



FIVE ESTUARIES OFFSHORE WIND FARM

10.38 WITHOUT PREJUDICE HRA DCO SCHEDULES

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In preparation of this document Five Estuaries Wind Farm Ltd has made reasonable efforts to ensure that the content is accurate, up to date and complete for purpose.

Revision	Date	Status/Reason for Issue	Originator	Checked	Approved
A	Jan 25	Deadline 5	Burges Salmon	VEOWF	VEOWF

This draft is provided on a without prejudice basis. The Applicant does not concede that there is any adverse effect on integrity for any National Site in relation to any the species to which the provisions set out in this draft would apply.

This drafting is provided in a form that can be inserted into schedule 13 of the draft DCO if required.

DRAFTING NOTE: in order to insert further compensation provision, the existing contents of schedule 13 are to be amended to be Part 1 of that schedule.

- New part header 'Lesser Black Backed Gulls'
- In paragraph 1, amend "In this Schedule" to read "In this Part".

Part []

Kittiwake

1. In this Part—

"compensation measure" means an artificial nesting structure onshore, designed to provide a suitable nesting environment for kittiwake;

"FFC SPA" means the site designated as the Flamborough and Filey Coast Special Protection Area;

"KIMP" means a kittiwake implementation and monitoring plan to be developed in accordance with the outline KIMP;

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

"Marine Recovery Fund Payment" means a contribution to the Marine Recovery Fund to compensate for the predicted loss of adult kittiwakes from the FFC SPA as a result of the authorised development, the sum of which will be calculated in accordance with any guidance issued by Defra or otherwise to be agreed with the Secretary of State; and

"outline KIMP" means the outline kittiwake implementation and monitoring plan being the document certified as such by the Secretary of State for the purposes of this Order under article 43 (certification of plans etc.).

2. No offshore works are to commence until the undertaker has confirmed in writing to the Secretary of State whether it—

- (a) has secured nesting space within the Gateshead kittiwake tower constructed by Dogger Bank South (DBS) OWF; or
- (b) will make a Marine Recovery Fund Payment, or
- (c) will submit a KIMP for a compensation measure not utilising the Gateshead kittiwake tower to the Secretary of State for approval.

(3) Where the undertaker has confirmed in writing to the Secretary of State that it has secured nesting space within the Gateshead kittiwake tower constructed by Dogger Bank South (DBS) OWF, it must submit a monitoring and management plan in accordance with the relevant sections of the outline KIMP to the Secretary of State for approval. The monitoring and management plan must be implemented as approved under this paragraph.

4.(1) Unless the Secretary of State confirms in writing that either:

- (a) it has been demonstrated to his satisfaction that sufficient capacity within the Gateshead kittiwake tower constructed by Dogger Bank South (DBS) OWF has been secured and will be maintained on behalf of the undertaker for the operational period of the authorised development; or
- (b) the Marine Recovery Fund Payment has been made,

then a KIMP, which must be in accordance with the outline KIMP, must be submitted to the Secretary of State for approval in consultation with the statutory nature conservation body and the relevant planning authority for the compensation measure, prior to the commencement of the offshore works.

(2) The KIMP under sub-paragraph (1) (if required) must include:

- (a) details of the location(s) where the compensation measure will be delivered;
- (b) details of how any necessary land access rights, licences and approvals have or will be obtained and any biosecurity measures will be or have been secured;
- (c) where the compensation measures comprise an artificial nesting structure details of the capacity of such structure(s) and its ability to accommodate at least 7 additional nesting spaces for pairs of kittiwake to compensate for the impact of the authorised development on the population of the FFC SPA;
- (d) an implementation timetable for delivery of the compensation measure (where the measure is not already in place);
- (e) details of monitoring and maintenance programmes,
- (f) success criteria;
- (g) survey and reporting programmes for kittiwake and predators;
- (h) details of any adaptive management measures, with details of the factors used to trigger any such measures; and
- (i) provision for reporting to the Secretary of State.

5. Where a KIMP is approved under this Part, the undertaker must carry out the compensation measure as approved by the Secretary of State in consultation with statutory nature conservation body and the relevant planning authority unless otherwise agreed by the Secretary of State following consultation with the relevant statutory nature conservation body and the local planning authority for the area in which the compensation measure is to be provided.

