

ISH 6_29 April_Session 1

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FULL TRANSCRIPT (with timecode)

00:00:06:03 - 00:00:14:26

Good morning. Before I begin, can I just confirm with Mr. Johansson that everybody can hear me clearly and that the livestreaming of this event has commenced?

00:00:16:16 - 00:00:24:20

I can confirm, but I can see you clearly. And I can see that the recording has started and the livestream has.

00:00:24:22 - 00:00:25:18

Just begun.

00:00:25:21 - 00:00:29:05

And I'm just going to turn on the light captions.

00:00:30:07 - 00:00:31:09

All is ready to go.

00:00:32:00 - 00:01:04:08

Thank you so much, Mr. Johansson. So the time is now 10:00. And this is the sixth issue specific hearing in relation to the Hornsea project for Offshore Wind Farm, and it's now open at today's hearing. We will be considering issues relating to the Habitat Regulations assessment. My name is Joe Downing. I'm a chartered town planner and I have been appointed by the Secretary of State to be the named member of the panel of inspectors that have been appointed to examine this application. Today, I will be going through the management of the event and instructions, and Mr.

00:01:04:10 - 00:01:09:27

Burns will be taking notes of any actions. I would now like to ask my colleagues to introduce themselves.

00:01:11:05 - 00:01:16:06

Good morning. My name is Gavin Jones. I'm a planning inspector and a chartered town planner.

00:01:17:29 - 00:01:36:15

Good morning. My name is Robert McArthur. I'm a chartered architect and I've been appointed by the Secretary of State to be a member of a panel of inspectors to examine this location. Good morning. My name is Andrew. Man, I have a background in ecology and Environmental Impact Assessment and I'm a chartered environmentalist and a chartered landscape architect.

00:01:37:16 - 00:02:04:05

Together with Mr. Steven Bradley, we form the examining authority. There are three more colleagues from the Planning Inspectorate. They're here today. You have spoken to Mr. Johanson, the case manager for this project in the management conference, and he's assisted today by Alberto Santamaria

and Jerry Rice. We have also who are also here from the case team. In addition, there are technicians from CBS International who are attending solely for the purpose of managing and recording and livestreaming of the event

00:02:06:27 - 00:02:40:29

at first light. To deal with a few housekeeping matters, though, I will be brief as those of you actively participating today or your advocates have attended previous hearings for this examination. Firstly, I ask that all audible notifications for electronic devices be switched off and remember to make sure your microphones switch to mute unless you are speaking. This is particularly important for the applicant to remember us because of your audio arrangement. If you leave your microphone on or press the button to speak whilst we are still asking a question, we are experience a lot of echo feedback which makes it difficult to hear

00:02:42:21 - 00:02:49:28

no requests to be made for any special measures or arrangements to enable participation in this hearing. But I'd just like to confirm that this is correct.

00:02:51:20 - 00:03:19:04

I can't see any hands up son proposing to me because nobody needs any special arrangements for the purposes of identification and for the benefit of those who may listen to the digital recording later. Could I ask that at every point at which you speak, could you please give your name? And if you are representing an organisation or individual who it is that you represent? Does anybody have any questions or concerns about the technology or the general management of today's event?

00:03:21:01 - 00:03:23:10

Again. A casino. Hands up. So we need to move on.

00:03:25:29 - 00:03:43:13

There is a digital recording being made at this hearing and this will be made available on the project page of the National Infrastructure website. If you take part in the hearing, it's important that you understand that your comments will be recorded and that the digital recording will be published and retained usually for a period of five years from the Secretary of State's decision.

00:03:44:29 - 00:04:18:27

The Planning Inspectorate is subject to the General Data Protection Regulation. The Examining Authority will not ask you to put sensitive personal information such as email addresses and economic, financial, cultural, health related matters into the public domain. Indeed, we actively encourage you not to do so. Please bear in mind that the only official record of the proceedings is the digital recording that we placed on the project page of the National Infrastructure website. Tweets, blogs and other similar similar communications arising out of this meeting will not be accepted as evidence in examination of this application.

00:04:21:00 - 00:04:40:25

Today's hearing is being held by the examining authority to explore a number of matters orally in respect of the habitats regulation assessments. This is a public examination, and if there is a point that you want to make, please raise your hands and switch on your camera at the relevant time that you wish to contribute. But please wait to be invited before speaking.

00:04:42:19 - 00:05:18:02

The hearing today will be a structured discussion, which Mr. Mann will lead based on the agenda that has already been published. The purpose of this discussion is for us to ask questions and to seek clarification on the matters listed on the agenda to ensure that we have all the information that we need to make our report to the Secretary of State, and also to ensure that the Secretary of State, as the

competent authority, would have sufficient information with which to carry out an appropriate assessment under the habitat regulations before making a decision. The questions that we are going to ask today will be focused on those areas that we think will benefit from examination.

00:05:18:04 - 00:05:37:07

Already, since the agenda and invitations were issued. We have been informed that the marine management organisation Natural England and the Royal Society for the Protection of Birds will not be with us today. We will nevertheless run through the agenda as issues and will be seeking a written response from those organisations in lieu of their participation.

00:05:39:08 - 00:06:12:06

Rule 42 of the examination procedure rules requires that at the start of the hearing, the examining authority shall identify matters to be considered at that hearing. The agenda for this hearing was placed on the website on Wednesday, the 13th of April 2022. In brief, the main purpose of this hearing is to examine evidence relating to habitat regulations, assessment that the Secretary of State would have to undertake, including all of the necessary tests and matters relating to derogation and compensation, including those submitted without prejudice to the positions taken.

