



Sheringham Shoal and Dudgeon Offshore Wind Farm Extension Projects

Written Summary of the Applicant's Oral Submissions
at Issue Specific Hearing 5

Revision A

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1 Introduction

1. This document presents a written summary of Equinor New Energy Limited's (the Applicant) oral case at Issue Specific Hearing 5 (ISH 5) (Table 1-2). ISH 5 on the Sheringham Shoal Offshore Wind Farm Extension Project (SEP) and Dudgeon Offshore Wind Farm Extension Project (DEP) Development Consent Order (DCO) application took place on 30 March 2023 at 10:00am at Fishmongers Recital Hall, Gresham School, Cromer Road, Holt NR25 6EA.

Table 1 Written summary of the Applicant's oral submission at ISH 5

I.D.	Stakeholder Comment	Applicant Response
Offshore Ornithology from an Environmental Impact Assessment perspective		
3.i	<p>Hornsea Project 4, in updating their assessments for the Secretary of State, reported on the impacts upon the Common Scoter feature of the Greater Wash Special Protection Area (SPA). Of particular note, they responded “No assessment of the common scoter feature of the Greater Wash SPA was undertaken by Sheringham Shoal and Dudgeon Extension, therefore a construction phase ECC in-combination assessment was not possible” (reported by Natural England in paragraph 5 of Appendix B to [RR-063]). The Environmental Statement [APP- 097, Tables 11-18 and 11-34, Paragraph 425] screens out Common Scoter and sets out that the species is not at risk of collision. Is Natural England content with this position?</p>	<p>A. The Applicant confirmed it broadly agrees with Natural England’s position. Low densities of common scoter were recorded within the survey area and none were recorded within the SEP and DEP array sites themselves. In accordance with Natural England’s suggestion, the Applicant has reviewed the information that is presented in the Departmental brief for Greater Wash SPA (Natural England and JNCC, 2016), which confirms that very low densities of common scoter are present both within the SEP and DEP array sites and also along the route of the cable corridor (as shown on Figure 3 of the Departmental Brief). Common scoter was therefore screened out from construction and operations and maintenance disturbance/displacement impacts (see Table 11-18 and 11-34 of the Environmental Statement (ES) Chapter 11 Offshore Ornithology [APP-097]). The Applicant noted that Greater Wash SPA common scoter was omitted from the screening tables in APP-061, so the Applicant confirmed it would update these tables before the close of Examination.</p> <p>B. On the basis of the low densities of species of common scoter that are present both within the array and along the cable route, the Applicant anticipates that the species will be screened out from the appropriate assessment, and this aligns with Natural England's position as set out.</p>
3.ii	<p>The Environmental Statement [APP-097, Table 11-168] reports a moderate adverse cumulative effect (residually) upon Great Black-backed Gull. No further mitigation is proposed for the species. Natural England has set out that, at the Environmental Impact Assessment level, there would be a significant adverse impact on Great Black-backed Gull irrespective of whether the Proposed Development is included in the totals. Reasons for the difference in the conclusions and what, if any, mitigation or compensation should be sought to reduce the impact further?</p>	<p>A. The Applicant notes there is not a fundamental disagreement between the position that the Applicant is taking and that of Natural England. In the draft Statement of Common Ground (SoCG) [REP-205], at 35 it is stated that there is a cumulative moderate adverse impact cumulatively on Great Black-backed Gull, which is the same position as Natural England. This position is the same as in the case of East Anglia One North, where the Secretary of State considered there was no need for additional mitigation.</p>

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		<p>B. The Applicant confirmed the primary mitigation for collision risk is the increase in air gap, which was included between the preliminary environmental impact report (PEIR) stage and the application stage. The air gap between the highest astronomical tide (HAT) and the lowest point of the turbine blades was raised from 26m to 30m, which the Applicant estimates has reduced the collision risk for great black-backed gull by approximately 50%. This air gap will apply irrespective of turbine size.</p> <p>C. The Applicant confirmed this is agreed with Natural England in the SoCG.</p> <p>D. The Applicant confirmed that increasing the air gap further between HAT and the turbine blades (i.e. beyond 30m) is not technically feasible, and that is set out in Habitats Regulations Derogation - Provision Evidence [APP-063], and is acknowledged by Natural England in the SoCG.</p>
3.iii	<p>The Environmental Statement [APP-097, Table 11-168] reports a minor adverse cumulative effect (residually) upon Lesser Black-backed Gull. No further mitigation is proposed for the species. Is Natural England content with this position?</p>	<p>A. The Applicant confirmed that they are aligned with Natural England that there are no significant adverse effects. The increase in air gap between HAT and the lowest point of the turbine blades is also mitigation for this species and no further mitigation is technically possible. The Applicant confirmed that all mitigation that can be provided is being provided.</p> <p>B. The Applicant is not aware of evidence to say that greater distances between turbines would offer additional mitigation for impacts. The application is based on the overall parameters of the wind farm, based on a worst-case scenario.</p>
3.iv	<p>Clarification from Natural England on their conclusion that there would be a significant adverse impact at the Environmental Impact Assessment scale on red-throated diver irrespective of whether the Proposed Development is included in the totals. Reasons for the difference in conclusions presented by the Applicant and Natural England.</p>	<p>A. The Applicant confirmed it is waiting on a further response from Natural England at Deadline 3. With regard to the effects from construction and operation and maintenance vessels on red throated diver, a commitment to best practice protocol in respect of red throated diver should enable Natural England to advise that there would be no contribution to in-combination effects on the Greater Wash Special Protection Area (SPA). This secured</p>

