

Date: 10 January 2025
Our ref: Case: 27347 Consultation: 486675
Your ref: EN010115



National Infrastructure Planning
The Planning Inspectorate
Temple Quay House
2 The Square
Bristol
BS1 6PN

Hornbeam House
Crewe Business
Park Electra Way
Crewe
Cheshire
CW1 6GJ

T 0300 060 3900

BY EMAIL ONLY

Dear Sir/Madam,

Five Estuaries Offshore Wind Farm

The following constitutes Natural England's formal statutory response for Examination Deadline 5.

1. Natural England's Deadline 5 Submissions

Natural England has reviewed the documents submitted by the Applicant at Deadline 4. An update of Natural England's position regarding documents relevant to our remit is provided in Annex 1, including anticipated timing of responses. Natural England is also submitting the following detailed responses, signposted from Annex 1:

- EN010115 486675 Five Estuaries Appendix L5 – Natural England's Risk and Issues Log DL5.xls
- EN010115 497793 Five Estuaries Rule 17 Letter Benthic Ecology NE Response.pdf
- EN010115 496835 Five Estuaries Rule 17 Letter Migrating Bats NE Response.pdf
- EN010115 497797 Five Estuaries Rule 17 Letter Ornithology NE Response.pdf
- EN010130 495640 ODOW Appendix G1 - Natural England's Advice on Seabird Compensation Calculations Deadline 3.pdf [REP3-071]

2. Updated Draft Development Consent Order (DCO)

Natural England has reviewed the updated draft DCO [REP4-005] and Schedule of Changes to the Draft Development Consent Order (To Revision E, Deadline 4) [REP4-006] and have updated our Risk and Issues Log accordingly (please see Appendix L5 to this Deadline 5

submission). As advised in our Deadline 4 response [REP4-061], we met with the Applicant on 9 December 2024 to discuss the outstanding DCO issues. An outcome of that meeting was that Natural England has reviewed the Applicant's Response to Natural England's Relevant Representation [REP1-051] with regard to the DCO issues and provided advice and recommendations on the outstanding DCO issues under Natural England's Discretionary Advice Service (DAS).

Natural England considers the Applicant's proposed changes to condition 19 within Schedule 10 (the Generation Deemed Marine Licence), a significant step forward in resolving issues A1 and A11 in our Risk & Issues Log tab A. However, we have outstanding concerns with regard to the timing of the submission of the report being within 9 weeks of the installation. Previous wording of this condition on other projects, such as East Anglia One North and East Anglia 2, has been for the report to be submitted within 6 weeks of the first foundation piling. We consider 6 weeks to be appropriate timing and would also note that the proposed wording is too open as it does not refer to when the 9 weeks period starts (installation of 1st pile, or last pile?).

Further we would note the wording in condition 19 (2) *"if, in the reasonable opinion of the MMO in consultation with the statutory nature conservation body, the assessment shows impacts significantly in excess to those assessed in the environmental statement and there has been a failure of the mitigation."* Our emphasis added. The use of 'and' instead of 'or' (as used in other OWF DCOs) means that in order to stop works the mitigation has to fail **and** the impact needs to be significantly in excess of predictions. We would note the drafting used on previous Offshore Wind Farm DCO's requires works to stop in either event. If the noise impacts are significantly in excess the mitigation may not fail, but simply be insufficient, and we question if this wording would require the works to stop and for additional mitigation to be agreed.

Natural England notes and welcomes the addition of a condition requiring the submission of an updated Sediment Disposal Management Plan (Schedule 10 Part 2 Condition 12 (1) (j)). We accept this amendment, however, note that any issues raised on the Outline Sediment Disposal Management Plan remain unchanged.

3. Lesser Black Backed Gull (LBBG) Proposed Compensation Site (PCS)

Natural England welcomes the Applicant's 2024 vegetation and invertebrate survey report results from Orford Ness [REP4-042]. However, we note that the area covered by these surveys now lies outside (though immediately adjacent to) the revised proposed LBBG compensation area. We have also reviewed the updated LBBG Habitats Regulations Assessment [REP4-008], LBBG Compensatory Areas Environmental Impact Assessment [REP4-014], and LBBG Ecological Impact Assessment [REP4-016].

The updated LBBG HRA [REP4-008], includes results from the updated surveys. However, these were carried out adjacent to a section of the Proposed Compensation Site (PCS) but not within its boundary or adjacent to the new northern section of the PCS. The northern section of the PCS was not included in the initial surveys (January 2024) or the 'eastern' adjacent surveys (August to October 2024) (Para 2.2.8). Therefore approx. 2.3ha of the PCS have not been formally surveyed at all, including ditch systems. Furthermore, both surveys were carried out at sub-optimal times (Para 2.2.9) and are based on one visit outside the main survey window for flora and fauna.

The assessments presented are based on 'inferences' from the data gathered and conclusions of LSE remain based on incomplete baseline information and are therefore not robust. Moreover, the Applicant continues to conclude no Likely Significant Effect (LSE) despite acknowledging that the new survey and assessment data is based on surveys outside of the PCS, were undertaken outside optimal survey periods, and made using 'inferences' and assumptions of the data gathered. Our previous concerns, therefore, remain unresolved.

In the updated LBBG EIA [REP4-014], new areas and amended boundaries have been identified but the baseline data are still absent. We advise that additional information is needed to confirm the conclusions of no significant impact. Our concerns remain unresolved. This also applies to the updated LBBG EcIA [REP4-016]. Lastly, no new information on the proposed ditch crossing has been provided in the EIA as the new survey data do not cover the area impacted.

