

**RWE Renewables UK Dogger Bank  
South (West) Limited**

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South (East) Limited**

**Dogger Bank South Offshore  
Wind Farms**

**The Applicants' position on compliance with legal  
and policy requirements for compensatory  
measures**

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## Glossary

Term	Definition
Development Consent Order (DCO)	An order made under the Planning Act 2008 granting development consent for one or more Nationally Significant Infrastructure Project (NSIP).
Habitats Regulations Assessment (HRA)	The process that determines whether or not a plan or project may have an adverse effect on the integrity of a European Site or European Offshore Marine Site.
The Applicants	The Applicants for the Projects are RWE Renewables UK Dogger Bank South (East) Limited and RWE Renewables UK Dogger Bank South (West) Limited. The Applicants are themselves jointly owned by the RWE Group of companies (51% stake) and Masdar (49% stake).
The Projects	DBS East and DBS West (collectively referred to as the Dogger Bank South Offshore Wind Farms).

## Acronyms

Acronym	Definition
AEoI	Adverse Effect on Integrity
ANS	Artificial Nesting Structure
CIMP	Compensation, Implementation and Monitoring Plan
DCO	Development Consent Order
EC	European Commission
FFC	Flamborough and Filey Coast
HRA	Habitat Regulations Assessment
MPA	Marine Protected Area
NPS	National Policy Statement
SAC	Special Area of Conservation
SNCB	Statutory Nature Conservation Body
SPA	Special Protection Area

# 1 Executive Summary

1. This document explains how the information provided by the Applicants in relation to compensatory measures meets all relevant legal and policy requirements and demonstrates that the Secretary of State can lawfully conclude that the Projects' compensatory measures are sufficiently secured to enable a derogation to be granted. The Applicants have particularly focused this document on compensatory measures for guillemot [and razorbill], where there are outstanding questions to resolve with statutory nature conservation bodies in relation to the proposed measures, all of which could be resolved post consent. The Applicants' approach to securing compensatory measures, specifically the use of suspensive Grampian-style conditions in the **Draft Development Consent Order (DCO) (Revision 13)** [document reference 3.1] is fully compliant with UK, government policy, and regulatory guidance, and in many respects goes beyond what has previously been required or accepted for similar projects.
2. The legal framework is set out in the Conservation of Species and Habitats Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017. These regulations require the Secretary of State to secure that any necessary compensatory measures are taken to protect the coherence of Natura 2000 sites, but do not require that all measures are fully implemented at the point of consent. Rather, the law requires that these measures are "secured," meaning there must be a rational basis for believing they can and will be delivered. Case law supports this interpretation, notably the *Humber Sea Terminal* case, which confirmed that it is sufficient for the Secretary of State to be satisfied that compensatory measures will be delivered, even if all details are not finalised at the time of consent.
3. National policy and guidance are expressly aligned with this position and support the Applicants' approach. National Policy Statements EN-1 and EN-3 require applicants to work closely with statutory nature conservation bodies and ensure that compensatory measures are appropriate and securable, rather than fully implemented at consent. The Applicants have engaged extensively with Natural England and other statutory bodies to develop robust compensation plans. Both European Commission and UK guidance emphasise that compensatory measures must be in place before any adverse effects occur and support the position that enforceable mechanisms such as DCO conditions are suitable for securing delivery. The Energy Act 2023 introduces further flexibility and strategic options for compensation, including the Marine Recovery Fund, and supports a pragmatic approach to securing compensatory measures.

4. Within this framework, the Applicants have put forward a comprehensive and multi-layered compensation package for guillemot [and razorbill]. Predator eradication schemes at shortlisted sites in Scotland is the primary project-led measure, supported by a package of further potential measures including the provision of spaces on the Applicants' offshore ANS and the potential for financial contributions to the MRF to deliver strategic measures, including predator eradication on the Isles of Scilly. As set out in **Schedule 1** of this document, the Applicants have demonstrated that the proposed measures meet all of the criteria on the Natural England checklist, along with other relevant guidance.
5. The Applicants' proposed compensation measures are secured through the Grampian-style suspensive conditions included in the **Draft DCO (Revision 13)** [document reference 3.1], which require that compensatory measures must be approved and implemented before any potential impacts occur. This approach is consistent with legal precedent and policy and is directly enforceable by the Secretary of State. All necessary legal, technical, financial, and monitoring arrangements are secured in advance of any potential negative effects. Ongoing approval of further details will be provided by a post-consent steering group and the Secretary of State, with detailed implementation and monitoring plans to be further developed and approved as required by the DCO.
6. The use of suspensive conditions to secure compensatory measures is a well established and accepted approach in both English and Scottish offshore wind consents and numerous projects have been consented on this basis, even where details were not finalised at the time of decision. While more recent decision-making has been delayed by the evident trend towards requiring more detailed and advanced information from applicants, often driven by examining authorities and statutory consultees, this must be understood as a change in practice rather than in the underlying legal test. The emergence of strategic compensation mechanisms and changing guidance have made it more challenging to secure project-led measures, particularly due to landowner preferences, and requests for increased compensation quantum by Natural England during the DCO examination process have challenged the securing of measures of sufficient scale. Against this backdrop, the Applicants have provided a level of detail that goes beyond what has previously been accepted as sufficient. The Secretary of State can therefore be confident that the Projects' compensatory measures are sufficiently secured to enable a derogation case to be granted for the Projects. The provisions in the DCO will ensure that the public interest is fully protected.

