



Sheringham Shoal and Dudgeon Offshore Wind Farm Extension Projects

Proposed Without Prejudice DCO Drafting
(Revision C) (Clean)

Revision C
Deadline 5
June 2023
Document Reference: 3.1.3

Title:	
Sheringham Shoal and Dudgeon Offshore Wind Farm Extension Projects Examination submission Proposed Without Prejudice DCO Drafting (Revision C) (Clean)	
PINS document no.: C282-BS-Z-GA-00010	
Document no.: 3.1.3	
Revision: C	
Date:	Classification
June 2023	Final
Prepared by:	
Burges Salmon LLP	
Approved by:	Date:
Felix Cryer, Equinor	June 2023

Table of Contents

1	Revision C Updates at Deadline 5	6
2	Revision B Updates at Deadline 2	6
3	Introduction.....	6
4	Need for provisions in the draft DCO securing compensatory measures under the Habitats Regulations	7
5	Need for provisions in the draft DCO securing measures of equivalent environmental benefit under the Marine and Coastal Access Act 2009.....	8
6	Draft DCO provisions.....	9
	Annex - Draft DCO Wording	10

Glossary of Acronyms

AEoI	Adverse Effect on Integrity
CSCB	Cromer Shoal Chalk Beds
DCO	Development Consent Order
DEL	Dudgeon Extension Limited
DEP	Dudgeon Offshore Wind Farm Extension Project
ETG	Expert Topic Group
FFC	Flamborough and Filey Coast
GW	Greater Wash
MCZA	Marine Conservation Zone Assessment
MEEB	Measures of Equivalent Environmental Benefit
NNC	North Norfolk Coast
OWF	Offshore Wind Farm
RIAA	Report to Inform Appropriate Assessment
SEL	Scira Extension Limited
SEP	Sheringham Offshore Wind Farm Extension Project
SPA	Special Protection Area
SoS	Secretary of State
SOW	Sheringham Shoal Offshore Wind Farm
UK	United Kingdom

Glossary of Terms

Dudgeon Offshore Wind Farm Extension Project (DEP)	The Dudgeon Offshore Wind Farm Extension onshore and offshore sites including all onshore and offshore infrastructure.
European site	Sites designated for nature conservation under the Habitats Directive and Birds Directive. This includes candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation, potential Special Protection Areas, Special Protection Areas, Ramsar sites, proposed Ramsar sites and sites compensating for damage to a European site and is defined in regulation 8 of the Conservation of Habitats and Species Regulations 2017, although some of the sites listed here are afforded equivalent policy protection under the National Planning Policy Framework (2021) (paragraph 176) and joint Defra/Welsh Government/Natural England/NRW Guidance (February 2021).
Habitats Regulations	Together, The Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017.
Sheringham Shoal Offshore Wind Farm Extension Project (SEP)	The Sheringham Shoal Offshore Wind Farm Extension onshore and offshore sites including all onshore and offshore infrastructure.
The Applicant	Equinor New Energy Limited. As the owners of SEP and DEP, Scira Extension Limited and Dudgeon Extension Limited are the named undertakers that have the benefit of the DCO. References in this document to obligations on, or commitments by, 'the Applicant' are given on behalf of SEL and DEL as the undertakers of SEP and DEP.

