

**REGULATION 63 OF THE CONSERVATION OF HABITATS AND SPECIES  
REGULATIONS 2017, AND REGULATION 28 OF THE CONSERVATION OF  
OFFSHORE MARINE HABITATS AND SPECIES REGULATIONS 2017**

***Project Title:* TRITON KNOLL OFFSHORE WIND FARM – NON MATERIAL  
CHANGE**

**Date: 3 August 2018**

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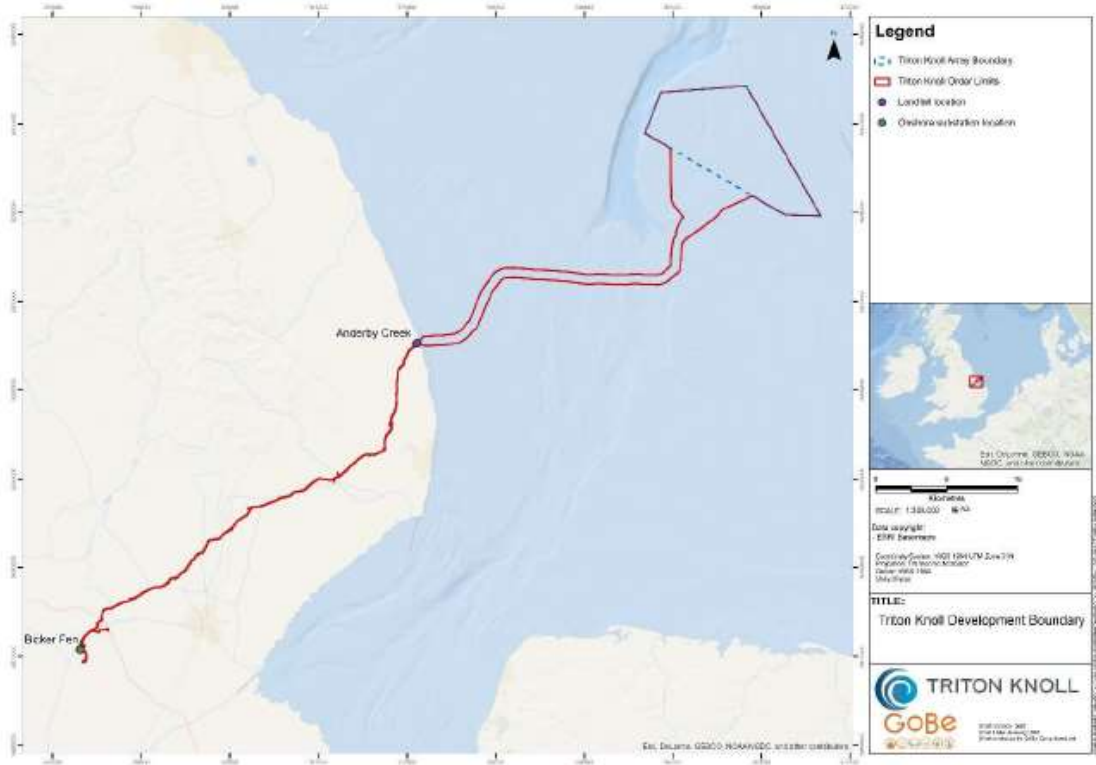
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# Introduction

## Background

- 1.1 This is a record of the Habitats Regulation Assessment (“HRA”) that the Secretary of State for Business, Energy and Industrial Strategy has undertaken under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (the Offshore Habitats Regulations) in respect of the non-material change (“the change application”) to the Development Consent Order (“DCO”) for the Triton Knoll Offshore Wind Farm Array and its associated infrastructure (TKOWF). For the purposes of these Regulations the Secretary of State is the competent authority.
- 1.2 Triton Knoll is located off the east coast of England, approximately 33km from the Lincolnshire coast and 46km from the coast of north Norfolk, with the export cable landfall located at Anderby Creek on the Lincolnshire coast (Figure 1). The footprint of the consented development area is approximately 145km<sup>2</sup>.



**Figure 1 Location of the Triton Knoll Array and Triton Knoll Electrical System**

- 1.3 The project has progressed through two separate consent applications, the Triton Knoll Offshore Wind Farm Array which was granted development consent on 11 July 2013

(“the 2013 Order”), and Triton Knoll Electrical System, which was granted development consent on 5 September 2016 (“the 2016 Order”). The array and the electrical system are being brought forward as a single development by Triton Knoll Offshore Wind Farm Ltd (TKOWFL) who have secured funding via a Contract for Difference (CfD) for a much-reduced project – see paragraph 5.28

- 1.4 On 19<sup>th</sup> February 2018 the Applicant has submitted a request to the Secretary of State for a non-material change to be made to the 2013 Order under the powers in section 153 and Schedule 6, to the Planning Act 2008. The requested changes are to vary the 2013 Order to reduce capacity from 1,200MW to 900MW with the associated changes in infrastructure as summarised below in table 1:

**Table 1 The changes applied for within the Non Material Change**

Project Component	As Consented	Refined Project Design for NMC Application
Capacity	1,200MW	Up to 900MW
Number of WTGs	288 (333 assessed within the ES)	Up to 90
Offshore Substation Platforms (OSPs)	Up to eight OSPs, including up to four offshore collector stations and up to four HVDC substations	Two OSPs, no HVDC substations
Meteorological stations	Up to 4 meteorological stations	No meteorological stations

- 1.5 Upon receiving the change application, the Secretary of State consulted all relevant stakeholders. All the consultation responses received have been considered throughout this HRA.
- 1.6 In undertaking the HRA for the change application the Secretary of State has cross referenced the HRA published for the 2013 Order (“the 2013 HRA”). Having re-visited the assessment documents, the Secretary of State considers its conclusion is relevant to the change application. Specifically, he considers that the assessment of likely significant effects of the project alone and in-combination can still be relied upon, as can the Appropriate Assessment undertaken for North Norfolk Special Protection Area, Flamborough Head and Bempton Cliffs Special Protection Area , Humber Estuary Special Area of Conservation, The Wash and North Norfolk Coast Special Area of Conservation and Inner Dowsing and North Ridge Site of Community Importance. As the proposed change application reduces the total number of structures and activities originally consented, the Secretary of State considers that any impacts associated with the implementation of the change application would be the same or less than those already assessed.

