



# Hornsea Project Four: Derogation Information

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## Volume B2, Chapter 4: Summary Statement

**Prepared** GoBe Consultants Limited, September 2021  
**Checked** Sarah Randall Orsted, September 2021  
**Accepted** Francesca De Vita Orsted, September 2021  
**Approved** Julian Carolan, Orsted September 2021

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## Glossary

Term	Definition
Compensation / Compensatory Measures	If an Adverse Effect on the Integrity on a designated site is determined during the Secretary of State's Appropriate Assessment, compensatory measures for the impacted site (and relevant features) will be required. The term compensatory measures is not defined in the Habitats Regulations. Compensatory measures are however, considered to comprise those measures which are independent of the project, including any associated mitigation measures, and are intended to offset the negative effects of the plan or project so that the overall ecological coherence of the national site network is maintained.
Commitment	A term used interchangeably with mitigation and enhancement measures. The purpose of Commitments is to reduce and/or eliminate Likely Significant Effects (LSEs), in EIA terms. Primary (Design) or Tertiary (Inherent) are both embedded within the assessment at the relevant point in the EIA (e.g. at Scoping, Preliminary Environmental Information Report (PEIR) or ES). Secondary commitments are incorporated to reduce LSE to environmentally acceptable levels following initial assessment i.e. so that residual effects are acceptable.
Cumulative effects	The combined effect of Hornsea Four in combination with the effects from a number of different projects, on the same single receptor/resource. Cumulative impacts are those that result from changes caused by other past, present or reasonably foreseeable actions together with Hornsea Project Four.
Design Envelope	A description of the range of possible elements that make up the Hornsea Project Four design options under consideration, as set out in detail in the project description. This envelope is used to define Hornsea Project Four for Environmental Impact Assessment (EIA) purposes when the exact engineering parameters are not yet known. This is also often referred to as the "Rochdale Envelope" approach.
Development Consent Order (DCO)	An order made under the Planning Act 2008 granting development consent for one or more Nationally Significant Infrastructure Projects (NSIP).
Environmental Impact Assessment (EIA)	A statutory process by which certain planned projects must be assessed before a formal decision to proceed can be made. It involves the collection and consideration of environmental information, which fulfils the assessment requirements of the EIA Directive and EIA Regulations, including the publication of an Environmental Impact Assessment (EIA) Report.
Habitats Regulations	The Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017
Hornsea Project Four Offshore Wind Farm	The term covers all elements of the project (i.e. both the offshore and onshore). Hornsea Four infrastructure will include offshore generating stations (wind turbines), electrical export cables to landfall, and connection to the electricity transmission network. Hereafter referred to as Hornsea Four.
Landfall	The generic term applied to the entire landfall area between Mean Low Water Spring (MLWS) tide and the Transition Joint Bay (TJB) inclusive of all construction works, including the offshore and onshore ECC, intertidal working area and landfall compound. Where the offshore cables come ashore east of Fraisthorpe.
Maximum Design Scenario (MDS)	The maximum design parameters of each Hornsea Four asset (both on and offshore) considered to be a worst case for any given assessment.

Mitigation	A term used interchangeably with Commitment(s) by Hornsea Four. Mitigation measures (Commitments) are embedded within the assessment at the relevant point in the EIA (e.g. at Scoping, or PEIR or ES).
Onshore export cables	Cables connecting the landfall first to the onshore substation and then on to the NGET substation at Creyke Beck.
Onshore substation (OnSS)	Comprises a compound containing the electrical components for transforming the power supplied from Hornsea Project Four to 400 kV and to adjust the power quality and power factor, as required to meet the UK Grid Code for supply to the National Grid. If a HVDC system is used the OnSS will also house equipment to convert the power from HVDC to HVAC.
Order Limits	The limits within which Hornsea Project Four (the 'authorised project') may be carried out.
Orsted Hornsea Project Four Ltd.	The Applicant for the proposed Hornsea Project Four Offshore Wind Farm Development Consent Order (DCO).
Planning Inspectorate (PINS)	The agency responsible for operating the planning process for Nationally Significant Infrastructure Projects (NSIPs).