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		<p>through the outline Project Environmental Management Plan (oPEMP) [REP1-017].</p> <p>B. The Applicant considers that effects in respect of the construction and operation maintenance vessel activities are fully addressed, and that aligns with Natural England's position in respect of Hornsea Project Four.</p> <p>C. The Applicant noted that a key point of difference is in relation to displacement effects cumulatively or in-combination with other projects. The Applicant's position is that there is a cumulative minor adverse effect, which is not significant. The Applicant has presented a range of mortality (1-10%) for displaced birds, in accordance with Natural England's advice. However, the Applicant considers there is sufficient evidence that 1% mortality is realistic and proportionate. On that basis, only 0.2 birds (mortality rate per annum) would be contributed to the cumulative effect. Natural England seek to consider the full range of mortality up to 10% which the Applicant considers is an overly precautionary approach and not proportionate. At 10% mortality the cumulative mortality would be 318 birds per annum, to which SEP and DEP would contribute 2.3 birds.</p> <p>D. The Applicant confirmed that 'without prejudice' derogation measures are not proposed for red throated diver as there are no significant cumulative effects on this species.</p> <p>E. The Applicant confirmed that cable laying activities involving vessels will take place for 110 days, approximately 25 of which could affect the SPA. That figure is for both projects constructed on a sequential basis.</p>
3.v	The Collision Risk Modelling Updates (EIA Context) Technical Note [REP1-056] provides statistics for the little gull species. Are there any unresolved issues or concerns regarding this species?	<p>A. The Applicant confirmed that collision mortality is lower in the Collision Risk Modelling Updates Technical Note [REP1-056] compared to those that were published in the ES, and that the Applicant's conclusion is unchanged, i.e. that there is no significant adverse effect on SEP and DEP alone and that the level of mortality is very low. The impact is less than three birds, which is</p>

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		<p>equivalent to approximately a 0.02% increase in mortality for the biogeographic population. On this basis, the mortality is too low to contribute to any significant effects.</p> <p>B. The Applicant noted that Natural England confirmed in their relevant representation [RR-063] that for Hornsea Project Four they consider there would be no significant cumulative adverse effect on little gulls (including the effects from Hornsea Project Four).</p>
3.vi	<p>The Applicant has said they will be advised by Natural England as to how to best incorporate the Highly Pathogenic Avian Flu into the assessments [REP2-017]. Can Natural England clarify how it wants this element to be reported and why?</p>	<p>A. The Applicant considered the additional guidance provided by Natural England in its Relevant Representations (Appendix B2 of [RR-063]) is high level. The Applicant would be willing to undertake further assessment relating to the impact of Avian Flu but does not have sufficient data at this stage to inform that. The Applicant confirmed it would be happy to work with Natural England and the Royal Society for the Protection of Birds (RSPB) and other relevant stakeholders to obtain that data. The Applicant considers that those bodies should coordinate the gathering of that information, as it has wide ranging implications beyond an assessment of SEP and DEP.</p> <p>B. The Applicant would welcome input from Natural England on providing further specific guidance on this matter and the assessment process. For example, it could be clarified whether population viability analysis is required as part of the assessment, or Natural England could clarify what specific colonies should be considered.</p> <p>C. The Applicant noted that based on the initial guidance on Avian Flu from Natural England (Appendix B2 of [RR-063]), there is an expectation that, at a broad level, the resultant declines in colony populations will be associated with proportionate reductions in the abundance of birds from such colonies in at-sea surveys (as used for baseline characterisation), with the consequence that the scale of impact is likely to remain in proportion to the size of the colony.</p>

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		<p>However, it is too early at this stage to be able to confirm what impacts would arise.</p> <p>D. Assuming that updated guidance and adequate data become available, information on known Avian Flu impacts on relevant species and colonies could be compiled, and any update to the assessment presented, later in the Examination. This would, however, depend on what Natural England consider is required and when the Applicant has sufficient clarity from them. The Applicant would need to work with relevant stakeholders (e.g. Natural England and RSPB) to obtain suitable data to inform such an assessment.</p>
Offshore Ornithology from a Habitats Regulation Assessment (HRA) perspective		
4.i	<p>The Apportioning and Habitats Regulation Assessment Updates Technical Note sets out the predictions regarding the puffin species [REP2-036]. Is Natural England content that, following the modelling results, an Adverse Effect on Integrity on puffin as part of the seabird assemblage can be ruled out?</p>	<p>A. The Applicant confirmed the assessment of puffin displacement concludes no measurable mortality impacts on the Flamborough and Filey Coast SPA population (Section 9 of Natural England's Relevant Representations [REP2-036]). On that basis there would not be any contribution to in-combination mortality for that species. That is primarily on the basis of the distance from the windfarm sites to Flamborough and Filey Coast SPA, which is at the outer limits of puffin foraging range. As such it is very unlikely that significant numbers of puffins from the Flamborough and Filey Coast SPA population are present at the windfarm sites and could be impacted.</p>
4.ii	<p>Following the discussion in the Applicant's Apportioning and Habitats Regulation Assessment Updates Technical Note [REP2- 036], in terms of seabird assemblage, does Natural England agree with the approach, assessment and calculation of impacts on the total abundance and diversity of the species components of the assemblage?</p>	<p>A. The Applicant confirmed in relation to the seabird assemblage that within the Apportioning and Habitats Regulations Assessment Updates Technical Note [REP1-057], the Applicant provided an assessment on seabird assemblage and sought to follow the approach requested by Natural England. For the seabird assemblage Natural England's Supplementary Advice on Conservation Objectives (SACOs) include targets in relation to species abundance, diversity, extent and distribution of supporting habitats and quality of supporting habitats. The assemblage comprises nine different species (gannet, kittiwake, guillemot,</p>