1 Revision C Updates at Deadline 5

1. This revision C of the **Proposed Without Prejudice DCO Drafting** [document reference 3.1.3] has been updated to make a number of amendments:
 - a. Reference to compensation measures for gannet have been removed. An updated assessment on the gannet feature of the Flamborough and Filey Coast SPA is provided in the **Apportioning and HRA Updates Technical Note (Revision D)** [document reference 13.3] which confirms a reduction in the worst-case upper 95% confidence interval value for this species from approximately 10 to approximately 6 compared to that in the **RIAA** [APP-059]. In addition, following its review of the Applicant's **Review of 2022 Highly Pathogenic Avian Influenza (HPAI) outbreak on relevant UK seabird colonies** [REP4-042], Natural England has confirmed that adverse effect on integrity can be ruled out for gannet (meeting held between the Applicant and Natural England on 23rd May 2023). As such, the Applicant considers that it is no longer necessary to present 'without prejudice' compensation measures relating to gannet. This document has therefore been updated to remove the measures relating to gannet.
 - b. A new condition has been added to each Part of the Schedule to clarify the relevant undertaker's obligations in relation to monitoring and adaptive management. These amendments reflect amendments made to Schedule 17 (Compensation Measures and Measures of Equivalent Environmental Benefit) of the **Draft Development Consent Order** (Revision H) [document reference 3.1].
 - c. In respect of the Measures of Equivalent Environmental Benefit (MEEB), additional wording has been added to make clear that the measures would only be required where external cable protection is installed within the Cromer Shoal Chalk Beds (CSCB) Marine Conservation Zone (MCZ).

2 Revision B Updates at Deadline 2

2. This document has been updated at Deadline 2 to amend a sub-paragraph of the "without prejudice" derogation provisions and MEEB provisions in the **Draft Development Consent Order** (DCO) (Revision D) [document reference 3.1]. In particular, the amendment is to the provisions that provide the option for the relevant undertaker to pay a contribution to the Strategic Compensation Fund wholly or partly in substitution for project-specific compensation measures or Measures of Equivalent Environmental Benefit. The effect of the amendment is that the Secretary of State's consent would be required prior to such an option being exercised by the undertaker. These amendments reflect amendments made to Schedule 17 (Compensation Measures and Measures of Equivalent Environmental Benefit) of the **Draft DCO** (Revision D) [document reference 3.1].

3 Introduction

3. This document is submitted as part of the examination of the Sheringham Shoal Offshore Wind Farm Extension Project (SEP) and Dudgeon Offshore Wind Farm

Extension Project (DEP) in response to a question in the **Examining Authority's Written Questions (WQ1)** [PD-010] and a point discussed between the Applicant and the Examining Authority at Issue Specific Hearing 1.

4. Question Q.1.14.1.9 in the **Examining Authority's Written Questions (WQ1)** [PD-010] states:

“Securing any Derogation Case and Compensatory Measures through a DCO

a) Could the Applicant clarify how any derogation case and compensatory measures would be secured through any DCO should the SoS's HRA demonstrate that they were necessary to address residual AEoI that could not be excluded beyond a reasonable scientific doubt?

b) Provide final, without prejudice compensation measures through a Requirement in the dDCO, to be activated only if the SoS finds AEoI?

c) Alternatively, submit a version of the dDCO with the necessary provisions to address the SoS's potential finding of AEoI?”

5. This document is submitted to address parts b) and c) of this question. The Annex to this document read together with the **Draft DCO** (Revision D) [document reference 3.1] contains the necessary provisions to address the Secretary of State's potential findings that (i) an adverse effect on integrity (AEoI) of a site within the national site network cannot be ruled out and/or (ii) that there is a significant risk that the achievement of a MCZ's conservation objectives will be hindered by the construction, operation and decommissioning phases of SEP and DEP, or cumulatively with any other plan, project or activity.

4 Need for provisions in the draft DCO securing compensatory measures under the Habitats Regulations

6. As part of the application, Equinor New Energy Limited (the Applicant) submitted a **Report to Inform Appropriate Assessment (RIAA)** [APP-059], which provides the information necessary for the competent authority to undertake an appropriate assessment to determine if there is any AEoI on the national site network.

