



Hornsea Project Four

Without Prejudice Derogation Draft Development Consent Order Schedules

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Revision Summary

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Revision Change Log

<i>Rev</i>	<i>Page</i>	<i>Section</i>	<i>Description</i>
01	-	-	Submitted at Deadline 3.
02	4 - 10	2	Updated to reflect updated DCO wording.

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1 Introduction

- 1.1.1.1 The Applicant has proposed drafting to secure any necessary compensatory measures for gannet, guillemot and razorbill on a without prejudice basis, which was included within the compensation documents which accompanied its DCO application. The Applicant took the opportunity to update that drafting in its Deadline 5 response via the Roadmaps ([REP5-018](#) - [REP5-021](#); [REP5-028](#) – [REP5-033](#); [REP5-072](#) – [REP5-073](#)).
- 1.1.1.2 Prior to the Issue Specific Hearing on the Development Consent Order held on 18 July 2022, the Applicant has prepared this standalone document to bring together in one place its proposed drafting for gannet, guillemot and razorbill compensation, which continues to be submitted on a without prejudice basis.
- 1.1.1.3 The Applicant can confirm no amendments have been made to the proposed drafting between the Roadmaps submitted at Deadline 5 and this documents submission. This document has been provided for ease of reference only, to assist the Examining Authority and other stakeholders to clearly identify the without prejudice drafting.
- 1.1.1.4 It should be noted that if the Secretary of State is minded to secure compensatory measures for gannet, guillemot and/or razorbill in accordance with the draft provisions set out below, no amendment to article 40 of the draft DCO is required. As currently drafted, article 40 gives effect to the entirety of Schedule 16 and so it is only the drafting in Schedule 16 which would need to be amended.

2 Without Prejudice Derogation Draft DCO Schedules

Schedule 16

COMPENSATION TO PROTECT THE COHERENCE OF THE NATIONAL SITE NETWORK

Part 1

OFFSHORE ORNITHOLOGY ENGAGEMENT GROUP

1. In this Schedule—

“Defra” means the Department for the Environment, Food and Rural Affairs.

“the FFC” means the site designated as the Flamborough and Filey Coast Special protection Area;
“GCIMP” means the gannet compensation implementation and monitoring plan for the delivery of measures to compensate for the predicted loss of adult gannet from the FFC as a result of the authorised development;

“GRCIMP” means guillemot and razorbill compensation implementation and monitoring plan for the delivery of measures to compensate for the predicted loss of adult guillemot and razorbill from the FFC as a result of the authorised development;

“KCIMP” means the kittiwake compensation implementation and monitoring plan for the delivery of measures to compensate for the predicted loss of adult kittiwakes from the FFC as a result of the authorised development;

“the gannet compensation plan” means the document certified as the gannet compensation plan by the Secretary of State for the purposes of this Order under article 38 (certification of plans and documents, etc);

“the guillemot and razorbill compensation plan” means the document certified as the guillemot and razorbill compensation plan by the Secretary of State for the purposes of this Order under article 38 (certification of plans and documents, etc);

“the Hornsea Four Offshore Ornithology Engagement Group” or “H4 OOEG” means the group that will assist, through consultation, the undertaker in the delivery of the compensation measures identified in the kittiwake compensation plan, the gannet compensation plan and the guillemot and razorbill compensation plan;

“the kittiwake compensation plan” means the document certified as the kittiwake compensation plan by the Secretary of State for the purposes of this Order under article 38 (certification of plans and documents, etc.);

2. “the Marine Recovery Fund” means the fund operated by Defra pursuant to the Offshore Wind Environmental Improvement Package of the British Energy Security Strategy (April 2022) for the implementation of strategic compensation or any equivalent fund established by a Government body for that purpose.

“the offshore compensation measures” means, as the context requires, bycatch reduction and/or the offshore nesting structure(s); and “the onshore compensation measure” means, as the context requires, predator eradication and/or the onshore nesting structure(s).