1.7 Since the publication of the 2013 HRA, UK Government has increased the number of protected areas within the marine environment. This includes several new Special Areas of Conservation and Special Protected Areas, which have been identified to protect a range of marine habitats and species in the southern North Sea. Due to the timing of the Secretary of State's decision on the 2013 Order, several new sites have not been fully considered before. As such, this HRA contains the Secretary of State's conclusions on the effects of the 2013 Order - including the changes requested within the change application - on habitats, designated species and wild birds within five new European Sites in the southern North Sea:

- Greater Wash Special Protection Area ("Greater Wash SPA")
- Southern North Sea candidate Special Area of Conservation ("SNS cSAC")
- Flamborough and Filey Coast proposed Special Protection Area ("FFC pSPA")
- Outer Thames Estuary Special Protection Area extension ("Outer Thames SPA")
- Hamford Water Special Protection Area extension ("Hamford Water SPA")

1.8 For the remainder of this document the 2013 Order, including the changes requested within the change application, will be referred to as "the project".

## Habitats Regulation Assessment (HRA)

- 2.1 Council Directive 92/43/EC on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”) and Council Directive 2009/147/EC on the conservation of wild birds (“the Birds Directive”) aim to ensure the long-term survival of certain species and habitats by protecting them from adverse effects of plans and projects.
- 2.2 The Habitats Directive provides for the designation of sites for the protection of habitats and species of European importance. These sites are called Special Areas of Conservation (“SACs”). The Birds Directive provides for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species. These sites are called Special Protection Areas (“SPAs”). SACs and SPAs are collectively termed European sites and form part of a network of protected sites across Europe. This network is called Natura 2000.
- 2.3 In the UK, the Habitats Regulations transpose the Habitats and Birds Directives into national law as far as the 12nm limit of territorial waters. Beyond territorial waters, the Offshore Marine Habitats Regulations serve the same function for the UK’s offshore marine area. The change application covers areas within and outside the 12nm limit so both sets of Regulations apply. They are collectively referred to as “the Habitats Regulations” for the purposes of this HRA.
- 2.4 Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) provides that:
- ...before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in-combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, [the competent authority] must make an appropriate assessment of the implications for that site in view of that site’s conservation objectives.*
- 2.5 Regulation 28 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 (“the Offshore Habitats Regulations”) contains similar provisions:
- Before deciding to undertake, or give any consent, permission or other authorisation for, a relevant plan or project, a competent authority must make an appropriate assessment of the implications of the plan or project for the site in view of that site’s conservation objectives....which - (a) is to be carried out on any part of the waters or on or in any part of the seabed or subsoil comprising an offshore marine area or on or*

*in relation to an offshore marine installation (b) is likely to have a significant effect on a European marine site (either alone or in-combination with other plans or projects) and (c) is not directly connected with or necessary to the management of that site.*

- 2.6 The change application is not directly connected with, or necessary to, the management of a European site or a European marine site. The Habitats Regulations require that, where the project is likely to have a significant effect (“LSE”) on any such site, alone or in-combination with other plans and projects, an appropriate assessment (“AA”) is carried out to determine whether or not the project will have an adverse effect on the integrity of the site in view of that site’s Conservation Objectives. In this document, the assessments as to whether there are LSEs, and, where required, the AAs, are collectively referred to as the HRA.
- 2.7 This report should be read in conjunction with the application documents and consultation responses, which are available on the Planning Inspectorate’s Nationally Significant Infrastructure Project web pages<sup>1</sup>:
- 2.8 The key information in these documents is summarised and referenced in this report.

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<sup>1</sup> <https://infrastructure.planninginspectorate.gov.uk/>

## **Likely Significant Effects Test**

- 3.1 Under Regulation 63 of the Habitats Regulations and Regulation 28 of the Offshore Regulations the Secretary of State must consider whether a development will have a LSE on a European site, either alone or in combination with other plans or projects. A LSE is, in this context, any effect that may be reasonably predicted as a consequence of a plan or project that may affect the conservation objectives of the features for which the site was designated, but excluding trivial or inconsequential effects. An AA is required if a plan or project is likely to have a significant effect on a European site, either alone or in combination with other plans or projects.
- 3.2 The purpose of this test is to identify LSEs on the five European sites that may result from the change application and to record the Secretary of State's conclusions on the need for an AA and his reasons for including activities, sites or plans and projects for further consideration in the AA. For those features where a LSE is identified, these must be subject to an AA. This review of potential implications can be described as a 'two-tier process' with the LSE test as the first tier and the review of effects on integrity (AA) as the second tier.
- 3.3 This section addresses this first step of the HRA, for which the Secretary of State has considered the potential impacts of the change application both alone and in combination with other plans and projects on each of the interest features of the five new European sites listed above, to determine whether or not there will be a LSE.

## **Likely Significant Effects**

- 3.4 The Secretary of State has considered the potential construction and operational impacts of the change application on all relevant interest features of the five new southern North Sea sites listed above to determine whether there will be LSE in the context of the Habitats Regulations. The Secretary of State recognises that powers are in place for decommissioning effects to be addressed fully by the relevant authorities, prior to decommissioning and in light of more detailed information on decommissioning processes and environmental conditions at that time. The Secretary of State therefore considers that it is reasonable not to include a detailed discussion on decommissioning impacts in this report and notes that decommissioning is not a barrier to the change application being granted.

## **SPA Extensions: Outer Thames Estuary and Hamford Water**

- 3.5 In 2017 the Secretary of State for the Environment, Food and Rural Affairs extended the existing Hamford Water SPA and Outer Thames Estuary SPA. The extensions have



modified the original boundaries to include marine foraging areas for little tern and, in the case of the Outer Thames SPA, common tern.