## 2 Introduction

7. Throughout pre-application, pre-examination and during examination, the Projects developed their compensation plans for three derogation cases (namely, Annex I sandbank loss from the Dogger Bank Special Area of Conservation, impacts on the kittiwake feature of the Flamborough and Filey Coast (FFC) Special Protection Area (SPA), and impacts on the guillemot feature of the FFC SPA). In addition to the three conceded derogation cases, the Applicants have also presented without prejudice derogation cases for the razorbill feature of the FFC SPA and the guillemot feature of the Farne Islands SPA, as Natural England have not been able to rule out Adverse Effect on Integrity (AEol) for these features.
8. The compensatory measures for potential impacts to the Dogger Bank SAC and on the kittiwake feature of the FFC SPA were agreed through strategic steering groups and are presented in the **Project Level Dogger Bank Compensation Plan (Revision 4)** [REP7 -020] and the **Project Level Kittiwake Compensation Plan (Revision 8)** [document reference 6.2.1].
9. In relation to the guillemot [and razorbill] feature of the FFC SPA [and guillemot feature of the Farne Islands SPA], provision of a scheme of predator eradication has been agreed in principle as being a suitable compensatory measure to address any AEol relating to guillemot [and razorbill]. This is being progressed as one of a number of measures that continue to be explored and progressed, including provision of nesting spaces on the Applicants' proposed offshore ANS structure and the potential to make a financial contribution to the Marine Recovery Fund, once available, to deliver compensation on a strategic basis, likely to consist of predator eradication on the Isles of Scilly (but noting that that changes to be introduced under the Energy Act 2023 may broaden the scope of what can be provided on a strategic level, covered in more detail below).
10. To progress the project-led predator eradication scheme, the Applicants have undertaken extensive surveys in order to progress a suitable site for this measure and have shortlisted two sites in Scotland, after ruling out closer sites for a variety of reasons, detailed in the **Guillemot [and Razorbill] Compensation Plan (Revision 8)** [document reference 6.2.2]. Each of the shortlisted sites is in private ownership, the scheme has landowner(s) support (as evidenced by Letters of comfort, provided in **Appendix 2 - Guillemot [and Razorbill] Compensation Plan (Revision 8)** [document reference 6.2.2]) and heads of terms have been issued to the relevant landowner(s) to secure the necessary rights to undertake the proposed predator eradication scheme. No separate planning permission would be required for this purpose.

### 3 Purpose of Document

11. The Applicants are aware that other similar projects are currently facing delays in determination due to further clarification being sought by the Secretary of State in relation to compensatory measures. The Applicants have therefore produced this document to confirm compliance with the legal requirements in relation to securing compensatory measures pursuant to a derogation case under the Conservation of Species and Habitats Regulations 2017 (the HRA Regulations) and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (the Offshore HRA Regulations).
12. The Applicants have continued to close out remaining areas of disagreement with Natural England since the close of examination (as detailed in the **Guillemot [and Razorbill] Compensation Plan (Revision 8)** [document reference 6.2.2]) and have made significant progress in securing two different possible sites for project-led eradication schemes, alongside continued progress of a package of different measures that could be utilised if needed. This document highlights relevant decision-making precedents from previous comparable projects, including commentary on the maturity of proposals that has been previously considered to be sufficiently secure such that consent has been granted, to show that the Applicants have gone above and beyond what has previously been considered sufficient.
13. The Applicants have also demonstrated that the **Draft DCO (Revision 13)** [document reference 3.1] adequately secures the delivery of the compensatory measures, through the use of Grampian-style suspensive conditions, in order that the public interest is protected.
14. Therefore, the Secretary of State can be satisfied that the compensatory measures for the Projects are sufficiently secure and that a derogation case can be granted.



## 4 Habitats Regulations

### 4.1 Legal requirements

15. Under Regulation 68 of the Habitats Regulations and Regulation 36 of the Offshore Habitats Regulations, the Secretary of State, as appropriate authority, must “secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected”.
16. The wording in the legislation is framed in the future tense – ensuring that measures “are taken” – and therefore there is no legal requirement for compensation measures to be in place at the point in time that a decision is made to grant consent for a project that requires a derogation case. It is therefore necessary to consider what is required to “secure” that the measures are taken. The Habitats Regulations do not contain any further guidance on what “secure” means. There is, however, relevant case law.
17. The case of *Humber Sea Terminal Ltd v Secretary of State for Transport* [2005] EWHC 1289 (Admin) considered the meaning of “secure” in the context of compensatory measures. In that case, there was an agreement in place between the developer, English Nature, the Environment Agency, the Royal Society for the Protection of Birds and others which required the necessary land ownership and consents to undertake the compensatory measures to be in place before development commenced and for the measures to be delivered in accordance with the implementation plan. The Secretary of State (not being a party to the agreement) had no way to ensure that the measures would be undertaken.
18. Despite this, the Court held that it was not necessary for the compensation measures to be in place before the consent was granted – nor was there a requirement for there to be a binding agreement in place. What was required was for the Secretary of State, as competent authority, to rationally believe that they could fulfil their duty to secure compensation measures and that the mechanism for delivery of the compensation would be implemented. They were entitled to rely on English Nature, who was a party to the agreement, in this regard.

#### 4.1.1 Suspensive conditions

19. The Overarching National Policy Statement (NPS) for Energy EN-1 (Department for Energy Security and Net Zero, November 2023) provides that requirements can be imposed on development consent when they are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise and reasonable in all other respects (paragraph 4.1.16 NPS EN-1). The NPS also refers to the National Planning Policy Framework and Planning Practice Guidance: Use of Planning Conditions.

