

FIVE ESTUARIES OFFSHORE WIND FARM

10.39 APPLICANT'S RESPONSE TO RULE 17 REQUESTS FOR INFORMATION FOR DEADLINE 5

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CONTENTS

1.	Mig	grating Bats [PD-016]	5
		nithology [PD-022]	
	2.1	Report to Inform the Appropriate Assessment	
2	2.2	Apportioning Note	
		Guillemot and Razorbill Compensation Measures	
		rchon Interconnector [PD-018]	
		st Anglia Two Ltd [PD-019]	
5.	Bei	nthic Ecology [PD-023]	13
5	5.1	Benthic Mitigation and Sediment Deposition	13
5	5.2	Consideration of Alternatives	13
5	5.3	Compensation Measures	14
Ар	pend	dix 1: Tarchon Interconnector – information note	17

DEFINITION OF ACRONYMS

Term	Definition
BCSR	Benthic Compensation Strategy Roadmap
BDMPS	Biologically Defined Minimum Population Scales
ВІМР	Benthic Implementation and Monitoring Plan
DCO	Development Consent Order
DWR	Deep Water Route
EACN	East Anglia Connection Node
ECC	Export Cable Corridor
EIA	Environmental Impact Assessment
FFC	Flamborough and Filey Coast
FISPA	Farne Isles Special Protection Area
MDS	Maximum Design Scenario
MLS	Margate and Long Sands
NE	Natural England
NF	North Falls Offshore Wind Farm
PVA	Population Viability Analysis
RIAA	Report to Inform Appropriate Assessment
SAC	Special Area of Conservation
VE	Five Estuaries Offshore Wind Farm

1. MIGRATING BATS [PD-016]

Request for information

Can the Applicant clarify whether or not it intends to carry out any further survey work relating to migratory bat species? If so, when would that survey work be conducted? Additionally, can the Applicant comment on the possibility of reducing turbine rotation speed as a mechanism for mitigating any harm to migratory bats. What would be the implications of that type of mitigation for the operation of the Proposed Development and how effective do you consider it might be? If the Applicant considers that form of mitigation would be ineffective, explain: 1) why that would be the case; and 2) how it is intended the potential for harm to migratory bats could be addressed.

Applicant's response

Please see response to NE80 in 10.34.1 Applicant's Comments on Natural England's Deadline 4 Submissions, which also serves as the Applicant's response to the Examining Authorities Rule 17 letter, received on the 16 December 2024.

2. ORNITHOLOGY [PD-022]

2.1 REPORT TO INFORM THE APPROPRIATE ASSESSMENT

Demost few information	Aunthorations
Request for information	Applicant's response
In response to Natural England's relevant representation the Applicant has stated in Table 6.1 of the RIAA [page 111 of REP1-016] that an assessment has not been included for the Razorbill populations of the Farne Isles Special Protection Area	Given the distance from the Proposed Development to the Farne Islands SPA, there is only non-breeding season connectivity to the SPA for razorbill.
(FISPA) " because the predicted impact from the displacement was 0.00%". Identify the evidence that has been used to inform that conclusion.	The population of razorbill at the Farne Islands SPA is small (427 individuals for the most recent count and 572 individuals for the citation count) and therefore the SPA adult breeding population as a percentage of the relevant BDMPS is just 0.0007% for autumn and spring and 0.002% for winter.
	Consequently, the adult birds attributed to the SPA is 0.004 individuals for autumn, 0.03 individuals for winter and 0.008 individuals for spring. Applying displacement rates of 50% and a mortality rate of 1% results in an estimated annual mortality of 0.000, and the same applies if 70% displacement and 2% mortality is used. Therefore, the impact is considered negligible at this site.
It is also noted that the Applicant was unable to run the Population Viability Analysis with a burn-in of five years for Lesser Black Backed Gulls [REP4-040]. Could such analysis have affected the compensation quantum proposed for this	The compensation quantum is calculated directly from the impact estimates of the Proposed Development, which does not require PVA.
species? If so, how and why?	PVA, and therefore the use of burn-in, is used to determine whether an AEol can be ruled out. Both the Applicant and Natural England are in agreement that an AEol cannot be ruled out for the Lesser Black Backed Gull feature of Alde Ore Estuary. Therefore, the impacts used to calculate the compensation quantum remains the same regardless of the
	PVA results (and the use of burn-in).

