



# Hornsea Project Four

## Compensation measures for FFC SPA: Compensation Connectivity Note

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## Table of Contents

1	Introduction.....	7
2	Legislation – Habitats Regulations.....	8
3	Department for Environment Food and Rural Affairs (DEFRA) Guidance.....	9
4	Case Precedent – Hornsea Three.....	9
5	Ecological Connectivity of Hornsea Four Compensation Measures.....	9
6	Future Monitoring and Condition Assessment.....	10

## 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.
Development Consent Order (DCO)	An order made under the Planning Act 2008 granting development.
European site	A Special Area of Conservation (SAC) or candidate SAC (cSAC), a Special Protection Area (SPA) or a site listed as a Site of Community Importance (SCI). Potential SPAs (pSPAs), possible SACs (pSACs) and Ramsar sites are also afforded the same protection as European sites by the National Planning Policy Framework – para 176 (Ministry of Housing, Communities and Local Government, 2019). European offshore marine sites are also referred to as "European sites" for the purposes of this document.
Habitats Directive	European Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora.
Habitat Regulations	The Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017.
Habitats Regulations Assessment (HRA)	A process which helps determine likely significant effects and (where appropriate) assesses adverse impacts on the integrity of European conservation sites and Ramsar sites. The process consists of up to four stages of assessment: screening, appropriate assessment, assessment of alternative solutions and assessment of imperative reasons of overriding public interest (IROPI).
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.
Long-term	Of several years or decades, accounting for year to year variations.
Mitigation	A term used interchangeably with Commitment(s) by the Applicant.
National Site Network	The network of European Sites in the UK. Prior to the UK's exit from the EU and the coming into force of the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 these sites formed part of the EU ecological network known as "Natura 2000".
Natura 2000	An EU ecological network protecting valuable and threatened species and habitats.
Orsted Hornsea Project Four Ltd.	The Applicant for the proposed Hornsea Project Four Offshore Wind Farm Development Consent Order (DCO).

Special Area of Conservation (SAC)	Strictly protected sites designated pursuant to Article 3 of the of the Habitats Directive (via the Habitats Regulations) for habitats listed on Annex I and species listed on Annex II of the Directive.
Special Protection Area (SPA)	Strictly protected sites designated pursuant to Article 4 of the Birds Directive (via the Habitats Regulations) for species listed on Annex I of the Directive and for regularly occurring migratory species.