00:06:14:13 - 00:06:22:03

So before we move on, are there any questions at this stage about the procedural side of today's hearing or the agenda?

00:06:24:08 - 00:06:45:27

Can see no hands up. So I'm proposing to move on to introductions. I'd now like to take the names of those who wish to speak at this hearing. If you are a representative, please can you state whom you represent and your role within the organizational group? Can you also please indicate how you wishes to address yourself e.g. Dr. Mas or Mr.. So if I can start with the applicant.

00:06:49:15 - 00:07:17:23

Good morning, madam. Garry McGovern I'm a partner and solicitor with Pinsent Masons. I'm appearing today on behalf of the applicant and the cherry topic and the questions straddle quite a number of different disciplines, as you'll be aware. So we do have and ten potential speakers and who we may call on, depending on the length of Mr. Martin's questioning. Would you like them all to introduce themselves now for the camera? And some of them may not speak until later agenda items. So it was whether you wanted to wait for them to introduce themselves later or I.

00:07:17:25 - 00:07:25:05

Think it would be I think would be helpful if we can just familiarise ourselves with their faces and their names and just then we'll know who they are when they pop up later on.

00:07:25:21 - 00:07:28:14

Of course, it will go around the table in that case. Thank you.

00:07:32:06 - 00:07:36:18

Good morning. Dr. Gillian Constand, project Manager on behalf of the applicant.

00:07:40:02 - 00:07:50:11

Good morning. Sean Sweeney, I'm associate director and head of ornithology consultancy for APM. I'm here is a lead for offshore mythological matters venture right on behalf of the applicant.

00:07:54:03 - 00:08:01:03

Come on in. My name's Matthew Bower. I'm a senior ornithologist, ape and the applicant. And you refer to me as Mr. Bower.

00:08:04:00 - 00:08:11:19

Good morning, Mr. Lester. You could be here for the applicant. I work for us, but not specifically the project as a strategic compensation lead.

00:08:14:27 - 00:08:19:21

Rachel Sinclair from Smoke Consulting. I'm the marine mammal specialist on behalf of the applicant.

00:08:23:13 - 00:08:26:05

Mr. Filani from Derby Consultants on behalf of the applicant.

00:08:30:13 - 00:08:38:12

Good morning, Glen Gillespie from Derby Consultants. I'm a technical director and representing the applicant, and you can call me Mr. Gillespie.

00:08:42:16 - 00:08:50:16

Good morning, Fraser Carter, Senior Ornithologists Consultants. I'll be answering questions on compensation today on behalf of the applicant.

00:08:50:24 - 00:08:52:11

And you can call me Mr. Carter.

00:09:04:07 - 00:09:04:22

Yes.

00:09:05:01 - 00:09:11:26

Good morning. Sara Randall Hornsey for derogation lead, I'm happy to refer to as Dr. Randall.

00:09:13:19 - 00:09:14:04

Thank you.

00:09:18:03 - 00:09:19:28

Is that as well, Mr. McGovern?

00:09:21:02 - 00:09:23:01

Yes, that's everyone from now.

00:09:24:02 - 00:09:35:17

Okay. Thank you. I have not been advised that there are any other interested parties wishing to join us today, but for completeness, I'm just going to check that that is the case. Is that anyone else wanting to participate in today's hearing?

00:09:38:11 - 00:09:45:00

No. In that case, I'm not going to hand over you and you over to Mr. Moen, who's going to lead on items 2 to 60 agenda. Thank you.

00:09:46:27 - 00:10:20:02

Thank you, Miss Dowling. So as you've heard, the main purpose of this hearing is to examine evidence in respect of the habitats, regulations, assessment that the secretary state would have to undertake as the competent authority for this application. We will include consideration of the necessary tests and matters relating to derogation and compensation, including those submitted

without prejudice to the positions taken. Now we examine scientific, technical and environmental impact assessment matters in relation to the marine environment and marine and coastal law ethology.

00:10:20:13 - 00:10:52:19

On Wednesday and Thursday, an issue specific hearing for and issue specific hearing five respectively. Much of what we will discuss today extends matters discussed in those two hearings where they have relevance to the habitats regulations assessment. I should also point out that while some of the issues to be discussed overlap with matters relating to the draft development consent order, the detail of the order itself will be examined principally in hearings relating to the draft order and in any allied written questions.

00:10:55:07 - 00:11:21:26

The agenda for this hearing was published on Wednesday, the 13th of April 2022, which was prior to deadline three. On Thursday, the 21st of April, some of the deadline three submissions relate to items on the agenda today. The examining authority has read and taken into account all of these. But are some parties listening to this hearing may not have had time to review them in full. I will be inviting summaries or signposting where this may be helpful.

00:11:24:12 - 00:11:51:18

So moving on to the proposed agenda, the agenda shows the path that I intend to follow today. Some of the matters relating to the Marine and coastal environment and ecology and ornithology that were discussed in the earlier issue specific hearings could have implications for the habitats regulations. So we will begin with those. Later in the agenda, you'll see that there are also some matters related to the habitats regulations assessment that have not been discussed in hearings so far.

00:11:53:27 - 00:12:15:19

So in relation to the first set of matters and that status that we've already discussed in relation to science and environmental impact assessment, I don't think it would be a particularly good use of our time today to go back into the detail of those. But I would like us to explore if and to what extent some of those key matters may affect the outcome of the habitats regulations assessment.

00:12:17:13 - 00:12:26:24

So in part two of the agenda today, we will briefly revisit some of those matters and I'll seek views on any habitats, regulations, assessment implications.