20. PINS Advice Note 15 on drafting DCOs says:

**"5.1 15. Requirements – general considerations**

*15.1 Section 120 of the PA2008 provides that a DCO may impose Requirements in connection with the development for which consent is granted. Such Requirements may correspond with conditions which could have been imposed on the grant of any permission, consent or authorisation (for example planning permission under the Town and Country Planning Act 1990 (the TCPA1990)) which would have been required for the development if it had been consented through a different regime.*

*15.2 The law and policy relating to planning conditions (in particular, in England, relevant paragraphs of the National Planning Policy Framework and associated Planning Practice Guidance), imposed on planning permissions under the TCPA1990, will generally apply when considering Requirements to be imposed in a DCO in relation to the terrestrial elements of a proposed NSIP. Requirements should therefore be precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other respects."*

21. It has been established through case law (*Grampian RC v City of Aberdeen DC* 1984 SC (HL) 58) that permission for development can be granted subject to negatively-worded conditions or requirements.
22. The Planning Practice Guidance: Use of Planning Conditions (Ministry of Housing, Communities and Local Government and Department for Levelling Up, Housing and Communities, March 2014) confirms that a Grampian condition, prohibiting development until a specified action has been taken, can be used in relation to conditions requiring works on land that is not controlled by the Applicants, or that requires the consent or authorisation of another person. It advises that such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission.
23. This Guidance is therefore clear that, if there is any prospect of the action in question being performed within the time-limit imposed by the permission, then a Grampian condition can be appropriate. It is the Applicants' position that such a condition is appropriate to secure compensatory measures as there is a strong prospect of the measures being implemented within the relevant timeframes. Details of the relevant conditions in the Applicants' Draft DCO are included in section 5 below.

## 4.2 Guidance

### 4.2.1 European Commission Guidance

24. The European Commission (EC) guidance on “Managing Natura 2000 sites – The provisions of Article 6 of the Habitats Directive 92/43/EEC” (European Union, 2019) provides a list of key elements to consider in consideration of compensation measures (section 5.4.4). The Natural England checklist for compensatory measures largely mirrors this list. The Applicants have set out in **Schedule 1** a table demonstrating how the proposed compensatory measures meet all of the criteria on the Natural England checklist, along with the EC Guidance list and other relevant UK guidance.
25. Paragraph 5.5.6 of the EC Guidance states that “All technical, legal or financial provisions needed to implement the compensatory measures must be completed before the plan or project implementation starts, so as to prevent any unforeseen delays that may hinder the effectiveness of the measures.”
26. Paragraph 5.5.7 provides that “Compensatory measures require that a sound legal and financial basis for long-term implementation and for the protection, monitoring and maintenance of the sites be secured before impacts on habitats and/or species occur. This could include... Applying binding enforcement tools at the national level to ensure the full implementation and effectiveness of compensation...”
27. The EC Guidance is therefore clear that the key milestone for ensuring the measures are in place is the time at which the impact(s) will occur, and that using an enforceable mechanism (i.e. within the DCO) to ensure implementation and effectiveness of measures is an appropriate means of securing this.

### 4.2.2 Government Policy and Guidance

#### 4.2.2.1 National Policy Statements EN-1 and EN-3

28. NPS EN-1 (paragraph 5.4.30) provides that applicants should work closely with Statutory Nature Conservation Bodies (SNCBs) and Defra to develop a compensation plan for all protected sites that are likely to be subject to AEoI. It states that applicants should engage with the local planning authority at an early stage regarding the proposed location of compensatory measures.
29. At paragraph 5.4.31 it states that “Before submitting an application, applicants should seek the views of the Statutory Nature Conservation Body (SNCB) and Defra/Welsh Government as to the suitability, securability and effectiveness of the compensation plan to ensure the development will not hinder the achievement of the conservation objectives for the protected site.”
30. NPS EN-3 (NPS EN-3) recognises that compensatory measures may be required for offshore wind development. It provides that any compensatory measures must be “appropriate” and “securable” (paragraph 2.8.269).

31. The Applicants have fully complied with the NPS policy. They have engaged closely with Natural England and other SNCBs from an early stage, as set out in the **Guillemot [and Razorbill] Compensation Plan (Revision 8)** [document reference 6.2.2]. The principle of the compensatory measure (predator eradication) was agreed in the Round 4 strategic HRA and has been added to the library of measures which will form part of strategic compensation under the MRF.

#### 4.2.2.2 Joint Guidance on Habitats Regulations Assessments

32. The joint guidance “Habitats regulations assessments: protecting a European site” (Defra, Natural England, Welsh Government and Natural Resources Wales, February 2021) contains guidance for competent authorities when deciding if a plan or project that affects a European site should go ahead. It states that competent authorities “need to make sure that compensatory measures will be taken”.
33. It lists various considerations for competent authorities, which have been included in the table at **Schedule 1** in order to demonstrate how the Applicants’ proposals satisfy the matters to be considered.
34. The guidance provides that competent authorities should “make sure the compensatory measures will go ahead as agreed and will remain in place all the time they’re needed, which in most cases will be indefinitely. You should include these measures in the conditions attached to your permission. You must put in place all the necessary legal, technical, financial and monitoring arrangements. Compensatory measures should usually be in place and effective before the negative effect on a site is allowed to occur.”
35. The drafting within the Applicants’ **Draft DCO (Revision 13)** [document reference 3.1] is fully aligned with the guidance and ensures that all legal, technical, financial and monitoring arrangements will be in place at the time to be agreed and approved by the steering group and Secretary of State in advance of any potential negative effects occurring.

#### 4.2.2.3 Draft Defra Guidance on Developing Compensatory Measures

36. In July 2021, Defra published “Best practice guidance for developing compensatory measures in relation to Marine Protected Areas” for consultation (Defra, July 2021). It contains a section on securing compensatory measures (paragraphs 30 to 40). It states (paragraph 37) that “Applicants should be as specific as possible when outlining proposals for compensatory measures (including, but not limited to, timings, materials, construction methods, scales and monitoring).”

37. At paragraph 38 it provides "The Applicant must demonstrate that it has a clear delivery plan in place and has had discussions with regulators to seek in-principle decisions to licences or permissions. When considering potential measures, the Applicant should work with the responsible authority and use the principles outlined below to guide proposals. Before proposing compensatory measures, the Applicant should consider any necessary agreements from other parties. For example, an Applicant should not propose predator control measures to compensate for ornithological impacts without previously seeking any relevant landowner agreements."
38. In relation to timing, the guidance (paragraph 58) states that "A protected feature should not be impacted before compensation is secured... [Where measures may take longer to be fully established] it is important that necessary licences are in place, finances are secured, and realistic implementation plans have been agreed with the appropriate bodies to demonstrate that the compensatory measure is secured."
39. The Applicants note the status of this guidance as draft but have sought to comply with its principles, as outlined in **Schedule 1**.