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		<p>razorbill, fulmar, puffin, herring gull, cormorant and shag), four of which are qualifying species in their own right. The assessment of the impact on seabird assemblage utilised the species-specific assessments, where appropriate.</p> <p>B. The Applicant's position is that there will be no Adverse Effect on Integrity on the seabird assemblage, alone and in-combination, and therefore no compensation is required.</p> <p>C. Effects on fulmar, herring gull, cormorant and shag were screened out (see Habitats Regulations Assessment Screening Report [APP-060]).</p> <p>D. For kittiwake (as a qualifying feature of Flamborough and Filey Coast in its own right), Adverse Effect on Integrity in-combination has been concluded (see Report to Inform Appropriate Assessment (RIAA) [APP-059]) and compensation is proposed. However, it should be noted that the effect on this qualifying feature does not automatically translate to Adverse Effect on Integrity on the assemblage; refer to Paragraph 83 of Natural England's Relevant Representations [REP2-036]; <i>'However, the scale of the potential impact is not considered sufficient to have the potential to affect the SACO target concerning the overall abundance of the seabird assemblage feature from being achieved'</i>.</p> <p>E. The Applicant's position for guillemot and razorbill (as standalone qualifying species) is that there would be no Adverse Effect on Integrity, alone or in-combination. Therefore, there would be no effect on the Conservation Objectives in respect of these species when considered as part of the species assemblage.</p> <p>F. The Applicant understands that the key area of discussion with Natural England and RSPB is likely to relate to the abundance target for the Flamborough and Filey Coast SPA assemblage, which is 216,730 individuals. The Applicant has estimated total most recent abundance estimate for the Flamborough and Filey Coast SPA assemblage is 236,926, based on 2017/18 counts from</p>

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		<p>the Seabird Monitoring Programme database. This is approximately 20,000 birds above the target for the Flamborough and Filey Coast SPA conservation objectives. For a number of these species (kittiwake, gannet, guillemot, razorbill and puffin) counts between 2000 and 2017/18 indicate increasing populations.</p> <p>G. Therefore, even if small reductions in guillemot and razorbill populations were to occur (and the Applicant considers that there is no evidence that this is the case), it is very unlikely that this would result in any appreciable abundance change, and therefore would not prevent the abundance target for the assemblage being met. Indeed, if existing trends continue, it would be expected that the Flamborough and Filey Coast assemblage abundance will continue to increase.</p> <p>H. If the SoS concluded AEol in respect of guillemot and razorbill (i.e as standalone qualifying species), then compensation for these species would be required. This would not necessarily mean that there would also be AEol for the assemblage, e.g. as the PVA outputs from the RIAA for guillemot (Paras 1538-1542 [APP-059]) indicate that under all realistic scenarios there would not be a population decline, only a slowing of growth. The same case is made for razorbill (Paras 1577-1581 [APP-059]). In the case of the 'abundance' attribute of the Conservation Objectives, therefore, this confirms that there would be no decline in the population from these assemblage species.</p> <p>I. In respect of kittiwake, guillemot and razorbill, even if AEol was concluded for the assemblage, no additional compensation would be required, as it is considered that this would be adequately addressed through compensation as qualifying species.</p> <p>J. There are no other species likely to trigger AEol for the abundance of the assemblage.</p> <p>K. No effects on the supporting habitat targets (extent and distribution and quality) are predicted. This is due to the distance of SEP and DEP from Flamborough and Filey Coast SPA (112km and 116km);</p>

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		<p>i.e. that the windfarms will be located outside of core foraging areas for all of the assemblage species.</p> <p>L. No effects on species diversity (i.e. due to extinction of an assemblage species from the Flamborough and Filey Coast SPA population) are considered likely.</p> <p>M. The Applicant confirmed it is not possible to consider what compensatory measures would be suitable in the hypothetical event that two of the assemblage species were subject to a significant effect but the overall assemblage did not suffer a significant effect.</p>
4.iii	<p>Discussion between parties, in particular Natural England, Royal Society for the Protection of Birds and the Applicant, about the effects of the Proposed Development on seabird assemblage, and the potential need for additional compensation for the Flamborough and Filey Coast SPA.</p>	<p>A. The Applicant was not able to confirm the threshold level of impacts at which compensation would be required if there was decline in the seabird assemblage abundance. The Applicant considered the test would be whether the conservation objectives are no longer being met and evidence that decline in abundance was likely to occur.</p>
4.iv	<p>The Applicant has set out its case as to why an Adverse Effect on Integrity can be ruled out for red-throated diver [REP2-040]. Can Natural England confirm why, if this is still the case, an AEol cannot be ruled out?</p>	<p>A. The Applicant referred to earlier discussions under agenda item 3.iv and the range of mortality which Natural England uses when considering displacement effects on red throated diver. The Applicant considers it inconceivable that a 10% mortality rate would occur in reality. The Applicant considers there is good evidence to suggest that the 1% value is already a precautionary figure. The Applicant concludes there is no adverse effect on integrity.</p> <p>N. The Applicant confirmed that obligations to comply with the oPEMP [APP-297] will be binding on whoever has the benefit of the deemed marine licences in Schedules 10 to 14 of the draft DCO (Revision F) [document 3.1].</p> <p>B. The Applicant confirmed it was not aware of any industry-wide issues arising with regards to compliance with deemed marine licences.</p>