3. Work Nos. 1, 2, 3, 4 and 5 together with any associated development offshore may not be commenced until a plan for the work of the H4 OOEG has been submitted to and approved by the Secretary of State, such plan to include—

terms of reference of the H4 OOEG;

details of the membership of the H4 OOEG which must include—

the MMO and the relevant statutory nature conservation body as core members for the offshore compensation measures;

the relevant local planning authority and statutory nature conservation body as core members for the onshore compensation measures;

the RSPB and The Wildlife Trust as advisory members, for both the onshore compensation measures and/or the offshore compensation measures subject to their area of expertise;

details of the proposed schedule of meetings, timetable for preparation of the KCIMP, the GCIMP and the GRCIMP and reporting and review periods;

the dispute resolution mechanism and confidentiality provisions; and

4. the scope of work to be limited to the topics for discussion as identified by the appointed chair to include in relation to the compensation measure, monitoring and adaptive management.

Part 2

KITTIWAKE COMPENSATION

1. Following consultation with the H4 OOEG, the KCIMP must be submitted to the Secretary of State for approval in consultation with the MMO and relevant statutory nature conservation body for the offshore compensation measure (if required), and with the relevant local planning authority and relevant statutory nature conservation body for the onshore compensation measure (if required). The KCIMP must be based on the strategy for kittiwake compensation set out in the kittiwake compensation plan and include—
 - a. details of location where the compensation measure will be delivered, and in the event an onshore structure is required, details of landowner agreement(s) and in the event an offshore structure is required, details of any relevant seabed agreement(s);

- b. details of the design of the artificial nesting structure; including the projected number of nests that will be accommodated on the structure, and how risks from avian or mammalian predation and for an onshore nesting structure how unauthorised human access will be mitigated;
 - c. an implementation timetable for delivery of the artificial nesting structure, such timetable to ensure that the structure is in place to allow for at least three full kittiwake breeding seasons prior to operation of any turbine forming part of the authorised development. For the purposes of this paragraph each breeding season is assumed to have commenced on 1st April in each year and ended on 31st August;
 - d. details of the maintenance schedule for the artificial nesting structure;
 - e. details for the proposed ongoing monitoring of the measure including—
 - i. survey methods;
 - ii. survey programmes; and
 - iii. colony and productivity counts;
 - f. recording of H4 OoEG consultations;
 - g. details of any adaptive management measures, with details of the factors used to trigger any such measures; and
 - h. provision for reporting to the Secretary of State, to include details of the use of the structure by breeding kittiwake to identify barriers to success and target any adaptive management measures.
 - i. provision for the option to be exercised at the sole discretion of the undertaker to pay a contribution (in addition to the sum stipulated in Part 3 of this Schedule) to the Marine Recovery Fund wholly or partly in substitution for the onshore compensation measure and/or the offshore compensation measure or as an adaptive management measure for the purposes of paragraph 1.g. of this Part of this Schedule. The sum of the contribution to be agreed between the undertaker and Defra in consultation with the OoEG and included in the KCIMP.
2. Paragraphs 3, 4 and 5 of this Part of this Schedule shall not apply to the extent that a contribution to the Marine Recovery Fund has been elected in substitution for the onshore compensation measure and/or the offshore compensation measure for the purposes of paragraph 1(i) of this Part of this Schedule.
 3. The undertaker must construct the artificial nesting structure as set out in the KCIMP approved by the Secretary of State.
 4. The undertaker must notify the Secretary of State of completion of construction of the artificial nesting structure as set out in the KCIMP.
 5. The artificial nesting structure must not be decommissioned without prior written approval of the Secretary of State in consultation with relevant statutory nature conservation body.
 6. The KCIMP approved under this Schedule includes any amendments that may subsequently be approved in writing by the Secretary of State. Any amendments to or variations of the approved KCIMP must be in accordance with the principles set out in the kittiwake compensation plan and may only be approved where it has been demonstrated to the satisfaction of the Secretary of State that it is unlikely to give rise to any materially new or materially different environmental effects from those considered in the kittiwake compensation plan.

Part 3

CONTRIBUTION TO MARINE RECOVERY FUND

1. No turbine forming part of the authorised development may begin operation until the undertaker has paid the sum of £500,000 (five hundred thousand pounds) to the Marine Recovery Fund.

PART 4

FISH HABITAT ENHANCEMENT

1. No turbine forming part of the authorised development may begin operation until arrangements for the implementation of fish habitat enhancement measures have been put in place in accordance with the principles set out in the KCIMP, the GCIMP and the GRCIMP.