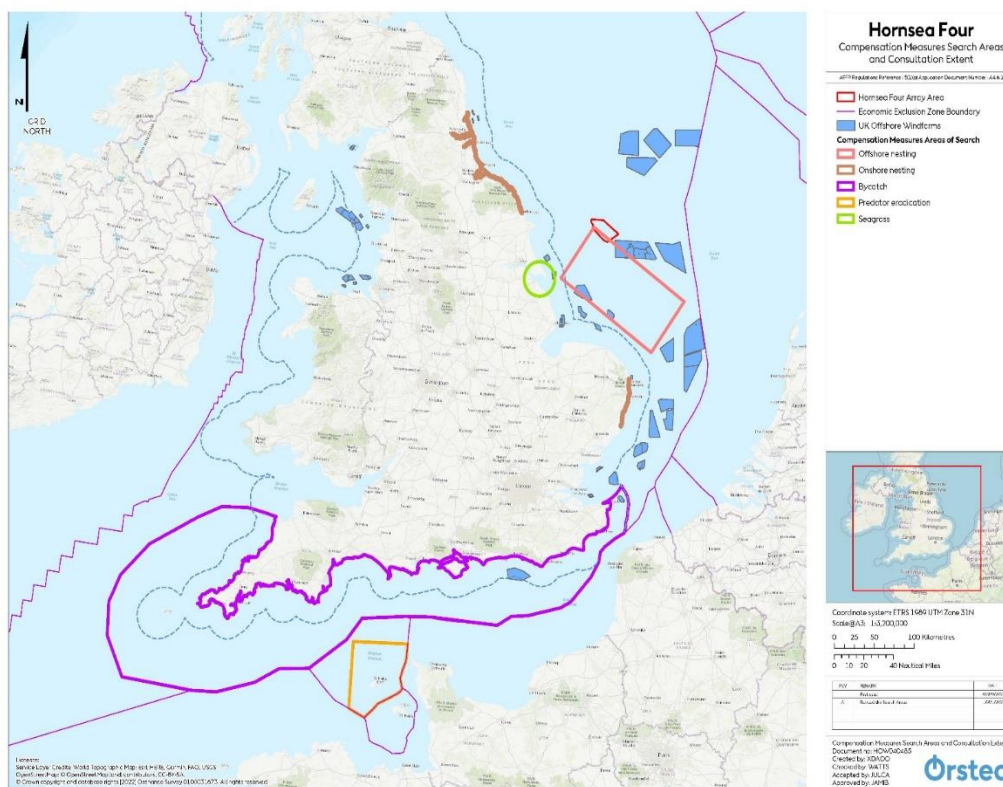
## Acronyms

Term	Definition
AEoI	Adverse Effect on Integrity
DCO	Development Consent Order
Defra	Department for Environment, Food & Rural Affairs
FFC	Flamborough and Filey Coast
HRA	Habitat Regulations Assessment
MPA	Marine Protected Area
NGO	Non-governmental organisation
RSPB	Royal Society for the Protection of Birds
SNCBs	Statutory Nature Conservation Bodies
SPA	Special Protection Area
UK	United Kingdom

## 1 Introduction

- 1.1.1.1 Orsted Hornsea Project Four Limited (hereafter the 'Applicant') is proposing to develop Hornsea Project Four Offshore Wind Farm (hereafter 'Hornsea Four').
- 1.1.1.2 This note has been prepared to support the 'without prejudice' compensatory measures for potential impacts on guillemot and razorbill from Hornsea Four. The Applicant has proposed a range of compensation measures as part of its 'without prejudice' compensation case for potential effects from Hornsea Four on razorbill and guillemot features of Flamborough and Filey Coast (FFC) Special Protection Area (SPA). For guillemot and razorbill, the proposed compensation measures are bycatch reduction and predator eradication, delivered off the English coast and Bailiwick of Guernsey (Channel Islands) respectively (see [Table 1](#) and [Figure 1](#)).

**Figure 1: Map showing locations for bycatch reduction (SE and SW English Coastal Waters) and predator eradication compensation measures (Bailiwick of Guernsey).**



**Table 1: Proposed compensation measures for guillemot and razorbill.**

Species	Bycatch reduction (SE and SW English Coastal Waters)	Predator eradication (Bailiwick of Guernsey)
Guillemot	✓	✓
Razorbill	✓	✓

- 1.1.1.3 This note sets out the primary legislative and ecological considerations which justify the location of proposed compensation measures (if required) off the English coast and within the Bailiwick of Guernsey.

## 2 Legislation – Habitats Regulations<sup>1</sup>

- 2.1.1.1 The Habitats Regulations do not specify a required location for compensatory measures.
- 2.1.1.2 The Habitats Regulations provide only that if the relevant appropriate assessment demonstrates that Adverse Effects on Integrity (AEol) on a European site cannot be ruled out, the competent authority (if it is satisfied there are no alternative solutions, and the plan or project must be carried out for imperative reasons of overriding public interest):
- "must secure that any necessary compensatory measures are taken to ensure that the overall coherence of [the national site network] is protected"*<sup>2</sup>
- 2.1.1.3 It is important firstly to note that the Habitats Regulations do not require that compensation secures the coherence of the European site which is adversely affected but refer explicitly to the "overall coherence" of the "network". The ordinary and natural meaning of the text in the Habitats Regulations therefore, is that the compensatory measures must protect the overall coherence of the network, not the site which is adversely affected.
- 2.1.1.4 Such an interpretation aligns with the text found in the Article 6(4) of the Habitats Directive:
- "If, in spite of a **negative assessment of the implications for the site** and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State **shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted**" (emphasis added).*
- 2.1.1.5 The first part of the sentence refers to AEol on "the site" whilst the second part of the sentence refers to compensatory measures for the "Natura 2000" network. If the compensatory measures were to be required to benefit "the site" then it would have been open to the draftsman to specify that in the Habitats Directive and/or Habitats Regulations operating in the UK.
- 2.1.1.6 Similarly, there is no requirement in the Habitats Regulations for the compensatory measures to be located within the UK, or any part of it. The compensatory measures requirement is not driven by the location of the measures themselves, but rather their ability to ecologically benefit the coherence of the national site network which is located within the UK.
- 2.1.1.7 It is therefore open to a project promotor to advance compensatory measures outside of the UK, provided there is sufficient ecological connectivity to the UK national site network.
- 2.1.1.8 Overall, therefore, it is clear that the focus of the Habitats Regulations is to protect the coherence of the national site network. That should be the aim and focus of the compensatory measures. If a location outside of the UK can benefit the national site network due to its ecological connectivity, then it can be used to locate compensatory measures for the purposes of the Habitats Regulations.