## Acronyms

Term	Definition
AfL	Agreement for Lease
CBRA	Cable Burial Risk Assessment
DCO	Development Consent Order
DBCBC	Dogger Bank Creyke Beck
ECC	Export Cable Corridor
EIA	Environmental Impact Assessment
ES	Environmental Statement
HRA	Habitats Regulations Assessment
HVAC	High Voltage Alternating Current
HVDC	High Voltage Direct Current
MBES	Multi-Beam Echo Sounder
MCZ	Marine Conservation Zone
MDS	Maximum Design Scenario
MLWS	Mean Low Water Springs
MMO	Marine Management Organisation
MPA	Marine Protected Area
PEIR	Preliminary Environmental Information Report
PINS	The Planning Inspectorate
PSA	Particle Size Analysis
SAC	Special Area of Conservation
SPA	Special Protection Area
SSS	Side-Scan Sonar
TCE	The Crown Estate
UKHO	UK Hydrographic Office

## 1 UK declare climate emergency

- 1.1.1.1 The UK government has declared a climate emergency and, in 2019, became the first major economy to legally commit to reducing its greenhouse gas emissions to net zero by 2050<sup>1</sup>. According to the Intergovernmental Panel on Climate Change (“IPCC”), global warming of 1.5°C and 2°C will be exceeded during the 21st century unless deep reductions in CO<sub>2</sub> and other greenhouse gas emissions occur in the coming decades<sup>2</sup>.
- 1.1.1.2 Significant progress has been made to date in decarbonising the UK’s power sector, largely due to a substantial reduction in coal-fired generation and a corresponding increase in the share of renewables. However, progress in other sectors has been slower, with the Committee on Climate Change (“CCC”) calling for a “rapid scale up in low carbon investment”<sup>3</sup>. Electricity demand is expected to increase significantly to support this transition, as the UK’s heat and transport sectors become electrified.
- 1.1.1.3 The UK therefore urgently needs to deploy significant volumes of low-carbon generation to meet its legally binding net zero target. In November 2020, the UK government launched its “Ten Point Plan for a Green Industrial Revolution”. In this plan the UK government stated its ambition to quadruple the UK’s installed offshore wind capacity over the next decade to 40GW by 2030, up from the 30GW target in the Offshore Wind Sector Deal, launched in March 2019. This pledge reflects the UK government’s aim to accelerate its journey in order to deliver net zero greenhouse gas emissions.

## 2 Relevance for Hornsea Four

- 2.1.1.1 This is important in the context of the Secretary of State’s decision on the Hornsea Project Four Offshore Wind Farm (“Hornsea Four”) Development Consent Order (“DCO”) Application (the “Application”), as Hornsea Four will deliver a substantial volume of low carbon generation in the 2020s. Offshore wind is now one of the lowest cost forms of energy and one that can be deployed at scale within relatively short timeframes. With the potential to generate an estimated 2.6GW, Hornsea Four will deliver a substantial, near-term contribution to Great Britain’s decarbonisation objectives and security of supply and will significantly help to reduce the UK’s greenhouse gas emissions.
- 2.1.1.2 Hornsea Four is being developed by Orsted Hornsea Project Four Limited (the “Applicant”), whose parent company is Orsted A/S. Orsted A/S has around 30 years’ experience and a strong track record developing, building and operating offshore wind farms; globally, Orsted has installed 7.6 GW of offshore wind capacity, with a further 2.3 GW under construction and a pipeline of projects in development.

## 3 HRA Derogation Provisions

- 3.1.1.1 Hornsea Four has an expected capacity of greater than 100 megawatts (MW) and is therefore defined as a Nationally Significant Infrastructure Project (NSIP) under Section 15(3) of the Planning Act 2008 (the ‘2008 Act’). As such there is a requirement to apply for

<sup>1</sup> The Climate Change Act 2008 (2050 Target Amendment) Order 2019.