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		<p>C. The Applicant confirmed the contribution to any in-combination effects arising from the development is very small.</p>
4.v	<p>Can Natural England confirm that, if the Sheringham Extension Project was not pursued, there would not be any concerns regarding red-throated diver?</p>	<p>A. The Applicant reiterated that, either way, the contribution of SEP or SEP and DEP to in-combination effects is so small as to make no material difference to the in-combination totals.</p>
4.vi	<p>There remains a fundamental disagreement as to whether compensation is required at all for guillemot and razorbill (notwithstanding any sub-arguments regarding the measures of said compensation). In light of recent submissions by the Applicant, can a resolution be reached, or identify areas pending resolution for discussion</p>	<p>A. The Applicant confirmed that if the application had been submitted ahead of Hornsea Project Four, the contribution of SEP and DEP to in-combination effects on guillemot and razorbill would be very small, and would not reach the threshold where an in-combination AEoI would be likely. The potential for AEoI arises because of the large contribution of Hornsea Project Four to in-combination values for these species. The position with regards to Hornsea Project Four is not clear at this stage given the delay to the decision for this project.</p> <p>B. In one scenario, the Secretary of State grants the Hornsea Project Four DCO and concludes there are no adverse effects on integrity. That would then mean that the compensation measures for SEP and DEP are also not required, as the effects are so small from SEP and DEP alone that they are unlikely to then result in there being an adverse effect on integrity.</p> <p>C. In a second scenario, the Secretary of State refuses Hornsea Project Four. The effects from that project will then no longer arise and again there will be no adverse effect on integrity resulting from SEP and DEP in-combination with remaining projects considered in the in-combination assessment.</p> <p>D. In a third scenario, the Secretary of State grants Hornsea Project Four with a finding that there will be an adverse effect on integrity in respect of guillemot and/or razorbill. In that scenario, the Secretary of State can only grant consent if he accepts the compensatory measures proposed are appropriate. SEP and DEP have submitted 'without prejudice' measures that are similar, or the same, as those proposed for Hornsea Project Four. In this scenario, it would then be the case that the proposed without</p>

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		<p>prejudice compensatory measures can be considered appropriate, as they would have been approved in relation to Hornsea Project Four. There would then be a solution for SEP and DEP.</p> <p>O. The Applicant has built on industry knowledge in this area to propose suitable without prejudice compensatory measures. The position is further detailed in the RIAA [APP-059], Apportioning and HRA Updates Note [REP2-036] and the Habitats Regulations Assessment Derogation and Compensatory Measures Update [REP1-061].</p>
Subheading		
5.i	<p>The Statement of Common Ground with the National Trust [REP2- 046] suggests that there need not be any further discussion on the Farne Islands compensation measures. However, before discounting this and moving on, the Examining Authority request that the National Trust a) provide a copy of the Farne Islands Management Plan to the Examination and b) explain why the proposed measures do not represent additionality?</p>	<p>A. The Applicant's position is set out in its Deadline 1 Submission - HRA Derogation and Compensatory Measures Update [REP1-061], namely that the measures proposed could provide substantial benefits to breeding numbers of Sandwich tern at the Farnes as well as compliment the proposed measure at Loch Ryan. This is in part underpinned by the ongoing situation at the Farne Islands SPA, which has seen Sandwich tern breeding numbers decline considerably over 40 years, despite ongoing conservation and management efforts. Thus, it is considered important that this measure remains within the proposed package of measures.</p> <p>B. Sufficient evidence has been outlined in the Appendix 2 - Sandwich Tern Compensation Document [APP-069] and the Sandwich Tern – Quantification of Productivity Benefits Technical Note [REP1-058] to demonstrate that if delivered at an appropriate scale, the measures proposed could provide substantial benefits to breeding numbers of Sandwich tern at the Farnes.</p> <p>C. In the first instance it is proposed to deploy 400 nest boxes and 400 shelters. Deployment of six cameras should allow a representative sample of nests to be monitored to record predation attempts by large gulls. In contrast, the updated draft Farnes Management Plan provided by the National Trust describes the intention to deploy 50 chick shelters around edge of existing colony</p>