00:12:28:12 - 00:13:12:22

Well, then go on in parts three and four of the agenda to address in more detail the second set of matters and that those were not discussed in the earlier hearings. I think this approach should work, as I believe most of us here today were present at the relevant parts of those earlier hearings. For anybody attending or tuning in or watching this hearing retrospectively, that was not party to those issues. Specific hearings, four and five. You will be able to fill in the background by viewing the earlier episodes on catch up and the full video recordings of the livestreams of those events will be available through links in the examination library on the project web page of the Planning Inspectorate National Infrastructure website in the next few working days, along of course, with the recording of this one.

00:13:13:24 - 00:13:20:01

And the case team will be very happy to provide guidance if you can't find them. And Mr. O'Connor, you happy with this approach?

00:13:21:27 - 00:13:23:17

Yes. I'm happy with that brooch. Thank you.

00:13:24:10 - 00:13:24:25

Thank you.

00:13:26:24 - 00:13:54:29

Said item two. Section two of the agenda is the matters that we are carrying forward from issue specific hearing for and issue specific hearing. Five. I want to start, if I may, with marine mammals before we move on to sea birds. And item 2.1 is in relation to the outline marine mammal mammal management protocol and in relation to potential underwater noise impacts on the marine mammal interests. Features of European sites

00:13:56:28 - 00:14:21:20

in particular, the environmental statement, as we discussed, focuses on instantaneous SPL peak peaks on set ranges. And the question we discussed on Wednesday was whether it should also look at the cumulative impact ranges. So the question for the applicant quite simply really is if you believe this matter has implications for the habitats, regulations, assessment, and if so, briefly explain why you believe this to be the case.

00:14:28:09 - 00:15:11:25

Gary McGovern on behalf of the applicant. And no, sir. Ultimately, we don't believe that there are any implications for the ultimate assessment on the ability to conclude no adverse effect. And as we discussed at the previous meeting, the key mechanisms are secured and through that issue and allow for that conclusion ultimately to be reached. Are the and and I'll use the acronyms because they're both full. But I think by now, you know what I'm referring to if I refer to the triple MP on the set and the SIPP is the control mechanism to protect site integrity and will ensure that come what may and the project cannot progress unless it's possible to conclude no adverse effect on site integrity.

00:15:12:05 - 00:15:40:17

And then the triple MP serves a slightly different purpose as a means to control the potential impact of auditory injury on individual animals. And there's a stage process on and post consent stage as detail becomes clear and there's a final design envelope, final hammer energies and so on. Then to the extent that any mitigation is still required, that is secured through those two mechanisms. And so I don't believe and the discussion we had at the previous session affects that overall conclusion. So thank you.

00:15:41:15 - 00:15:49:04

Thank you for those listening. If we do slip into acronyms, apologies but set his site integrity plan.

00:15:50:25 - 00:16:04:07

In that case, I'm happy to that. Now, we will, of course, be, as you've heard, be asking most, if not all of these questions to natural England and others who may have shown an interest in these matters and rather than representations.

00:16:06:00 - 00:16:22:00

So if we can move on to 2.2 continuing that. So we're still dealing with the Marine Mammal Monitoring Protocol and the site integrity plan and particularly the detail at this stage that we should have a mitigation at source for underwater noise.

00:16:23:19 - 00:16:54:12

We discussed this at some length issue specific here in full. We included consideration of mitigation at source and how detailed those needed to be at this stage. And I was very grateful for, Mr. Mason said, evidence on the science and practical applications at that hearing. So firstly today I'd like to hear the applicant's view again of the importance of this for the habitats regulations assessment. Again, this will go to natural England MMO and the Wildlife Trusts all shown interest in this.

00:16:55:05 - 00:17:05:18

Then I'd like to expand the matter a little to consider two more matters included in views expressed about the site integrity plan approach. So some of the mitigation at source.

00:17:09:09 - 00:17:10:29

And yes, sir, I am.

00:17:12:17 - 00:17:45:18

The applicant's position remains. I am not mitigation at source as a feasible option, and we've demonstrated that it's something that could be deployed in the context of this project. And there was a clarification note, as you're aware, that was submitted or not, which outlines some of the options. However, it's not appropriate and not necessary for that to be firmly committed to at this stage, because of all the variables that I outlined in my answer to your previous agenda item, sir, and the triple M.P. and the CIP provide all of the control that is necessary.

00:17:45:27 - 00:18:05:25

And the plan P does refer to and acknowledge the possible resort to source noise mitigation. But that's not something that we see as necessary to be committed to at this stage. And as we discussed in the previous hearings as well, it's not something that other projects have committed to a similar stage of the consenting process. Thank you so.

00:18:07:03 - 00:18:17:03

Thank you, sir. I think implicitly what you're saying is, obviously this could have implications for the habitats, regulations, assessment, but you feel the approach is fine in controlling that?

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That's correct, sir.

00:18:20:12 - 00:18:20:27

Thank you.

00:18:22:22 - 00:19:03:08

So if I can go to the first additional matter that I mentioned, and that's in relation to the level of confidence that the Secretary of State could have in the proposed southern North Sea speculative conservation site integrity plan for this project. When considered alongside similar plans to Act Two attached to other projects as a control to prevent an in combination adverse effect on integrity of the harbour porpoise interests feature. I note the recent discussions on this issue in the Secretary of State's Habitats regulations, assessments for the two recent East Anglia offshore wind farm projects, and I'd invite any relevant interpretation of those as well to my government.