<sup>2</sup> Climate Change 2021. The Physical Science Basis. Summary for Policymakers. Sixth Annual Report of the IPCC 9th August 2021. [https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC\\_AR6\\_WGI\\_SPM.pdf](https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf)

<sup>3</sup> CCC Progress in Reducing Emissions. 2021 Report to Parliament. June 2021. <https://www.theccc.org.uk/publication/2021-progress-report-to-parliament/>

a Development Consent Order (DCO) to the Planning Inspectorate (PINS), who administer the examination of applications on behalf of the relevant Secretary of State (SoS).

- 3.1.1.2 Following an extensive program of pre-application consultation, the Application is being submitted to PINS in September 2021. If accepted, the Application will be examined by the Examining Authority (ExA), that will make a recommendation to the SoS for Business Energy and Industrial Strategy (BEIS). The SoS will review and comment on this recommendation before determining whether to grant a DCO for Hornsea Four.
- 3.1.1.3 The Applicant is required to present such information as the Competent Authority (in this case, the SoS for BEIS), may reasonably require to enable it to undertake a Habitats Regulations Assessment (HRA). This is to determine if Hornsea Four may affect a European designated site (part of the National Site Network) in accordance with the provisions of the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (the "Habitats Regulations").
- 3.1.1.4 The Applicant has therefore provided information to support a HRA of Hornsea Four, specifically, an Appropriate Assessment (AA) documented in the Report to Inform an Appropriate Assessment ("the RIAA") (**Volume 2, Annex 2: Report to Inform Appropriate Assessment**). In accordance with the Habitats Regulations, the RIAA considers whether Hornsea Four could result in an Adverse Effect on Integrity ("AEol") on a conservation site of European importance (European site), either alone or in-combination with other plans and projects. The Applicant's evidence presented within the RIAA (summarised in **Section 5** below) concluded that Hornsea Four will not have an AEol on any European site, either alone or in combination.
- 3.1.1.5 The Habitats Directive<sup>4</sup> acknowledges that there may be imperative reasons of overriding public interest for some plans and projects to proceed i.e. the public interest in the plan or project can outweigh the possible harm to a European site, provided that harm is adequately compensated. The Directive provides a derogation under Article 6(4) that allows projects that may have an AEol to be consented ("the HRA Derogation Provisions").
- 3.1.1.6 During the consideration of the Application for Hornsea Three Offshore Wind Farm (Hornsea Three)<sup>5</sup>, the SoS clarified the importance of i) identifying the potential for adverse impacts on the integrity of designated sites during the pre-application period and ii) considering the need for derogation of the Habitats Regulations during the examination, where there is potential for AEol. The SoS further expected Applicants and statutory nature conservation bodies ("SNCBs") to engage constructively during the pre-application period and on these matters, including possible compensatory measures, for consideration during the examination. The SoS was clear that this does not necessarily require that agreement is reached between the Applicant and the SNCBs on the potential for significant adverse impacts on designated sites and evidence relating to derogation can be provided on a "without prejudice" basis, as the final decision on such matters remains for the SoS.<sup>6</sup>

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<sup>4</sup> EC Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

<sup>5</sup> See para 6.3 of the letter of the Department for Business, Energy & Industrial Strategy Decision Letter for Hornsea dated 31 December 2020. Available [here](#)

<sup>6</sup> See para 6.4 of the letter of the Department for Business, Energy & Industrial Strategy Decision Letter for Hornsea dated 31 December 2020. Available [here](#)

- 3.1.1.7 Hornsea Four are submitting a “without prejudice derogation case” which forms part of the Application. Its purpose is to provide, without prejudice, information to demonstrate that the Article 6 (4) derogation tests could be met for Hornsea Four if it is necessary to resort to them to authorise the project.
- 3.1.1.8 Within the RIAA, Likely Significant Effects (LSE) were identified for a number of European sites and as stated above, it is the Applicant’s position that Hornsea Four will not have an AEol on any European site, either alone or in-combination. However, there is one site Flamborough and Filey Coast Special Protection Area (FFC SPA) which as a result of consultation with SNCBs (and other stakeholders), the Applicant considers that there is a risk of the SoS concluding AEol in-combination with other plans or projects. The scope of the submission has therefore been limited to that site - the FFC SPA. The scope of the without prejudice derogation case is focused on the features and impact pathways set out in [Table 3-1](#).