7. With respect to certain ornithological features, the Applicant submitted information describing proposed compensatory measures, which are included as part of its **Habitats Regulations Derogation: Provision of Evidence** [APP-063]. The proposals were prepared in response to the outcomes of the Applicant's **RIAA** [APP-059], extensive stakeholder consultation and the emerging outcomes from other UK offshore wind farm (OWF) DCO applications and decisions. The ornithological features and their respective sites are:

- Sandwich tern from the North Norfolk Coast (NNC) Special Protection Area (SPA) and the Greater Wash (GW) SPA. The Applicant's **RIAA** [APP-059] concludes that AEoI cannot be ruled out as a result of predicted mortality due to the collision risk, when considered in-combination with other OWFs. As such, the Applicant has provided compensatory measures as part of its consent application to compensate for the predicted effects from SEP and DEP.

- Kittiwake from the Flamborough and Filey Coast (FFC) SPA. The Applicant's **RIAA** [APP-059] concludes that AEol cannot be ruled out as a result of predicted mortality due to collision risk, when considered in-combination with other OWFs. As such, the Applicant has provided compensatory measures as part of its consent application to compensate for the predicted effects from SEP and DEP.
- Guillemot and Razorbill from FFC SPA. The Applicant's **RIAA** [APP-059] concludes that there will be no AEol as a result of predicted mortality due to displacement, either alone or in-combination with other OWFs. In the event that the Secretary of State is unable to reach a conclusion of no AEol with respect to these features, the Applicant has developed "without prejudice" compensatory measures that could be applied to provide compensation for the predicted effects.

8. Should the Secretary of State conclude that AEol cannot be ruled out in respect of some or all of these ornithological features and their respective sites, then the Secretary of State will need to be satisfied that the DCO suitably secures the compensatory measures to be implemented to ensure the overall coherence of the national site network.
9. The Applicant has included provisions within the **Draft DCO** (Revision D) [document reference 3.1] that it considers are sufficient to secure that the necessary compensatory measures will be undertaken for ornithological features and sites where the Applicant has concluded that AEol cannot be ruled out.
10. The Applicant did not include provisions within the **Draft DCO** (Revision D) [document reference 3.1] itself in respect of the "without prejudice" measures. Instead, the Applicant included in Section 10 of **Appendix 4 – Gannet, Guillemot and Razorbill Compensation Document** [APP-074] what it considers to be suitable drafting that the Secretary of State could include within the DCO should they reach the conclusion that AEol could not be ruled out for those species and sites.

5 **Need for provisions in the draft DCO securing measures of equivalent environmental benefit under the Marine and Coastal Access Act 2009**

11. The Application included a **Stage 1 CSCB Marine Conservation Zone Assessment (MCZA)** [APP-077], as required by Section 126 of the Marine and Coastal Access Act 2009, as the offshore export cable corridor for SEP and DEP passes through the CSCB MCZ.
12. The assessment concludes that the conservation objective of maintaining the protected features of the CSCB MCZ in a favourable condition or restoring them to a favourable condition will not be hindered by the construction, operation and decommissioning phases of SEP and DEP, or cumulatively with any other plan, project or activity.
13. However, in response to advice from Natural England and outcomes for other consented UK OWFs in the southern North Sea, the Applicant provided a derogation

case, without prejudice to its position that the conservation objectives of the CSCB MCZ will not be hindered.

14. The Applicant did not include provisions within the **Draft DCO** (Revision D) [document reference 3.1] itself in respect of the “without prejudice” measures. Instead, the Applicant included in Annex D of **Appendix 1 - In-Principle Cromer Shoal Chalk Beds (CSCB) Marine Conservation Zone (MCZ) Measures of Equivalent Environmental Benefit (MEEB) Plan** (Revision C) [document reference 5.7.1] what it considers to be suitable drafting that the Secretary of State can include within the DCO should they reach an alternative conclusion to the Applicant.

6 **Draft DCO provisions**

15. The Applicant does not consider it necessary or appropriate to include the “without prejudice” derogation provisions in the **Draft DCO** (Revision D) [document reference 3.1] itself, as the **Draft DCO** (Revision D) [document reference 3.1] is in terms that the Applicant considers the Secretary of State should grant. In response to Q.14.1.9 in the **Examining Authority’s Written Questions (WQ1)** [PD-010], the Applicant has therefore included in the Annex to this document wording that would secure the derogation and MEEB provisions submitted on a without prejudice basis should these be required.