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<sup>1</sup> Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017

<sup>2</sup> See e.g. Regulations 2(3) and 36 of the Conservation of Offshore Marine Habitats and Species Regulations 2017



## 3 Department for Environment Food and Rural Affairs (DEFRA) Guidance

3.1.1.1 Defra's draft Marine Protected Area (MPA) Guidance<sup>3</sup> considers the location of compensation at paragraphs 51 to 53. It contains the following hierarchy:

- (a) Measures that replicate or benefit the same feature within the affected site;
- (b) Measures that replicate or benefit the same feature outside the affected site.

3.1.1.2 Notably, there is no further hierarchy for measures "*outside the affected site*" and no suggestion that measures must be located within the UK, or indeed that such measures are preferable or carry additional weight. Instead, the guidance recognises that for mobile species, connectivity between populations should be considered (paragraph 53).

3.1.1.3 This is also reflected in Table 2 (Hierarchy of Compensatory Measures for the Marine environment) where the second hierarchy is "*same ecological function different location*", but no further specification of that location beyond "*outside of the site* [i.e. the European site] *boundary*".

## 4 Case Precedent – Hornsea Three

4.1.1.1 The Secretary of State's HRA accompanying the decision for the Hornsea Three Offshore Wind Farm Order 2020 (the Hornsea Three Development Consent Order (DCO)) explains that the compensation put forward by Orsted Hornsea Project Three (UK) Limited i.e. the promotor of the Hornsea Three DCO was based on the following premise<sup>4</sup>:

4.1.1.2 "...the creation of artificial nesting structures that can support at least 404 pairs of nesting kittiwakes will produce sufficient young to provide an additional 65-73 breeding adult birds. These birds would be recruited into the southern North Sea kittiwake population, which forms part of the wider East Atlantic population of kittiwakes, which in turn provides the breeding adult birds that colonise the cliffs of the Flamborough and Filey Coast SPA. The Applicant states that the proposed measures would fully offset the potential impact of collision mortality of kittiwakes at Hornsea Three. This approach will be sustainable for at least the lifetime of Hornsea Three offshore wind farm." (Emphasis added).

4.1.1.3 The decision letter concludes that "Secretary of State is confident that adequate compensation is proposed and will be in place to offset any impacts to features of Natura 2000 sites"<sup>5</sup> (emphasis added). What was proposed is set out above: 65-73 breeding adult birds into the regional population. There is nothing in the terms of the decision letter to suggest that the Secretary of State disagreed with what was proposed in the kittiwake compensation plan.

## 5 Ecological Connectivity of Hornsea Four Compensation Measures

5.1.1.1 As set out in **Annex 1 G3.4 Compensation measures for FFC SPA: Ecological Connectivity of Compensation Measures**, there is significant evidence that there is connectivity of guillemot and razorbill from the Channel Islands/English Channel with populations across England both during winter and the breeding season. The presented evidence shows that guillemot and razorbill can disperse the distances between the proposed sites of compensation for Hornsea Four and National Site Network sites. Tagging research shows with certainty that birds from at least one English SPA site (Farne Islands) winter in the

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<sup>3</sup>Defra (2021), Best Practice Guidance for Developing Compensatory Measures in Relation to Marine Protected Areas. [https://consult.defra.gov.uk/marine-planning-licensing-team/mpa-compensation-guidance-consultation/supporting\\_documents/mpacompensatorymeasuresbestpracticeguidance.pdf](https://consult.defra.gov.uk/marine-planning-licensing-team/mpa-compensation-guidance-consultation/supporting_documents/mpacompensatorymeasuresbestpracticeguidance.pdf) [Accessed March 2022]

<sup>4</sup> See 2nd paragraph, page 111 of HRA.