#### 4.2.2.4 Defra consultation on MPA assessments

40. In February 2024, Defra published "Consultation on policies to inform updated guidance for Marine Protected Area (MPA) assessments" (Defra, February 2024). Whilst not binding and applying to MPAs only, that document provides guidance on the content of compensation plans. It recommends that such plans should:
- define nature and extent of the predicted damage to feature in light of the site conservation objectives
  - define aims and objectives of compensatory measures with reference to conservation objectives
  - identify ecological measures to deliver these aims and objectives
  - identify agreements on the spatial extent, location, and timings for delivery
  - identify the means (statutory, contractual, or administrative) by which the measures will be secured
  - evidence why the measures are sufficient to protect the coherence of the national site network
41. The Applicants have demonstrated compliance with the points set out above in **Schedule 1** of this document.

#### 4.2.2.5 Natural England Checklist

42. Natural England has developed a list of those aspects of compensatory measures that it considers need to be described in detail when developers are submitting or updating applications where impacts on marine MPAs are anticipated. Whilst not exhaustive, it lists key areas where Natural England considers sufficient detail is needed to provide the Secretary of State with appropriate confidence that compensatory measures can be secured.
43. Compliance with the matters set out in the checklist has been included at **Schedule 1** of this document and the **Guillemot [and Razorbill] Compensation Plan (Revision 8)** [document reference 6.2.2] has been prepared in accordance with it.

### 4.3 Energy Act 2023

44. The Offshore Wind Environmental Improvement Package (OWEIP) outlines the Government's ambitions to streamline offshore wind development. This aligns with the Government's pledge to deliver up to 50GW of offshore wind before 2030. Part 1 of the Energy Act 2023 provides the legal framework for delivering OWEIP.
45. The powers apply specifically for the development of offshore wind and associated infrastructure in the marine environment. The Act enables relevant appropriate authorities to implement, through regulations, provisions for the following:
- The assessment of the environmental effects of relevant offshore wind activities in relation to protected sites;
  - The measures undertaken by public authorities in relation to compensation for any adverse environmental effects of relevant offshore wind activities in relation to protected sites (compensatory measures); and
  - Tailored Habitats Regulations Assessments.
46. Appropriate authorities will be empowered to specify various matters in relation to the assessment, including the scope and methodology of assessment and how compensatory measures are to be provided.
47. The Energy Act 2023 provides for new strategic compensation mechanisms, including the introduction of the Marine Recovery Fund (MRF) and a broader range of compensation measures (under section 291). Section 291(5) provides that "the measures referred to in subsection (3) may be measures taken at the site or sites of the activities to which the measures relate or elsewhere." This is framed widely and could allow for non like-for-like measures to be provided through the MRF.
48. On 3<sup>rd</sup> December 2025 DEFRA published the Government's response to its consultation on the proposed Environmental Compensatory Measures Reforms for offshore wind, confirming that the Government will go ahead with reforms as part of its wider Offshore Wind Environmental Improvement Package.

49. The immediate next steps are for the Government to draft and lay the secondary legislation under section 293 of the Energy Act 2023 to amend the Habitats Regulations, and to publish accompanying guidance setting out how the new regime will operate in practice.
50. An outcome of the reforms will be enabling wider compensatory measures. Government will allow compensatory measures that deliver environmental benefits beyond the directly impacted feature or site.
51. These changes deviate away from the focus being on project-specific assessment as provided under the Habitats Regulations. The changes aim to simultaneously provide greater flexibility for regulators, who are granted more autonomy when designing the assessment process, alongside benefiting developers by way of faster consenting times, reduced risk of project delays, and additional options for providing compensation.
52. The Energy Act provisions recognise the need to take a more pragmatic and strategic approach in relation to compensatory measures. However, the move towards strategic measures has resulted in some landowners of potential sites where compensation measures could be delivered rejecting approaches from projects and preferring instead to retain their land for potential strategic delivery of measures. This has made securing project-led measures more challenging for applicants, as demonstrated by the Applicants having exhausted all potential predator eradication sites in England and Wales and identifying Scottish sites instead.

## 5 What does the Projects' DCO secure?

- 53. Schedule 18 of the **Draft DCO (Revision 13)** [document reference 3.1] secures the compensatory measures being proposed by the Projects. The Schedule is separated into 3 parts.
- 54. Part 3 relates to guillemot, for which adverse effect on integrity by reference to the Flamborough and Filey Coast SPA has been conceded (it also covers the without prejudice measures for the Farne Islands SPA and for razorbill, both in square brackets). It secures the submission and approval of a species specific compensation, implementation and monitoring plan (the guillemot [and razorbill] CIMP), which must be in accordance with the outline guillemot [and razorbill] CIMP.
- 55. The guillemot [and razorbill] CIMP must include various details of the compensatory measure(s) for guillemot [and razorbill], including details of the location(s) where the measure will be delivered, details of how any necessary land rights, licences and approvals have or will be obtained, details of who will carry out the measure and how this is secured, an implementation timetable, and any ongoing maintenance, monitoring and reporting provisions. The approved CIMP must specify a minimum period for the commencement of the predator eradication measure prior to the installation of any tower comprised within a wind turbine generator forming part of the authorised development.
- 56. Part 3 allows for compensatory measures to be delivered on a project-basis, or on a strategic or collaborative basis. There are also provisions allowing for adaptive management to be undertaken.
- 57. The drafting is based on other recently consented offshore wind farms and is very similar to that included in the DCOs for the Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm 2024 and the Hornsea Four Offshore Wind Farm 2023.
- 58. There are provisions in each of the Parts of the Schedule that oblige the undertaker to implement the relevant compensatory measure(s) as approved through the relevant CIMPs. These provisions can therefore be enforced by the Secretary of State.
- 59. The wording in the Draft DCO effectively secures the delivery of the compensatory measures to ensure the overall coherence of Natura 2000 is protected. This also protects the overriding public interest that has been demonstrated in the Applicants' **Habitats Regulations Derogation Provision of Evidence (Revision 5)** [document reference 6.2].