4. Seabird Compensation Calculations

Appendix G1 to Natural England's Deadline 3 submission to the Outer Dowsing Offshore Wind Farm Examination sets out our current advice regarding the calculation of compensation quanta. We are submitting this into the Five Estuaries Examination in the hope this assists the Examining Authority in considering the calculations provided by the Applicant with respect to the compensatory measures proposed for Flamborough & Filey Coast SPA kittiwake, guillemot and razorbill, and Alde-Ore Estuary SPA LBBG.

The key piece of advice is that the Hornsea 3 Stage 2 method should be used for scaling compensatory requirements where there is a need to calculate the number of breeding pairs required. However, if there is insufficient demographic data for a given species to populate the calculation it is acceptable to use the Hornsea 4 method, provided that the calculations are updated using philopatry data to account for the need of the colony to sustain itself.

For any queries relating to the content of this letter please contact me using the details provided below.

Yours faithfully,

Yolanda Foote
Marine Senior Officer - Sussex and Kent Area Team
E-mail: yolanda.foote@naturalengland.org.uk
Telephone: 07388386740

Annex 1: Natural England's Response to the Applicant's Documents Submitted at Deadlines 2 and 4 Relevant to our Remit.

PINS Document Reference	Document Name	Natural England's Response/Position Summary
Deadline 2		
REP2-023	9.22 Outline Landscape and Ecological Management Plan – Revision C (Tracked)	Natural England has no comments to make on this document
Deadline 4		
REP4-001	Five Estuaries Cover Letter	Natural England has no comments to make on this document.
REP4-003	1.3 Guide to the Application – Revision H (Tracked)	Natural England has no comments to make on this document.
REP4-005	3.1 Draft Development Consent Order – Revision E (Tracked)	Please refer to Section 2 of this cover letter.
REP4-006	Schedule of Changes to the Draft Development Consent Order (To Revision E, Deadline 4)	Please refer to Section 2 of this cover letter.
REP4-008	5.4.5 Lesser Black Backed Gull Habitats Regulations Assessment – Revision C (Tracked)	Please refer to Section 3 of this cover letter.
REP4-009	6.1.3.1 Cumulative Effects Assessment Methodology – Revision B	Natural England will provide a response on this document at Deadline 6.
REP4-011	6.5.6.4 Herring Seasonal Restriction Note – Revision C (Tracked)	Natural England will provide a response to this document at Deadline 6.
REP4-012	6.6.7.4 Archaeological and Geoarchaeological Monitoring of Ground Investigation Works – Landfall – Revision B	Natural England has no comments to make on this document.
REP4-014	6.8.1 Lesser Black Backed Gull Compensatory Areas Environmental Impact Assessment – Revision C (Tracked)	Please refer to Section 3 of this cover letter.
REP4-016	6.8.1.3 Lesser Black Backed Gull Ecological Impact Assessment – Revision C (Tracked)	Please refer to Section 3 of this cover letter.
REP4-018	9.8 Dredge Disposal Site Characterisation Report – Revision B (Tracked)	Natural England will provide a response to this document at Deadline 6.

PINS Document Reference	Document Name	Natural England's Response/Position Summary
REP4-020	9.12 Outline Cable Specification and Installation Plan – Revision B (Tracked)	Natural England will provide a response to this document at Deadline 6.
REP4-022	9.13 Margate and Long Sands Special Area of Conservation Benthic Mitigation Plan – Revision C (Tracked)	Natural England will provide a response to this document at Deadline 6.
REP4-024	9.14.1 Outline Marine Mammal Mitigation Protocol – Piling – Revision C (Tracked)	Natural England will provide a response to this document at Deadline 6.
REP4-026	9.19 Outline Marine Written Scheme of Investigation – Revision C (Tracked)	Natural England has no comments to make on this document.
REP4-028	10.2 Land Rights Trackers – Revision E (Tracked)	Natural England has no comments to make on this document.
REP4-030	10.10 Statement of Commonality – Revision D (Tracked)	Natural England has no comments to make on this document.
REP4-031	10.10.2 Essex Police Statement of Common Ground	Natural England has no comments to make on this document.
REP4-033	10.15 Revised International Herring Larval Survey Heat Map Figures – Revision B (Tracked)	Natural England will provide a response to this document at Deadline 6.
REP4-035	10.20.1 Technical Note – Methodology for Determining MDS (Offshore) - Revision B (Tracked)	Natural England will provide a response to this document at Deadline 6.
REP4-036	10.20.6 Technical Note – Haul Roads between Bentley Road and the Onshore Substation	Natural England has no comments to make on this document.
REP4-037	10.20.7 Legal Note – Compulsory Acquisition Case	Natural England has no comments to make on this document.
REP4-038	10.20.8 Technical Note – Screen Planting Options for Land Plot 17-024	Natural England will provide a response to this document at Deadline 6.
REP4-039	10.28 Applicant's Response to ExQ2	Natural England reserves the right to provide comments on this document at Deadline 6 following our review

PINS Document Reference	Document Name	Natural England's Response/Position Summary
REP4-040	10.29 Applicant's Comments on Deadline 3 Submissions	Natural England reserves the right to provide comments on this document at Deadline 6 following our review.
REP4-041	10.30 Outline Sediment Disposal Management Plan	Natural England will provide a response to this document at Deadline 6.
REP4-042	10.31 Orford Ness Surveys Report	Please refer to Section 3 of this cover letter.
REP4-043	10.32 Bentley Road Evening and Night-time Construction Noise Impacts	Natural England has no comments to make on this document.
REP4-044	10.33 Compiled DCOs in Response to ExQ2	Please refer to Section 2 of this cover letter.