PART 5

GANNET COMPENSATION

1. Following consultation with the H4 OOEG, the GCIMP must be submitted to the Secretary of State for approval in consultation with the MMO and relevant statutory nature conservation body for the offshore compensation measure(s) (if required), and with the relevant local planning authority and relevant statutory nature conservation body for the onshore compensation measure (if required). The GCIMP must be based on the strategy for gannet compensation set out in the gannet compensation plan and must include:
 - a. for the artificial nesting structure measure:
 - i. details of the location where compensation measure will be delivered, and in the event an onshore structure is required, details of landowner agreement(s) and in the event an offshore structure is required, details of any relevant seabed agreement(s);
 - ii. details of the design of the artificial nesting structure; including the projected number of nests that will be accommodated on the structure, and how risks from avian or mammalian predation and for an onshore nesting structure how unauthorised human access will be mitigated;
 - iii. an implementation timetable for delivery of the artificial nesting structure, such timetable to ensure that the structure is in place to allow for at least three full gannet breeding seasons prior to operation of any turbine forming part of the authorised development. For the purposes of this paragraph each breeding season is assumed to have commenced on 1st April in each year and ended on 31st August
 - iv. details of the maintenance schedule for the artificial nesting structure;
 - v. details for the proposed ongoing monitoring of the measure including
 - vi. 1. survey methods;
 - vii. 2. survey programmes; and
 - viii. 3. colony and productivity counts;
 - ix. recording of H4 OOEG consultations;
 - x. details of any adaptive management measures, with details of the factors used to trigger any such measures; and
 - xi. provision for reporting to the Secretary of State, to include details of the use of the structure by breeding gannet to identify barriers to success and target any adaptive management measures;
 - xii. provision for the option to be exercised at the sole discretion of the undertaker to pay a contribution (in addition to the sum stipulated in Part 3 of this Schedule) to the Marine Recovery Fund wholly or partly in substitution for the onshore and/or offshore artificial nesting structures or as an adaptive management measure for the purposes of paragraph 1.a.vii of this Part of this Schedule. The sum of the contribution to be agreed between the undertaker and Defra in consultation with OOEG and included in the GCIMP.
 - b. for the bycatch reduction measure:

- i. details of relevant technology supply agreements and arrangements with fishers to use the bycatch reduction technology that will be or have been secured by the undertaker;
 - ii. an implementation timetable for provision of the bycatch reduction measure, such timetable to ensure that contract(s) are entered into with fishers for the provision and use of bycatch reduction technology no later than one year prior to the operation of any turbine forming part of the authorised development;
 - iii. details for the proposed ongoing monitoring of the measure including collection of data from participating fishers;
 - iv. recording of H4 OOEG consultations;
 - v. details of any adaptive management measures and details of the factors used to trigger any such measures; and
 - vi. provision for annual reporting to the Secretary of State, to identify barriers to success and target any adaptive management measures.
 - vii. provision for the option to be exercised at the sole discretion of the undertaker to pay a contribution (in addition to the sum stipulated in Part 3 of this Schedule) to the Marine Recovery Fund wholly or partly in substitution for the bycatch measures or as an adaptive management measure for the purposes of paragraph 1.b.v of this Part of this Schedule The sum of the contribution to be agreed between the undertaker and Defra in consultation with OOEG and included in the GCIMP.
2. Paragraphs 3, 4 and 5 of this Part of this Schedule shall not apply to the extent that a contribution to the Marine Recovery Fund has been elected in substitution for the onshore compensation measure and/or the offshore compensation measure and/or the bycatch compensation measure for the purposes of paragraphs 1.a.ix and 1.b.vii of this Part of this Schedule.
3. The undertaker must construct the artificial nesting structure and enter into contract(s) with fishers for the provision and use of bycatch reduction technology as set out in the GCIMP approved by the Secretary of State.
4. The undertaker must notify the Secretary of State of completion of construction of the artificial nesting structure and the entering into contract(s) with fishers for the provision and use of bycatch reduction technology as set out in the GCIMP.
5. The artificial nesting structure must not be decommissioned without prior written approval of the Secretary of State in consultation with relevant statutory nature conservation body.
6. The GCIMP approved under this Schedule includes any amendments that may subsequently be approved in writing by the Secretary of State. Any amendments to or variations of the approved GCIMP must be in accordance with the principles set out in the gannet compensation plan and may only be approved where it has been demonstrated to the satisfaction of the Secretary of State that it is unlikely to give rise to any materially new or materially different environmental effects from those considered in the gannet compensation plan.