00:19:05:22 - 00:19:53:12

Kind of McGovern on behalf of the applicant and serves the mission. It would be that this act of state can have a high degree of confidence in this mechanism as a tool to control the possession. I make that submission on the basis that it's a well tried and tested route. The East Anglia projects the Vanguard Borealis Hornsea three projects. A number of others have all had this mechanism imposed upon them on something that is well understood under significant precedent for that. I also make that submission and you have seen the memos deadline three response on on this topic, ADA, which is very helpful and outlines the approach that they take to ensure that on a year by year basis, they're aware of all of the projects and that could potentially have in combination effects on the ICC.

00:19:53:14 - 00:20:05:25

And there's a clear way of dealing with that. And they conclude in their submission that the set process is a very robust mechanism. And so for those reasons, we would say that the sector state can have a high degree of confidence. Thank you, sir.

00:20:06:25 - 00:20:42:17

Thank you. Yes, I have seen that deadline through your response. And obviously that goes into detail about the review of consents process and the use of chair and CC guidance and indeed the Offshore Petroleum Regulator for Environment Decommissioning Tracker. So that does seem to be our that has to be some evidence behind the most confidence in that approach. But it's something again we'll need to take up with RSPB and Natural England, who are the ones who were making submissions that perhaps that needed to be a bit more robustness in that process, but we will follow that up with them.

00:20:45:00 - 00:20:56:23

Have you made it? Have you made a direct comparison between the approaches it is proposed without in the sector states habitats, regulations, assessments for the two recent East Anglia Offshore Wind Farms.

00:20:58:05 - 00:21:12:16

And Gordon McGovern for the applicant. I don't believe we've done a lightning filling comparison, sir, but I'm confident that our approach is broadly compatible in terms of the detail that would be in the SIPP and the wording of the requirement and the DCO and the EML drafting.

00:21:13:14 - 00:21:15:11

Do you think that might be useful exercise?

00:21:18:09 - 00:21:29:10

I'm in your hands, sir. If you would find that useful, we'd be happy to do it. But as. As I said earlier in my submissions, it's quite well tried and tested process, so I wouldn't believe there's any material differences.

00:21:30:01 - 00:21:31:24

Okay. Thank you. I'm happy with that.

00:21:33:20 - 00:21:54:25

And the other question, I suppose, which comes out of the Secretary State's happy tax regulations for the East Anglia projects, is the in combination assessment. Do you believe those have any implications for your own in combination assessment noting of course, the Times moved on a little and then a potentially a slightly different list of other plans and projects that could occur in combination.

00:21:56:21 - 00:22:27:13

Gary Macfarlane on behalf of the applicant. Yes. So you've alighted on one of the difficulties of the in combination assessment being a snapshot in time, and it's a very fluid and moving picture and hence the reason for the CEP mechanism which allows for that final and combination position to be looked at at the appropriate stage and ensures that necessary mitigation that is put in place at that stage is based on the other projects. It would be piling on having overlap temporally or especially with the Hornsea four project.

00:22:27:25 - 00:22:28:11

Thank you, sir.

00:22:29:18 - 00:22:30:03

Thank you.

00:22:31:27 - 00:22:41:06

Second and final in this section, an additional matter was natural England and the Marine management organisation were promoting marine mammal monitoring

00:22:42:29 - 00:22:44:22

in their Rowland representations.

00:22:47:04 - 00:23:02:16

We did ask questions whether any of the proposed monitoring was required to deliver control over adverse effects. So would it effectively inform the site integrity plan process and was it necessary to secure that through the development consent order?

00:23:04:04 - 00:23:15:19

Since those questions, both natural England and the MMO have now confirmed that the suggested post consent monitoring would inform the site integrity process. So does the applicants have any further thoughts on that?

00:23:19:15 - 00:23:34:18

Go to government for the applicant and we disagree with natural England on the RSPB. We don't see that what's being proposed would inform the CEP in this case and we can make further submissions on that if you wish.

00:23:36:04 - 00:23:41:09

It be useful. If you could clarify your position on that, if you can provide any evidence, it would be very useful for us.

00:23:42:00 - 00:23:42:16

Okay. Thank you.

00:23:42:21 - 00:23:43:06

So

00:23:44:12 - 00:23:58:28

I was only thought being given to if there was monitoring, for instance, for the bottlenose dolphin population, which was suggested, what would happen if the monitoring didn't actually support the assumptions? And what were the implications then be for the habitats regulations assessment?

00:24:08:09 - 00:24:13:28

Kind of McGovern for that. If we could have a minute while, we can. So if you could bear with us.

00:24:14:14 - 00:24:14:29

Let's turn.

00:25:03:06 - 00:25:14:10

Kind of McGuffin for the Afghan. So we don't believe it would make a material difference, but if we may, we would take that one way and come back to in writing it deadline for that's fine.

00:25:14:17 - 00:25:24:07

I mean it's there's a general question there about monitoring and what if it doesn't support the assumptions. But I wrote a specific one about those bottlenose dolphin population. Thank you.

00:25:31:12 - 00:25:39:04

Is there anything else anybody needs to raise in relation to that section of marine mammals?

00:25:40:23 - 00:25:49:20

If not, we're going to move on to item 2.3. And we're moving into bathymetry and marine and coastal processes. And the baseline.

00:25:52:26 - 00:26:10:15

I to say anything similar. I'm going to move on. On Wednesday, we discussed some concerns at the baseline information for Semitic bank. The coastline and the Flamborough front were incomplete. You submitted a marine processes supplementary scope of works deadline war and told us that further work is ongoing

00:26:12:17 - 00:26:21:16

qualified. We understand. With that in mind, could you please briefly summarize the possible implications of that work on the output from that work for the HRA?

