

Norfolk Boreas Offshore Wind Farm Applicant's comments on Responses to the Request for further Information

Applicant: Norfolk Boreas Limited
Document Reference: ExA.PDR.D17.V1
Deadline 17

Date: October 2020
Revision: Version 1
Author: Royal HaskoningDHV
Photo: Ormonde Offshore Wind Farm

Date	Issue No.	Remarks / Reason for Issue	Author	Checked	Approved
05/10/2020	01D	First draft for internal review	BT/DT/MT	VR/EV	JT
07/10/2020	01F	Version for submission at Deadline 17	CD/DT/MT	VR/EV	JT



Table of Contents

	Applicant's Comments on Responses to the Rule 17 Request for Further Information.....	1
1	Compulsory Acquisition	2
2	Cable Protection Decommissioning after 30 years	2
3	Decommissioning Development Consent Order (DCO) requirement	3
4	Compensatory Packages: Alde-Ore Estuary Special Protection Area (SPA)	7
5	Compensatory Packages: Flamborough and Filey Coast SPA	7
6	Licence and property agreements	9
7	Cumulative effects at port(s)	9

Glossary of Acronyms

AEol	Adverse Effect on Integrity
AOE	Alde-Ore Estuary
DCO	Development Consent Order
dDCO	Draft Development Consent Order
DML	Deemed Marine Licence
ES	Environmental Statement
ExA	Examining Authority
HE	Highways England
HHW	Haisborough, Hammond and Winterton
MCAA	Marine and Coastal Access Act
MMO	Marine Management Organisation
NE	Natural England
RIS	Road Investment Strategy
RSPB	Royal Society for the Protection of Birds
SAC	Special Area of Conservation
SPA	Special Protection Area
SoCG	Statement of Common Ground
SoS	Secretary of State
TWT	The Wildlife Trusts

Applicant's Comments on Responses to the Rule 17 Request for Further Information

1. This document contains the Applicant's comments on the information provided by Interested Parties at Deadline 16 of the Norfolk Boreas Examination in response to the Rule 17 request.

1 Compulsory Acquisition

Reference	Respondent:	Question:	Summary of Interested Parties response at Deadline 16	Applicant's Comments
R17.1.2	Savills	<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. 3. If agreement has been reached, confirmation of this position. <p>The Applicant is requested to comment on these responses at Deadline 17, 7 October.</p>	<p>Negotiations are still ongoing with the Applicant and it is anticipated that agreement is likely to be reached between the parties before the end of the Examination.</p> <ul style="list-style-type: none"> • Objection 20 Savills on behalf of Church Farms • Objection 27 Savills on behalf of L Padulli • 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 62 Christian Henry Allhusen and Penelope Amanda Allhusen 	<p>The Applicant notes the response provided by Savills (REP16-030) in relation to the outstanding objections of their 6 named clients. The Applicant agrees with the position stated by Savills and is continuing to engage with the affected parties in the hope that a private agreement can be concluded by the close of examination.</p>
R17.1.2	Colin King	<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. 3. If agreement has been reached, confirmation of this position. <p>The Applicant is requested to comment on these responses at Deadline 17, 7 October.</p>	<p>1. There is continuing objection to the compulsory acquisition of the easement rights over plots; 40/13,40/14,40/15,40/17,40/18,40/19,40/20,40/21,40/22,40/23,40/24, 40/25,40/26,40/27,40/33a,40/01a,41/02,41/03,41/04,41/05,41/06,41/08,41/10,41/11,41/13,41/14,41/15,41/16,41/19,41/20,41/22,41/23,41/24,41/25,41/26,41/28,41/28a,41/29,41/30a,41/30b,41/30c,41/30d,41/30f,41/31,41/33,41/34,41/35,41/36,41/37,41/38,41/40. as no agreement, or terms of agreement have been offered.</p> <p>The applicant is undecided about these easements, as there is little detail with the land registry, and a paper copy can not be found. If they are to be ignored, I ask for clarity, or proof of their nonexistence.</p> <p>2.No it is not anticipated</p> <p>3. --</p>	<p>1. The Applicant has previously addressed the easement rights believed to be held by Mr Colin King across the DCO land in the Deadline 5 Submission - Applicant's Responses to the Examining Authority's Further Written Questions (REP5-045), in the response to question 2.3.0.26. The Applicant remains of the position that if Mr King is able to provide evidence of what type of rights exist over which areas of the DCO Order land, the Applicant will seek to acquire these rights by agreement. To date no further information has been forthcoming.</p> <p>2. The Applicant is continuing to engage with landowners in the hope that a private agreement can be concluded by the close of examination.</p> <p>3. n/a</p>

