

SCHEDULE 18

Article 44

Offshore Ornithology Compensation Measures

PART 1

Flamborough and Filey Coast Special Protection
Area: Kittiwake Compensation Measures

1. In this Part—

“the kittiwake compensation plan” means Appendix 1 of the Offshore Ornithology Without Prejudice Compensation Measures.

2. The authorised development may not be commenced until a plan for the work of the kittiwake compensation steering group (“KCSG”) has been submitted to and approved by the Secretary of State. Such plan to include—

- (a) terms of Reference of the KCSG;
- (b) details of the membership of the KCSG;
- (c) details of the schedule of meetings, timetable for preparation of the kittiwake implementation and monitoring plan (the “KIMP”) and reporting and review periods; and
- (d) the dispute resolution mechanism.

3. Following consultation with the KCSG, the KIMP must be submitted to and approved by the Secretary of State (in consultation with the MMO, the local planning authority for the land containing the artificial nest site, and the relevant statutory nature conservation body). The KCSG must be consulted further as required during the approval process. The KIMP must be based on the strategy for kittiwake compensation set out in the kittiwake compensation plan and include—

- (a) details of the location where compensation measures will be deployed, why the location is appropriate ecologically and likely to support successful compensation, and details of agreements demonstrating how the land and/or rights will or have been secured to deliver the ecology objectives of the KIMP;
- (b) details of designs of the artificial nest site including the type of nesting structure; and how risks from avian or mammalian predation and unauthorised human access will be mitigated;
- (c) an implementation timetable for delivery of the artificial nest structure that ensures relevant compensation measures are in place to allow four full kittiwake breeding seasons prior to the operation of any wind turbine generator forming part of the authorised development;
- (d) details of the proposed ongoing monitoring of the measures including: survey methods; survey programmes; success criteria; recording of KCSG consultations and project reviews; adaptive management measures and details of the factors used to trigger alternative compensation measures and/or adaptive management measures;
- (e) details of the artificial nesting site maintenance schedule; and
- (f) provision for annual reporting to the Secretary of State, to include details of the number of birds colonising the site including: evidence of birds prospecting; nesting attempts; egg laying; hatching; and fledging, to identify barriers to breeding success and target alternative or adaptive management measures.

4. The undertaker must not commence the authorised development unless it has first—

- (a) provided a reasonable estimate of the cost of delivery of the compensation measures; and

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- (b) put in place either—
 - (i) a guarantee in respect of the reasonable estimate of costs associated with the delivery of the compensation measures; or
 - (ii) an alternative form of security for that purpose,
that has been approved by the Secretary of State.

5. The undertaker must implement the measures as set out in the KIMP approved by the Secretary of State, unless otherwise agreed in writing by the Secretary of State in consultation with the relevant statutory nature conservation body and the relevant local planning authority. In particular, no operation of any turbine forming part of the authorised development may begin until four full breeding seasons following the implementation of the measures set out in the KIMP have elapsed. For the purposes of this paragraph each breeding season is assumed to have commenced on 1 March in each year and ended on 30 September.

6. The undertaker shall notify the Secretary of State of completion of implementation of the measures set out in the KIMP.

7. Results from the monitoring scheme must be submitted at least annually to the Secretary of State and the relevant statutory nature conservation body. This must include details of any finding that the measures have been ineffective in securing an increase in the number of adult kittiwakes available to recruit to the SPA and, in such case, proposals to address this. Any proposals to address effectiveness must thereafter be implemented by the undertaker as approved in writing by the Secretary of State in consultation with the relevant statutory nature conservation body.

8. The artificial nest structure must not be decommissioned without written approval of the Secretary of State, in consultation with the relevant statutory nature conservation body. The artificial nest structures shall be maintained beyond the operational lifetime of the authorised development if they are colonised, and routine and adaptive management measures and monitoring must continue whilst the artificial nesting structures are in place.

9. The KIMP approved under this Schedule includes any amendments that may subsequently be approved in writing by the Secretary of State. Any amendments to or variations of the approved KIMP must be in accordance with the principles set out in the kittiwake compensation plan and may only be approved where it has been demonstrated to the satisfaction of the Secretary of State that it is unlikely to give rise to any materially new or materially different environmental effects from those considered in the kittiwake compensation plan.

10. In the event of any conflict or inconsistency between the terms of the kittiwake compensation plan and the provisions of this Order, the provisions of this Order shall prevail.