6. (1) Where a KIMP is approved under paragraph 4 of this Part, no wind turbine generator forming part of Work No. 1 may commence operation until the compensation measure has been in place for at least three full kittiwake breeding seasons prior to such operation, unless commencement of operation at an earlier date is approved in writing by the Secretary of State. For the purposes of this paragraph each breeding season is 1 March to 30 September of each year inclusive.

(2) Where the undertaker has confirmed that it will make a payment to the Marine Recovery Fund there may be no operation of a wind turbine generator forming part of Work No. 1 unless and until the Marine Recovery Fund Payment has been quantified and such payment has been made, and following such payment the undertaker will not be required to implement any further compensation for kittiwake pursuant to this Part [] of Schedule [13].

7. The undertaker must notify the Secretary of State of any implementation of a KIMP approved under paragraph 4 of this Part.

8. The details approved under paragraph 4 include any amendments that may subsequently be approved in writing by the Secretary of State. Any amendments to or variations of the approved KIMP must be in accordance with the principles set out in the outline KIMP 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.

9. In the event of any conflict between the terms of this Order and the KIMP then the provisions of this Order prevail.

Part []

DRAFTING NOTE: this Part has been drafted to allow use for either or both species as may be determined to be required. The references to species in square brackets will need to be resolved once need is determined.

[Guillemot] [Razorbill] [Guillemot and Razorbill]

1. In this Part —

“compensation measure” means the funding, provision or support of small scale management measures at [Guillemot] [Razorbill] [Guillemot and Razorbill] colonies in the southwest of England including: recreational disturbance reduction; wardening; signage; education; visitor access statements; and engagement with local businesses and organisations;

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

“GRIMP” means a Guillemot and Razorbill implementation and monitoring plan to be developed in accordance with the outline GRIMP;

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

“Marine Recovery Fund Payment” means a contribution to the Marine Recovery Fund to compensate for the predicted loss of adult [Guillemot] [Razorbill] [Guillemot and Razorbill] from the FFC SPA as a result of the authorised development, the sum of which will be calculated in accordance with any guidance issued by Defra or otherwise to be agreed with the Secretary of State;

“OOEG” means the Offshore Ornithology Engagement Group; and

“outline GRIMP” means the outline Guillemot and Razorbill implementation and monitoring plan being the document certified as such by the Secretary of State for the purposes of this Order under article 43 (certification of plans etc.).

2. No offshore works are to commence until the undertaker has confirmed in writing to the Secretary of State whether it will—

- (a) make a Marine Recovery Fund Payment, or
- (b) submit a GRIMP to the Secretary of State for approval.

3. (1) Where the undertaker elects to submit a GRIMP, the undertaker will form and administer the OOEG before carrying out any works to deliver the compensation measure under a GRIMP to be approved under this Schedule. The undertaker will invite representatives from the following organisations to participate in the OOEG;

- (a) Marine Management Organisation
- (b) Natural England;
- (c) the relevant planning authority;
- (d) The Royal Society for the Protection of Birds; and
- (e) Landowners of the site upon which the compensation measure is to be delivered.

(2) The OOEG must be convened and consulted on the proposed GRIMP before any approval of the GRIMP is sought by the undertaker under paragraph 4.

4. Unless the Secretary of State confirms in writing that the compensation measure has been delivered to his satisfaction or the Marine Recovery Fund Payment has been made, then the GRIMP, which must be in accordance with the outline GRIMP, must be submitted to the Secretary of State for approval in consultation with the statutory nature conservation body and the relevant planning authority for the compensation measure prior to the commencement of the offshore works.

(2) The GRIMP (if required) must include:

- (a) details of the location(s) where the compensation measure will be delivered;

- (b) details of how any necessary land access rights, licences and approvals have or will be obtained and any biosecurity measures will be or have been secured;
- (c) an implementation timetable for delivery of the compensation measure;
- (d) details of monitoring and maintenance programmes,
- (e) success criteria;
- (f) survey and reporting programmes for [Guillemot] [Razorbill] [Guillemot and Razorbill] and predators;
- (g) details of any adaptive management measures, with details of the factors used to trigger any such measures;
- (h) provision for reporting to the Secretary of State; and
- (i) a plan for reporting to the OOEG and consulting the OOEG on the details of any proposed adaptive management measures and/or amendments to the GRIMP.