PART 6

GUILLEMOT AND RAZORBILL COMPENSATION

1. Following consultation with the H4 OOEG, the GRCIMP must be submitted to the Secretary of State for approval in consultation with the MMO and relevant statutory nature conservation body for the offshore compensation measure, and with the relevant statutory nature conservation body and the relevant local planning authority and relevant conservation trusts for the onshore compensation measure. The GRCIMP must be based on the strategy for guillemot and razorbill compensation set out in the guillemot and razorbill compensation plan and include:
 - a. for the predator eradication measure:
 - i. details of the location(s) where the compensation measure will be delivered;

- ii. details of how any necessary access rights, licences and approvals have or will be obtained and any biosecurity measures will be or have been secured;
 - iii. an implementation timetable for delivery of the predator eradication measure, such timetable to ensure that the predator eradication method has commenced no later than two years prior to operation of any turbine forming part of the authorised development;
 - iv. details for the proposed ongoing monitoring of the measure including:
 - v. 1. survey methods;
 - vi. 2. survey programmes;
 - vii. 3. productivity rates;
 - viii. 4. breeding population; and
 - ix. 5. distribution of breeding birds;
 - x. recording of H4 OOEG consultations;
 - xi. details of any adaptive management measures, with details of the factors used to trigger any such measures; and
 - xii. provision for reporting to the Secretary of State, to include details of the use of the location(s) by breeding guillemot and razorbill to identify barriers to success and target any adaptive management measures.
 - xiii. provision for the option to be exercised at the sole discretion of the undertaker to pay a contribution (in addition to the sum stipulated in Part 3 of this Schedule) to the Marine Recovery Fund wholly or partly in substitution for the predator eradication measures or as an adaptive management measure for the purposes of paragraph 1.a.vi. of this Part of this Schedule] The sum of the contribution to be agreed between the undertaker and Defra in consultation with OOEG and included in the GRCIMP.
- b. for the bycatch reduction measure:
- i. details of relevant technology supply agreements and arrangements with fishers to use the bycatch reduction technology that will be or have been secured by the undertaker;
 - ii. an implementation timetable for provision of the bycatch reduction measure, such timetable to ensure that contract(s) are entered into with fishers for the provision and use of bycatch reduction technology no later than one year prior to the operation of any turbine forming part of the authorised development;
 - iii. details for the proposed ongoing monitoring of the measure including collection of data from participating fishers;
 - iv. recording of H4 OOEG consultations;
 - v. details of any adaptive management measures and details of the factors used to trigger any such measures; and
 - vi. provision for annual reporting to the Secretary of State, to identify barriers to success and target the adaptive management measures.
 - vii. provision for the option to be exercised at the sole discretion of the undertaker to pay a contribution (in addition to the sum stipulated in Part 3 of this Schedule) to the Marine Recovery Fund wholly or partly in substitution for the bycatch eradication measures or as an adaptive management measure for the purposes of paragraph 1.b.vi of this Part of this Schedule] The sum of the contribution to be agreed between the undertaker and Defra in consultation with OOEG and included in the GRCIMP.
2. Paragraphs 3 and 4 of this Part of this Schedule shall not apply to the extent that a contribution to the Marine Recovery Fund has been elected in substitution for the predator eradication measure and/or the bycatch compensation measure for the purposes of paragraphs 1.a.viii and 1.b.vii of this Part of this Schedule.

3. The undertaker must carry out the predator eradication method and enter into contract(s) with fishers for the provision and use of bycatch reduction technology as set out in the GRCIMP approved by the Secretary of State.
4. The undertaker must notify the Secretary of State of completion of the predator eradication method and entering into contract(s) with fishers for the provision and use of bycatch reduction technology set out in the GRCIMP.
5. The GRCIMP approved under this Schedule includes any amendments that may subsequently be approved in writing by the Secretary of State. Any amendments to or variations of the approved GRCIMP must be in accordance with the principles set out in the guillemot and razorbill compensation plan and may only be approved where it has been demonstrated to the satisfaction of the Secretary of State that it is unlikely to give rise to any materially new or materially different environmental effects from those considered in the guillemot and razorbill compensation plan.