**Table 3-1: Relevant European Site Features and Impact Pathways covered within the without prejudice derogation case**

European site	Qualifying Feature	Relevant impact pathway from Hornsea Four
Flamborough and Filey Coast Special Protection Area (FFC SPA)	Kittiwake (Breeding)	Collision risk mortality
	Gannet (Breeding)	Collision risk mortality Displacement and disturbance mortality Combined impact of collision & displacement
	Guillemot (Breeding)	Displacement and disturbance mortality Barrier effects
	Razorbill (Breeding)	Displacement and displacement mortality Barrier effects

## 4 Consultation on the HRA Derogation Provisions

- 4.1.1.1 The Applicant has sought to engage openly and transparently with the key stakeholders during the development of the potential compensation measures. Consultation on the HRA Derogation Provisions has been ongoing in the latter stages of the pre-application stage through a series of online workshops (see [Volume B2, Chapter 9: Record of Consultation](#)). Eight workshops were held which were attended by key stakeholders including Natural England, the Marine Management Organisation (MMO), PINS, the Department for Environment, Food and Rural Affairs (Defra), the Joint Nature Conservation Committee (JNCC), the Crown Estate (TCE), the Royal Society for the Protection of Birds (RSPB), The Wildlife Trusts, East Riding of Yorkshire Council and the National Federation of Fisherman’s Organisations (NFFO). Through these workshops, the Applicant has sought the advice of key stakeholders and kept them updated on project developments.

## 5 Conclusions of the RIAA and AEol for the Flamborough and Filey Coast SPA

- 5.1.1.1 The Applicant’s position, based on its ecological assessments, is that there will be no adverse effects on the integrity of the FFC SPA (or any other protected site) from Hornsea



Four. Natural England has advised it is unable to conclude no Adverse Effect on Integrity (AEol) for Hornsea Four in-combination during operation as a result of collision risk to kittiwake, gannet (which is also sensitive to displacement impacts), and displacement of guillemot and razorbill.

- 5.1.1.2 The Applicant’s predicted impacts on these seabird species and relevant features of the FFC SPA from Hornsea Four are set out in [Table 5-1](#). Further detail on the assessments used to derive these predicted impacts are presented in the RIAA ([Volume 2, Annex 2: Report to Inform Appropriate Assessment](#)).

**Table 5-1: Summary of Hornsea Four predicted impacts on the relevant features of the FFC SPA**

Impact	Quantification of Effect
Project Collision Risk on kittiwake (B2.2 Report to Inform Appropriate Assessment)	Project alone: 21.22 individuals
Project Collision Risk and Displacement Effect on gannet (B2.2 Report to Inform Appropriate Assessment)	Project alone: 11.77 - 12.85 individuals
Project Displacement Effect on guillemot (B2.2 Report to Inform Appropriate Assessment)	Project alone: 35.05 individuals (based on 50% displacement and 1% mortality)
Project Displacement Effect on razorbill (B2.2 Report to Inform Appropriate Assessment)	Project alone: 1.5 individuals (based on 50% displacement and 1% mortality)

## 6 Hornsea Four Derogation Case

### 6.1 Consideration of Alternatives

- 6.1.1.1 The Applicant has adopted a structured approach to the consideration of alternatives which is justified by guidance and case law. When tested against the core project objectives, the Hornsea Four without prejudice derogation case demonstrates that there are no feasible alternatives to Hornsea Four based on the refined envelope.
- 6.1.1.2 Consideration of alternative solutions to Hornsea Four should not be speculative but must be approached reasonably, with reference to the project objectives and grounded in a real-world consideration of feasibility (legally, technically and commercially). As noted previously, the Applicant’s parent company, Orsted A/S, has a strong track record and thus informed judgement in terms of the design and feasibility of any alternatives.
- 6.1.1.3 One of the key project objectives for Hornsea Four, which responds directly to the

fundamental and urgent need for the UK to decarbonise its power sector<sup>7</sup>, is to deliver a significant volume of low carbon generation in the 2020s. Offshore wind is already highly competitive against other forms of conventional and low-carbon generation, both in the UK and more widely, and has demonstrated that it can be delivered on time and at scale. Hornsea Four could generate in the order of 2.6GW of offshore wind power from 2028 / 2029.