- 3.6 As part of the change application, the Applicant provided a document called “Triton Knoll Offshore Wind Farm Non Material Change Application: Consolidation Screening Review of Potential Impacts on Natura 2000 Sites”<sup>2</sup>, which contained information on the two marine extensions. No representations were received from any other stakeholder in relation to the information provided by the Applicant in relation to these two marine extensions.
- 3.7 The project is outwith the foraging areas covered by the SPA extensions, so there is limited potential for connectivity. Little terns and common terns undertake relatively short foraging trips with maximum foraging range of 11 km and 30 km from their breeding colonies, respectively (Thaxter *et al.* 2012). At its nearest point, the Project lies 115 km from Hamford Water SPA and 97 km from the Outer Thames Estuary SPA. It is therefore unlikely that little and common terns from either SPA make use of the change application boundaries during the breeding season. Furthermore, few individuals are likely to pass through the array during the non-breeding months. Surveys carried out at the site of the array have recorded only small numbers of common tern during the Autumn migration period and little tern have not been recorded in the site of the array.
- 3.8 **The Secretary of State concludes that the TKOWF alone and in combination with other plans and projects is not likely to have a significant effect on the marine extensions to the Hamford Water SPA and the Outer Thames SPA. This is on the basis that the boundaries of the project are beyond the foraging ranges protected by the SPA extensions and in view of the Applicant’s survey results, which record a low usage of terns at the project site.**

### **Greater Wash SPA**

- 3.9 The Greater Wash SPA was classified on 10<sup>th</sup> April 2018. The site qualifies as an SPA by regularly supporting populations of national importance of red-throated diver, little gull, sandwich tern, common tern and little tern. The site also qualifies by regularly supporting a population of international importance of common scoter.
- 3.10 As part of the change application, the Applicant provided information on the Greater Wash SPA within the screening document<sup>2</sup>, which including a shadow HRA within

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<sup>2</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010005/EN010005-000893-Triton%20Knoll%20NMC%20-%20Review%20of%20Potential%20Impacts%20on%20Natura%202000%20Sites\\_Updated%20Report%20210618.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010005/EN010005-000893-Triton%20Knoll%20NMC%20-%20Review%20of%20Potential%20Impacts%20on%20Natura%202000%20Sites_Updated%20Report%20210618.pdf)

Appendix I. No representations were received from any other stakeholder in relation to this information, although it is understood by the Secretary of State that Natural England have provided advice on this document previously.

- 3.11 Within the Greater Wash, common terns breed at Breydon Water, Scroby Sands and at several sites on the north Norfolk Coast. This species has a mean maximum foraging range of 15.2 km (Thaxter *et al.* 2012), which is less than the distance between the tern colonies and the location of the project. Local, site specific studies support the finding of Thaxter *et al.* (2012). Boat-based tracking at these colonies identified colony-specific foraging ranges of between 10 km to 13 km (Wilson *et al.* 2013). During surveys undertaken at the site of the array, no common terns were recorded during the breeding season (April to early July) but small numbers were recorded during the Autumn migration period, which implies that all sightings were of migrating individuals rather than commuting birds from breeding colonies. On this basis, it is likely that there is no connectivity between the Greater Wash breeding colonies and the project. Any effect on the small number of birds recorded in the Autumn would be undetectable alone and in-combination.
- 3.12 It is also likely that little tern do not use the project site during the breeding season. Little terns have a mean maximum foraging range of 6.3 km (Thaxter *et al.* 2012) and the project lies 35 km from the nearest little tern colony. The Applicant's ornithological surveys indicate that little tern is absent from the site of the array year round.
- 3.13 The distance between the Greater Wash Sandwich tern breeding colonies and the project site is just within the mean maximum foraging range reported by Thaxter *et al.* 2012 (49 km). Colonies exist at Scolt Head and Blakeney Point and the project lies approximately 46 km from these colonies. However, connectivity during the breeding season is considered unlikely in view of site specific foraging range studies (Wilson *et al.* 2013), which have showed that few individuals foraged further than 22 km from the two colonies. Furthermore, surveys undertaken at the project site by the developer recorded few sightings in April to July, during the main part of the breeding season (34 individuals in 2009 and 17 individuals in 2008). Peak counts were observed in August (77 birds) but these individuals are most likely to associated with the Autumn migration. Whilst, due to the presence of Sandwich terns during the breeding season, connectivity cannot be entirely ruled out, the applicant considers that any effect of the project on the small numbers observed in the breeding season is not likely to have a significant effect on the SPA and any contribution to the in-combination assessment would be *de minimus*. This conclusion could be extended to birds on migration, as surveys indicate individuals pass through the array in small numbers in over a short period of the year.

- 3.14 In addition to the tern species, the Applicant also provided information on common scoter, red-throated diver and little gull.
- 3.15 Common scoter is present only in the winter months when it concentrates in a small area close to the southern coast of Lincolnshire and spanning across the mouth of the Wash to the north-western coast of Norfolk (Natural England and JNCC 2016). It is possible that the population could be disturbed by boat traffic going to and from the project site. However, the level of boat traffic is expected to be minimal in relation to existing traffic in the area, and the Applicant considers that it is unlikely that its boats would pass through this small area. Collision risk is also a possibility if the birds were to pass through the array on migration. However, common scoter are known to fly close to the water and published studies indicate that few birds fly at collision risk flight (Johnston et al. 2014).
- 3.16 Red-throated diver have been reported in low numbers during surveys of the project site. This species spends most of its time on the water and it has been estimated that only 6% of flights are at collision risk height (Johnston *et al.* 2014). Collision risk impacts can therefore be discounted in this case. Displacement or disturbance to this species resulting from operations within the SPA is also a possibility; however, due to the low numbers of birds recorded, any impact associated with the shipping route has been assessed by the applicant to be low and any contribution to an in-combination assessment would be *de minimus*. The applicant has also investigated the effect of displacement of red-throated divers from the array into the boundaries of the SPA. It is possible that the addition of new individuals into the SPA population could increase competition for resources. However, in view of the small number of individuals recorded in the array (a maximum of 15 individuals recorded during in the array and buffer in the spring) and displacement of individuals into the SPA boundaries (which supports an overwintering population of 1,407 individuals) an increase to the population would be undetectable. Such an increase would not make a material contribution to an in-combination assessment.
- 3.17 Little Gull is the final qualifying feature for which an assessment needs to be undertaken. It is possible that little gull could be disturbed and displaced from the array during operation, and there is also the risk of collision with operational turbines. In relation to displacement, the only threat to the SPA population would come from density dependent effects if displaced individuals were to move from the site of the array into the boundaries of the SPA. Little gulls are thought to range widely during the winter months so a slight increase in individuals in the SPA would be of no consequence to the SPA population. In relation to collision, the applicant has provided a collision risk

assessment. Based on an avoidance rate of 99.2% (Cook et al. 2014) the Applicant has calculated an annual collision mortality of 26 individuals. The lowest regional little gull population estimate is 10,000 and the SPA population (1,255) would make up approximately 13% of this. Due to the wide-ranging nature of little gull can be assumed that mortality would be attributed evenly throughout the regional population. On this assumption a maximum of 3 individuals from the SPA population would be killed each year. Such an impact to the SPA population is considered to be undetectable. It is also considered to be highly precautionary given that the collision risk assessment was based on a project build out of 288 and the change application seeks to revise this figure to 90. The cumulative assessment provided by the Applicant includes Race Bank, Sheringham Shoal, Hornsea Project 1 and Hornsea Project 2. Together with Triton Knoll, an annual collision mortality of 54.2 birds is predicted. Assuming collisions are attributed evenly amongst the regional population, this equates to 7 individuals from the Greater Wash population. Such a small impact would also be undetectable in the SPA population. Whilst this figure does not contain recently consented projects, it is considered to be suitably precautionary given that the collision risk assessment was based on consented project build outs rather than actual build outs.

