



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

NORFOLK BOREAS OFFSHORE WIND FARM

Planning Inspectorate Reference: EN010087

Secretary of State Additional Information Request

**Natural England's advice on the Proposed DCO Conditions  
regarding Compensatory Measures**

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20th August 2021

## Annex 4 - Natural England Advice on Norfolk Boreas Proposed DCO Conditions Regarding Compensatory Measures

	Page	Para	Comment	RAG
Alde-Ore Estuary SPA In-Principle Compensation				
1.	28	2	<p>Natural England note from condition 2 that the timing of submission of the plan is now limited to before operation of any wind turbine. We do not consider this an appropriate condition as it provides no certainty that the plan will be provided within sufficient time for it to be approved and for the compensatory measures to be deployed and take effect prior to the impact occurring.</p> <p>Additionally, we note that there is no requirement for compensation to be in place or functional prior to impact, just for the plan to be approved prior to generation. In our view this significantly reduces the confidence that the measures will be implemented in a timely fashion. Please note the Hornsea Project 3 compensation schedule for kittiwake had a requirement for the compensation to be in place four full breeding seasons prior to operation, providing the required certainty that the measures would be in place at an appropriate point in time. In contrast, the conditions as phrased for Norfolk Boreas do not provide any certainty at all regarding when the compensatory measures would be in place, and therefore at what point the counteracting benefits of the measure would arise. Natural England would support the inclusion of a condition similar to Hornsea Project 3 which secured an appropriate timeframe.</p> <p>We have engaged with the Applicant through our Discretionary Advice Service (DAS) and expect some of the wording may be updated, however, our concerns on the timing and lack of security for compensation prior to impact remain.</p> <p>Natural England would also request that this condition secure an appropriate consultation period on the compensation plan. These plans are likely to be highly technical and to required detailed review and expert feedback to support our response. A period of 6 weeks for Natural England and the MMO to respond would give all parties more certainty on the timeframes.</p>	
2.	28	3	This Condition states that the strategy must adhere to the principles of the In-Principle Compensation plan.	

			<p>However, there is no definitive list of principles within the compensation plan. The applicant has included a list of compensation requirements, provided by Natural England, in the plan. We are pleased that the Applicant will use the list of key compensatory as developed by Natural England. However, Natural England notes that this list was compiled with a view to informing submission of appropriately well-developed compensatory measures into the Examination (or as is the case with current projects, prior to determination), rather than to inform the development of compensatory measures in the post-consent period. It is Natural England's view that sufficient clarify on all these matters is needed prior to determination.</p> <p>We advise that if this list of compensation requirements is being proposed as the Plan's principles, and was re-labelled as such, this would be satisfactory from a drafting perspective and without prejudice to our concerns regarding the sufficiency of the compensation plans. However, they are currently described as the proposed content of the Plan.</p> <p>Natural England has engaged with the applicant on this point and consider that agreement may be reached on amended wording for this condition and for amendments within the plan. We understand that the applicant will be submitted some updated wording for this condition.</p>	
3.	28	5	<p>No timing requirement on how long Natural England will be given for consultation on the monitoring reports has been included. As with the final comment on condition 2 above, Natural England considers that a consultation period of not less than 6 weeks should be stated within the condition.</p>	
4.	NA		<p>Natural England considers an additional condition is needed to ensure that the onshore site/s chosen for compensation are fit for purpose i.e. for locations with designated sites, that the location is already receiving the appropriate level of site management (the landowner is meeting their SSSI requirements which underpin the N2K sites); and that for other locations the site is not going to be subject to modifications which may affect the effectiveness of compensation both initially and over the life time of the project.</p> <p>Natural England is continuing to engage with the</p>	

			applicant through DAS and considers that changes may be made to future versions of this schedule which may address this issue.	
Flamborough & Filey Coast SPA In-Principle Compensation				
5.	49	2	Our comments regarding paragraph 2 in the Ade-Ore Estuary SPA In-Principle Compensation Plan also apply here.	
6.	49	3	Our comments regarding paragraph 3 in the Ade-Ore Estuary SPA In-Principle Compensation Plan also apply here.	
7.	49	5	Our comments regarding paragraph 5 in the Ade-Ore Estuary SPA In-Principle Compensation Plan also apply here.	
8.	NA		Natural England considers an additional condition is needed to ensure that the onshore site/s chosen for compensation are fit for purpose i.e. for locations with designated sites, that the location is already receiving the appropriate level of site management (the landowner is meeting their SSSI requirements which underpin the N2K sites); and that for other locations the site is not going to be subject to modifications which may affect the effectiveness of compensation both initially and over the life time of the project.	
Guillemot Compensation				
9.	4	2	Our comments regarding paragraph 2 in the Ade-Ore Estuary SPA In-Principle Compensation Plan also apply here.	
10.	4	3	Our comments regarding paragraph 3 in the Ade-Ore Estuary SPA In-Principle Compensation Plan also apply here.	
11.	4	5	Our comments regarding paragraph 5 in the Ade-Ore Estuary SPA In-Principle Compensation Plan also apply here.	
12.	NA	NA	There is no requirement for decommissioning, which seems appropriate as there is no structure to decommission. However, there is no requirement to consider and seek approval for the end of the programme of compensatory measures. Given that the compensation plan might need to run longer than the works, we recommend that a condition requiring approval for the	