- 6.1.1.4 If the UK is to meet its aim to reach 40GW of offshore wind by 2030 and 2050 net-zero commitment, then it is not a case of choosing between Hornsea Four and one or more alternative offshore wind farms (any of which would be subject to an HRA), but rather Hornsea Four and other wind farms.
- 6.1.1.5 During development of Hornsea Four, the Applicant has reduced the boundaries of the proposed Agreement for Lease (AfL) on three occasions in order to minimise impacts on ornithology and other environmental features (the “Developable Area Approach”). For example, an area to the north of the final AfL has been excluded in an effort to reduce/eliminate the potential for AEol upon the guillemot and razorbill features of the FFC SPA by removing areas of high auk (guillemots and razorbills) density to the northwest of the AfL and thereby significantly reducing bird numbers within the final development footprint. It is not feasible to further reduce the site developable area without jeopardising the commercial/economic viability of the project and ability to fulfil the project need and objectives. The Applicant has also already engineered a significantly reduced risk from collision to kittiwake and gannet by incorporating a revised project design for the DCO application with a raised minimum tip height commitment (the distance between sea level and the lower turbine tip or air gap).
- 6.1.1.6 In addition, the Applicant has also examined the possibility of reducing the number of turbines. This would materially reduce the ability of Hornsea Four to fulfil its secured grid connection capacity and thus the positive impact Hornsea Four could otherwise have in terms of responding to the need for low carbon energy (as established in the NPSs), helping the UK meet its legally binding net zero by 2050 commitment, helping realise the UK government’s ambition of 40GW of offshore wind capacity by 2030 and deliver a cost-effective solution, while maximising the benefits to the UK.

## 6.2 Imperative Reasons of Overriding Public Interest (IROPI)

- 6.2.1.1 The HRA Derogation Provisions provide that a plan or project having an AEol on a designated site may proceed, subject to a positive conclusion on the absence of alternatives and provision of any necessary compensation, if the plan or project in question must be carried out for reasons of IROPI. When balancing the IROPI against the risk of harm for Hornsea Four, the without prejudice derogation case demonstrates that there is an urgent need for Hornsea Four which outweighs the risk of harm to the protected site.
- 6.2.1.2 Hornsea Four could be instrumental in limiting the negative consequences of climate change and the threats it poses to the environment. For example, research has directly linked the effects of climate change to declining populations of seabirds, in particular

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<sup>7</sup> This is aligned with national objectives articulated at the highest level in legislation and policy documents including but not limited to The Climate Change Act 2008, The Overarching National Policy Statement (NPS) for Energy (EN-1) and the NPS for Renewable Energy Infrastructure (EN-3) amongst others.

kittiwake, due to the impact of increases in sea surface temperature on prey availability<sup>8</sup>.

- 6.2.1.3 The urgent need for Hornsea Four is aligned with the objectives of the National Policy Statements (NPSs), the UK's legally binding net zero commitment and the government's Ten Point Plan to deliver 40GW of offshore wind by 2030. Hornsea Four is well placed to deliver significant volumes of low carbon generation in the 2020s, whilst also contributing to the essential tasks of ensuring security of supply and providing low-cost energy for consumers in line with the UK government's national policies.
- 6.2.1.4 Hornsea Four will also bring wider benefits to the public, through helping to combat climate change and the risks that it presents to human health, public safety and the environment. These are all aspects which are defined as IROPI in the relevant legislation and through wider socio-economic benefits.
- 6.2.1.5 The UK government has been clear that it wants to deliver on its net zero commitment in a way that maximises the opportunities for UK industry of both the UK's transition and the global shift to clean growth<sup>9</sup>. Hornsea Four is a significant infrastructure project which has the potential to substantially contribute to the UK economy, creating highly skilled jobs and supporting the continued development of the UK's offshore wind supply chain and skills base.