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		<p>and investigate options to monitor productivity using remote cameras. Taken together with the decline in breeding numbers it is hard to see the case that there is no additionality offered by the Applicant's proposals.</p> <p>D. The Applicant confirmed it would check whether nest boxes and chick shelters have already been used at the Farnes and at what level.</p> <p>E. The Applicant notes there are upcoming changes to policy and best practice guidance on this matter, which suggest that there will be increased flexibility with regards to additionality.</p>
5.ii	Views from Natural England, National Trust and the Applicant about the appropriateness to pursue bamboo canes as a compensation measure for the Farne Islands?	<p>A. The Applicant confirmed that any reduction in losses of chicks would be of benefit where it is clear a number of measures are required to halt the impact on breeding numbers. A reduction in gull attacks by 50% would be expected to achieve the same as a reduction in successful predation attempts. As such the Applicant considers there is a significant potential benefit in implementing bamboo canes as set out in the Applicant's submissions to date. That is also something that is recognised in RSPB good practice guidance.</p>
5.iii	The Applicant has quoted the Energy Security Bill insofar as: "Government is also considering enabling developers to undertake work already identified by Government to improve the condition of protected species and habitats. This would substantially increase the number of measures available to developers and also accelerate marine recovery for some sites" [REP2-038]. Can the Applicant set out whether the management plan for the Farne Islands represents (or is included as part of) any Government document or whether there are any Government-backed measures on the Farne Islands that are on public deposit to which the Applicant is relying?	<p>A. The Applicant confirmed that the Farne Islands Management Plan is a government document and therefore the quote taken from the Energy Security Bill could apply.</p> <p>B. The Applicant confirmed that Defra issued draft guidance (<i>Best practice guidance for developing compensatory measures in relation to Marine Protected Areas</i> (July 2021)) on compensatory measures some time ago and there was a lot of feedback which specifically looked at the question of additionality. The Applicant confirmed it is engaging with Defra with a meeting taking place this month. There is going to be a consultation on further guidance that is expected to be issued this summer, including on how the concept of additionality should be applied to compensation measures. Therefore, additionality represents a grey area which the Applicant has sought to navigate as safely and as effectively as</p>

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		<p>possible to identify suitable compensatory measures. This has been undertaken through detailed stakeholder engagement via the EPP process alongside regular engagement with Defra.</p> <p>C. The Applicant confirmed that during the pre-application stage, the steer from the National Trust was that measures proposed were additional and the Applicant put them forward on that basis. Concerns were raised about the simplicity of the measures and in some cases historical use. At the time and based on draft Defra guidance, the Applicant did not consider these concerns to be sufficient reason to discount the measures on the basis they did not provide 'additionality'.</p> <p>D. The Applicant confirmed that since submission, National Trust stated in its Relevant Representation [RR-061] that it was not confident the measures would be effective or additional. Natural England raised similar concerns (see Natural England Relevant Representation [RR-063]). The Applicant has only recently seen the management plan which has been submitted into the Examination by the National Trust (see Position Statement in Lieu of Attendance at Issue Specific Hearing 5 [AS-042]). The Applicant will review this in light of the draft Defra Guidance.</p> <p>E. The Applicant confirmed that National Trust were supportive of the measures during the pre-application stage. The Applicant hopes to engage further with the National Trust, with respect to the 'additionality' point and in light of the now shared Management Plan.</p>
5.iv	<p>If the Secretary of State were to ultimately conclude that sandwich tern compensation in respect of the Farne Islands to be insufficient, unsound or not to represent additionality, would this result in the compensation package as a whole being inadequate with only a single-strand approach for Loch Ryan?</p>	<p>A. The Applicant confirmed that Natural England have advocated for the development of packages of measures. That is what the Applicant has sought to do. Natural England has noted that if habitat creation at Loch Ryan was the sole measure brought forward this would inevitably raise the level of risk regarding whether sufficient compensation would be provided. Natural England have stopped some way short of saying single strand approach of Loch Ryan would be inadequate. The Applicant's</p>

I.D.	Stakeholder Comment	Applicant Response
		<p>position is that the proposed measure at Loch Ryan alone would be sufficient (see Sandwich Tern – Quantification of Productivity Benefits Technical Note [REP1-058]).</p> <p>B. In addition, restoring lost breeding range represents a major qualitative conservation gain. Natural England have recognised the proposal goes beyond the requirement to maintain the network by improving the geographical coherence of breeding range in Britain and Ireland. It does that by providing greater resilience, by spreading the breeding distribution over a wider area and counters the long term trend of sandwich tern nesting in in fewer sites. This is a significant beneficial aspect which must be taken into account in weighing up the overall level of risk.</p> <p>C. The Applicant received comments from Natural England on productivity benefits note at Deadline 2 and is in the process of responding to those.</p> <p>D. The other measures proposed are not being put forward to address issue of scale, they are about uncertainties involved in implementing a relatively unique proposal at Loch Ryan. There is uncertainty with any proposal for compensation of impacts on sea birds. SEP and DEP is not unique in that regard. The package of different measures and of adaptive management proposals is included in the Applicant's proposals and secured in the Outline Sandwich Tern Compensation Implementation and Monitoring Plan [APP-070]. Whilst the Applicant has made all reasonable endeavours to put forward a package of measures, in the event the Farne Island measures could not be taken forward the Applicant believes the measure at Loch Ryan would be sufficient for compensating the predicted impacts from SEP and DEP. The arrangements for adaptive management provide the appropriate mechanism to ensure that that is the case, including details of the factors used to trigger alternative compensation measures and or adaptive management measures.</p> <p>E. In relation to strategic compensation, there is a further option within the Applicant's proposals for a contribution to a future strategic</p>