00:26:25:26 - 00:27:01:16

Got him. On behalf of the applicant. Yes, sir. As we discussed earlier and hearing, there is a report which is being compiled and will be submitted at deadline for which we hope will address the residual concerns raised by natural England in relation to receptors. And our position is and our expectation is that that report will confirm and validate the assessment that's been done and that there are no pathways or no likely significant effects to the relevant European sites and receptors that are raised by natural England and therefore validate the conclusion and the real.

00:27:06:26 - 00:27:23:20

So again, if I can paraphrase, you believe there is the potential for fundamental implications for the habitats, tax regulations assessment, but you don't believe that's likely to be any changes and you believe everything will be satisfactory?

00:27:25:14 - 00:27:28:09

Yes, sir. We don't believe it's likely to alter the conclusion.

00:27:29:11 - 00:27:30:09

A Thank you very much.

00:27:33:27 - 00:27:40:01

There's nothing else on that one. Moving on to the related item, which is the Marine and coastal processes receptors.

00:27:42:04 - 00:27:58:00

Again, we discussed this earlier in the week and we discussed the concerns expressed by Natural England that the list of marine and coastal process receptors in the environmental statement might be incomplete. And you explain the reasoning behind the absence of a full assessment of the sites that we did discuss.

00:27:59:18 - 00:28:10:18

Could you just simply confirm your view that all relevant protected sites have now been considered in the report to inform appropriate assessment and that there were no others that may be at risk of likely significant effects.

00:28:13:13 - 00:28:26:20

Got him government on behalf of government? Yes, sir. I'm very happy to give that confirmation. And all relevant European sites have always been identified in the relevant reports and considered through the screening and appropriate assessment process. Thank you.

00:28:27:25 - 00:28:33:10

Clearly, we will be following up later with a similar question to Natural England and the MMO, who raised that initially.

00:28:35:00 - 00:28:52:12

So moving on to the application of the MRC model in the baseline ornithological data characterization. Again, we gave this very good coverage earlier in the week and we've seen the first part of the Baseline Sensitivity Report DEADLINE two and Europe date for the gamut data.

00:28:54:06 - 00:29:09:23

And we had an update from yesterday about yesterday about the rerun of the model and its implications for baseline oil based on an offshore ornithological data. It's the same question. Mr. McGowan really wants a view on the implications of this whole matter in relation to the habitats regulations assessment.

00:29:13:13 - 00:29:20:28

Kind of McGovern for the Afghan. If I may pass you to Mr. Sean Sweeney, you'll be able to address your own political critics, I'm sure. Thank you.

00:29:25:09 - 00:29:58:07

And the with you on behalf of the applicants? Yes, I can confirm and I think we went through a lot of the sort of chapter and verse around the differences and in the modelling that we now have the agreement as the MLC v2 in comparison to the DCO and we'll the one as we refer into these these matters and models and the spatial and model fit are better for that MLC v2 which was now presented within the Baseline and Baseline Sensitivity report. We did discuss also Ice Age five yesterday.

00:29:58:15 - 00:30:30:13

The work through example from gametes and the implications in that from the young A-level was that it was a reduction in the use of the revised updated MLC v2, which translated to a reduction of one over the one bird, a collision with mortality and under one bird with regards to the displacement impact, that consequence a consequence of displacement mortality. And we've just to further iterate that point and with regards to the habitats regulations assessment and that did happen.

00:30:30:15 - 00:31:18:16

It was reported through the report and for an appropriate assessment it was rare. Again, there would be no material difference to the outcome of the conclusions project alone on the contribution of waterfall in the in combination assessments and particularly in light or in line with the Flamborough Valley Coast S.p.a which just for the record, and which we could also confirm to you that deadline for in terms of the numbers, the impacts actually a reduction of 0.05 and a breeding adults and a portion to flamborough Filey Coast S.p.a with the combined collision risk displacement with use of 60% displacement, percent mortality, and it would be a reduction of 0.13 bringing adults from Summer and Filey Coast s.p.a.

00:31:18:26 - 00:31:48:08

With regards to utilise in the combined collision risk mortality and displacement whilst using the high rate of 80% and 1% mortality rate. So this translates to a reduction in of 0.5% or 1% dependent on the two which are just and I'd walk through examples if you like. So, so therefore immaterial differences such a small percentages difference in the overall outcome of our reporting for the mercury assessment for this species of FZ.

00:31:48:10 - 00:31:51:12

SB Thank you. Ms. three. That's very clear.

00:31:55:11 - 00:32:11:04

Kate, can we move on to section 2.6, eight and 2.6, which is the regional breeding season populations? Again, yesterday we had an update on the differences between the applicant and their the party's over the approach taken to calculate regional breeding populations.

00:32:12:27 - 00:32:18:13

Do you have a view on whether any implications might remain for the habitats regulations assessment in this respect?

00:32:21:18 - 00:33:16:12

Thank you, Anthony, for the free up. And yes, obviously from the EIA perspective, we won't get into the provision of natural England's abated values to be used for breeding season be and that which would be applicable at EIA level for incorporation of the annual totals that would then any impacts would be assessed against with regard to habitats, regulations, assessment. Those values are not applicable as the methodological approach differs for when considering individual impacts on a colony from from this particular project whereby we followed the the SNH guidance or the Scottish National Natural Heritage Guidance, which looks at the colonies within the foraging range of hornsea policy for land, which is not the values that naturally are provided from the wider b-bbee scale.