## 6 Previous Decision-Making

### 6.1 English Offshore Windfarms

60. The legislation and policy in relation to securing compensatory measures has not materially changed since the introduction of the Habitats Regulations in 2017. Despite this, the information being requested from applicants in order to “secure” measures has been gradually increasing for projects in England and Wales. The position in Scotland is different, as outlined in section 6.2.

#### Hornsea Project Three (2020)

61. This was the first offshore wind farm where compensatory measures for offshore ornithology impacts were required to be considered by the Secretary of State. The Applicant did not agree that there was likely to be an AEoI and so had not provided any information about potential compensatory measures during examination. During the determination period, the Secretary of State requested that compensatory measure be proposed for any potential AEoI.
62. Following further consultation by the Secretary of State, the Applicant submitted proposals that outlined methods for selecting locations for the artificial nest sites; contained a criterion for the design of the nesting structures; and a monitoring and adaptive management strategy. The final details of the compensation measures were to be presented within a Kittiwake Implementation and Monitoring Plan that will be submitted to the Secretary of State prior to the commencement of the development. Final details of the location of the measures and any other consents or licenses required to deliver them was not available at the point of Secretary of State decision-making.
63. On the basis of this information and reliant on a suspensive condition in the DCO that secured the kittiwake implementation and monitoring plan, the Secretary of State concluded that they were “confident that adequate compensation is proposed and will be in place to offset any impacts to features of Natura 2000 sites from the Development.” (paragraph 6.60 of the Secretary of State’s Decision Letter).

#### **Norfolk Boreas (2022)**

64. Similar to Hornsea Project Three, further consultation was carried out in relation to compensatory measures during the determination period. The Secretary of State requested more details of the measures being proposed. The Applicant provided additional information regarding the compensation measures including the details of the locations for delivering the compensation measures; programmes for the implementation of the compensation measures, and habitat maintenance; and details of the monitoring measures to assess the success of the compensation measures. The Applicant also provided evidence that land could be leased for delivery of the measures (but had not actually secured the relevant land or obtained any planning permission).
65. In addition, the applicant in that case also proposed compensatory measures for impacts to the Haisborough, Hammond and Winterton SAC, which consisted of the removal of marine debris. This measure was not supported by Natural England.
66. The Secretary of State found that the applicant had provided sufficient evidence to enable the Secretary of State to “conclude that appropriate compensation measures can be secured and delivered through the DCO as set out in Schedule 19 and that the requirements of the derogation provisions under the Habitats Regulations and Offshore Habitats Regulations have been met.” (paragraph 5.56 of the Secretary of State’s Decision Letter). The lack of support from Natural England for some of the compensatory measures was dealt with by the use of conditions within the DCO, securing a steering group to develop the measures and an implementation plan.

#### **Norfolk Vanguard (2022)**

67. The position was the same as outlined for Norfolk Boreas above.

#### **East Anglia One North (2022)**

68. The Applicant submitted an Offshore Ornithology Without Prejudice Compensation Measures report for the National Site Network Sites where adverse effects were predicted i.e. Alde-Ore Estuary SPA, Flamborough and Filey Coast SPA, Outer Thames Estuary SPA.
69. In relation to kittiwake, guillemot, razorbill and lesser black backed gull, the Applicant had proposed compensation measures but had not secured sites or obtained any relevant planning consents or licences to carry out works. The majority of the post-examination consultation focussed on measures for red-throated diver, including the appropriateness of a buffer between the array and Outer Thames Estuary SPA. Similar to other projects, suspensive conditions were used in the DCO to secure the approval of further details and implementation of any necessary measures.
70. The Secretary of State concluded that they were “satisfied that the necessary compensatory measures to ensure that the overall coherence of the National Site Network can be secured” (paragraph 17.56 Secretary of State’s decision letter).

**East Anglia Two (2022)**

71. The position was the same as outlined for East Anglia One North above.

**Hornsea Project Four (2023)**

72. The Applicant had proposed compensatory measures for kittiwake and guillemot and provided information to support the securing of the measures, including details of likely locations for potential onshore and offshore ANS and predator eradication measure, as well as potential adaptive management measures.
73. This project was the first where significantly more detail was requested from the Applicant by the Secretary of State with regards to compensatory measures. Eight rounds of post-examination consultation were carried out, including numerous requests for information in relation to compensatory measures. This would appear to be a result of some disagreement from Natural England and other SNCBs as to the likelihood of success of the proposed measures, as well as the Examining Authority's interpretation of what was required in order to ensure that measures were "secured", which was not aligned with the level of detail provided on projects previously that had satisfied the Secretary of State and enabled projects to be consented.
74. There were no legal or policy changes that the Applicants are aware of that would have resulted in a different approach being required and so it would appear that the Secretary of State was led by the recommendation of the Examining Authority and the SNCBs, rather than being guided by the approach taken to date, which had been to rely on suspensive conditions in order to secure the detail of compensation measures.

**Sheringham and Dudgeon Extensions (2023)**

75. The Applicant submitted a package of compensatory measures for Sandwich tern and kittiwake, which were secured through Schedule 17 of the DCO. The sandwich tern compensation involved the creation of a new inland lagoon at Loch Ryan in Scotland. Although the Applicant had not secured the land or necessary planning permission at the time of the Secretary of State's decision, it submitted that it could obtain compulsory purchase powers to deliver the scheme as a fallback. For kittiwake, the Applicant proposed an extension to an existing onshore ANS in Gateshead.
76. The Applicant's measures for guillemot were less certain but accepted by the Secretary of State on the basis that the DCO provided for ongoing monitoring and adaptive management measures should the initial measures not be successful. Natural England had raised concerns regarding the measures for both Sandwich tern and guillemot due to their relative novelty but the Secretary of State was satisfied that ongoing monitoring and adaptive management provisions in the DCO would address any residual risk.

