



THE PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES  
2010

**Appendix A to the Relevant Representations of Natural England  
Draft Development Consent Order (DCO)**

For:

The construction and operation of the Five Estuaries Offshore Wind Farm located approximately 57km from the Essex Coast in the Southern North Sea.

Planning Inspectorate Reference EN010115

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13 August 2024

## **Appendix A – Draft DCO**

In formulating these comments, the following documents have been considered:

- [APP-024] 3.1 Draft Development Consent Order
- [APP-025] 3.2 Explanatory Memorandum
- [APP-248] 9.17 Outline Offshore Operations and Maintenance Plan

### **1. Natural England's Advice and Recommendations**

A summary of Natural England's key concerns in relation to the Draft Development Consent Order (DCO) is set out in Table 1. Our detailed advice and recommendations are presented in further detail in Table 2.

## Glossary of Acronyms and Abbreviations

AEol	Adverse Effect on Integrity
CoCP	Code of Construction Practice
DCO	Development Consent Order
dML	Deemed Marine Licence
ES	Environmental Statement
LBBG	Lesser Black Backed Gull
LEMP	Landscape and Ecological Management Plan
LIMP	Lesser Black Backed Gull Implementation and Monitoring Plan
LPA	Local Planning Authority
MMO	Marine Management Organisation
SAC	Special Area of Conservation
SADEP	Sheringham and Dudgeon Extension Project
SIP	Site Integrity Plan
SNCB	Statutory Nature Conservation Body
SoS	Secretary of State
SPA	Special Protection Area

**Please note:** This appendix should be read in conjunction with the Principal Areas of Disagreement Summary Statement (PADSS) contained within our Relevant Representations.

**Table 1 Summary of Key Issues – Draft DCO.**

NE Ref	Summary of Key Concerns	Natural England's Recommendations to Resolve Issues.	Risk
A1	<p>The during construction monitoring conditions within the deemed Marine Licences (dML) Schedules 10 and 11 do not secure that piling must cease in the event the monitoring highlights the noise impact is significantly in excess of the predicted impacts assessed. This is a key mitigation for marine mammals and has been included in previous DCOs for various offshore wind farms, such as the recent East Anglia One North project or the Sheringham and Dudgeon Extension Project.</p>	<p>Natural England has provided example wording in Table 2 below and would recommend it is included in Schedules 10 and 11.</p>	
A2	<p>The Margate and Long Sands Special Area of Conservation (SAC) Benthic Mitigation Plan is not secured through condition within the transmission dML, Schedule 11. This Plan details key mitigation for the Margate and Long Sands SAC and should be updated to reflect current information prior to the commencement of construction. It should, therefore, be secured through appropriate condition.</p>	<p>Natural England requests this mitigation plan should be secured through condition in Schedule 11.</p>	
A3	<p>Schedule 14 compensation <u>only</u> covers impacts to Lesser Black Backed Gull. In Appendix E and Appendix C we have detailed concerns that we cannot rule out an adverse effect on integrity (AEoI) on the Margate and Long Sands SAC and the Flamborough and Filey Coast Special Protection Area (SPA). Provision for the compensation should be included in the draft DCO on a without prejudice basis to provide the Secretary of State (SoS) with detailed and agreed provisions should he determine that compensation is required.</p>	<p>Natural England requests that draft compensation provisions are provided for all features where there is disagreement that an AEoI can be ruled out.</p>	

**Table 2 Natural England's Detailed Advice and Recommendations – Draft DCO.**

Natural England's Key Considerations	Natural England's Advice				
Relevant and Written Representations	NE Ref	Ref	Comment	Recommendation	Risk (RAG)
<b>Document(s) Used:</b> [APP-024] 3.1 Draft Development Consent Order					
Development Consent Order	A4	Schedule 2 Requirement 7 (2)	The requirement for landscaping does not cover all the aspects we would expect to be captured within the requirement. We would expect this to cover survey methods, monitoring requirements and the requirement to maintain, including the potential for replanting due to plant failures. Further we would expect to be consulted on these plans prior to their approval by the relevant local planning authority.	The requirement should be amended.	
	A5	Schedule 2 Requirement 8	Requirement 8 (1) does not secure that the Code of Construction Practice (CoCP) must be submitted and approved prior to the commencement of works. Further we would request the text be amended to include a requirement to consult the relevant SNCB on the CoCP. Natural England notes that the interpretations section includes an outline CoCP. Therefore, we would recommend that the requirement should note the final CoCP must accord with the outline CoCP. Further the requirement refers to sub paragraph (3) of the requirement which does not exist.	The requirement should be amended.	