00:33:16:14 - 00:33:21:12

So from a breeding season perspective that they are not applicable in this case and from the non breeding season.

00:33:22:27 - 00:33:43:27

Metallurgical approach we took all said and we relied on the the furnace paper of 2014 for our apportionment and that relies also on the non breeding populations and not that which was provided by natural England, which was to be the addition of breeding season that. So sorry to conclude. Obviously, there is no no implications with regards to our calculations.

00:33:45:00 - 00:33:45:15

If.

00:33:51:07 - 00:34:20:09

Okay. The next linked item is the definitions of the seasons for Kittiwake and encounters. Again, we discussed the implications of the Environmental Impact Assessment yesterday for the impact on Gannets and Kittiwake, and she explained for us the use of a migration free breeding season rather than the full breeding season. But we defer consideration in relation to implications for the habitats regulations until assessment until today. Could I be of use on that one please?

00:34:23:29 - 00:35:07:25

Yes. I shall tell you for the African. And yes, happy to discuss again. And just to confirm that, obviously the evidence that we discussed at H5 yesterday regarding the use of the migration free breeding season is still applicable for today's discussion from a regulation assessment perspective and that the evidence is strongly supported by the South Pacific Survey data, which shows that this significant proportion of the birds during the migratory period that offline, north, south well stays within the migration free breeding period, aren't moving into more of an eastern west direction, which shows the sort of confirmation that the birds within the migration free season will have more likely connection to the closest colony.

00:35:07:27 - 00:35:23:11

The number of highly coast s.p.a well stays outside of that migration free breeding season, which we determined to be the breeding season, if you like, and are more likely to be migrating birds either going north or south depending on the season. So.

00:35:25:28 - 00:35:37:26

Could you, in that case, comment on the RSPB observations? The birds seem to be remaining in August, are still special protection area birds and those most likely to be affected by impacts from the proposed development.

00:35:42:14 - 00:35:47:27

So she won the right to keep this the RSPB square for the month of August. Did you say, sir?

00:35:48:12 - 00:35:50:13

Yes. Yes.

00:35:51:21 - 00:36:20:07

And just just to reiterate what it depended upon, the species you're looking at and the new migration free breeding seasons obviously for if with respect to Kittiwake and Gannet, then obviously we still defer to the evidence we put forward with regards to migratory movements outside of the breeding season, supporting migrant birds more than birds moving to and from the colony commuting prior or after that breeding season, which in the case of course would be after the breeding season to certain species.

00:36:21:26 - 00:36:27:18

Is this something you continue to discuss with RSPB, perhaps through the Centre Common Ground Process?

00:36:36:04 - 00:36:44:00

I should send you for the update. Yes. I mean, this is perfectly reasonable for us to continue dialogue with the RSPB on these points. On these matters, sir.

00:36:45:16 - 00:36:46:01

Thank you.

00:36:54:09 - 00:36:57:13

And the next matter is gayness, avoidance rates.

00:36:59:22 - 00:37:20:06

We had the RSPB questions the Guinness avoidance rates that we use in the collision risk modelling and we have had everybody's views on this simple question really is to believe that if the RSPB recommended avoidance rate was used, would that have an implications for the outcome of the Habitats Regulations assessment?

00:37:25:23 - 00:38:14:09

Shortly. And I think we sort of went over some of the matters regarding the suitability avoidance rates and the application avoidance rates within the Commission. Ms. model Johannes H5 said. I sort of the first part of the answer really sort of. I'd like to sort of reiterate it an additional note with regard to Janet in that following these sort of recent CFPB's guidance on displacement, there is clearly a note within that and even within the updated version of that in the interim guidance for this year that they provide supporting evidence for the avoidance rate that we have used, which is the 98.9, is suitably precautionary as it's actually iterated within that guidance that that doesn't include what is known as

the displacement or the macro for additional micro avoids the consequence of displacement of the species.

00:38:14:11 - 00:38:52:15

And that it does think within that, you know, that is a very precautionary element even at using 98.9% avoidance rate within the collision risk model. So yes, obviously using a lower avoidance rate for a species within a collision with model would result in a higher level of mortalities as a consequence of utilising that. I think all the guidance suggested, as we discussed yesterday, if the elements are accounted for and you were to account for additional macro avoidance going into the collision with models, and it would be a reduction in the seabird monthly seabird densities going into the collision model if we were to utilise a lower avoidance rate.

00:38:52:17 - 00:39:09:09

I think overall if we were to incorporate both of those elements, I don't believe that it would create any significant differences in our conclusions and I think it would still lead to a reduction in the overall collision mortality rate if we were to apply that additional macro avoidance before the use of the lower avoidance rate.

00:39:10:15 - 00:39:26:11

And I appreciate you're using the avoidance rate which is recommended by Natural England. I'm just trying to get a feel really for whether it would make a material difference to the habitats regulations assessment if one or the other or both were actually applied through the modelling.

00:39:33:09 - 00:40:06:13

I suppose such chances for the applicant. I suppose in isolation, if it was only to be considered it would be a slight difference. But as I reiterate in a consideration of a lower avoidance rate doesn't feel appropriate this late unless you did consider utilising the additional advice within the SNC, the guidance on displacement, which would imply that if you were to use a lower avoidance rate, it doesn't particularly make much sense. But if you were to do that, then you'd certainly have to account for reducing the seabird densities going into the model.

00:40:06:25 - 00:40:16:04

Therefore, I still don't think it would make professional opinion a change in the outcome of the habitat regulation assessment for this species.