3.18 It is noted that, in relation to red-throated diver and little gull, the Applicant considered it precautionary to conclude that the project would be likely to have a significant effect of the two qualifying features. However, in view of the small impacts quantified above, the Secretary of State considers that an Appropriate Assessment is not required in this case.

3.19 **The Secretary of State concludes that the project alone and in combination with other plans and projects is not likely to have a significant effect on the Greater Wash SPA. For common tern and little tern, this is on the basis that there is no connectivity with the project site during the breeding season, and few individuals have been observed within the array at other times of the year. For species for which connectivity cannot be ruled out (Sandwich tern, little gull, red-throated diver and common scoter), the Secretary of State considers that the impacts attributed to the project alone and cumulatively would be undetectable within the SPA populations.**

### **Flamborough and Filey Coast pSPA**

3.20 In 2014, Natural England held a formal public consultation on the designation of the Flamborough and Filey Coast pSPA. This pSPA, if confirmed by the Secretary of State for the Environment, Food and Rural Affairs, would represent a geographical extension

to the existing Flamborough Head and Bempton Cliffs SPA and new species would be added to the citation list. The new full list of features includes black-legged kittiwake, Northern gannet, common guillemot and razorbill. The site also qualifies due to its seabird assemblage: During the breeding season the area regularly supports 215,750 individual seabirds including black-legged Kittiwake, Northern gannet, common guillemot, razorbill and Northern fulmar.

- 3.21 It is Government policy to treat pSPAs as if they were a fully classified European site under the Habitats Regulations. As such, the Secretary of State considers it important to consider the impacts of the project and whether or not LSEs can be ruled out.
- 3.22 The 2013 HRA assessed the effects of the Order on the existing Flamborough Head and Bempton Cliffs SPA. This assessed the effects of the Order on the kittiwake and gannet features of the SPA. Puffin, razorbill, guillemot and herring gull were all screened out of assessment at an earlier stage. Fulmar was not considered because, at that time, this species was not named as part of the seabird assemblage.
- 3.23 The Applicant has revisited the assessments for those species screened into the 2013 HRA (kittiwake and gannet). The applicant has also provided a new assessment for fulmar as this species has not previously been considered<sup>2</sup>. During the consultation no representations were received from any other stakeholder in relation to this information.
- 3.24 In respect of kittiwake and gannet the 2013 HRA concluded that there would not be an adverse effect on the site integrity of the Flamborough Head and Bempton Cliffs SPA. Since that time the reference populations for both species have changed. The new citation records 89,041 breeding adult kittiwake and 16,938 breeding adult gannet. For kittiwake, this represents a 15.5% increase to the population as assessed within the 2013 Order and for gannet it represents a 3% increase. Despite this increase, the Applicant considers the 2013 HRA conclusion still stands due to the reduction in infrastructure proposed in the change application (a 69% reduction to the consented number of turbines).
- 3.25 Recent findings in other offshore wind HRAs support this conclusion. The East Anglia THREE HRA was published on 7<sup>th</sup> August 2017 and it incorporated the revised site designation and population numbers together an up to date list of projects for the in-combination assessment, including the 2013 Order. It concluded that, in-combination with other plans and projects, East Anglia THREE would not have an adverse effect on site integrity. The Applicant considers that the reduction in infrastructure proposed within the change application would not alter this conclusion as any impacts are likely to be less than or, at worst, the same as those already assessed.

3.26 In respect of fulmar, as noted above, this species was not assessed with the 2013 HRA. However, within the change application the Applicant has provided information on this species obtained from the Environmental Statement (“ES”) submitted with the application for the 2013 Order. The ES concluded that the effects of construction and operation of this windfarm alone and cumulatively would not significantly impact fulmar populations in the vicinity of the array. The ES noted that fulmar are highly mobile foragers, generally tolerant of construction activities. In EIA terms the cumulative impact of construction activities was considered to be of minor significance at worst and the cumulative impact of operation was considered to be moderate at worst. As part of the operational phase assessment, a quantitative assessment was provided specifically in respect of collision risk. In total, 17 collisions per annum were predicted cumulatively, which the applicant considered to be a negligible proportion of the east coast passage population (from which most individuals on site are likely to arise). Due to the wide ranging nature of fulmar it is unlikely that all 17 birds would originate from the FFC pSPA and so any in-combination effect of this kind would be undetectable.

**3.27 On the basis of the above, the Secretary of State considers that the changes proposed are not likely to compromise the conclusions of the existing assessments that have been used in support of this change application. In view of the significant reduction in infrastructure proposed, the Secretary of State considers the risk to the protected seabird populations is now considerably lower. The Secretary of State has therefore concluded that the project, including the changes proposed in the change application, is not likely to have a significant effect on the Flamborough and Filey Coast pSPA alone and in-combination with other plans and projects**

### **Southern North Sea cSAC**

3.28 The Southern North Sea candidate Special Area for Conservation was approved by the UK government and submitted for approval to the European Commission on 30<sup>th</sup> January 2017. The SNS cSAC lies wholly within UK waters, with harbour porpoise being the sole feature of interest.

3.29 The Order has previously been assessed in-combination with other plans and projects as part of the Habitats Regulations Assessment undertaken by the Secretary of State for the East Anglia THREE application. The Order was also accounted for in the Appropriate Assessment undertaken for the Discharge of Requirement 36 for East Anglia ONE. Whilst both in-combination assessments concluded that there would be no adverse effects on the integrity of the cSAC, the Secretary of State considers it

necessary to undertake a stand-alone assessment in order to capture any refinements made to the project design, including revisions to the construction schedule.