It should also be noted that running PVA with no burn-in
generally results in very small changes to the PVA outputs.

2.2 APPORTIONING NOTE

Request for information Applicant's response The Applicant states in [REP4-040] under reference NE14 that it has provided The Applicant was mistaken. The update was updated apportioning for the breeding population of Gannets at Flamborough undertaken prior to submission and the 74% and Filey Coast Special Protection Area (FFC SPA). However, the Apportioning apportionment to FFC SPA was already in the Note, last updated at Deadline 1 [REP1-020], does not appear to include any Apportioning Note. update in this regard. The apportionment to FFC SPA was agreed The Applicant should provide clarity on this matter and/or provide signposting with Natural England prior to submission. for where the updated apportioning information for the gannet feature of the FFC SPA can be found within the submitted Examination documents.

2.3 GUILLEMOT AND RAZORBILL COMPENSATION MEASURES

This section of the Rule 17 letter was addressed to Natural England for response. The Applicant has included the following information as additional context.

Request for information

Natural England previously requested in [PD2-006] that the Applicant carries out significant amounts of on-site monitoring and engagement with local experts to establish a baseline for disturbance at the proposed compensation sites in the south west of England.

How far does the surveying work carried out in the 2024 breeding season, as reported on in [REP1-054], address Natural England's request? What remaining work, if any, do you consider would be required to address your concerns?

Applicant's response

The 2024 breeding season survey work was undertaken to establish the main sites where disturbance took place from the shortlisted sites.

Given the very low level of impact on auks, the Applicant is confident that appropriate sites that can provide the necessary compensation have been identified.

If compensation is required for guillemot and razorbill, which is not conceded, a more detailed on-site monitoring programme will be implemented. This will focus on measuring productivity and disturbance events with greater accuracy, ensuring that at least two years of baseline data are collected to effectively assess the benefits of the compensation measures once implemented.

The Applicant is also currently in correspondence with local groups regarding establishing compensation measures that will benefit the populations in the south west, and is seeking to collaborate as far as possible with other offshore wind farm projects seeking similar measures in the region.

3. TARCHON INTERCONNECTOR [PD-018]

This Rule 17 letter [PD-018] was addressed to National Grid Electricity Transmission Plc (NGET) and the Applicant regarding the Tarchon Interconnector project (which is being developed by Copenhagen Infrastructure Partners). The Tarchon project is independent from the Five Estuaries project, the Norwich to Tilbury project, and NGET generally. As such, the Applicant and NGET are reliant on information in the public domain and provided by the project's promoters.

The Applicant, NGET and Copenhagen Infrastructure Partners have met to discuss the Rule 17 request. Copenhagen Infrastructure Partners has provided a note that has been included as Appendix 1, setting out more detail about the current status of their project.

Request for information

In responding to the Examining Authority's second written questions (ExQ2) GC.2.02 National Grid Electricity
Transmission (NGET) in [REP4-055] has advised it is intended that the proposed East Anglia Connection Node (EACN) substation would be "... the connection point for three customers with signed connection agreements. These are the North Falls and Five Estuaries offshore windfarms and the Tarchon interconnector project."

NGET (and some other Interested Parties) have referred to the proposed Tarchon interconnector (TI), however, no details about TI, for example timing, siting and scale, have been made available to the Examining Authority. The originally made Development Consent Order (DCO) for the Norfolk Vanguard offshore wind farm was quashed because it was found that inadequate consideration of the cumulative effects of the onshore substations for Norfolk Vanguard and Norfolk Boreas had been undertaken prior to the DCO's making1. To assist the Secretary of State's and the Examining Authority's understanding of the potential cumulative effects for the

Applicant's response

More information regarding the Tarchon Interconnector project has been included in Appendix 1. This information has been provided by the promoter of the project, following discussions with the Applicant and NGET.

Given the level of information provided, it is not possible to carry out an assessment of potential cumulative impacts.