77. Overall, the Secretary of State confirmed that they were “satisfied that a package of compensatory measures to ensure that the overall coherence of the UK NSN is maintained can be secured and delivered with regards to kittiwake and guillemot of the FFC SPA and sandwich tern of the GW SPA and NNC SPA.” (paragraph 5.32 of the Secretary of State’s decision letter).

#### **Rampion 2**

78. In relation to kittiwake, the Applicant submitted a package of compensatory measures for the kittiwake feature of the FFC SPA. This included either a provision of a monetary contribution to strategic compensation through the Marine Recovery Fund, or through collaborating with other offshore wind farms to provide additional nesting spaces for kittiwake at an artificial nesting structure (ANS). The Applicant has secured formal agreement that the delivery of artificial nesting spaces would be undertaken through use of the existing ANS at Gateshead. These measures were secured through Schedule 17 of the Order.
79. In relation to guillemot, the Applicant submitted a package of compensatory measures for the guillemot feature of the FFC SPA and Farne Islands SPA. This included either a provision of a monetary contribution to strategic compensation through the Marine Recovery Fund, or through reducing recreational disturbance of guillemot at selected colony sites by implementing measures such as restrictions of boat approach distances or seasonal closures. These measures were secured through Schedule 17 of the Order.
80. The Secretary of State was “satisfied that a package of compensatory measures to ensure that the overall coherence of the UK NSN is maintained can be secured and delivered.” (paragraph 5.26 of the Secretary of State’s Decision Letter).

## **6.2 Scottish Offshore Windfarms**

81. Several offshore windfarms in Scotland, including West of Orkney Windfarm (consented in June 2025), Berwick Bank and Salamander (both consented in July 2025) have all been granted consent using suspensive conditions to secure ornithological compensation. The Conservation (Natural Habitats, &c.) Regulations 1994 and the Conservation of Offshore Marine Habitats and Species Regulations 2017 apply in Scotland but contain the same provisions in relation to securing compensatory measures.

82. At the point of consent West of Orkney were proposing to erect mammalian predator-proof exclusion fences and subsequently eradicate or exclude brown rats and remove feral cats at certain seabird colonies within Orkney. It was stated that Rousay is the preferred location for this measure but Hoy, Stronsay and Westray were also considered. Survey data had been gathered to demonstrate the presence of rats and feral cats on Rousay. Stable isotope analysis had been undertaken but did not provide any evidence of seabird predation, attributed to the timing of the survey. Seabird Monitoring Programme data was used by West of Orkney to estimate the potential colony size that could be achieved following implementation of the measure. Disturbance reduction measures were also proposed although the information was redacted.
83. For Salamander, at the time of consent, the proposed compensation measures were to fund the continuation of the Scottish Invasive Species Initiative's Mink Control Project for and to provide additional resources, expertise and funding to support the continuation of monitoring, trialling and eventual implementation of bycatch reduction efforts in Portuguese waters in partnership with the Portuguese Society for the Study of Birds. Desk based information was used by Salamander to estimate the population of mink and their potential impacts on the target seabird species at specific SPAs and to demonstrate the scale of bycatch impact on gannet and the connectivity with Scottish SPAs.
84. In the case of both West of Orkney and Salamander, the Scottish Ministers assessment of the compensation proposals concludes that the proposed measures have the potential to deliver the required level of compensation to seabirds but that further information is required to reduce the uncertainty of the measures.
85. With regards to Berwick Bank, a suite of compensation measures were proposed based on desk based assessment and consultation. These were closure of the sandeel fishery in Sandeel Area 4, rat eradication on two Scottish islands, funding of a warden role at Dunbar Castle, and reduction of the Sula Sgeir gannet harvest.
86. Based on advice from Marine Directorate – Science, Evidence, Data and Digital and the Chief Scientific Advisor, the Scottish Ministers concluded that the measures proposed by Berwick Bank will not provide sufficient compensation in respect of the impacts identified and quantified in the Appropriate Assessment for the Project.
87. In each of the three cases the Scottish Ministers state in the Derogation Case assessments: "The Scottish Ministers therefore consider it appropriate to meet the requirement to put in place compensatory measures through a suspensive condition on the section 36 consent and marine licences."
88. The marine licences and Section 36 consents for each project contain the following (or very similar) wording within the relevant condition:  
*"...The Commencement of the Licensed Activity cannot take place without written approval of the Detailed Seabird Compensation Plan by the Licensing Authority. The*

*Licensing Authority may also require that certain elements of the Detailed Seabird Compensation Plan must be fulfilled prior to Commencement of the Licensed Activity. In this instance, the Licensing Authority will notify the Licensee, in writing, of what is required. The Licensee must not initiate Commencement of the Licensed Activity until the Licensing Authority have confirmed, in writing, that they are content and any such elements have been fulfilled...”*

89. It is evident that the Scottish Ministers and NatureScot consider that the use of such a suspensive condition meets the requirements of the Habitats Regulations<sup>1</sup> in prohibiting the commencement of development without any agreed compensation plan in place. The same legal requirements apply in Scotland in relation to the need to secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

## 6.3 Projects currently undergoing determination

90. The Applicants note that decisions for the Five Estuaries Offshore Wind Farm DCO and the Outer Dowsing Offshore Wind Farm DCO have both been delayed, with further consultation taking place, including the Secretary of State seeking additional details of proposed compensatory measures. The Morecambe Offshore Wind Farm DCO (now granted) was also subject to similar delays.
91. The Applicants are concerned that this demonstrates the tendency for the provision of more detailed and advanced compensatory measures to provoke further requests for information – applicants are being continuously pressed to provide more and more at an earlier stage, and this is resulting in delays to decision-making. It is the Applicants' view, and has previously been the view of the Secretary of State (and continues to be the approach adopted by Scottish Ministers), that the information being requested prior to determination could lawfully be provided at the post-consent stage as controlled by suspensive DCO condition(s).
92. The above tendency for mandating more detailed and advanced measures is in addition to continually changing advice from statutory nature conservation bodies that seeks to apply a high degree of over-precaution (as explained in **Precaution in the Ornithology Assessment and Implications for Compensation Quantum** [REP3-030]) in the assessment of compensation quantum and “scaling” requirements. In the case of the Projects, discussion during examination (including re-assessment and the introduction of ‘scaling of measures’) led to an almost ten-fold increase in the compensation quantum the Projects needed to have provision for compared to their understanding based on recent precedent decisions at the DCO submission stage.