- 3.30 As part of the change application, the Applicant provided a document called the “Triton Knoll Offshore Windfarm: Southern North Sea candidate Special Area of Conservation (SNS cSAC): Report to Inform Appropriate Assessment”<sup>3</sup>. The Secretary of State has referred to this in order to undertake this HRA. In addition to this, the Secretary of State has also referred to a range of documents that have been produced and published by the Joint Nature Conservation Committee (“JNCC”) in relation to the SNS cSAC. Published documents include site selection reports, Conservation Objectives and Advice on Activities; all of which have been made available at the JNCC’s site information centre<sup>4</sup>.
- 3.31 JNCC and other statutory nature conservation bodies (“SNCBs”) have also circulated among stakeholders (but not published) a potential approach to assessing the significance of disturbance against conservation objectives of the harbour porpoise cSACs. The Applicant has appended version 3 of this draft approach to its Report to Inform the Appropriate Assessment<sup>3</sup>. This approach identifies a 26 km ‘effective deterrent radius’ (“EDR”) as a means to measure potential impacts from piling on harbour porpoise. This EDR has also been used previously<sup>5</sup> to assess the likely significant effects of potential UXO clearance operations.
- 3.32 Both piling and UXO clearance activities are expected to occur during construction of the project. The Triton Knoll array lies outwith the cSAC; however, a portion of the Order Limits lies within the 26 km EDR (at its nearest point, the array boundary lies 22.93 km from the SNS cSAC). The Applicant considers this overlap to be negligible or *di minimis*, but the potential for LSE is acknowledged.
- 3.33 In contrast to its conclusions for the project alone, the Applicant has concluded that the change application is likely to have a significant effect on the SNS due to in-combination impacts likely to arise from other pile driving event and UXO detonations. As such, the Applicant has provided the information in respect of the effect of underwater noise from piling and UXO clearance to inform the Secretary of State’s in-combination section of the Appropriate Assessment. As a precaution, however, and “to enable a robust and reliable determination”, information on the effects of the project alone to inform the Appropriate Assessment has also been provided by the Applicant as part of the change

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<sup>3</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010005/EN010005-000895\\_WORK\\_31550652\\_1\\_Triton%20Knoll%20NMC%20-%20SNS%20cSAC%20Report%20to%20Inform%20Appropriate%20Assessment\\_250518\\_HIGHLIGHTED.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010005/EN010005-000895_WORK_31550652_1_Triton%20Knoll%20NMC%20-%20SNS%20cSAC%20Report%20to%20Inform%20Appropriate%20Assessment_250518_HIGHLIGHTED.pdf)

<sup>4</sup> <http://jncc.defra.gov.uk/page-7243>

<sup>5</sup> In Appropriate Assessments undertaken for Hornsea Projects 1 and 2, East Anglia ONE and East Anglia THREE. Available to access from: <https://infrastructure.planninginspectorate.gov.uk/>

application. The Secretary of State considers this appropriate, given the array is within 26 km of the SNS cSAC (i.e. the EDR as identified above).

3.34 The Secretary of State notes that several other effects were assessed by the Applicant as part of the change application (underwater noise from vessel movement, geophysical survey, acoustic deterrent devices, wind farm operations and decommissioning; collision risk; suspended sediment impacts on prey; underwater noise impacts on prey; impacts on prey nursery habitat; and electromagnetic fields) and that these were not considered by the Applicant as likely to be significant. The evidence behind Applicant's conclusions in respect of these effects has been provided in a screening matrix in Appendix 1 of the Applicant's Report to Inform the Appropriate Assessment<sup>3</sup>. The Secretary of State has considered the Applicant's assessment within this matrix and, on the basis of the rationale presented within, he has come to the same conclusion.

**3.35 The Secretary of State has thoroughly considered all of the above information sources. In view of the array's location within 26 km of the cSAC, and in view of the potential for piling and UXO operations to occur during construction, he has concluded that the project is likely to have a significant effect on the SNS cSAC alone and in-combination with other plans and projects. An Appropriate Assessment is therefore required in order to assess these effects in greater detail in view of the site's conservation objectives.**



## Appropriate Assessment

### Test for Adverse Effect on Site Integrity

- 4.1 The requirement to undertake an AA is triggered when a competent authority, in this case the Secretary of State, determines that a plan or project is likely to have a significant effect on a European site either alone or in combination with other plans or projects. Guidance issued by the European Commission states that the purpose of an AA is to determine whether adverse effects on the integrity of the site can be ruled out as a result of the plan or project, either alone or in combination with other plans and projects, in view of the site's conservation objectives (European Commission, 2000).
- 4.2 The purpose of this AA is to determine whether or not adverse effect on the integrity of the features of the Southern North Sea pSAC can be ruled out as a result of the change application alone or in combination with other plans and projects in view of the site's conservation objectives and using the best scientific evidence available.
- 4.3 If the competent authority cannot ascertain the absence of an adverse effect on integrity within reasonable scientific doubt, then under the Habitats Regulations, alternative solutions should be sought. In the absence of an acceptable alternative, the project can proceed only if there are imperative reasons of overriding public interest ("IROPI") and suitable compensation measures identified. Considerations of IROPI and compensation are beyond the scope of an AA.

### Conservation Objectives

- 4.4 Guidance from the European Commission indicates that disturbance to a species or deterioration of a European site must be considered in relation to the integrity of that site and its conservation objectives (European Commission, 2000). Section 4.6.3 of that guidance defines site integrity as:
- ...the coherence of the site's ecological structure and function, across its whole area, or the habitats, complex of habitats and/or populations of species for which the site is or will be classified.*
- 4.5 Conservation objectives outline the desired state for a European site, in terms of the interest features for which it has been designated. If these interest features are being managed in a way which maintains their nature conservation value, they are assessed as being in a 'favourable condition'. An adverse effect on integrity is likely to be one which prevents the site from making the same contribution to favourable conservation status for the relevant feature as it did at the time of its designation (English Nature, 1997).
- 4.6 There are no set thresholds at which impacts on site integrity are considered to be adverse. This is a matter for interpretation on a site-by-site basis, depending on the designated feature and nature, scale and significance of the impact. Conservation objectives have been used by the Secretary of State to consider whether the change application has the potential for having an adverse effect on integrity, either alone or in combination.

# Southern North Sea cSAC

5.1 The conservation objectives for the cSAC are in Table 2.

**Table 2 Conservation Objectives for Southern North Sea cSAC**

Conservation Objectives	<p><b>To avoid deterioration of the habitats of the harbour porpoise or significant disturbance to the harbour porpoise, thus ensuring that the integrity of the site is maintained and the site makes an appropriate contribution to maintaining Favourable Conservation Status (FCS) for the UK harbour porpoise.</b></p> <p>To ensure for harbour porpoise that, subject to natural change, the following attributes are maintained or restored in the long term:</p> <ul style="list-style-type: none"> <li>• The species is a viable component of the site.</li> <li>• There is no significant disturbance of the species.</li> <li>• The supporting habitats and processes relevant to harbour porpoises and their prey are maintained.</li> </ul>
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5.2 For the Southern North Sea cSAC the harbour porpoise population needs to be maintained rather than restored. Maintain implies that, based on existing understanding, the feature is regarded as being in favourable condition and will, subject to natural change, remain in this condition after the site is designated.