Annex - Draft DCO Wording

Article 46 Compensation

Compensation

46. Schedule 17 (compensation measures) has effect.

Schedule 17 Compensation Measures

SCHEDULE 17

Article 46

Compensation Measures and Measures of Equivalent Environmental Benefit

PART 3

Flamborough and Filey Coast Special Protection Area: Delivery of
measures to compensate for, guillemot and razorbill loss

21. In this Part—

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

“the FFC” means the site designated as the Flamborough and Filey Coast Special protection Area;

“Guillemot and Razorbill CIMP” means the 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;

“Guillemot and Razorbill Compensation Plan” means the relevant principles for guillemot and razorbill compensation set out in the document certified as the Habitats Regulations Derogation Provision of Evidence, Annex 4A Outline Guillemot and Razorbill Compensation Implementation and Monitoring Plan for the purposes of this Order under article 38 (Certification of plans and documents, etc.);

“GRCSG” means the Guillemot and Razorbill Compensation Steering Group; and

“the Strategic Compensation Fund” means any fund established by Defra or a Government body for the purpose of implementing strategic compensation measures;

22. The offshore works may not be commenced until a plan for the work of the GRCSG has been submitted to and approved by the Secretary of State. Such plan must include:

- (a) terms of reference for the GRCSG;
- (b) details of the membership of the GRCSG;
- (c) details of the schedule of meetings, timetable for preparation of the Guillemot and Razorbill CIMP and reporting and review periods; and
- (d) the dispute resolution mechanism.

23. Following consultation with the GRCSG the Guillemot and Razorbill CIMP must be submitted to the Secretary of State for approval, in consultation with the relevant statutory nature conservation body.

24. The Guillemot and Razorbill CIMP must be based on the strategy for guillemot and razorbill compensation set out in the Guillemot and Razorbill Compensation Plan and include:

- (a) 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;
- (b) an implementation timetable for provision of the bycatch reduction measure(s), 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;
- (c) details for the proposed ongoing monitoring of the measure including collection of data from participating fishers;
- (d) minutes from all consultations with the GRCSG;
- (e) details of the proposed ongoing monitoring and reporting on the effectiveness of the measures, including: survey methods; success criteria; adaptive management measures; timescales for the monitoring and monitoring reports to be delivered; and details of the factors used to trigger alternative compensation measures and/or adaptive management measures;
- (f) provision for reporting to the Secretary of State, to identify barriers to success and target any adaptive management measures.
- (g) provision for the option to be exercised by undertaker, following consent in writing of the Secretary of State, to pay a contribution to the Strategic Compensation Fund wholly or partly in substitution for the bycatch reduction measures or as an adaptive management measure for the purposes of paragraphs 24(2)(e) and (f) of this Part of this Schedule. The sum of the contribution to be agreed between the undertaker and Defra or other Government body responsible for the operation of the Strategic Compensation Fund in consultation with GRCSG.
- (h) provision for the option to be exercised, following consent in writing of the Secretary of State, to pay a financial contribution towards the establishment of compensation measures by another party wholly or partly in substitution for the bycatch reduction measures or as an adaptive management measure for the purposes of paragraphs 24(2)(e) and (f) of this Part of this Schedule. The sum of the contribution to be agreed between the undertaker and the other party in consultation with the GRCSG. The Secretary of State shall consult with the relevant statutory nature conservation body prior to granting consent in terms of this paragraph.
- (i) provision for the option to be exercised, following consent in writing of the Secretary of State, to collaborate with another party in the delivery of bycatch reduction measures wholly or partly in substitution for the compensation measure or as an adaptive management measure for the purposes of paragraphs 24(2)(e) and (f) of this Part of this Schedule. The Secretary of State shall consult with the relevant statutory nature conservation body prior to granting consent in terms of this paragraph.