<sup>5</sup> Paragraph 6.60 of the Decision Letter.

English Channel. In relation to FFC SPA specifically, ringing data shows that birds from the northeast have been recaptured in both the English Channel and on the Channel Islands.

- 5.1.1.2 A review of the evidence on breeding connectivity led to a conclusion that guillemot and razorbill can breed away from their natal sites, as well as moving breeding locations as adults. Therefore, birds born or breeding on the Channel Islands can feasibly move to breed within the UK's National Site Network, in particular given that dispersal distances as far as 780km were recorded for guillemot.
- 5.1.1.3 Given that guillemot from both the North and South of the UK are found to winter in the English Channel, bycatch reduction off the English coast will benefit both the *aalge* and *albionis* subspecies.
- 5.1.1.4 It can therefore be concluded that the proposed compensation measures of predator eradication (targeting breeding birds in the Bailiwick of Guernsey, in the Channel Islands) and bycatch reduction (targeting wintering birds off the English coast) will directly benefit the UK National Site Network populations through the provision of additional breeding adults.

## 6 Future Monitoring and Condition Assessment

- 6.1.1.1 Flamborough and Filey Coast (FFC) SPA forms part of the UK National Site Network, following the UK's departure from the EU. Flamborough Head SSSI underpins the Flamborough and Filey Coast (FFC) SPA designation. The two designations share the same location and include kittiwake, razorbill, guillemot and gannet as designated features. Periodic reporting by Natural England for these designated sites, under provision 23(4) of the Wildlife and Countryside Act 1981 and regulation 9A of the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019, is to the Secretary of State for Environment Food and Rural Affairs.
- 6.1.1.2 A key objective of Natural England's SSSI condition monitoring is "To assess the effectiveness of interventions" (Natural England, 2020)<sup>6</sup>. This aligns closely with a key objective of condition assessment/ monitoring for SPAs and SAC's "Adjust existing measures as necessary" (Natural England, 2020)<sup>7</sup>.
- 6.1.1.3 The proposed ('without prejudice') Hornsea Four compensation measures relate to a potential reduction in FFC SPA bird numbers and take two principle forms:
  - The eradication of invasive species at seabird breeding locations to improve productivity and enhancement to breeding habitat suitability; and
  - A reduction in the numbers of birds caught through commercial fishing activities (bycatch) off the English coast, through the use of cutting-edge technology and will be delivered within the biogeographic range of each species.
- 6.1.1.4 Natural England will be party to monitoring of the population enhancement measure at the Bailiwick of Guernsey as a member on the Offshore Ornithology Engagement Group (OOEG), which will be secured through the Hornsea Four DCO. Natural England will also have access to seabird census data from colonies in the UK, Ireland and the Channel Islands which are compiled within the JNCC and BTO's Seabird Monitoring Programme (SMP) database.
- 6.1.1.5 Natural England will have access to all necessary sources of information to monitor, assess and feedback (to UK Government) on the condition of the relevant designated features of FFC SPA and component SSSIs – adhering to requirements as set out in the Common

<sup>6</sup> <http://publications.naturalengland.org.uk/publication/6232097035386880>

<sup>7</sup> <http://publications.naturalengland.org.uk/publication/6077396446085120>

Standards for Monitoring (CSM) and the associated guidance for feature assessment agreed by the UK country agencies and the Joint Nature Conservation Committee (JNCC).

- 6.1.1.6 On this basis it can be concluded that the location of Hornsea Four bycatch reduction and predator eradication compensation measures, with the latter being delivered outside of the UK, will not affect the ability for the English Statutory Nature Conservation Body (Natural England) to provide satisfactory monitoring and condition assessment for FFC SPA and Filey Head SSSI – with appropriate reporting to the Secretary of State.