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Relevant and Written Representations	NE Ref	Ref	Comment	Recommendation	Risk (RAG)
	A6	Schedule 2 Requirement 12	<p>Natural England requests that the relevant SNCB be included as a required consultee on this important ecological document. We also note that based on the wording here, and the interpretation of onshore commencement, clearing works could be conducted prior to the submission and approval of the final Landscape and Ecological Management Plan (LEMP). This provision should be amended to state that no pre commencement clearance works should be undertaken until a written LEMP, as relevant to the stage of the works, has been submitted to, and approved by, the Local Planning Authority (LPA) following consultation with the relevant SNCB.</p>	The requirement should be amended.	
	A7	Schedule 2 Requirement 20	<p>This requirement covers vehicle access and construction plans for the compensatory works for LBBG. The requirement is to be signed off by the LPA. Natural England has no objection to these requirements. However, we are not aware of similar provisions being used elsewhere and note the compensatory works are mostly covered under Schedule 14 with the SoS acting as the decision maker. Consideration should be given as to whether the requirements belong within the compensation schedule. This would</p>	Consider if the requirement should move.	

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			ensure that the approval of compensatory works are considered holistically by a single decision maker and reduce the potential for conflicting decisions on the different aspects of the compensation.		
	A8	Schedule 2 Requirement 23	This requirement secures the need for a Biodiversity Net Gain (BNG) strategy. We note that the relevant SNCB is not listed as a consultee, given the nature of this plan we would request consultation on this document. Further we note that no time period is given for the duration of which the strategy should be monitored, maintained or when adaptive management measures may be implemented. Natural England advises the requirement should ensure the strategy is enforced for a period of thirty years, or for the lifetime of the development.	Amend requirement to require consultation with the relevant SNCB and to monitor, maintain and potentially employ adaptive management measures over thirty years.	
	A9	Schedule 10 Part 2 Condition 12 (1) (j)	Due to the need to appropriately consider in-combination impacts of other developments it is also important that the Site Integrity Plan (SIP) should not be submitted too early as the plan needs to consider in combination issues and submission too early may mean significant in combination factors are not included.	Natural England recommends that the condition should require the SIP no sooner than 9 months and no later than 6 months prior to commencement of piling.	
	A10	Schedule 10 Part 2 Condition	Natural England notes that the monitoring conditions only cover benthic monitoring. However, we consider that Ornithological	Amend to include requirements for ornithological and marine mammal monitoring.	

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		n 16 and 18	and Marine Mammal monitoring should also be requirements due to the potential for impact. Please see our comments in Appendices C and H.		
	A11	Schedule 10 Part 2 Condition 17	<p>This condition <u>does not</u> include the requirement to pause piling in the event that noise is significantly in excess of that predicted and for potential further monitoring. These requirements are considered a key mitigation for noise impacts to sensitive species and should be included as a standard. Example provision from the recent Sheringham and Dudgeon Extension Project (SADEP) DCO provided below for reference:</p> <p><i>(2) In the event that driven or part-driven pile foundations are proposed, such monitoring must include measurements of noise generated by the installation of the first four piled foundations of each piled foundation type to be installed unless the MMO otherwise agrees in writing.</i></p> <p><i>(3) The undertaker must carry out the surveys approved under sub-paragraph (1), including any further noise monitoring required in writing by the MMO, and provide the agreed reports in the agreed format in accordance with the agreed</i></p>	Amend the condition to include the requirement to stop should the noise impacts of the works be significantly in excess of those assessed.	



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			<p><i>timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory nature conservation bodies.</i></p> <p><i>(4) The results of the initial noise measurements monitored in accordance with sub-paragraph (2) must be provided to the MMO within six weeks of the installation of the first four piled foundations. The assessment of this report by the MMO will determine whether any further noise monitoring is required. If, in the reasonable opinion of the MMO in consultation with the relevant statutory nature conservation body, the assessment shows significantly different impacts to those assessed in the environmental statement or failures in mitigation, all piling activity must cease until an update to the marine mammal mitigation protocol and further monitoring requirements have been agreed.</i></p>		
	A12	Schedule 10 part 2 conditions 16-18	The recent SoS decision for SADEP approved the following recommendation from Natural England and the Marine Management Organisation for particular impacts requiring remediation or further mitigation works (see Condition 20 in Schedules 10 and 11). We have copied	Natural England requests that a similar condition is included within all dMLs.	