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		<p>compensation fund to be made, such as the marine recovery fund, which could be wholly or partly substituted for project-specific compensatory measures. It is foreseeable that this fund could become available within the delivery timescales for SEP and DEP.</p>
5.v	<p>Foulness Island in Essex has appeared as a possibility for sandwich tern compensation. Is this being pursued as a further site to Loch Ryan and Farne Islands or as a substitute for Loch Ryan or the Farne Islands?</p>	<p>A. The Applicant confirmed that Foulness Island was considered as a possible alternative to the Farne Islands. The proposals have to date focussed on the Farne Islands in addition to Loch Ryan, primarily because it has not been possible to progress matters effectively with the Ministry of Defence (MOD) and second because the expert topic group feedback has led the Applicant to understand that the particular characteristics of Foulness mean that it's not well suited to the development of a project-specific compensatory measure.</p> <p>B. The Applicant confirmed it is in dialogue with QinetiQ, which manages Foulness Island on behalf of the MOD, and that has confirmed what existing measures are in place. The Applicant notes the existing measures focus on other species, not Sandwich tern.</p> <p>C. The Applicant will continue to keep lines of communication open with QinetiQ but does not intend to actively progress further development of measures at Foulness Island.</p>
5.vi	<p>Update the Examining Authority on progress with the Gateshead kittiwake tower compensation measure.</p>	<p>A. The Applicant provided a detailed update on the delivery of the Gateshead kittiwake tower measure at Deadline 1 (see Habitats Regulations Assessment Derogation and Compensatory Measures Update [REP1-061]). This included a letter of support from Gateshead Council.</p> <p>B. The Applicant can confirm that since then draft heads of terms were shared with Gateshead Council in January 2023 and a meeting is scheduled early April to discuss feedback on these. The Phase 1 Site Inspection and Condition Assessment of the existing tower was successfully completed in late February 2023. Modelling is now underway using the information collected during the site inspection to analyse the stability of the existing structure (as it is</p>

I.D.	Stakeholder Comment	Applicant Response
		<p>currently) and with the proposed modification to the topside to assess whether the existing foundation and steel structure can accommodate the proposed change or whether more extensive upgrades would be required to ensure the integrity of the structure for the operational lifetime of the development. This piece of work is expected to conclude in early April and will confirm the extent and nature of the necessary upgrades to the existing structure and next steps including the development of concept designs.</p> <p>C. The Applicant is on track to consult key stakeholders on the concept designs in Q2 2023. The Applicant hopes to be in a position to provide a further update with respect to the concept designs, consultation undertaken, and feedback received from stakeholders at Deadline 5.</p> <p>D. The Applicant remains on track to undertake formal pre-application consultation with Gateshead Council in Q2 2023.</p> <p>E. Overall, the Applicant remains broadly on track against the indicative programme outlined in Table 7 of Habitats Regulations Assessment Derogation and Compensatory Measures Update [REP1-061].</p> <p>F. The onward programme does to some extent rely on the outcome of the Phase 1 Site Inspection and Condition Assessment and the potential extent of necessary upgrades to the existing Saltmeadows tower; however, at this stage the indicative dates provided at Deadline 1 remain broadly appropriate for the different anticipated outcomes of the assessment.</p>
5.vii	Effectiveness of replacing the poor-performing nests on the south face of the kittiwake tower at Salt Meadows Gateshead with potentially better-performing nests on the north face of the tower (in greater numbers) and if that represents appropriate and qualifying compensation?	A. The Applicant welcomes Natural England's position and will provide a further update at Deadline 3.
5.viii	The compensation proposals for guillemot and razorbill, if required, appear to have switched focus from the northeast to the southwest [REP2-040]. Taking this into account, combined with Natural England and the Royal	A. The Applicant confirmed that the Applicant has shifted the focus of the proposals from the northeast to the southwest. That is largely as a result of the feedback that the Applicant received from

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	<p>Society for the Protection of Birds both disputing the effectiveness of both bycatch reduction and looming eye buoys, why should the Examining Authority have confidence in, what appears to be, a relatively uncertain compensation strategy?</p>	<p>stakeholders and also as a result of some additional work that was undertaken to help confirm the level of bycatch in the northeast. The additional work led the Applicant to conclude that in order to give this measure the best possible chance of success it should be focussed on the southwest. This remains the case despite the issues raised by Natural England and RSPB with respect to the effectiveness of bycatch reduction and looming eye buoys.</p> <p>B. Accounting for the uncertainties, the measures will be monitored to demonstrate that they have delivered effective and sustainable compensation for the impact of the project. The monitoring and management strategy requires further action to be taken, as part of an adaptive management approach, if the compensation is not successful (as secured through the draft DCO (Revision F) [document reference 3.1] via the relevant CIMP).</p> <p>C. Notwithstanding this, the Applicant acknowledges stakeholder concerns and is exploring options to support the existing evidence base and will be in a position to provide further information at Deadline 3. This will include submission of an Auk Bycatch Reduction Feasibility Statement, which has been produced with input from Fishtek, which is the same contractor that has undertaken the fisheries liaison, equipment design and installation on Hornsea Project 4's bycatch reduction trials. This note will describe the distribution, extent, and seasonality of set-net fishing activity in the southwest of England; review the evidence demonstrating that bycatch is an issue in the southwest; demonstrate Fishtek's fisheries liaison credentials; describe Remote Electronic Monitoring (REM) systems – explaining how this has been successfully implemented elsewhere; describe Looming Eye Buoy (LEB) technology and its potential to reduce bycatch; and outline the process and time-period for securing vessel involvement in a REM scheme for the purpose of delivering compensation for SEP and DEP.</p> <p>D. The Applicant is also exploring what other options might be available to the development beyond Deadline 3 to further reduce</p>