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<sup>1</sup> Regulation 53 of The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended).

93. This, alongside landowners becoming less receptive to project-led measures (in large part due to the near emergence of the Marine Recovery Fund) further adds to the challenge for applicants in identifying suitable sites to provide compensatory measures and fully securing them within the timescales of the DCO process.

## 7 Analogous Decision-Making

- 94. The use of suspensive conditions has also been accepted on numerous other consented projects to secure the delivery of future mitigation measures.
- 95. For example, the National Policy Statement EN-1 at paragraph 5.5.58 states "Where a proposed energy infrastructure development would significantly impede or compromise the safe and effective use of civil or military aviation, meteorological radars, defence assets and/or significantly limit military training, the Secretary of State may consider the use of 'Grampian conditions', or other forms of requirement which relate to the use of current or future technological solutions, to mitigate impacts on legacy CNS equipment."
- 96. Paragraph 5.5.57 provides that "Where suitable technological solutions have not yet been developed or proven, the Secretary of State will need to consider the likelihood of a solution becoming available within the time limit for implementation of the Development Consent Order."
- 97. This sets a clear precedent for the use of Grampian-style suspensive conditions where appropriate, even where some of the details of the mitigation are not known at the time of granting consent. It is considered appropriate to use such conditions in relation to sensitive matters of national security and safety and so the Applicants submit that the same approach should be applied to compensatory measures i.e. the Secretary of State should consider the likelihood of a solution becoming available within the time limit for implementation of the DCO.



## 8 Conclusion

98. It is clear from the above that it is lawfully possible for the detail of compensatory measures to be dealt with post-consent if adequately secured through the use of suspensive conditions in the DCO. This has been accepted on numerous earlier offshore wind farm consents in England and also continues to be the accepted approach in Scotland, as well as for other sensitive matters such as military radar mitigation.
99. Analysis of more recent decision-making suggests that due to a combination of more information being demanded by Examining Authorities and continued disagreement by Natural England and SNCBs as to the sufficiency of compensatory measures, Applicants have been seeking to de-risk their projects and avoid delay during determination by providing more and more detail with regards to proposed compensatory measures. This has resulted in evolving precedent-setting whereby each time a consent is granted, more information and detail is required and this trend is continuing to gain momentum.
100. It is concerning that, with each consent that is granted, more is being expected of Applicants at an earlier stage in the process, despite there being no legislative or policy changes that have required a change in approach. Against a background of landowners preferring to safeguard their land for strategic delivery of measures and continuous changes to guidance resulting in significantly increased compensation quantum, identification of feasible sites is becoming increasingly more challenging.
101. However, the Applicants submit that they have provided a substantial level of detail in relation to the proposed compensatory measures, far in excess of what has been considered adequate to secure such measures on numerous other consents. They have demonstrated compliance with all of the relevant legislation and guidance, as set out above and in more detail at **Schedule 1** of this document. Any further information required will be provided as the relevant implementation and monitoring plans are developed, consulted upon and approved post-consent, as secured by the conditions within Schedule 18 of the **Draft DCO (Revision 13)** [document reference 3.1]. The public interest is fully protected by this approach and the terms of the draft DCO.

## Schedule 1

Natural England Checklist criteria, completed for Auk Plan		European Commission (EC) guidance	Joint Guidance on Habitats Regulations Assessments	Defra, February 2024
NE Criteria	Applicant plan			
What, where and when	<p>Predator eradication measure as presented in this compensation document and to be further detailed in future iterations of this document and the CIMP.</p> <p>Site selection information presented in section <b>Error! Reference source not found.</b> of this document with roadmap for identification of a final site(s) in section <b>Error! Reference source not found.</b>.</p> <p>Outline implementation roadmaps provided in <b>Error! Reference source not found.</b> and <b>Error! Reference source not found.</b> of this document.</p>	<p>d. Demonstration of the technical feasibility of the measures in relation to their objectives.</p> <p>f. Analysis of suitable locations and acquisition of the rights (purchase, lease...) to the land to be used for the compensatory measures.</p> <p>g. Explanation of the time-frame in which the compensation measures are expected to achieve their objectives.</p> <p>h. Timetable for implementation and co-ordination with the schedule for the plan or project implementation.</p>	<ul style="list-style-type: none"> <li>• how technically feasible and effective the measures will be - based on scientific evidence and previous examples</li> <li>• how the compensation would be carried out, including how it'll be managed and monitored over the time that's needed, and how it's been secured</li> <li>• distance from the affected site - compensation closer to the site is generally preferred, unless measures further away will benefit the network of European sites as a whole</li> <li>• how long the compensatory measures will take to reach the required quality and amount of habitat</li> </ul>	<ul style="list-style-type: none"> <li>• define nature and extent of the predicted damage to feature in light of the site conservation objectives</li> <li>• define aims and objectives of compensatory measures with reference to conservation objectives</li> <li>• identify ecological measures to deliver these aims and objectives</li> <li>• identify agreements on the spatial extent, location, and timings for delivery</li> <li>• evidence why the measures are sufficient to protect the coherence of the national site network</li> </ul>
Why and how	Summarised in this document and will be detailed further in future iterations of this document and the CIMP.			