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			<p>and included the condition below for your reference.</p> <p><i>(7) In the event that the reports provided to the MMO under sub-paragraph (4) identify impacts which are unanticipated and or beyond those predicted within the Environmental Statement and the Habitats Regulations Assessment an adaptive management plan to reduce effects to within what was predicted within the Environmental Statement and the Habitats Regulations Assessment, unless otherwise agreed by the MMO in writing, must be submitted alongside the monitoring reports submitted under sub-paragraph</i></p> <p><i>(4). This plan must be agreed by the MMO in consultation with the relevant statutory nature conservation bodies to reduce effects to an agreed suitable level for this project. Any such agreed and approved adaptive management or mitigation should be implemented and monitored in full to a timetable first agreed in writing with the MMO. In the event that this adaptive management or mitigation requires a separate consent, the undertaker shall apply for such consent. Where a separate consent is required to undertake the</i></p>		

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			<i>agreed adaptive management or mitigation, the undertaker shall only be required to undertake the adaptive management or mitigation once the consent is granted.</i>		
	A13	General	All comments raised on Schedule 10 apply to Schedule 11 where similar provisions exist. For brevity we will not repeat these comments.	N/A	
	A14	Schedule 11 Part 2 Condition 13 (g) (iv)	Natural England notes that the Margate and Long Sands Benthic Mitigation Plan is referenced here in relation to cable protection. However, there is no condition securing submission of an updated plan for approval within the dML or DCO. Natural England has commented under Appendix E with regard to the need for benthic mitigation and compensation. It is important that this plan be resubmitted with detailed mitigation based on the final designs and up to date mitigation techniques. Therefore, we consider that an updated plan should be secured through condition.	Consider inclusion of a condition securing the submission of an updated Margate and Long Sands Benthic Mitigation Plan.	
	A15	Schedule 11 Part 2 Condition 26	Natural England notes this condition; however, our standard position is that, due to the complex and changeable nature of marine benthic environment, it is not appropriate to issue licences to deploy cable protection within benthic sites over a	Amend the condition to exclude the area of the site within the Margate and Long Sands SAC.	

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			long period. Therefore, this condition should be amended to ensure that cable protection within the Margate and Long Sands Special Area of Conservation (SAC) is only deployed during the construction phase.		
	A16	Schedule 14 General comment	Natural England notes that compensation provisions have been provided for Lesser Black-Backed Gull (LBBG) only. We have advised in Appendices C and E that compensation is required for other ornithological and benthic features, specifically kittiwake, guillemot and razorbill at Flamborough & Filey Coast SPA, and sandbanks at Margate & Long Sands SAC. Compensation provisions should be provided for these features on a without prejudice basis to ensure that, should the SoS find that compensation is required, appropriate and, wherever possible, agreed provisions are available.	The compensation schedule should be updated to cover <b>all</b> sites where there is currently disagreement regarding an adverse effect on site integrity.	
	A17	Schedule 14	All references to Natural England within this schedule should be amended to the SNCB to ensure consistency with the rest of the DCO.	Amend any references to Natural England.	
	A18	Schedule 14 Para 2	Natural England notes that the Offshore Ornithology Engagement Group appears similar to the steering groups used on other compensation provisions. However, the condition does not include the need to	Update to include provision of terms of reference, timetable for the preparation and delivery of the LBBG, and a dispute resolution mechanism.	