PART 2

Alde-Ore Estuary Special Protection Area: Lesser black-backed gull Compensation Measures

- 1. In this Part—
 - “the lesser black-backed gull compensation plan” means Appendices 5 and 7 of the Offshore Ornithology Without Prejudice Compensation Measures.
- 2. The authorised development may not be commenced until a plan for the work of the lesser black-backed gull compensation steering group (“LBBCSG”) has been submitted to and approved by the Secretary of State. Such plan to include—
 - (a) terms of Reference of the LBBCSG;
 - (b) details of the membership of the LBBCSG;

- (c) details of the schedule of meetings, timetable for preparation of the lesser black-backed gull implementation and monitoring plan (the “LBBIMP”) and reporting and review periods; and
 - (d) the dispute resolution mechanism.
- 3.** Following consultation with the LBBCSG, the LBBIMP must be submitted to the Secretary of State for approval (in consultation with the MMO, the local planning authority for any land containing the predator control fencing, and the relevant statutory nature conservation body). The LBBCSG must be consulted further as required during the approval process. The LBBIMP must be based on the strategy for lesser black-backed gull compensation set out in the lesser black-backed gull compensation plan and include—
- (a) details of the location where compensation measures will be deployed, why the location is appropriate ecologically and likely to support successful compensation, and details of agreements demonstrating how any land and/or rights will or have been secured to deliver the ecology objectives of the LBBIMP;
 - (b) details of designs of any predator control fencing including the type of fencing and area and location of enclosure, and details of any other habitats management measures;
 - (c) an implementation timetable for delivery of any predator control fencing and any other habitat management measures that ensures relevant compensation measures are in place to allow four full lesser black-backed gull breeding seasons prior to the operation of any wind turbine generator forming part of the authorised development;
 - (d) details of the proposed ongoing monitoring of the measures including: survey methods; survey programmes; success criteria; recording of LBBCSG consultations and project reviews; adaptive management measures and details of the factors used to trigger alternative compensation measures and/or adaptive management measures.;
 - (e) details of the maintenance schedule for any predator proof fencing; and
 - (f) details of the work in respect of ornithological by-catch measures as set out in Appendix 7 of the Offshore Ornithology Without Prejudice Compensation Measures, that could support practical management measures to reduce ornithological by-catch, and which would be undertaken alongside or in place of the predator control fencing.
- 4.** The undertaker must not commence the authorised development unless it has first—
- (a) provided a reasonable estimate of the cost of delivery of the compensation measures; and
 - (b) put in place either—
 - (i) a guarantee in respect of the reasonable estimate of costs associated with the delivery of the compensation measures; or
 - (ii) an alternative form of security for that purpose,
that has been approved by the Secretary of State.
- 5.** The undertaker must implement the measures as set out in the LBBIMP approved by the Secretary of State, unless otherwise agreed in writing by the Secretary of State in consultation with the relevant statutory nature conservation body and the relevant local planning authority. In particular, no operation of any turbine forming part of the authorised development may begin until four full breeding seasons following the implementation of the measures set out in the LBBIMP have elapsed. For the purposes of this paragraph each breeding season is assumed to have commenced on 1 March in each year and ended on 30 September.
- 6.** The undertaker shall notify the Secretary of State of completion of implementation of the measures set out in the LBBIMP.

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7. Results from the monitoring scheme must be submitted at least annually to the Secretary of State and the relevant statutory nature conservation body. This must include details of any finding that the measures have been ineffective in securing an increase in the number of adult lesser black-backed gulls available to recruit to the SPA and, in such case, proposals to address this. Any proposals to address effectiveness must thereafter be implemented by the undertaker as approved in writing by the Secretary of State in consultation with the relevant statutory nature conservation body.

8. Any predator proof fencing installed must not be decommissioned without written approval of the Secretary of State, in consultation with the relevant statutory nature conservation body. The predator control fencing shall be maintained beyond the operational lifetime of the authorised development if the site is colonised. The routine and adaptive management measures and monitoring should continue whilst the fencing is in place.

9. The LBBIMP approved under this Schedule includes any amendments that may subsequently be approved in writing by the Secretary of State. Any amendments to or variations of the approved LBBIMP must be in accordance with the principles set out in the lesser black-backed gull compensation plan and may only be approved where it has been demonstrated to the satisfaction of the Secretary of State that it is unlikely to give rise to any materially new or materially different environmental effects from those considered in the lesser black-backed gull compensation plan.

10. In the event of any conflict or inconsistency between the terms of the lesser black-backed gull compensation plan and the provisions of this Order, the provisions of this Order shall prevail.