2 Cable Protection Decommissioning after 30 years

Reference	Respondent:	Question:	Summary of Interested Parties response at Deadline 16	Applicant's Comments
R17.1.3	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. 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>	<p>The Applicant understands Natural England is unlikely to change its position and therefore the final positions of the Applicant and Natural England are presented within the SoCG (REP16-010).</p>

Reference	Respondent:	Question:	Summary of Interested Parties response at Deadline 16	Applicant's Comments
R17.1.3	The Wildlife Trusts	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. 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	It is TWTs position that impacts on benthic habitats caused by cabling impacts is a permanent impact and there is uncertainty that Haisborough, Hammond and Winterton SAC would recover to a pre-impacted state. Please refer to the covering letter and appendix A as part of this document for further information.	The Applicant firmly disagrees with this position and has responded to TWT's detailed comments in Appendix A of the Applicant's Comments on Deadline 16 Submissions (document reference ExA.ASR.D17.V1). The Applicant has committed to numerous mitigation measures to promote recovery and with these secured Natural England has agreed that impacts would not be permanent. Natural England also acknowledge that the mobile nature of this particular sandbank system would make it more likely to recover from changes in structure than less mobile ones.

3 Decommissioning Development Consent Order (DCO) requirement

Reference	Respondent:	Question:	Summary of Interested Parties response at Deadline 16	Applicant's Comments
R17.1.4	Marine Management Organisation	<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. 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 [AS081] commented on and provided its version of an amended Condition 20. 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— (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; (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. (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: (a) A decommissioning feasibility study on the proposed protection. (b) A method statement for recovery of cable protection. (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. (d) A monitoring plan to include</i></p>	<p>The MMO is content with the inclusion of condition 3(1)(g) to secure decommissioning of cable protection within the HHW SAC.</p> <p>In the MMO's deadline 15 response (REP15-007) the MMO provided an amended version of condition 20 in the event the SoS was minded to include a condition. Since Deadline 15 the MMO, the Applicant and NE have continued discussions in relation to the requirement of condition 20 and the wording reviewing the condition set out in REP15-007. During these discussions NE's position has changed, NE now believes that both Condition 3(1)(g) and Condition 20 should be included in the DCO, however the MMO notes that NE has deferred to the MMO and the SoS to decide if it would be more appropriate to place Condition 20 in the main body of the DCO as a requirement or within the DMLs.</p> <p>The MMO still believes that Condition 3(1)(g) should be included in Schedule 11 and 12 and that it is up to the SoS to decide if Condition 20 should be secured but reiterates that this should be as a requirement not as a condition in the DMLs. The MMO notes the information requested as part of the condition is already included within the HHW control document, which will be required to be approved by the MMO in consultation with NE prior to construction commencing and is secured by Condition 9(1)(m) of Schedule 11 and 12.</p> <p>The addition of Condition 20 was included within Schedule 11 and 12 of the Norfolk Boreas Project as a result of the decision on the Norfolk Vanguard project, to allow the competent authority, in this case the SoS, to conclude no AEoI. The MMO believes it is for the competent authority to conclude no AEoI and it is for the SoS, having taken the advice of the SNCB, to reach a conclusion on this point. The MMO understands the SoS needs to consider the implications of the project as a whole in deciding if there is an AEoI and therefore the MMO considers that this condition should be in the requirements in the DCO as the DMLs do not take the whole project into account.</p> <p>The MMO believes that if the SoS is minded to include a mechanism to secure a concern in relation to AEoI it should sit within the main body of the DCO and the SoS should approve any documentation. The MMO believes if the SoS is minded to include such a mechanism the appropriate place is as a requirement under Requirement 14 to submit a Decommissioning Programme under the Energy Act 2004 (EA2004). The MMO also considers the wording of this requirement should be updated from the proposed Condition 20 in REP13-007 to include the</p>	The Applicant agrees with the MMO's summary of events and also notes that this has been recorded within the SoCG with the MMO which was submitted at Deadline 16 [REP16-009]. As stated in the SoCG and provided in the Applicant's response to this question in [REP16-004], the Applicant's position is that it is not necessary to include either Condition 20 or requirement 14 within the DCO for reasons stated in response to in point i) of the Applicant's response to R17.1.4 [REP16-004].