### Assessment of Adverse Effect - Alone

#### **Conservation Objective 1: The species is a viable component of the site**

5.3 The intent of this Conservation Objective is to minimise the risk posed by activities to species viability within the SNS cSAC. Activities that kill, injure or significantly disturb harbour porpoise have the potential to affect species viability within the site. In line with the consideration of LSE above, the Applicant has considered the potential for an adverse effect from the piling and UXO detonation requirements of the project alone in respect of harbour porpoise viability. Disturbance is considered later in this assessment (paragraphs 5.5- 5.16) so the focus of this section is on potential mortality and injury only.

5.4 It may be that harbour porpoise ranging from the cSAC could suffer mortality or injury from underwater noise generated from piling and UXO clearance. However, mitigation of mortality and permanent and temporary injury to harbour porpoise is secured through the Marine Mammal Mitigation Protocol (“MMMP”). The deemed Marine Licences (Condition 9(7)) requires the applicant to submit this to the Marine Management Organisation (“MMO”) before the commencement of piling and UXO clearance. This must be done in consultation with Natural England and JNCC and following current best practice as advised by the SNCBs. The MMMP will contain measures that minimise the potential for lethal and injurious effects to occur. Measures could include provision of Marine Mammal Observers, Passive Acoustic Monitoring and 30 minute soft-start procedures. On this

basis, the Secretary of State has concluded that suitable mitigation is in place to control the risk of mortality and injury, and, therefore there will not be an adverse effect on the integrity of the species viability from the project alone through these impact pathways.

**Conservation Objective 2: There is no significant disturbance of the species**

- 5.5 This Conservation Objective refers to disturbance of harbour porpoise to ensure that it is not significant in terms of extent and duration.
- 5.6 In line with the consideration of LSE above, the Applicant has considered the potential for an adverse effect from the piling and UXO detonation requirements of the change application alone in respect of harbour porpoise disturbance.

Piling

- 5.7 The methodology used by the Applicant is based on draft advice from the SNCBs. As detailed in paragraph 3.31, the JNCC and Natural England have drafted guidance that supports the use of a generic effective disturbance range (“EDR”) of 26km around piling events to calculate the daily and seasonal spatio-temporal effects on the cSAC. In order to avoid an adverse effect on the integrity of the cSAC, the SNCBs recommend that disturbance should be limited to 20% of the site over a 24-hour period and 10% over a season. The notion of seasonality in this case refers to summer and winter periods. Through the site selection process it has been identified that harbour porpoise occur at elevated densities in some parts of the site compared to others during summer and winter. The Conservation Objectives and Advice on Activities document takes account of this, stating that seasonality in porpoise distribution should be considered in the assessment of impacts and proposed management
- 5.8 It is important to note that this guidance is still in draft form and is not yet published. While the guidance is subject to ongoing discussion among the relevant bodies, the Secretary of State considers that it can be used as an indicative management tool to limit the spatial distribution of noise from offshore wind operations within the SNS cSAC.
- 5.9 In order to undertake its assessment with use of this guidance, the Applicant provided a provisional turbine layout for the project design envelope proposed within the change application. Based on this layout, 14 turbines lie within 26 km of the summer area of the cSAC and 14 lie within the winter range of the cSAC.
- 5.10 Table 3, below, summarises the percentage area of the summer and winter extents of the SNS cSAC that have the potential to be disturbed by piling, based on the 26 km EDR extending from each turbine within range. Whilst the approach to piling is most likely to be

sequential, worst case figures for concurrent piling (two simultaneous piles) have been provided as the applicant cannot completely rule this out.

**Table 3 Potential for disturbance within the SNS cSAC seasonal areas from piling at TKOWF**

Project Scenario	WTG Foundation	Maximum Disturbance area (km <sup>2</sup> )		Maximum % of SNS cSAC seasonal area	
		Winter (total area 12,687km <sup>2</sup> )	Summer (total area 27,000km <sup>2</sup> )	Winter	Summer
CfD Project Design	Single piling (from location representing the worst case for seasonal area)	9.15	37.39	0.07%	0.14%
	Concurrent piling of two WTGs (worst case locations; separation minimum 2.5km)	9.15	37.43	0.07%	0.14%

5.11 Table 3 shows that the maximum combined area of overlap for two simultaneous piles has the potential to affect up to 37.43km<sup>2</sup> of the summer area, which is equivalent to 0.14% of the summer cSAC extent on a single day. For the winter area of the SNS cSAC, the maximum combined area of overlap for two simultaneous piles has the potential to affect up to 9.15km<sup>2</sup> of the winter area, which is equivalent to 0.07% of the winter cSAC extent on a single day. The Applicant considers that this level of effect is negligible or *de minimis* in relation to the 20% of the cSAC daily disturbance threshold.

5.12 The temporal aspect of the thresholds (i.e. 10% across the season) equates to the piling anticipated to occur within both the summer season (1 April – 30 September) and the winter season (1 October – 31 March).

5.13 The Applicant’s piling window encompasses the period from 1 December 2019 to 31 November 2020. The total duration of piling activities within this period has been calculated to be 368 hours or 15.33 days.

5.14 To assess the temporal implications of this, the Applicant has combined all the individual overlap areas for the 14 piles and expressed these as a proportion of the seasonal area within the seasonal period (183 days for the summer and 182 days for the winter). Adopting this approach, the applicant has calculated that the maximum impact overlap equates to 0.0016% of the winter season and 0.0041% of the summer season. The Applicant considers that this level of effect is negligible or *de minimis* in relation to the 10% seasonal threshold.