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		<p>uncertainty. We intend to discuss these options with key stakeholders namely Natural England and RSPB and to feed any progress made into the examination as it progresses.</p> <p>E. Finally, collaborative and/or strategic approaches to the delivery of compensation for auks remain a key strand of the Applicant's proposals (for the reasons already set out) and the Applicant is tracking developments in this regard closely and are progressing discussions with other developers with respect to potential opportunities for collaboration.</p> <p>F. The Applicant confirmed that the reason for the bycatch proposals being focussed in the chosen locations, rather than at the site of the array area, is because that is where bycatch has been identified as being an issue i.e. where fishing activities are taking place at sufficient levels where birds are present. There are higher densities of guillemot and razorbill in these locations and the same does not apply to the area around the wind farm arrays.</p>
5.ix	<p>At the specific Special Protection Area, with regards to the coherence of the UK National Site Network, if bird losses undermined the overall seabird assemblage (combined with compensation effectively enabling birds to move away from the SPA – managed loss), would that require targeted compensation at the specific Special Protection Area?</p>	<p>A. The Applicant noted that it would be reasonable to assume that compensation that is considered sufficient (for an individual qualifying species that is also an assemblage species) would equally address assemblage impacts. The principal of compensation is that populations away from the impacted SPA are increased, so that the overall resilience of the population is protected. This would seem to be compatible with maintaining the coherence of the UK National Site Network, i.e. it could benefit a range of SPAs.</p>
<p>The extent, scope and security of mitigation for marine mammals</p>		
6.i	<p>Is there agreement on the content, scope and level of mitigation secured in the Marine Mammal Management Protocol [REP1- 014]? If not, what amendments are perceived to be required in order for agreement to be reached?</p>	<p>A. The Applicant confirmed that the content of the Marine Mammal Management Protocol (MMMP) is largely agreed (as evidenced by Natural England's Relevant Representations [RR-063] (see Section 1 – Summary of Main Issues) and Natural England's Position Statements in Lieu of Attendance at Issue Specific</p>

I.D.	Stakeholder Comment	Applicant Response
		<p>Hearing 4, Issue Specific Hearing 5 and Issue Specific Hearing 6 [AS-041]. However, clarification of ADD duration / deployment with respect to simultaneous piling is required and will be provided within the Marine Mammals Technical Note / Addendum at Deadline 3.</p> <p>B. The Applicant confirmed in relation to a question about HDD noise impacts that drilling noise tends to be significantly less than the noise associated with piling works and the Applicant has not assessed or predicted the need for any mitigation for those works in terms of noise. The Applicant is not aware of any projects that have required mitigation for HDD works. The onshore and offshore environments are very different with regards to underwater noise impacts so they are not comparable.</p>
6.ii	<p>Does Natural England and the Marine Management Organisation consider that there are any fundamental issues remaining, on either an Environmental Impact Assessment or Habitats Regulation Assessment basis, in respect of marine mammals that warrant further work to be done? Explain with reasons.</p>	<p>A. The Applicant confirmed with regards to screening out of permanent threshold shift (PTS) and temporary threshold shift (TTS) impacts from the cumulative assessment, that there is justification for this in Appendix 10.3 - Marine Mammal Cumulative Impact Assessment (CIA) Screening [APP-193].</p> <p>B. The Applicant confirmed with regards to the project-alone underwater noise disturbance issues that it is currently undertaking additional assessments using Dose Response Curves which factor in the individual response of marine mammals to noise disturbance and provide a more detailed assessment on that. The Applicant is also undertaking updates to the cumulative and in combination assessments for both seal species and going through the process of population modelling for harbour porpoise, grey seal and harbour seal, which are the three species on which agreement has not yet been reached with Natural England regarding the outcomes of those cumulative assessments. Further information will be provided in the Marine Mammals Technical Note / Addendum at Deadline 3.</p>
<p>Draft Development Consent Order</p>		