Reference	Respondent:	Question:	Summary of Interested Parties response at Deadline 16	Applicant's Comments
		<p><i>appropriate surveys following decommissioning to monitor the recovery of the area of the HHW SAC impacted by cable protection.</i></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. The Applicant, Natural England and the MMO are requested to: 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>opportunity for the MMO and NE to be consulted on the information provided and to clarify that decommissioning works are not consented. These concerns were raised in REP14-058. The MMO supports NE's request, as the Statutory Nature Conservation Body, for the addition of further information to the requirement that may not be covered within the EA 2004 but is required to rule out AEoI.</p> <p>The MMO would like to clarify that the MMO understands that decommissioning of the wind farm is subject to dual regulation through both the Energy Act 2004 and the Marine and Coastal Access Act 2009 (MCAA09). The EA 2004 enables the SoS to ensure decommissioning activities will be possible both financially and practically at the consenting stage through Requirement 14, whereas any decommissioning activities that may require consent under MCAA09 will need to be assessed and, if appropriate, consented at decommissioning stage. At this time no decommissioning activities are consented within the dDCO and the MMO has concerns the original Condition 20 (REP13-007) allowed for this.</p> <p>The MMO and the Applicant have agreed wording for a requirement should the SoS wish to include this within the main body of the DCO:</p> <p>Offshore decommissioning</p> <p><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 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</i></p>	

Reference	Respondent:	Question:	Summary of Interested Parties response at Deadline 16	Applicant's Comments
			<p><i>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>If the SoS decides a DML condition should be included in Schedule 11 and 12, Part 4, Condition 20 within the Norfolk Boreas Project then the MMO does not agree with the wording the Applicant included in the DCO submitted at deadline 13 (REP13-007). The MMO, the Applicant and NE have now agreed on the following wording:</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) A decommissioning feasibility study on the proposed protection to be updated at intervals of no more than every ten years throughout the operation 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 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 MMO believes this wording is in line with the rest of the DMLs and incorporates all NE's concerns. The MMO has made it clear within this</p>	

Reference	Respondent:	Question:	Summary of Interested Parties response at Deadline 16	Applicant's Comments
			draft condition that the decommissioning of cable protection within the HHW SAC is not consented at this stage.	
R17.1.4	Natural England	<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. 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 [AS081] commented on and provided its version of an amended Condition 20. 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— (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; (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. (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: (a) A decommissioning feasibility study on the proposed protection. (b) A method statement for recovery of cable protection. (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. (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>(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. The Applicant, Natural England and the MMO are requested to: i) state by Deadline 16 if it agrees that with the inclusion of Condition 3 (1) (g) Condition 20 is not required; ii) if Condition 20 is deemed to be required, confirm agreement with the Applicant's draft wording;</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 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>	<p>The Applicant confirms that the summary of events provided by Natural England is accurate. The Applicant and Natural England are in agreement on most of these points, except that the Applicant's position is that Condition 20 (or Requirement 14) does not need to be included within the DCO for the reasons provided in the Applicant's original response to R17.1.4 (see above).</p> <p>However, should the SoS be minded to include either Condition 20 or Requirement 14, the agreed wording for both is presented by the Applicant and the MMO in their responses to this question, and they are also both included in the final SoCG with the MMO submitted by the Applicant at Deadline 16 (REP16-009).</p>

Reference	Respondent:	Question:	Summary of Interested Parties response at Deadline 16	Applicant's Comments
		<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>		

4 Compensatory Packages: Alde-Ore Estuary Special Protection Area (SPA)

Reference	Respondent:	Question:	Summary of Interested Parties response at Deadline 16	Applicant's Comments
R17.1.5	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 the view of Natural England in relation to these measures. 	<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 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>	<p>The Applicant welcomes Natural England's agreement that the revised condition to secure compensation at the Alde Ore Estuary (AOE) SPA in the draft DCO (to be submitted at Deadline 18) is now appropriately secured, should this be required by the Secretary of State. The Applicant is grateful for the advice Natural England has provided with regard to landowners. However, as noted in REP16-004, the Applicant considers 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. Nonetheless, the Applicant will take steps to identify and make initial contact with relevant parties in order to explore options for predator management in order to minimise subsequent delays post consent should this compensation be required.</p> <p>The Applicant is aware that Hornsea Project Three has recently submitted (30th September 2020) revised proposals for kittiwake compensation which have identified provision of artificial nest sites as the most appropriate option. The Applicant notes that Natural England advised the Applicant (on the 22nd September):</p> <p><i>'Natural England encourages Vattenfall to include a commitment to working collaboratively and strategically in such circumstances.[that other parties may have an interest in erecting structures]'</i>.</p> <p>In response to this, the Applicant considers it relevant to highlight that REP16-003 (paragraph 20) stated:</p> <p><i>'It is clear there are a number of existing programmes for the creation of artificial nests and others may be proposed in the future. Therefore, where other parties have an interest in the creation of artificial nest structures for kittiwakes the Applicant will seek to engage with them to work collaboratively and strategically where appropriate.'</i></p>