25. Notwithstanding the requirements of paragraphs 26, 27 and 28 of this Part of this Schedule the undertaker shall not be required to undertake to the bycatch reduction compensation measure to the extent:

- (a) that a contribution to the Strategic Compensation Fund has been elected in substitution for the bycatch reduction compensation measure for the purposes of paragraphs 24(1)(i) or 24(2)(g) of this Part of this Schedule.
- (b) a financial contribution towards the establishment of compensation measures by another party has been elected in substitution for the bycatch reduction compensation measure for the purposes of paragraphs 24(1)(j) or 24(2)(h) of this Part of this Schedule.; or
- (c) the undertaker has elected to collaborate with another party in the delivery of compensation measures in substitution for the bycatch reduction compensation measure for the purposes of paragraphs 24(1)(k) or 24(2)(i) of this Part of this Schedule..

26. The undertaker must carry out the measures set out in the, Guillemot and Razorbill CIMP approved by the Secretary of State unless otherwise agreed in writing by the Secretary of State in consultation with the relevant statutory nature conservation body.

27. The undertaker shall notify the Secretary of State of completion of the measures as set out in the Guillemot and Razorbill CIMP.

28. Results from the monitoring scheme must be submitted at least annually to the Secretary of State and the relevant statutory nature conservation body. This must include details of any finding that the measures have been ineffective and, in such case, proposals to address this. Any proposals to address effectiveness must thereafter be implemented by the undertaker as approved in writing by the Secretary of State in consultation with the relevant statutory nature conservation body.

29. The Guillemot and Razorbill CIMP 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 Guillemot and Razorbill CIMP 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.

PART 4

MEASURES OF EQUIVALENT ENVIRONMENTAL BENEFIT

30. In this Part—

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

“the Cromer Shoal Chalk Beds MCZ” means the Marine Conservation Zone designated by the Secretary of State under the Cromer Shoal Chalk Beds Marine Conservation Zone Designation Order 2016;

“in-principle MEEB plan” means the document certified as the in-principle MEEB plan by the Secretary of State for the purposes of this Order under article 38 (certification of plans and documents etc);

“licenced activities” means the activities licenced by the deemed marine licence granted either under Schedule 12 or Schedule 13 of this Order;

“MEEB steering group” means the steering group who will shape and inform the scope and delivery of the MIMP;

“MIMP” means the MEEB implementation and monitoring plan to be submitted to and approved by the Secretary of State in accordance with paragraph 32 below; and

“the Strategic Compensation Fund” means any fund established by Defra or a Government body for the purpose of implementing strategic compensation measures;

“MEEB” means measures of equivalent environmental benefit, as that term is used in section 126(7)(c) of the 2009 Act;

31. The licenced activities may not be commenced until a plan for the work of the MEEB steering group has been submitted to and approved by the Secretary of State. Such plan must include:

- (a) terms of reference for the MEEB steering group;
- (b) details of the membership of the MEEB steering group;
- (c) details of the schedule of meetings, timetable for preparation of the MIMP and reporting and review periods; and
- (d) the dispute resolution mechanism.

32. Following consultation with the MEEB steering group the MIMP must be submitted to the Secretary of State for approval in consultation with the MMO and the relevant statutory nature conservation bodies. The MIMP must be based on the principles set out in the in-principle MEEB plan and include:

- (a) details of the location, nature and area of the measures to be delivered, which should equate to no less than 10,000m² of native oyster bed restoration to deliver equivalent environmental benefit as a result of the predicted effects of the authorised development;
- (b) confirmation of any marine licence required in order to implement and maintain the measures;
- (c) confirmation of any lease required (if any) from The Crown Estate for the site(s) where the measures are to be delivered;