In relation to the Examining Authority's reference to the legal challenge to the grant of development consent for the Norfolk Vanguard project on cumulative EIA grounds, the Applicant wishes to stress that EIA case law recognises that it is reasonable for a decision-maker to defer the consideration of the cumulative environmental effects of other potential projects where there is not adequate information available to conduct a cumulative assessment, as is the case here. See for example:-

R (Littlewood) v Bassetlaw District Council [2009] Env. L.R. 407 at paragraph [32] where the Court set out that "No planning application had been made and no planning

proposed onshore substations for the Five Estuaries and North Falls offshore wind farms, EACN and TI, the Applicant and NGET are requested to submit details for the proposed TI project, including the following matters:

- 1) Anticipated timings for TI, ie submission of any application for consent, the undertaking of construction works and commissioning.
- 2) The intended consenting mechanism, ie via the Planning Act 2008 or the Town and Country Planning Act 1990.
- 3) The location of and scale for any proposed onshore converter and substation
- 4) Any other information that is considered to be pertinent.

If the requested information about TI is currently not readily available within the public domain then that information should be sought by either NGET or the Applicant from TI's promoter and incorporated into a document that can be submitted and published as an Examination document. In responding to this request for information the Examining Authority recommends that NGET and the Applicant liaise with one another about which party takes the lead in submitting the requested information to avoid any unnecessary duplication.

permission given in respect of the [other development], and no proposals had yet been formulated for that [other development]. There was not any, or any adequate, information upon which a cumulative assessment could be based. In my judgment, there was not a legal requirement for a cumulative assessment under the EIA Regulations involving the rest of the [other development] in those circumstances"

R (Larkfleet Ltd) v South Kesteven District Council [2016] Env. LR. 76 at paragraphs [35] to [38where the Court of Appeal upheld the applicant's approach to cumulative assessment noting that it could only reflect the information available to it at the time. The uncertainty over the later development which prevented the level of assessment sought by those bringing the challenge did not mean that a proper and lawful decision could not be reached. The cumulative decision may be deferred to the later application when the required detail is available.

R (Substation Action Save East Suffolk Limited) v Secretary of State for Energy Security and Net Zero [2024] EWCA Civ 12 at paragraphs [55] and [56], applying the decision in Larkfleet and stating "the objective of securing environmental protection is sufficiently secured by consideration of the cumulative effects at the stage when the first project is assessed so far as that is reasonably possible. However, a decision-maker may defer consideration of the cumulative effects arising from future projects where, amongst other reasons, there was not any adequate information on which a cumulative assessment could be based".

Pearce v Secretary of State for Business, Energy an Industrial Strategy [2021] EWHC 326 (Admin) at paragraphs [116] to [117]

The Pearce case, which concerned the Norfolk Vanguard project, can readily be distinguished from the circumstances of the Five Estuaries project for a number of reasons, most particularly that in that case a cumulative assessment had in fact been carried out by the promoter of the first project (and implicitly adequate information to carry out a cumulative assessment was available), but the decision-maker nevertheless sought to defer consideration of cumulative effects to the consenting process for the second project. The Court in its judgement noted the different circumstances and set out why this case was different to that in Littlewood such that the principle set out in Littlewood, (and applied in Larkfleet and Substation Action Save East Suffolk Limited) did not apply. The Pearce decision did not change the law but rather found that the defendant failed to evaluate information they did already have, rather than the information being too limited to support an assessment as was the circumstance in the other cases listed and as is the case in this application.

4. EAST ANGLIA TWO LTD [PD-019]

This Rule 17 letter [PD-019] was addressed to East Anglia Two Ltd for response. The Applicant has responded to East Anglia Two Ltd's Deadline 4 submission in the 10.34 Applicant's Comments on Deadline 4 Submissions document also submitted at this deadline.

Request for information

With respect to the matter of wake loss, the Applicant has submitted in response to your client's Written Representation [REP2-079] that there is no need to undertake a wake loss assessment [page 56 in REP3-024]. In responding to our written question (ExQ2) GC.2.05

[REP4-073] you have advised that your client could undertake a wake loss assessment, based on some assumptions that would need to made about the size and layout of the wind turbine generators that might be utilised by the Applicant.

Given the potential for there to be an impasse between your client and the Applicant with respect to this matter, to assist the Examining Authority's understanding of your client's wake loss case we consider East Anglia Two should submit a wake loss assessment, as referred to in your response to ExQ2 GC.2.05. That wake loss assessment should be submitted by not later than Deadline 5 (10 January 2025).