00:40:17:03 - 00:40:25:05

Thank you. I appreciate that. And I think it's for the RCP, obviously RSPB following this hearing to come back with further evidence if they wish to put it in.

00:40:27:21 - 00:40:59:17

So next 1 to 2.9 on the agenda is the assessment methodology for displacement and mortality. And we had concerns about the exclusion of Auckland flight from the analysis of displacement and mortality, and we also looked at a rerun of the analysis using current data with orcs exhibiting all behaviours. And I know we're expecting this more from you on this at deadline five. Just an indication whether you believe this has a fundamental potentially material effect on the outcome of the habitats regulations again.

00:41:03:01 - 00:41:38:27

I shouldn't say anything. No, I don't think you do. Obviously, we have discussed the matter of the displacement and the the submission of an amended version of that into the examination process to account for all behaviour sedans, flying and sitting birds for both rateable guillemot and puffins as the three species performing the assessments within the habitat regulation assessment in this case and no,

the the addition of I can confirm that there would be no material change to the conclusions that we put forward within that assessment process.

00:41:40:09 - 00:41:42:24

That's in relation to the habitats regulations assessment.

00:41:45:26 - 00:41:49:17

Shortly again. Yes, I can confirm that. That's what I meant to say.

00:41:50:06 - 00:41:50:26

Thank you very much.

00:41:52:26 - 00:41:56:21

So 2.10 similarly is the displacement. Mortality.

00:41:58:26 - 00:42:26:00

We've seen your reported deadline, too. We discussed this in some detail yesterday. We also heard you've had some involvement in a workshop to discuss the identification and rectification of some double counting from displacement and collision mortality. So clearly we must await news from natural England about when and if this might be published. Do you believe that the odds that these matters has an implication for the Shadow Habitats Regulations assessment you produced?

00:42:29:06 - 00:43:04:09

And shortly, I think sort of the broader point on this is that there's an acknowledgement and a recognition from anyone working in the industry that these matters are being discussed and formulated and that guidance is, in fact pending. And the application or the implications for all appetite verification assessments for offshore wind farms in relation to Flamborough Valley Coast S.p.a. We believe that the result would be when combining collision risk and displacement assessments in combination that those values would reduce significantly.

00:43:04:29 - 00:43:30:01

So we believe that the implication would be perhaps material material in a positive manner and that whilst considering the updated information which the report that we submitted to the examination on the evidence review of that kind of displacement of mortality rates and helps provide that information that perhaps even natural England would well, we know are welcoming and will be incorporated within their own pending reports.

00:43:32:07 - 00:43:33:01

Good. Thank you.

00:43:38:06 - 00:43:54:24

Agenda. Item 2.11 was the discussion we had again about the use of a range and confidence intervals in the collision risk assessment. We had a good discussion about this, about the use of the statistical confidence limits as promoted by natural England.

00:43:57:05 - 00:44:03:26

The question really we have for Natural England, the RSPB as much as yourselves. But do you believe this matter has any material implications for the assessment?

00:44:07:03 - 00:44:37:23

And challenging for the applicant as stated in the Ice Age five. We will be most confident with the use of the flight I distributional gated. It forms from the Johnson et al paper that we rely on assessments to

go in both an EIA and entry level. So so yes we don't believe that use of 95% confidence values should be applied in the case of this project or other projects due to the the model fitted on data.

00:44:37:25 - 00:44:53:05

And as we discussed yesterday, therefore we're confident that this number should note should it should be no material change to our assessments as they should be reliant upon the best outcomes in the Johnson et al. Data which used to us is that fly type distribution that we have within our assessments.

00:44:54:26 - 00:45:03:13

Okay. Thank you. I think we came to the conclusion that should you do it, you may get some bracketing figures, but you'd still be using the central figure out anyway for the assessment.

00:45:06:09 - 00:45:08:12

Sean Sweeney for the up? That's correct, sir.

00:45:09:03 - 00:45:09:18

And keep.

00:45:12:09 - 00:45:43:02

2.12. We've got on the agenda the inclusion of the counterfactual, the final population size in the population viability analysis. We talked about this yesterday again, and you offered to take it away and give further consideration to whether both metrics should be used or could both be used, whilst nevertheless focusing on what you believe to be the most appropriate one, which is a counterfactual population growth rate. Do you believe you giving figures for both would have any implications for the outcome of the habitats regulations assessment?

00:45:45:24 - 00:45:53:28

Sean, thank you for the update. If I could pass over to my colleague Matthew Bauer, who provided this information to you yesterday, set up. You must appreciate it.

00:45:54:11 - 00:45:54:26

Thank you.

00:45:57:26 - 00:46:18:16

Rocky Balboa for the applicant. As reiterated yesterday in Ice Age five, duty and reliability of the counterfactual, the final population size and with the absence of density dependence in the model, we would consider only the counterfactual population growth be used for assessment purposes for both an air level and a A-level level.

00:46:20:27 - 00:46:30:04

I guess the question, Mr. Boehner, is if you came to the conclusion that two good reasons were both, then would it actually have an implications for the outcome of the assessment?

00:46:33:15 - 00:47:08:13

Both the applicant again as stated yesterday notice H5, although both outputs could be presented due to the issue in relation to a benchmarking of the counterfactual, a final population size and what effect that would have on the population is near enough impossible to actually quantify. We would have to automatically default back to the counterfactual of population growth, which in this case can be assessed against the historic and recent trends in population growth of the colony.

00:47:08:15 - 00:47:24:06

In particular, in this instance there CISPAs, which has had routine colony monitoring for that vast amount of years and only 50 years worth of monitoring data which rely which makes it very reliable and much more applicable and to be used as the output.