I.D.	Stakeholder Comment	Applicant Response
7.i	<p>The Applicant promised a number of documents at Deadline 1 to be submitted 'early in the Examination.' These included the Auk Construction Phase Displacement Assessment Technical Note (received), the Export Cable Laying Vessel RTD Displacement Assessment (though that may have been incorporated in the apportioning and habitats note at D2), the Auk Bycatch Reduction Feasibility Statement and the Marine Mammals Technical Note. Can a firm date be confirmed for receipt of these.</p>	<p>A. The Applicant confirmed the Export Cable Laying Vessel RTD Displacement Assessment has been incorporated in the Apportioning and Habitats Regulations Assessment Updates Technical Note [REP2-036]. The Auk Bycatch Reduction Feasibility Statement will be submitted at Deadline 3. The Marine Mammals Technical Note / Addendum will be submitted at Deadline 3. The Applicant confirmed 'Addendum' was added to the title as it is an update to the assessment.</p>
7.ii	<p>A number of technical notes were submitted at Deadline 1 and Deadline 2. This supplements, adds to or revises the data used to form the Environmental Statement. Can the Applicant set out how these Examination-based revisions will affect the useability of the Environmental Statement, and which documents require certification as part of the Environmental Statement under the dDCO?</p>	<p>A. The Applicant recognises that there are now a suite of supplementary documents or updates that now form part of the Environmental Statement. These need to either be incorporated within the ES chapters, or included certified documents under Article 38. The Applicant is content to update and resubmit ES chapters where it is sensible or proportionate to do so but other supplementary information may sit more sensibly as a supplement alongside the ES. The Applicant confirmed it would submit these before Deadline 6.</p> <p>B. The Applicant confirmed it is aware that there has been a move to have a schedule of certified documents included in DCOs and the Applicant is willing to do the same. The Applicant confirmed that if updates are not within ES chapters they will be in the ES subheading of the table within that schedule. The Applicant confirmed it would include a form of this table in the draft DCO (Revision F) [document 3.1] at Deadline 3.</p>
7.iii	<p>The Marine Management Organisation continue to raise objection to the use of the phrase "materially" within the context of the draft Development Consent Order and Deemed Marine Licenses [REP2-059, paragraph 8.9]. The ExA notes the argument of precedence raised by the Applicant. Can the MMO explain why, if that phrase has been accepted by the SoS in other consented DCOs, it is inappropriate for that phrase to be used in this instance?</p>	<p>A. The Applicant confirmed this was first raised as a concern in relation to Schedule 10, Part 1, paragraph 9(1) of the draft DCO (Revision F) [document 3.1] in the MMO's Relevant Representation [RR-053] which the Applicant responded to in its comments at ID130-134 [REP1-033]. This paragraph deals with potential amendments and variations to the approved details, plans and schemes, which can only be agreed with the MMO where it is demonstrated that such amendment or variation is unlikely to give</p>

I.D.	Stakeholder Comment	Applicant Response
		<p>rise to any materially new or materially different environmental effects from those assessed in the ES. This approach is entirely in accordance with general planning and EIA principles and the process routinely undertaken to apply for amendments and variations of any consent in an EIA context, in particular the tests to be considered by the decision maker for a non-material change request as set out in the Planning Act 2008: Guidance on Changes to Development Consent Orders.</p> <p>B. The Marine Management Organisation's (MMO) concern seems to be that the drafting allows for the Applicant to determine what is or is not material. The Applicant disagrees that the wording at Schedule 10, Part 1, paragraph 9(1) provides for that because it can only be done in agreement with the MMO. If the MMO consider that the amendment or variation proposed is materially different, the undertaker could not implement the amendment or variation as it won't be agreed as required by paragraph (9).</p> <p>C. In response to the MMO's concerns about the Applicant determining what activities may or may not be material during operation and maintenance activities, there is a condition in each deemed marine licence which requires an offshore operations and maintenance plan to be submitted for approval to the MMO (e.g. in Schedule 10, Part 2, paragraph 13(1)(f)). The Applicant confirmed this would deal with the MMO's concerns and sets out what would and would not require a new marine licence and therefore what would be considered 'material' in terms of activities undertaken during the operational phase.</p> <p>D. The Applicant confirmed that it has submitted an outline offshore operation and maintenance plan [REP1-015] (oOOMP). The final column within the table at Annex I of the oOOMP confirms in relation to each operation and maintenance activity where the undertaker would consult with the MMO and it states for each activity whether or not consultation with the MMO would be undertaken to determine whether or not the activity required any further consents or licences.</p>

I.D.	Stakeholder Comment	Applicant Response
7.iv	Progress on discussion with Marine Management Organisation regarding the timeframes for post-consent submissions for review	<p>A. The Applicant confirmed that following the last hearings the Applicant has amended the draft DCO (Revision F) [document 3.1] to provide for submission of the site integrity plan (see Schedule 10, Part 2, paragraph 14) 6 months prior to construction.</p> <p>B. The Applicant also confirmed that it was its intention to review the submission timescales for each pre-construction plan and document with the MMO to try and reach an agreed position with the MMO. However, following the MMO's Deadline 1 submission on this point which stated that its position is that all documents should have a 6 months prior to construction submission timescale, the Applicant will undertake that review individually and confirm at D3 which documents it is prepared to amend to 6 months submissions timescales and which should remain at 4 months.</p> <p>C. The Applicant subsequently welcomed confirmation from the MMO that they would be willing to reopen discussions on submission timescale. The Applicant confirmed it would engage with the MMO on further discussions and provide an update at D3. [Post-hearing note: see Schedules 10 and 11, part 2, condition 13 and Schedules 12 and 13, condition 12, draft DCO (Revision F) [document reference 3.1]]</p>

References

Natural England and JNCC (2016). Departmental Brief: Greater Wash potential Special Protection Area.