			<p>end of the programme should be included.</p> <p>Natural England have engaged with the applicant and discussed this issue and have agreed wording on a condition securing appropriate end of compensation sign off and expect this condition to be submitted to the SoS.</p>	
Razorbill Compensation				
13.	4	2	Our comments regarding paragraph 2 in the Ade-Ore Estuary SPA In-Principle Compensation Plan also apply here.	
14.	4	3	Our comments regarding paragraph 3 in the Ade-Ore Estuary SPA In-Principle Compensation Plan also apply here.	
15.	4	5	Our comments regarding paragraph 3 in the Ade-Ore Estuary SPA In-Principle Compensation Plan also apply here.	
16.	NA	NA	Our comments in the Guillemot compensation section regarding the need for a condition approving the end of the programme also apply here.	
Haisborough, Hammond and Winterton SAC In-principle Compensation Plan				
17.	23	47	<p>Natural England notes the agreement made in the Statement of Common Ground (SoCG) of August 2020 [REP16-010]. However, considering the ongoing uncertainty regarding the effectiveness and deliverability of any of the compensation measures, Natural England now questions if the mitigation of decommissioning the rock protection within the HHW SAC should be removed in the event of a determination of Adverse Effect on Integrity (AEoI). As advised on Norfolk Boreas' sister project Norfolk Vanguard on 27 April 2020, the mitigation hierarchy should be adopted. This would indicate that condition 3 (1) (g) and the then condition 20 in the transmission DMLs should be retained in the DML under either determination.</p> <p>However, as per the agreement of the SoCG we defer to the SoS to make the final decision regarding if the mitigation should be included in either instance. Please see Annex 1 and 5 for further comments on this matter.</p>	
18.	77	2	The wording here and in paragraph 3 confirms that	

			<p>compensation will be provided only after the impact occurs. As per our comments on the Flamborough &amp; Filey Coast SPA and Alde-Ore Estuary SPA In Principle Compensation plans, Natural England does not support this approach. However, it is noted that the wording here implicitly states the compensation plan will be produced an undefined period of time after the impact. Natural England considers that the plan should be provided, agreed and the compensation functioning prior to, or as soon as possible after, any impact. The conditions should be written to ensure this.</p> <p>We also note the three-months timing previously included has been replaced with '<i>as soon as is reasonably practicable</i>'. This is an ambiguous statement, though we recognise that this is only for notifying that an impact has occurred, not for the delivery of the compensation plan. Nevertheless, a specified timeframe would be preferable. For example; "<i>as soon as reasonably practicable, however within a period of not greater than...</i>" would provide more certainty. Natural England has engaged with the applicant and expects an updated condition to be submitted. However, note that we have not yet reached an agreement on a condition which fully addresses these issues.</p> <p>Furthermore, the approach taken raises several practical issues regarding which we consider require clarification:</p> <ul style="list-style-type: none"> <li>• What happens if further cable protection is determined to be required after the first notification?</li> <li>• Is the notification to be given once all cable protection has been deployed or just the first instance? Noting this could mean that some impact occurs a significant period before triggering any need for notification. However, the alternative could mean multiple compensation plans need to be produced and agreed.</li> <li>• Does this notification serve as a notice that no further cable protection can be deployed in the SAC under this consent?</li> <li>• If so where is this secured? If not how does this condition deal with the potential for multiple compensation plans/updates to the plan? Is this only through condition 7?</li> </ul>	
19.	77	3	As noted above, Natural England does not support the	

			<p>delivery of compensatory measures after the impacts have occurred.</p> <p>We also note that the timing requirement in previous versions has been removed. The condition simply requires that a plan must be submitted. Although it is noted that the condition does prevent operation of any wind turbine prior to the submission of a plan, as cables are often installed first there could still be a period of over a year or more before there is a turbine fully installed and ready to generate. Thus, this does not in our view act to sufficiently secure the plans are submitted as soon as possible following the notification.</p> <p>We also note that within the condition the SoS has the ability to waive the requirement for the plan to be submitted prior to generation. It is not clear why this condition is considered necessary and we would again note our opinion that the compensation plans need to be submitted, approved and the compensatory measures functioning prior to impact. Furthermore, should this requirement be waived, this could further reduce the extent to which prompt submission of the Plan is secured and the extent to which the compensation measures within the plan are delivered.</p> <p>Again, no timing requirement has been included for how long Natural England will be given for consultation on these plans.</p>	
20.	77-78	4	<p>Condition 4 is split into 2 parts covering two potential compensation options. Condition 4 (a) covers removal of anthropogenic material, condition (b) covers extension of the SAC.</p> <p>We assume that 'anthropogenic material' is being used as a 'catch all' for the different strands of this element of the compensation here, rather than circumscribing the scope of compensatory measure, but consider that this wording could be subject to misinterpretation. Specifically, we are concerned that could be interpreted as only referring to marine litter/debris and not to e.g. removal of redundant 3<sup>rd</sup> party infrastructure. We recommend alternative wording is used, or a short description of each of the compensation strands could be added.</p>	

			<p>Regarding 4 (a) and for the avoidance of doubt, Natural England does not support (a) as a compensatory measure should it <u>only</u> be referring to the removal of marine debris/litter. We also offer the following comments:</p> <ul style="list-style-type: none"><li>• The condition provides for no monitoring of the success of these measures;</li><li>• The condition provides for no adaptation subject to the results of monitoring. I.e. if the measures are not compensating there is no requirement to address their failure.</li><li>• There is no provision within the schedule for the 'end of life' for these measures. While there will be no structures to decommission, the ending of the proposed measures should be subject to the approval of the SoS in consultation with Natural England. This may be especially important for these measures if compensation is delivered after impact as there may be a need for compensation to run longer than the project life.</li></ul>	
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