## 7 Proposed Compensation Measures

- 7.1.1.1 If the Secretary of State does conclude AEoI, the Applicant has, through extensive consultation with the relevant stakeholders and experts, developed a suite of compensation measures, which are considered by the Applicant, with a high degree of confidence, to be sufficient to ensure the coherence of the National Site Network is maintained. The Applicant has undertaken considerable work on the development of these compensation measures already and has included a series of roadmaps in this application which set out the next steps for each measure. The Applicant is confident that these measures, are effective, flexible, scalable and deliverable. The roadmaps set out the means by which they can be securely delivered.

### 7.2 Kittiwake compensation proposals

- 7.2.1.1 The Applicant has developed a suite of measures in relation to kittiwake compensation. These comprise:
  - Offshore artificial nesting structures; or
  - Onshore artificial nesting structures; and
  - Fish habitat enhancement which is a compensation resilience measure that seeks to provide additional resilience to seabirds, including kittiwake.
- 7.2.1.2 The measures for kittiwake compensation have been developed following on from experience gained on Hornsea Three, which was consented on the basis of delivering sufficient onshore artificial nesting structures to support the production of a specific number

<sup>8</sup> RSPB, 2017: Kittiwake joins the red list of birds facing risk of global extinction. Accessed at: <https://www.rspb.org.uk/about-the-rspb/about-us/media-centre/press-releases/kittiwake-joins-the-red-list-of-birds-facing-risk-of-global-extinction/>

<sup>9</sup> This is reflected in the UK's Industrial Strategy, Clean Growth Strategy (BEIS, 2017), UK Offshore Wind Sector Deal (BEIS, 2019) and the UK governments Ten Point Plan for a Green Industrial Revolution (BEIS, 2020).

of breeding kittiwake. Hornsea Three undertook extensive evaluation of potential kittiwake compensation options, and through that process and subsequent determination from the Secretary of State, it has been firmly established that the provision of artificial nesting structures forms a viable and deliverable mechanism for compensating potential impacts on the species.

## 7.3 Gannet compensation proposals

7.3.1.1 The Applicant has developed a suite of measures in relation to gannet compensation. These comprise:

- Offshore artificial nesting structures; or
- Onshore artificial nesting structures; and
- Bycatch reduction measures; and
- Fish habitat enhancement which is a supporting measure that seeks to provide additional resilience to seabirds, including gannet.

## 7.4 Guillemot and razorbill compensation proposals

7.4.1.1 The Applicant has developed a suite of measures in relation to guillemot and razorbill compensation. These comprise:

- Bycatch reduction measures; and/or
- Predator eradication at specific locations; and,
- Fish habitat enhancement which is a supporting measure that seeks to provide additional resilience to seabirds, including these two auk species.

## 8 Conclusion

8.1.1.1 The UK needs to urgently deploy significant volumes of large-scale low carbon generation to meet its legally binding net zero commitment. Hornsea Four is a major infrastructure project which responds directly to fundamental and urgent national objectives, delivering significant volumes of low carbon generation in the 2020s, whilst also contributing to the essential tasks of ensuring security of supply and providing low-cost energy for consumers in line with the UK government's national policies.

8.1.1.2 The Applicant has continued to vigorously re-appraise all elements of the developable area and MDS for Hornsea Four and believes the evidence is clear to support the Application position that no alternative solutions exist and a conclusion of no AEol for the FFC SPA can confidently be reached.

8.1.1.3 Without prejudice to the Applicant's position that Hornsea Four will not give rise to an AEol on the FFC SPA, the Applicant has provided the Secretary of State with information to support an alternative route for the Secretary of State to approve Hornsea Four.

8.1.1.4 The Applicant is confident that the HRA without prejudice derogation case submitted provides the necessary information to support a clear and overriding case for Hornsea Four should the Secretary of State conclude AEol.

8.1.1.5 If the SoS finds AEol in respect of the FFC SPA then there is a demonstrable overriding public

interest in Hornsea Four and the policy objectives it will serve, which outweighs the risk of any adverse impact on the FFC SPA. The Applicant has developed through engagement with stakeholders, a 'without prejudice' suite of compensation measures that demonstrate the efficacy and feasibility of the measures. The Applicant has further demonstrated that the measures can be secured to ensure that the overall coherence of the National Site Network is maintained.