- (d) an implementation timetable for delivery of the oyster bed restoration;
- (e) details of management and maintenance arrangements for the oyster bed restoration;
- (f) details of the proposed ongoing monitoring and reporting on the effectiveness of the measures, including: survey methods; success criteria; adaptive management measures; timescales for the monitoring and monitoring reports to be delivered; and details of the factors used to trigger alternative measures and/or adaptive management measures;
- (g) minutes from all consultations with the MEEB steering group; and
- (h) provision for the option to be exercised by the undertaker, following consent in writing of the Secretary of State, to pay a contribution to the Strategic Compensation Fund wholly or partly in substitution for the oyster bed restoration measures of equivalent environmental benefit. The sum of the contribution to be agreed between the undertaker and Defra or other Government body responsible for the operation of the Strategic Compensation Fund in consultation with the MEEB steering group.
- (i) provision for the option to be exercised by the undertaker, following consent in writing of the Secretary of State, to pay a financial contribution towards the establishment of measures of equivalent environmental benefit by another party wholly or partly in substitution for the oyster bed restoration measures of equivalent environmental benefit or as an adaptive management measure for the purposes of paragraphs 32(f) of this Part of this Schedule. The sum of the contribution to be agreed between the undertaker and the other party in consultation with the MEEB steering group. The Secretary of State shall consult with the relevant statutory nature conservation body prior to granting consent in terms of this paragraph
- (j) provision for the option to be exercised by the undertaker, following consent in writing of the Secretary of State, to collaborate with another party in the delivery of measures of equivalent environmental benefit wholly or partly in substitution for the oyster bed restoration measures of equivalent environmental benefit or as an adaptive management measure for the purposes of paragraphs 32(f) of this Part of this Schedule. The Secretary of State shall consult with the relevant statutory nature conservation body prior to granting consent in terms of this paragraph.

33. No external cable protection works may be commenced within the Cromer Shoal Chalk Beds MCZ until the MIMP has been approved by the Secretary of State.

34. Notwithstanding the requirements of paragraphs 35, 37, 38 and 39 of this Part of this Schedule the undertaker shall not be required to undertake the oyster bed restoration measures of equivalent environmental benefit to the extent that:

- (a) a contribution to the Strategic Compensation Fund has been elected in substitution for the oyster bed restoration measures of equivalent environmental benefit for the purposes of paragraph 32(h) of this Part of this Schedule.
- (b) a financial contribution towards the establishment of measures of equivalent environmental benefit by another party has been elected in substitution for the oyster bed restoration measures of equivalent environmental benefit for the purposes of paragraph 32(i) of this Part of this Schedule; or
- (c) the undertaker has elected to collaborate with another party in the establishment of measures of equivalent environmental benefit by another party has been elected in substitution for the oyster bed restoration measures of equivalent environmental benefit for the purposes of paragraph 32(j) of this Part of this Schedule.

35. Subject to paragraph 15 of this Part, the undertaker must implement the measures set out in the MIMP approved by the Secretary of State, unless otherwise agreed in writing by the Secretary of State in consultation with the relevant statutory conservation body and the MMO.

36. The undertaker is not required to implement the MIMP if no external cable protection works are required within the Cromer Shoal Chalk Beds MCZ.

37. The undertaker shall notify the Secretary of State of completion of implementation of the measures set out in the MIMP.

38. Results from the monitoring scheme must be submitted at least annually to the Secretary of State and the relevant statutory nature conservation body. This must include details of any finding that the measures have been ineffective and, in such case, proposals to address this. Any proposals to address effectiveness must thereafter be implemented by the undertaker as approved in writing by the Secretary of State in consultation with the relevant statutory nature conservation body.

39. Once the measures have been implemented the undertaker shall provide an annual report to the Secretary of State on the progress of the measures as detailed in the MIMP.

40. The MIMP 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 MIMP must be in accordance with the principles set out in the in-principle MEEB 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 in-principle MEEB plan.