5. BENTHIC ECOLOGY [PD-023]

5.1 BENTHIC MITIGATION AND SEDIMENT DEPOSITION

Request for information	Applicant's response
1) With regard to Natural England (NE) item E30 [PD2-007], explain why an un-caveated commitment to using readily removable cable protection (if required), together with the removal of protection during decommissioning, cannot be included in section 7 of the Margate and Long Sands Special Area of Conservation Benthic Mitigation Plan [REP4-022]?	The Applicant has added these two requirements to an update to the Margate and Long Sands Special Area of Conservation Benthic Mitigation Plan [REP4-022] Section 7 – Cable Protection Mitigation Commitments, submitted at Deadline 5
2) How have NE's concerns regarding sediment deposition from sandwave levelling [item E33 in item E33 in PD2-007] been addressed?	As noted in the response to Natural England's relevant representations [REP1-051], following mitigation measure 53 (as detailed within the 9.31 Schedule of Mitigation – Routemap [APP-264] it is considered that all sediment being removed from the MLS SAC will be deposited back into the SAC or within the same sediment cell, with no sediment being 'lost from the system'.

5.2 CONSIDERATION OF ALTERNATIVES

Request for information

1) Noting the Applicant's response in [REP1-051] to NE item F48 in [PD2-008], can the Applicant explain whether or not the offshore export cable corridor could be further co-ordinated with the North Falls Offshore Wind Farm (NF OWF) to potentially avoid the Margate and Long Sands Special Area of Conservation (MLSSAC)? If further coordination with the NF OWF would not be possible, explain why that is considered to

Applicant's response

decision was made to route the offshore ECC further south

and encroach into a small area of M&LS SAC.

be the case?

Once shore-ward (west) past the SAC and Sunk pilot boarding station constraints, the Applicant's cable corridor is south of North Fall's. This is to avoid impacting shipping and navigation by deflecting away from the east-west sunk DW route and Harwich DWR that runs parallel to the cable routes. Secondly having separate corridors within which to route in this area allows both projects the greatest flexibility to minimize the disruption to the ports during construction. This minimizes the amount of time construction vessels will be in the area as obstructions can be avoided rather than removed (which takes longer). As such, The Applicant is unable to coordinate further with North Falls whilst also satisfying concerns raised by shipping stakeholders. 2) Paragraph 2.3.7 in the Benthic Compensation Strategy The separation of the cables will be in general at least 300m. Roadmap (BCSR) [APP-047] states that the location of the final This is governed by the need to be able to repair cables and cable route for the Proposed Development will be informed by lay an "omega" loop during a repair. If during detailed design necessary separation from cables proposed as part of the NF there are hard constraints discovered that mean the projects OWF project. What separation distance between the project's must be closer than this, these situations will be considered on export corridor cables would be necessary and how is that a case by case basis and will be very limited in length. distance determined?

5.3 COMPENSATION MEASURES

Request for information	Applicant's response
With regard to compensation measures, the Applicant should	The Applicant wishes to retain the removal of redundant
address NE's comments in [PD2-008] as follows:	telecommunications cables as a potential compensatory option
	and has provided evidence in 5.5.1 Benthic Compensation
	Strategy Roadmap [APP-047] that such infrastructure is located
	within SACs with sandbank features (not only M&LS SAC). If it