5. The undertaker must carry out the compensation measure as approved by the Secretary of State in consultation with statutory nature conservation body and the relevant planning authority.

6. (1) No wind turbine generator forming part of Work No. 1 may commence operation until the compensation measure has been implemented, unless commencement of operation at an earlier date is approved in writing by the Secretary of State.

(2) Where the undertaker has confirmed that it will make a payment to the Marine Recovery Fund there may be no operation of a wind turbine generator forming part of Work No. 1 unless and until the Marine Recovery Fund Payment has been quantified and such payment has been made, and following such payment the undertaker will not be required to implement any further compensation measures for [Guillemot] [Razorbill] [Guillemot and Razorbill] pursuant to this Part [] of Schedule [13].

7. The undertaker must notify the Secretary of State of implementation of the compensation measure.

8. The details approved under paragraph 4 include any amendments that may subsequently be approved in writing by the Secretary of State. Any amendments to or variations of the approved GRIMP must be in accordance with the principles set out in the outline GRIMP 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.

9. In the event of any conflict between the terms of this Order and the GRIMP then the provisions of this Order prevail.

Part []

Margate and Long Sands SAC benthic compensation

1. In this Part —

“BCSG” means Benthic Compensation Steering Group;

“BIMP” means the benthic implementation and monitoring plan to be developed in accordance with the outline BIMP;

“compensation measure” means the funding, provision or support of measures to remove anthropogenic pressure from the ML&S SAC including but not limited to removal of redundant infrastructure or removal of aggregate pressure as identified in the ML&S SAC benthic mitigation plan;

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

“Marine Recovery Fund Payment” means a contribution to the Marine Recovery Fund to compensate for impacts on protected features of the ML&S SAC through extension of SAC by Defra, the sum of which will be calculated in accordance with any guidance issued by Defra or otherwise to be agreed with the Secretary of State;

“the ML&S SAC” means the site designated as the Margate and Long Sands Special Area of Conservation; and

“Outline BIMP” means the outline benthic implementation and monitoring plan being the document certified as such by the Secretary of State for the purposes of this Order under article 43 (certification of plans etc.).

2. (1) No offshore works within the ML&S SAC are to commence until the undertaker has confirmed in writing to the Secretary of State whether it will—

- (a) make a Marine Recovery Fund Payment; or
- (b) submit a BIMP in accordance with outline BIMP to the Secretary of State, in consultation with statutory nature conservation body and the MMO, for approval.

(2) Where the undertaker elects to submit a BIMP, the undertaker will form and administer the BCSG before carrying out any works to deliver the compensation measure under a BIMP to be approved under this Schedule. The undertaker will invite representatives from the following organisations to participate in the BCSG;

- (a) Marine Management Organisation
- (b) Natural England; and
- (c) [TBC].

(2) The BCSG must be convened and consulted on the proposed BIMP before any approval of the BIMP is sought by the undertaker under this paragraph.

(3) Any BIMP submitted under this paragraph must include a plan for reporting to the BCSG on the implementation of the BIMP, and consulting the BCSG on the details of any proposed adaptive management measures and/or amendments to the BIMP.

(4) Where a BIMP required under sub-paragraph (1), the undertaker must carry out the compensation measure in the BIMP as approved by the Secretary of State unless otherwise agreed by the Secretary of State following consultation with the relevant statutory nature conservation body.

3. Where the undertaker has confirmed that it will make a payment to the Marine Recovery Fund there may be no installation of cable protection within the ML&S SAC unless and until the Marine Recovery Fund payment has been quantified and such payment has been made, and following such payment the undertaker will not be required to implement any further compensation measures for benthic impacts to the ML&S SAC pursuant to this Part [] of Schedule [13].
4. The undertaker must notify the Secretary of State of implementation of the compensation measure.
5. The details approved under paragraph 2 include any amendments that may subsequently be approved in writing by the Secretary of State.
6. In the event of any conflict between the terms of this Order and the BIMP then the provisions of this Order prevail.



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