00:47:27:04 - 00:47:27:19

Keep.

00:47:35:11 - 00:48:05:20

Say Item 213. The indirect effects on bird populations through impact on prey species. And we heard earlier in the week that natural England disagrees with the basis on which indirect effects on seabirds were assessed, especially because of the use of the array area by flightless hawks in moult with dependent chicks in August and September. We're expecting your further reported that on five. And clearly this was because it's awaiting the update the marine processes assessment

00:48:08:12 - 00:48:16:09

really just to gain a view on the degree to which the outcome of this report could affect the outcome of the Shadow Habitats Regulations assessment.

00:48:21:06 - 00:48:34:21

Got him covered for the. And so we do not believe at this stage that the reports which are due to be submitted a deadline five on this topic today will have any material implications for the report to inform the appropriate assessment.

00:48:39:18 - 00:48:47:20

Is that because of the type of information it includes, or is it because you are sufficiently advanced to believe there would be no material change to the outcome?

00:48:54:01 - 00:48:55:23

Sorry, sir. Could you repeat the question, please?

00:48:55:29 - 00:49:11:25

Yes, sir. Is that because of the nature of the information in the report, which you don't believe could have an implication for the habitats regulations assessment? Or is it because you are sufficiently aware of the conclusions of that report to know the hope material changed the outcome of the assessment?

00:49:14:02 - 00:49:17:09

Got him government for the applicant. My understanding is it's a combination of both, sir.

00:49:18:08 - 00:49:20:06

Okay. Thank you.

00:49:25:06 - 00:49:46:19

Can we then move on to actually 2.14, which is the impact on goals? And we discussed this yesterday despite the ongoing disagreement between the applicant and natural England in relation to the project loan and cumulative collision risk assessment. But we could defer the implications for that. Flamborough and Filey Coast Special Protection Area for today's discussion.

00:49:49:00 - 00:50:26:27

Before asking for your views, I've noted the very recent comments and conclusions of the Secretary of State in the Habitats Regulations assessments undertaken for the two recent East Anglia offshore wind farm projects. I might try to summarise what I see as being most pertinent here in the context of this agenda item, as being maintaining the integrity of an assemblage feature as the interchangeability of

abundance and diversity. This seems potentially to be an interpretation either provided the species is not lost completely and losses in numbers of one species can be countered by increases in others, thus maintaining abundance and diversity.

00:50:29:04 - 00:50:38:17

Perhaps your views on the implications for the habitats regulations and for my interpretation of the Secretary of State, East Anglia decisions and Race.

00:50:43:01 - 00:51:06:25

Insurance, even if the applicant and say if you if you wish for us to confirm the outcome, that then yes. I mean, we we understand it. Yes. We we wouldn't have any implications or we'd still be advocating the same conclusions within our report to put in for an appropriate assessment for Flamborough Folly Coast SBA with regard to the seabed assemblage and and the not being an adverse effect on integrity not feature.

00:51:08:10 - 00:51:19:03

Have you taken any comfort, Mr. Sweeney, from the Secretary of State's Habitats Regulations Assessment for the East Anglian Offshore Wind Farms. In this respect, in terms of assemblage features.

00:51:20:10 - 00:51:36:10

I shall see. Yes. Yes. Certainly, sir. We take great comfort from, I suppose, just not that the formulation reiteration of that guidance, if you like, from the Secretary of State in its applicability to other projects, including Hornsea four, sir.

00:51:38:10 - 00:51:43:26

Thank you. And it will be asking Natural England and the RSPB for their interpretations of that as well.

00:51:46:09 - 00:52:29:13

So item 215 on the agenda is impacts on and cons go to read through to Diver. We did discuss this very briefly yesterday and I think it's fair to say your deadline to assessment of common sketch and read through to Diver report which is in the examination library wrap to 49 provides us with clarification but no change of position, which I believe remains that the evidence supports the conclusion of no adverse effect on integrity beyond scientific doubt in relation to the conservation objective, to maintain the distribution of red throated diver and common scoped qualifying features within the greater wash special protection area with the applicant like to expand on this at all.

00:52:29:15 - 00:52:37:23

And again comments and the implications of the sector states habitats, regulations, assessments and decisions in the East Anglian Offshore Wind Farm cases.

00:52:40:15 - 00:53:13:10

And shortly for the applicant. And I said we would like to go back into the East Anglia one north east only to consulting decisions as is probably not so relevant for this particular item. And as you stated actually that we've we do have now agreement from natural England within the risk and issues log that the submission submitted deadline three which an agreement that as he as you quite rightly stated that the methodological approach and the impact assessed with regards to habitat regulation assessment for Greater Washington s.p.a.

00:53:13:12 - 00:53:40:24

With regard to retro the retrofit dive and common skater feature that there is no idea that this fact integrity project alone in combination with regard to both the population or the distribution of that

part of those two populations from that designated sites. So I think as agreement has now been reached and green within that box provided we're satisfied that we are we can safely conclude that that matter.

00:53:40:26 - 00:53:42:20

So a small win

00:53:44:10 - 00:53:59:16

indeed. Thank you. That brings us to the end of agenda item two. And see anybody else has anything to raise in relation to the implications of matters that we've previously discussed at the earlier hearings for the HRA.

00:54:03:01 - 00:54:04:24

So nothing further serious here. Thanks.

00:54:05:27 - 00:54:15:10

McGovern. In that case, can I suggest we take a short break before we continue with the agenda, and if we could return, please, at 11:05? Thank you.