UXO detonation

5.15 The Applicant has also assessed the potential for an adverse effect from UXO detonation during clearance prior to construction. However, it should be noted that UXO clearance is subject to a separate licence application to the MMO through the Marine and Coastal

Access Act 2009 and does not, therefore, come within the remit of the 2013 Order, or the changes requested within the change application. UXO detonation is scheduled to occur in summer 2019 so there will be no overlap with piling operations. In the absence of guidance from the SNCBs on UXO detonation, the Applicant applied the 26 km EDR to determine the likely effects of this activity. Using this approach, a single detonation at the closest point of the Order Limits would overlap 0.169% of the cSAC summer area. Whilst the detonation requirements can only be confirmed following seismic survey work, the Applicant anticipates that up to 25 UXO detonations could be required within the Order limits, and a maximum of 4 detonations a day could occur within 26 km of the cSAC. However, the combined effect of the cSAC does not exceed worst case for a single detonation. This falls well below the 20% daily threshold and the 10% threshold for the summer season so on this basis the applicant considers that the effect of the project alone is negligible or *de minimis*.

- 5.16 Based on the information above, the Secretary of State has concluded that the project's piling and UXO detonation operations will not significantly disturb harbour porpoise within the SNS cSAC, and, therefore these activities, alone, will not have an adverse effect on site integrity. The Secretary of State places weight on the above assessment of piling and UXO clearance activity, which demonstrates that the percentage area of the SNS cSAC impacted is below that considered by the SNCBs to be significant. The Secretary of State recognises that some parameters used in this assessment are provisional i.e. the specific requirements for UXO detonation is not yet known and the turbine layout is yet to be finalised. However, sufficient comfort can be taken from the project's location at the periphery of the 26 km EDR, and in view of the small percentage area of impact calculated from the latest and most realistic project parameters.

**Conservation Objective 3: The supporting habitats and processes relevant to harbour porpoises and their prey are maintained**

- 5.17 The Conservation Objective for this component of the cSAC is focused on maintaining the availability and density of suitable harbour porpoise prey within the cSAC. Harbour porpoise prey on a variety of fish including whiting, sandeel, herring and gobies. The habitat of the prey referred to is in relation to the characteristics of the seabed and water column.
- 5.18 The assessment of LSE established that underwater noise from piling and potential UXO clearance represents the only potential sources of significant effect from the project on the cSAC. There is no evidence of a pathway to link underwater noise to seabed and water column characteristics so the focus of this assessment is on harbour porpoise prey.

5.19 The project's Environmental Statement previously concluded that the effect of underwater noise would not be significant in respect of fish prey. Potential impacts identified on fish receptors were considered to be localised, short term and reversible. Given that the change application seeks a reduction in infrastructure, the Secretary of State is content to adopt the same conclusions. It is also noted that since consent for the project was granted further research has been published to provide best practice techniques for determining the impacts of noise on fish species (Popper *et al.* 2014). Based on these new metrics, the Applicant has assessed that potential impacts on prey are lower than that previously assessed in the ES.

5.20 On this basis the Secretary of State is content that the underwater noise generated from the project will not have an adverse effect on the supporting habitats and processes relevant to harbour porpoises and their prey.

#### **Conclusion – Project Alone**

5.21 **The Secretary of State concludes that the anthropogenic underwater sound from the construction of the project alone will not result in an adverse effect on the integrity of the cSAC.**

#### **Assessment of Adverse Effects – In-combination**

5.22 In line with the determination of the above assessment of likely significant effects on the cSAC, the in-combination assessment presented here is solely concerned with sources of underwater noise that have the potential to contribute to an in-combination effect on harbour porpoise.

5.23 The plans and projects scoped into the in-combination assessment are therefore limited to those that are known to meet any of the following criteria and are anticipated to occur within the period summer season 2019, winter season 2019/2020, summer season 2020 and winter season 2020/2021 inclusive (to cover the construction period of the change application):

- Percussive piling activity within 26km of the cSAC
- UXO clearance activity with 26km of the cSAC
- Oil and gas activities of seismic surveys up to 10km of the cSAC

5.24 As the project is at an advanced stage, a clearer picture of the in-combination landscape is available compared to that which was available at the time of the determination of the 2013 Order.

- 5.25 Table 4 shows the complete list of projects considered by the Applicant within the Report to Inform the Appropriate Assessment<sup>3</sup>. Of these, only Hornsea Project 1, Hornsea Project 2 and Borselle have been taken forward for assessment. All other projects have been screened out of this in-combination assessment on the following basis:
- 5.26 East Anglia ONE's construction timetable overlaps the change application's plans to undertake geophysical surveys in 2018, but because underwater noise from the project's surveys would not impact the cSAC (due to the distance and the nature of the surveys), underwater noise impacts will not be additive.
- 5.27 Two other potentially overlapping activities listed in Table 4 are UXO clearances (Galloper and other clearance activity across the OSPAR region) and oil and gas surveys. However, no specific UXO detonations within 26km of the cSAC have been identified, and no oil and gas activities within 10 km of the cSAC are currently planned. Should either activity be required in UK waters for other campaigns, they would be subject to a separate licencing regime, which must also comply with the Habitats Regulations.
- 5.28 All other windfarms listed in Table 4 are either consented projects without a Contract for Difference (CfD) or Final Investments Decisions (FID) in place; consented projects with unknown or non-overlapping construction timetables; or projects in the pre-application stages.
- 5.29 A CfD is the method through which certainty is provided regarding the price paid for electricity generated by a project. A project is unlikely to progress through to final scheme design and into the construction phase without a CfD in place as the sector is not commercially viable in the UK on a "subsidy-free" basis. The next CfD allocation round is expected in Spring 2019 and biennially thereafter<sup>6</sup>. As the average time from securing a CfD to construction commencing is around 2 years with at least 18 months elapsing between FID and construction of the first piles, it is reasonable to conclude with some degree of certainty that construction of the consented projects without CfD (i.e. the Dogger Bank projects and East Anglia THREE) will not overlap with the change application's construction window.
- 5.30 Pre-application projects will be subject to the requirements of the Habitats Regulations at the time each application is determined, including an HRA to be undertaken by the competent authority. Potential impacts arising from future projects, both alone and in combination, will be assessed at the time and are therefore not included within this HRA.