1) NE item F11: Submit evidence that redundant telecommunications cables are currently causing a significant impact to qualifying features of the MLSSAC.	is ultimately concluded that the very limited potential effect of the Applicant's works could lead to an AEoI despite not being significant in EIA terms, it is not considered that these cables would need to be having a significant impact on the qualifying feature for them to be having a similar adverse effect and therefore would be of benefit to the SAC for them to be removed.
2) NE item F12: Provide a status update on any discussions held with the owners of redundant telecommunications cables.	2) The Applicant has been engaging with BT on cable crossings and has discussed the issue of removing redundant infrastructure. BT has raised no objection to this concept, however discussions at this stage are high level in nature and will take longer than the duration of the examination to conclude. The Strategic Compensation measure is both the Applicants and Natural England's preferred option to provide compensation, should it ultimately be required.
3) NE item F16: The ExA notes the Applicant's response in [REP1-051] to NE's Relevant Representation. Amongst other things, that states it would be disproportionate to undertake surveys of redundant telecommunications cable locations as strategic compensation is the preferred option. Nevertheless, in the absence of evidence relating to the nature or timing of that strategic compensation, what level of confidence can be attributed to the effectiveness of that compensatory measure and why?	As highlighted within 5.5.1 Benthic Compensation Strategy Roadmap [APP-047], Section 6.4 and within Table 6.3, disused telecom cables have been identified within SACs with protected sandbank features which could technically be removed if there is a conclusion of AEoI, and thus provides confidence that redundant infrastructure is there and could be removed. In line with NE's preference, these cables would need to have been surface laid, or exposed (rather than buried). However, the Applicant's view is that in mobile and dynamic environments such as sandbanks these assets are likely to be exposed and reburied at different points in time and therefore their removal where present in sandbank features would prevent any re-exposure in the future, removing the potential for future impact on the feature in question. While some of the identified cables are out with the boundary of
	the M&LS SAC it would maintain the ecological coherence of

the sandbank network in the region. The reinstated habitat would also be considered to be of high environmental value to other species of conservation importance. Overall, the Applicant has confidence that this compensation measure can be effective at compensating for potential habitat loss in M&LS SAC. However, the Applicant stresses it is their, and Natural England's preference, that a Strategic Compensation measure, such as an SAC extension, is the preferred option. 4) NE items F17, F27 and F37: Provide an update on what A minor update has been made to 5.5.2 Outline Benthic steps have been or will be taken by the close of Examination to Implementation and Monitoring Plan – Revision B at Deadline update the Outline Benthic Implementation and Monitoring Plan 5. If further information with regards to the Benthic Strategic Compensation Measure is released by Defra and/ or Natural [APP-048]. England then the Applicant will incorporate any further information into this plan, as necessary. However, outside of this, the Applicant is not planning to make major updates during examination. It should be noted that this is an outline plan currently and any further information will be provided in a final BIMP post consent, if required.

APPENDIX 1: TARCHON INTERCONNECTOR – INFORMATION NOTE

A: Freepost TARCHON ENERGY

T: 03 303 010079

Dear Diane,

I refer to your email of 16th December 2024 addressed to Jonathan Wood (Tarchon project director) and the associated Rule 17 letter.

Tarchon note that the following has been requested from the examining inspectors within their Rule 17 letter:

- 1. Anticipated timings for TI, ie submission of any application for consent, the undertaking of construction works and commissioning.
- 2. The intended consenting mechanism, ie. via the Planning Act 2008 or the Town and Country Planning Act 1990.
- 3. The location of and scale for any proposed onshore converter and substation.
- 4. Any other information that is considered to be pertinent.

Please see below the information provided by Tarchon in response to the points 1-4) within the request from the examining inspectors.

The following indicative timings are provided for the Tarchon project:

1. Finalisation of site selection work – Q1/Q2 2025 EIA Scoping Q2/Q3 2025 Offshore surveys – Q3 2025 Consent Submission Q3/Q4 2026 Financial close/construction works to commence Q4 2027 Final commissioning of interconnector Q4 2030

The COD and FIC dates remain as outlined within the project website until the project has full feedback from the supply chain which is expected by end of 2025.

- 2. Tarchon can confirm that the consenting mechanism for the project is anticipated to be via the Planning Act 2008 – a section 35 request will be submitted by the end of January 2025 with DESNZ having been notified of this position in December 2024. Meetings with Essex County Council and Tendring District Council are taking place between December 2024 and January 2025 to discuss this approach and seek letters of support for the section 35 direction. Similarly, the Marine Management Organisation will be consulted in January 2025 and a letter of support for the proposed section 35 direction application also sought.
- 3. In respect of the site selection for the converter station, Tarchon is proposing to prepare and submit a scoping report to the Secretary of State by Q2/Q3 2025 and at this stage the study area for the proposed converter station is indicative only. The site selection process remains on-going with the first non-statutory consultation exercise expected by the end of Q1 2025.



TARCHON ENERGY

A: Freepost TARCHON ENERGY
T: 03 303 010079

4. At this time there is no further project information that Tarchon are able to provide to the Five Estuaries team.

Yours Sincerely,

Lindsay Smith (e-signature)

Senior Development Manager





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