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Relevant and Written Representations	NE Ref	Ref	Comment	Recommendation	Risk (RAG)
			provide and consult upon; terms of reference for the group, details of proposed meetings, timetable for the preparation and delivery of the LBBG implementation and monitoring plan (LIMP), or a dispute resolution mechanism. We consider these vital requirements to ensure a smooth compensation delivery process and would note that they have been included in many compensation schedules for LBBG.		
	A19	Schedule 14 Para 3 (1)	The wording here is confusing as it implies that compensation may be delivered through some other, unknown, or undetailed mechanism and thus the compensation within this provision may not be required. Natural England notes that there is ongoing work on strategic compensation and would support the inclusion of appropriate provisions to allow use of agreed strategic compensation. However, the wording here is insufficient, if that is its purpose. We have included details in Annex A1 below of some draft wording we proposed for a strategic benthic provision which could be extrapolated into an appropriate provision for LBBG.	Recommend amending this provision and consideration of how to appropriately implement a provision allowing strategic compensation options. This could also be applied to other compensation schedules provided on a without prejudice basis.	
	A20	Schedule 14 Para	The list of requirements to include in the LIMP is lacking in detail when compared to	Consider amendment to the provision.	

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		3 (2) (d) and (g)	similar provisions used to secure compensation. Within (d) we would expect to see survey methodologies, timetables for the monitoring to be conducted and reports delivered and success criteria. Within (g) we would expect to include a detailed mechanism to determine the need for any alternative compensation or adaptive management measures, along with potential further monitoring and maintenance of such measures. We refer to the East Anglia Two DCO which has such provisions within their LBBG compensation schedule.		
	A21	Schedule 14 Para 5	This requirement ensures that LBBG compensation must be provided three full breeding seasons prior to operation. However, Natural England-notes that on other developments a period of four full breeding seasons was deemed appropriate and considers this should therefore be amended.	Amend the condition to reflect four full breeding seasons in line with compensation requirements for other projects.	
	A22	Schedule 14 Para 8	Natural England notes the provision ensures that the compensation must be maintained until the end of the operational life of the project. We would advise that the compensation may be required for longer than the lifetime of the project and that the compensation should be maintained until the SoS approves its	Amend the provision to require the approval of the SoS and consultation with the SNCB.	

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			decommissioning in consultation with the relevant SNCB.		
<b>Document(s) Used:</b> [APP-248] 9.17 Outline Offshore Operations and Maintenance Plan					
	A23	Appendix A	Natural England notes there are several activities within the table that will require a new marine licence, but are recorded as <u>amber</u> , whereas the traffic light coding provided within the plan indicates that these should be considered <u>red</u> . For example, foundation replacement.	Suggest this should be amended to reflect the appropriate colour marking.	
	A24	Appendix A	It would have been useful for the table to have included a reference to the relevant section in the Environmental Statement (ES) to allow appropriate cross referencing.	Suggest cross referencing each item to the location within the ES where it is detailed, for ease of reference during operation.	

## **ANNEX A1 – Suggested Benthic Compensation Wording Provided to Regulators**

### **Schedule XX**

#### **[Site Name] Special Area of Conservation or Marine Conservation Zone: Delivery of measures to compensate for [impacts]**

**1. In this Schedule—**

“BIMP” means the benthic implementation and monitoring plan for the delivery of measures to compensate for the cable installation and protection in the [Site Name] SAC as a result of the authorised development;

“BSG” means the benthic steering group who will shape and inform the scope and delivery of the BIMP;

“[Site ref] SAC” means the [Site name] Special Area of Conservation;

“[Site ref] SAC compensation plan” means the document certified as [In Principle Compensation Plan Document Ref] by the Secretary of State for the purposes of this Order under article XX (Certification of plans etc); and

“Strategic Compensation Fund” means the [name of strategic fund] fund established by Defra [or another Government body] for the purpose of implementing strategic compensation measures.

“Strategic Compensation Owner” means the government body which established the Strategic Compensation Fund with the responsibility to manage the fund.

**2. No later than 2 years from the date of this order the Undertaker must advise the Secretary of State of the intention to provide compensation either;**

a. Through a monetary contribution to the Strategic Compensation Fund; or

b. Through a project alone compensation scheme for the undertaker to provide compensation as outlined in the [site ref] SAC Compensation Plan.

Paragraphs 7-15 of this Schedule shall not apply to the extent that a contribution to the Strategic Compensation Fund has been elected in Paragraph 2 of this Schedule and paragraphs 4, 5 and 6 of this schedule shall not apply to the extent that a project alone compensation plan has been elected in paragraph 2 of this Schedule.