5 Compensatory Packages: Flamborough and Filey Coast SPA

Reference	Respondent:	Question:	Summary of Interested Parties response at Deadline 16	Applicant's Comments
R17.1.6	Natural England	a) The Applicant to provide full details of the proposed offshore additional nesting sites, to include:	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	As noted in the Applicant's response to this question [REP16-004], the Applicant was informed by Natural England that it would not be possible to produce a joint statement in the time available. However, the

Reference	Respondent:	Question:	Summary of Interested Parties response at Deadline 16	Applicant's Comments
		<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>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>	<p>Applicant's submission at Deadline 16 [REP16-003] was produced in response to Natural England's request for additional information on the feasibility and probability of success of new nests sites for kittiwake, and Natural England provided constructive comments on the first draft of this document. Therefore, the Applicant has sought to address Natural England's comments on the draft addendum, as communicated to the Applicant through Natural England's Draft Advisory Service, , in the final version of the Addendum submitted at Deadline 16 [REP16-003].</p>
R17.1.6	RSPB	<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>In the September Rule 17 letter (request for further information), the RSPB was asked to provide its position, ideally in a joint statement with the Applicant, Natural England and Marine Management Organisation, on the proposed compensation measures for kittiwake from the Flamborough and Filey Coast Special Protection Area (SPA). The RSPB made enquiries to the Applicant on the matter of a joint statement with the different organisations, but the Applicant did not enter into discussions with us on this issue. On the 23rd September 2020, the Applicant confirmed via email to the RSPB that Natural England would not be able to agree a joint statement within the timeframe and that individual statements would therefore be submitted. The RSPB is therefore providing an individual response below, concentrating on matters raised at Deadline 15.</p>	<p>As stated in the Applicant's Deadline 16 submission [REP16-004], the Applicant intended to initially agree a joint position with Natural England and the MMO, and then with the RSPB.</p> <p>This proposed approach was communicated (via email) to the RSPB on the 18th September.</p> <p>However, following this Natural England informed the Applicant that they would not be able to agree to a joint statement and the Applicant subsequently advised the RSPB of this (as noted by the RSPB), and that as a consequence individual statements would be appropriate.</p> <p>The RSPB has provided additional responses in REP16-029 and the Applicant has provided a response to this submission in ExA.ASR.D17.V1.</p>
R17.1.6	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 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>The MMO defers to NE in relation to all Habitat Regulations matters including feasibility of the nesting sites and probability of success. Therefore, the MMO has no further comments at this time. The MMO will review Deadline 16 documents and provide comments where required.</p>	<p>The Applicant notes this position. As described above there was insufficient time to progress a joint statement with the MMO, Natural England and the RSPB, but the Applicant will continue to engage with all parties and comment on their responses to Deadline 16 and Deadline 17 submissions as appropriate.</p>

6 Licence and property agreements

Reference	Respondent:	Question:	Summary of Interested Parties response at Deadline 16	Applicant's Comments
R17.1.7	Highways England	<p>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 would be 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 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.</p>	<p>The appropriate license 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 they are available. Highways England have agreed the approach to obtaining licence and property agreements with the Applicant and this is now detailed in the Statement of Common Ground version 3 (submitted separately by the applicant).</p>	<p>The Applicant welcomes the response from Highways England and confirms the updated SoCG submitted at Deadline 16 [REP16-008] captures the agreed approach to obtaining licence and property agreements.</p>

7 Cumulative effects at port(s)

Reference	Respondent:	Question:	Summary of Interested Parties response at Deadline 16	Applicant's Comments
R17.1.8	Highways England	<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.</p>	<p>An approach to considering any potential cumulative impacts with the proposed road improvement schemes for the A47 as set out in the Road Investment Strategy 2020- 2025 (RIS), and including the impact of Norfolk County Council's Great Yarmouth Third River Crossing, has been agreed with the Applicant and is secured through the Outline Traffic Management Plan, Section 1.6.2. Any potential cumulative impacts associated with the offshore base port will be determined and considered through the ongoing engagement with the Applicant.</p>	<p>The Applicant welcomes the response from Highways England and will continue to engage with Highways England regarding any potential cumulative impacts.</p>