THE PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

FIVE ESTUARIES OFFSHORE WIND FARM

Appendix C8A to Natural England's Deadline 8A Submission
Natural England's comments on 10.48 Red Throated Diver Note [REP6-052]

For:

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

Planning Inspectorate Reference EN010115

14 March 2025

Appendix C8A Natural England's comments on 10.48 Red Throated Diver Note [REP6-052]

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

- [REP6-052] 10.48 Red Throated Diver Note

1.Summary

The Applicant has proposed a seasonal restriction to cable laying activities during the sensitive winter period to mitigate impacts on red-throated diver (RTD) using the Outer Thames Estuary Special Protection Area (OTE SPA). However, this restriction is only proposed where the offshore export cable corridor (ECC) overlaps OTE SPA. Natural England's general advice is that seasonal restrictions for RTD SPAs should be applied along any part of the ECC within 2km of the SPA boundary. Below are our detailed comments on, and supporting evidence for, the need for developers to adopt this seasonal restriction for their cable installation works in diver SPAs, as well as an update on a meeting between Natural England and the Applicant in which we explored where potential flexibility around the requirement for a 2km buffer might lie in the specific instance of the Applicant's ECC.

1.1 Detailed comments

Natural England welcome the seasonal restriction on export cable installation within the OTE SPA to mitigate impacts on red-throated diver (RTD), between 1st November and 31st March, inclusive but we also continue to advise that the restriction should be applied within the SPA and a 2km buffer from its boundary. This is consistent with the advice we have given to other projects and ensures the designated RTD population can be fully safeguarded up to the SPA boundary.

Natural England do not challenge the Applicant's assessment of likely RTD mortality through displacement. However, our concern is the impact of vessel disturbance on the extent and distribution of the qualifying features habitat and the distribution of birds within the site. One of the high-level conservation objectives of the OTE SPA is to maintain or restore *'the distribution of the qualifying features within the site'*, with underpinning supplementary advice targets to *'Maintain the extent, distribution and availability of suitable habitat…'* and *'Reduce the frequency, duration and/or intensity of disturbance…'*. If RTD are displaced from an area inside the SPA over an extended period of time, then the conservation objectives of the site could be compromised and AEoI could not be ruled out, particularly given the existing and consented pressures on the SPA.

To meet the conservation objectives and maintain site integrity, we generally advise that the seasonal restriction should extend 2km beyond the SPA boundary and not just apply within the SPA. This is because there is good evidence that vessel movements can disturb RTD out to a distance of at least 2km (Burt et al. 2017, Schwemmer et al. 2011, Fleissbach et al. 2019), which means that the proposed additional Five Estuaries vessel activity within the 2km buffer zone could sporadically deter birds from using the site over an extended period of time. Furthermore, for a proportion of the RTD population, impacts from vessels may extend much further (Burger et al 2019, Mendel et al 2019, Garthe et al. 2023). Therefore, Natural England believe that advising there is a need for seasonal restrictions within the SPA and out to the 2km buffer is both pragmatic and suitably precautionary.

We note and welcome the evidence provided by the Applicant in [REP6-052]. Natural England acknowledge that habituation to vessels may occur in some RTD, and that this behaviour may contribute to the relatively high RTD densities apparently close to the northern edge of the SPA and around 2km distant of the busy Vessel Traffic Scheme (VTS),

(Figures 2.1 and 2.2)]. However, this is based on speculation and contrary to the above evidence. The proximity of the western edge of Margate and Long Sands Special Area of Conservation (MLS SAC) in this sector, may well account for the high numbers of RTD owing to its favourable foraging conditions, despite the relative proximity of the busy VTS. In any event, although some individual RTD may be more tolerant of vessel movements than others, it is the proportion that are not tolerant that need to be considered. Hence our advice to adopt a range-based approach to the displacement assessment.

Assessment of the distance between high diver densities and vessel activity is difficult to measure accurately in Figures 2.1 and 2.2 [REP6-052], however, they clearly demonstrate the marked separation between high diver densities and the VTS, noting that the SPA is effectively split into two main sections here, in all likelihood due to the negative impact of vessel activity on RTD distribution, and the need for this impact to be adequately considered and appropriate mitigation measures sought.

The Applicant has suggested that cable laying vessels will be less disturbing to RTD because the movement of the tide relative to the vessels will make them appear stationary to a bird on the water. This may occur when the tidal current and vessel(s) are moving in the same direction, but the converse would apply when the tide turns. In any event, there is evidence that slow -moving as well as fast -moving vessels are more disturbing to divers than vessels moving at a moderate speed (Burger et al., 2019) .

Furthermore, cable laying activities would not just be restricted to the use of one vessel but also a number of auxiliary vessels. During construction up to 35 vessels may be present on site simultaneously during the ECC installation phase (see 6.2.9 Shipping and Navigation [APP-078]), with up to 12 vessels involved in cable laying (see 6.2.4 Offshore Ornithology [APP-073]). Those associated with the cable laying, travelling at 150-450m per day, will require at least 35 days to cover the 16km of the ECC within the southern portion of the OTE SPA.

Natural England therefore considers that this worst-case scenario, in addition to the likely timing, frequency and duration of cable laying along the corridor (i.e. for sequential periods lasting 5-15 days over 5 years), has the potential to lead to adverse effects on site integrity except where Digital Aerial Survey (DAS) data are indicating that RTD densities are low (<1.0 birds/km^2) or if a seasonal restriction is applied when the birds were present.

The current mitigation proposed by the Applicant does not fully address the potential impacts on the high densities of RTD present near the northern boundary of the SPA. However, Natural England is mindful that the most recent DAS data indicates variation in RTD distribution, and given the existing heavy vessel usage in the area outside the SPA, we consider that there may be a sections of the ECC where less strict adherence to restrictions may be possible in places. Natural England and the Applicant held an exploratory meeting on 12th March 2025 to see whether a bespoke approach could be developed to facilitate the cable installation whilst giving sufficient protection to the SPA. Unfortunately, it transpires that the area of the SPA where the 2km buffer overlaps with areas of higher RTD density, and is therefore of greatest concern to Natural England, is also where installation difficulties such as other sea-users and burial depth requirements engineering difficulties, and therefore where the Applicant is constrained in their ability to commit to seasonal restrictions.

Given the very limited time remaining within the Examination, Natural England's position remains that a 2 km buffer is still required in order to rule out AEOI in-combination on the RTD feature of the OTE SPA. However, we do consider that, whilst challenging, there is potentially scope for a more bespoke restriction for the Five Estuaries export cable installation to address our concerns, and we are willing to engage further with the Applicant post-Examination to see if this can be achieved. Were this to prove achievable, we highlight

that a commitment to adhere to the RTD best practice protocol for all vessel activities in the sensitive winter period would still be needed to reduce disturbance to RTD.

Natural England welcomes the Applicant's desire to resolve the issue and also to seek opportunities to fill knowledge gaps through strategic monitoring approaches.

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