**3. The authorised development may not be commenced until a plan for the work of the BSG has been submitted to and approved by the Secretary of State. Such plan must include:**

(a) terms of reference of the BSG;

(b) the membership of the BSG;

(c) details of the schedule of meetings, timetable for preparation of the BIMP and reporting and review periods, or details of the schedule of meetings to agree contribution to the Strategic Compensation Fund; and

(d) the dispute resolution mechanism.



4. The undertaker must agree a ratio/value of contribution with the strategic compensation owner, in consultation with the Statutory Nature Conservation Body [and the BSG]. Unless agree otherwise with the Strategic compensation Owner the ratio/value must include consideration of the provision of;
  - a. The required contribution to compensate for the worst-case scenario of impact on the [site ref] SAC;
  - b. The required contribution to monitoring of the compensation undertaken under the Strategic Compensation Fund;
  - c. The required contribution to provide for any adaptive management measures for the compensation undertaken under the Strategic Compensation Fund;
  - d. The timing of any required contribution to ensure compensation is either provided ahead of construction or to a sufficiently high ratio to allow for construction prior to implementation of the compensation;
  - e. The required contribution for the ongoing maintenance of the compensation undertaken under the Strategic Compensation Fund; and
  - f. The required contribution for any decommissioning of the compensation undertaken under the Strategic Compensation Fund.
5. Prior to the commencement of any works the undertaker must provide details on the contribution to the Strategic Compensation Fund agreed under paragraph 4 to the Secretary of State for approval.
6. The undertaker must provide the contribution to the Strategic Compensation Fund as per the agreement approved by the Secretary of State under paragraph 5.
7. The BSG must be consulted on the proposed BIMP prior to the submission to the Secretary of State and must be consulted further as required during the approval process.
8. The undertaker will meet with and report to the BSG at least annually throughout the establishment and implementation phases of the BIMP and document the conclusions of the meetings.
9. The BIMP must be submitted to and approved by the Secretary of State, in consultation with the MMO and the relevant statutory nature conservation body.
10. The BIMP must accord with the relevant principles contained in the [site ref] SAC compensation plan and must include in particular provide:
  - (a) details of any further survey work required to inform the compensation requirements as per the requirements of the secretary of state agreed through consultation with the BSG;
  - (b) details of the location, nature and works to be undertaken to compensate for the predicted effects of the project;
  - (c) a method statement for the compensatory works, to include the vessel type, tools used and mitigation for how impacts on the [site ref] SAC and any other relevant habitats or features

- (d) a programme of works for the compensatory works;
- (e) proposals for monitoring in accordance with the principles set out in the [site ref] SAC compensation plan as well as proposals for reporting of monitoring; and
- (f) success criteria, adaptive management measures, and details of how all impacts to protected habitats and features within designated sites will be avoided.

11. The BIMP must be carried out as approved, unless otherwise agreed in writing by the Secretary of State in consultation with the MMO and the relevant statutory nature conservation body. In particular, no installation works in the [site ref] SAC may be commenced until the Secretary of State has confirmed that compensation requirements have been discharged, excluding monitoring and/or adaptive management measures.
12. Unless otherwise agreed in writing with the Secretary of State, prior to the commencement of any cable installation works in the [site ref] SAC, the undertaker must—
  - (a) provide a reasonable estimate of the cost of delivery of the compensation measures; and
  - (b) put in place either—
    - (i) a guarantee in respect of the reasonable estimate of costs associated with the delivery of the compensation measures; or
    - (ii) an alternative form of security for that purpose, that has been approved by the Secretary of State.
13. Results from the monitoring scheme must be submitted at least annually to the Secretary of State, the MMO and the relevant statutory nature conservation body. This must include details of any finding that the measures have been ineffective in securing an improvement in the condition of the [site ref] SAC 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 MMO and the relevant statutory nature conservation body.
14. A report which demonstrates completion of the activities required by the BIMP must be submitted to the Secretary of State within 12 months of completion of such activities and following approval of the report by the Secretary of State, in consultation with the MMO and the statutory nature conservation body, the undertaker will be discharged from any further obligations under this Part.
15. The approved BIMP includes any amendments that may subsequently be agreed in writing by the Secretary of State, in consultation with the MMO and the relevant statutory nature conservation body. Any amendments to or variations of the BIMP must be in accordance with the principles set out in the [site ref] SAC 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 new or materially different environmental effects from those considered in the [site ref] SAC compensation plan.