PART 3

Outer Thames Estuary Special Protection Area: Red-throated diver Compensation Measures

1. In this Part—

“the red-throated diver compensation plan” means Appendix 6 of the Offshore Ornithology Without Prejudice Compensation Measures.

2. The authorised development may not be commenced until a plan for the work of the red-throated diver compensation steering group (“RTDCSG”) has been submitted to and approved by the Secretary of State. Such plan to include—

- (a) terms of Reference of the RTDCSG;
- (b) details of the membership of the RTDCSG;
- (c) details of the schedule of meetings, timetable for preparation of the lesser black-backed gull implementation and monitoring plan (the “RTDIMP”) and reporting and review periods; and
- (d) the dispute resolution mechanism.

3. Following consultation with the RTDCSG, the RTDIMP must be submitted to the Secretary of State for approval (in consultation with the MMO and the relevant statutory nature conservation body). The RTDCSG must be consulted further as required during the approval process. The RTDIMP must be based on the strategy for red-throated diver compensation set out in the red-throated diver compensation plan and include—

- (a) details of the location where compensation measures will be deployed, why the location is appropriate ecologically and likely to support successful compensation, and details of agreements demonstrating how the vessel route diversions and/or exclusions will or have been secured to deliver the ecology objectives of the RTDIMP;

- (b) an implementation timetable for delivery of the vessel route diversion and/or exclusion compensation measures which ensures that the measures are in place prior to the installation of any tower comprised within a wind turbine generator forming part of the authorised development;
 - (c) details in relation to the monitoring of red-throated diver abundance and distribution using aerial digital surveys in the Outer Thames Estuary SPA and a 10km buffer over two winters. Three surveys should take place each winter (between 1st November and 31st March) with one batch to take place before the installation of the turbines forming part of the authorised development and the other batch to take place after;
 - (d) details of the proposed ongoing monitoring of the measures including: survey methods; survey programmes; success criteria; recording of RTDCSG consultations and project reviews; details of the factors used to trigger alternative compensation measures and/or adaptive management measures;
 - (e) details in relation to the convening of a partnership with relevant authorities and user representation to—
 - (i) improve understanding of disturbance and displacement effects on red-throated diver within the Outer Thames Estuary SPA;
 - (ii) identify and implement opportunities to reduce these effects; and
 - (iii) ensure stakeholder engagement and liaison to raise awareness and communicate any proposed changes in usage; and
 - (f) details of the work in respect of ornithological by-catch measures as set out in Appendix 7 of the Offshore Ornithology Without Prejudice Compensation Measures, that could support practical management measures to reduce ornithological by-catch, and which would be undertaken alongside or in place of the predator control fencing.
4. The undertaker must not commence the authorised development unless it has first—
- (a) provided a reasonable estimate of the cost of delivery of the compensation measures; and
 - (b) put in place either—
 - (i) a guarantee in respect of the reasonable estimate of costs associated with the delivery of the compensation measures; or
 - (ii) an alternative form of security for that purpose,that has been approved by the Secretary of State.
5. The undertaker must implement the measures as set out in the RTDIMP approved by the Secretary of State unless otherwise agreed in writing by the Secretary of State in consultation with the relevant statutory nature conservation body and the relevant local planning authority. No tower comprised within a wind turbine generator forming part of the authorised development may be installed until the implementation of relevant measures as set out in the RTDIMP.
6. The undertaker shall notify the Secretary of State of completion of implementation of the measures set out in the RTDIMP. Once implemented, the measures should remain in place throughout the operational lifetime of the authorised development.
7. Results from the monitoring scheme and aerial digital surveys must be submitted at least annually to the Secretary of State and the relevant statutory nature conservation body. This must include details of any finding that the measures have been ineffective in securing the maintenance of the SPA's conservation objectives and, in such case, proposals to address this. Any proposals to address effectiveness must thereafter be implemented by the undertaker as approved in writing by the Secretary of State in consultation with the relevant statutory nature conservation body.

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8. The RTDIMP approved under this Schedule includes any amendments that may subsequently be approved in writing by the Secretary of State. Any amendments to or variations of the approved RTDIMP must be in accordance with the principles set out in the red-throated diver compensation plan and may only be approved where it has been demonstrated to the satisfaction of the Secretary of State that it is unlikely to give rise to any materially new or materially different environmental effects from those considered in the red-throated diver compensation plan.

9. In the event of any conflict or inconsistency between the terms of the red-throated diver compensation plan and the provisions of this Order, the provisions of this Order shall prevail.