Natural England Checklist criteria, completed for Auk Plan		European Commission (EC) guidance	Joint Guidance on Habitats Regulations Assessments	Defra, February 2024
NE Criteria	Applicant plan			
Deliverability is secured	Roadmap for delivery is provided in section <b>Error! Reference source not found.</b> of this document. Deliverability will be informed by pre-eradication studies and secured following selection of a suitable site(s).	<p>e. Demonstration of the legal and/or financial feasibility of the measures according to the timing required.</p> <p>k. The financing programme approved during the necessary period to guarantee the success of the measures.</p>	<ul style="list-style-type: none"> <li>how financially viable the measures are - the proposer must have enough funds to cover costs</li> </ul>	identify the means (statutory, contractual, or administrative) by which the measures will be secured
Policy / legislative mechanism for delivering the compensation	<p>Delivery of project-led compensation will be through agreement with individual landowners. In-principle agreements are being sought during the determination process.</p> <p>Delivery of strategic compensation will be through the MRF or an interim fund.</p>	e. Demonstration of the legal and/or financial feasibility of the measures according to the timing required.	n/a	
Agreed DCO/DML conditions	The <b>Volume 3, Draft DCO (application ref: 3.1)</b> includes condition wording similar to other consented OWFs at Schedule 18.	i. Public information and/or consultation stages.	<ul style="list-style-type: none"> <li>how the compensation would be carried out, including how it'll be managed and monitored over the time that's needed, and how it's been secured</li> </ul>	

Natural England Checklist criteria, completed for Auk Plan		European Commission (EC) guidance	Joint Guidance on Habitats Regulations Assessments	Defra, February 2024
NE Criteria	Applicant plan			
Clear aims and objectives & links to the conservation objectives of the site or feature and addresses the specific damage caused by the project and will not negatively impact other sites.	Clear aim to improve productivity of auks through successful predator eradication / control to replace auks lost as a result of the Projects. Potential negative impacts of the compensation are explored in this document (section <b>Error! Reference source not found.</b> ) but will be assessed in full by the feasibility study.	<p>b. Clear objectives and target values according to the site's conservation objectives.</p> <p>c. Description of the compensatory measures, accompanied by a scientifically robust explanation of how they will effectively compensate for the negative effects of the plan or project on the species and habitats affected in light of the site's conservation objectives, and how they will ensure that the overall coherence of Natura 2000 is protected.</p>	<ul style="list-style-type: none"> <li>how the compensation would be carried out, including how it'll be managed and monitored over the time that's needed, and how it's been secured</li> <li>how long the compensatory measures will take to reach the required quality and amount of habitat</li> </ul>	<ul style="list-style-type: none"> <li>define aims and objectives of compensatory measures with reference to conservation objectives</li> <li>identify ecological measures to deliver these aims and objectives</li> </ul>
Mechanism for further commitments if the original compensation objectives are not met – monitoring, adaptive	Monitoring and adaptive management included in sections <b>Error! Reference source not found.</b> and <b>Error! Reference source not found.</b> of this document and to be detailed in the CIMP. Future potential adaptive management measures included in section <b>Error! Reference source not found.</b> as agreed with the ETG.	j. Specific monitoring and reporting schedules based on progress indicators according to the objectives of compensation measures.	<ul style="list-style-type: none"> <li>how the compensation would be carried out, including how it'll be managed and monitored over the time that's needed, and how it's been secured</li> </ul>	n/a

Natural England Checklist criteria, completed for Auk Plan		European Commission (EC) guidance	Joint Guidance on Habitats Regulations Assessments	Defra, February 2024
NE Criteria	Applicant plan			
management & ongoing sign-off procedure	For strategic compensation, this would be the responsibility of the MRFO.			
Clear governance proposal for the post-consent phase (e.g. ToR agreed)	<p>A GCSG will be formed post-consent. Governance will be defined in the CIMP.</p> <p>For strategic compensation, this would be the responsibility of the MRFO.</p>	a. Tight coordination and cooperation between Natura 2000 authorities, assessment authorities and the proponent of the plan or project.		<ul style="list-style-type: none"> <li>identify agreements on the spatial extent, location, and timings for delivery</li> </ul>
Ensure development of compensatory measures is open and transparent	<p>Continued stakeholder engagement throughout the lifetime of the project.</p> <p>For strategic compensation, this would be the responsibility of the MRFO.</p>	i. Public information and/or consultation stages.	n/a	
Timescales for implementation & how quickly the measures will contribute to the network	<p>Indicative timeline for implementation of project-led compensation included in Error! Reference source not found. of this document.</p> <p>Timescales for strategic compensation is discussed in section <b>Error! Reference</b></p>	<p>g. Explanation of the time-frame in which the compensation measures are expected to achieve their objectives.</p> <p>h. Timetable for implementation and co-ordination with the</p>	<ul style="list-style-type: none"> <li>how long the compensatory measures will take to reach the required quality and amount of habitat</li> </ul>	

Natural England Checklist criteria, completed for Auk Plan		European Commission (EC) guidance	Joint Guidance on Habitats Regulations Assessments	Defra, February 2024
NE Criteria	Applicant plan			
	<p><b>source not found.</b> and shown in Error! Reference source not found..</p> <p>Increased productivity should become evident quickly after implementation.</p>	schedule for the plan or project implementation.		
Commitment to continued annual management of the compensation area throughout the lifetime of the project	<p>Monitoring commitments summarised in sections <b>Error! Reference source not found.</b> and <b>Error! Reference source not found.</b> of this document with details to be provided in the CIMP.</p> <p>Annual management of strategic compensation would be the responsibility of the MRFO and a financial contribution to the MRF by the Applicants would be reflective of the need for management for the lifetime of the Projects.</p>	j. Specific monitoring and reporting schedules based on progress indicators according to the objectives of compensation measures.		n/a

RWE Renewables UK Dogger Bank  
South (West) Limited

RWE Renewables UK Dogger Bank  
South (East) Limited

Windmill Business Park  
Whitehill Way  
Swindon  
Wiltshire, SN5 6PB

**RWE**

MASDAR 