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<sup>6</sup> <https://www.gov.uk/government/news/energy-minister-claire-perry-hails-success-story-of-offshore-wind-in-newcastle-today>

**Table 4 Plans or projects considered in the in-combination assessment**

<b>Plan or Project</b>	<b>Activity Timescale</b>
Triton Knoll	Seismic Surveys: Summer 2018 – Summer 2019 UXO Clearance: Summer 2019 Foundation Piling: Winter 2019 – Winter 2020
East Anglia ONE	UXO Surveys – Summer 2018 Foundation Piling: Summer 2018 – Winter 2018
Hornsea Project One	Foundation Piling: Summer 2018 – Summer 2019
Hornsea Project Two	Unknown, although construction of the wind farm must commence no later than September 2021.
Galloper	UXO Clearance: Summer 2018 – Winter 2019
Borssele	Foundation Piling: 2020
Oil and Gas Seismic Surveys	No Known surveys
Dogger Bank Creyke Beck A & B	Unknown, although construction of the wind farm must commence no later than March 2020.
Dogger Bank Teesside A	Unknown, although construction of the windfarm must commence no later than August 2022.
Sofia Offshore Windfarm	Unknown, although construction of the windfarm must commence no later than August 2022.
East Anglia THREE	Unknown, although construction of the windfarm must commence no later than August 2022.
Mermaid	Unknown
Thanet Extension	Pre-application.
Hornsea Project THREE	Pre-application.
East Anglia ONE: North	Pre-application.
East Anglia TWO	Pre-application.
East Anglia Norfolk Boreas	Pre-application.
East Anglia Norfolk Vanguard East	Pre-application.
East Anglia Norfolk Vanguard West	Pre-application.



Plan or Project	Activity Timescale
UXO Clearance activity across the OSPAR region	Unknown
Thanet OWF Cable Replacement	Pre-application.

- 5.31 In addition to the projects listed in Table 4, the Secretary of State considers that fishing should also be considered within his assessment. Whilst piling or UXO clearance activity are not associated with fishing operations, bycatch of harbour porpoise in fishing gear is reported to be one of the most significant anthropogenic pressures impacting on the harbour porpoise population (IAMMWG, 2015).
- 5.32 The majority of fish landings are obtained from areas adjacent to the cSAC but there are relatively low levels of fishing activity within the cSAC<sup>7</sup>. While commercial fishing is considered capable of forming a plan or project under the Habitats Directive, there are no known plans or projects that will increase the current level of fishing activity within the cSAC.
- 5.33 Commercial fishing has a long historical presence within the cSAC and any impacts on the harbour porpoise population as a result of commercial fisheries are considered to be a component of any environmental baseline. Furthermore, it is not possible to determine what the baseline conditions would be without the impacts that fishing activities have on the harbour porpoise population.
- 5.34 For the purposes of this assessment, on-going impacts from current activities that have a long historical presence within the cSAC have been captured as part of the environmental baseline against which the assessment has been carried out and are not considered to be significantly affecting the harbour porpoise population, which is in favourable condition. For this reason, effects from current fishing can be ruled out of this in-combination assessment.

**Conservation Objective 1: The species is a viable component of the site**

- 5.35 For the assessment of this project alone the Secretary of State has concluded that suitable mitigation is in place to control the risk of mortality and injury, and, therefore there will not be an adverse effect on the integrity of the species viability from the project alone through these impact pathways. On this basis it can be concluded that there is no pathway for an in-combination effect to occur.

<sup>7</sup> MMO 2014, UK Sea Fisheries Statistics 2014.  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/598190/UK\\_Sea\\_Fisheries\\_Statistics\\_2014\\_full\\_report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/598190/UK_Sea_Fisheries_Statistics_2014_full_report.pdf)

## **Conservation Objective 2: There is no significant disturbance of the species**

- 5.36 For the in-combination assessment of disturbance the Applicant's Report to Inform the Appropriate Assessment<sup>3</sup> followed the spatial/temporal approach as recommended by JNCC and Natural England, and as described above for the project alone.
- 5.37 The Applicant undertook this assessment for each season in which UXO detonation and piling is expected to occur (i.e. Summer 2019 – Winter 2020).
- 5.38 In the summer 2019 season an in-combination effect is expected from UXO clearance activity from the project, and foundation piling from Hornsea Project One and Hornsea Project Two. For the spatial assessment the Applicant's worst case scenario predicted that there would be four UXO detonations in a day and concurrent foundation piling would occur in both of the Hornsea projects. For the temporal assessment, the Applicant assumed that UXO clearance from the change application will occur on 25 days of the season and piling at the Hornsea projects occurs every day of the season. The average spatial overlap has been used for each Hornsea Project One foundation, but the maximum spatial overlap was used for each Hornsea Project Two foundation to account for the unknown location of foundations. Under the worst case scenario, the maximum spatial impact is calculated to be 17.169% of the summer area and the maximum temporal impact is calculated to be 9.998% of the 2019 summer season.
- 5.39 According to the Applicant, the in-combination effect in the winter 2019/2020 season is limited to the underwater noise generated from the project's foundation piling alone. This has already been assessed as part of the Appropriate Assessment undertaken above for the project alone. It is, however, possible that Borselle, a wind farm located in Dutch waters could be piling within this season too. However, the EDR extending from this project would have a maximum spatial overlap of 0.75% of the winter area so any in-combination effect between the projects would fall well below the 10% and 20% thresholds.
- 5.40 In the summer 2020 season an in-combination effect is expected from foundation piling from Hornsea Project Two and the project. For the spatial assessment, the Applicant's worst case scenario predicted the occurrence of concurrent foundation piling at both project sites. For the temporal assessment, the Applicant assumed that foundation piling would occur every day of the season and each pile would result in the maximum spatial impact. Under the worst case scenario, the maximum spatial impact is calculated to be 10.81% of the summer area and the maximum temporal impact is calculated to be 7.48% of the 2020 summer season.

- 5.41 The in-combination effect in the winter 2020/2021 mirrors that of the 2019/2020 winter season. As such the spatial and temporal assessments are expected to be the same.
- 5.42 Based on the above assessments undertaken for each season, the Secretary of State has concluded that the project's piling and UXO detonation operations will not significantly disturb harbour porpoise within the SNS cSAC, and, therefore these activities, when considered in-combination with other plans and projects, will not have an adverse effect on site integrity. The Secretary of State places weight on the above assessment of piling and UXO clearance activity, which demonstrates that the percentage area of the SNS cSAC impacted is below that considered by the SNCBs to be significant. The Secretary of State recognises that the construction timetables used within this in-combination assessment are based on CfD assumptions. However, in view of the discussion presented above on project funding, and the advanced stage of the Triton Knoll Offshore Windfarm programme, these parameters are considered, with a high degree of certainty, to be realistic. Sufficient comfort can also be taken from the project's location at the periphery of the 26 km EDR, and in view of the small contribution it makes to the in-combination total.

**Conservation Objective 3: The supporting habitats and processes relevant to harbour porpoises and their prey are maintained**

- 5.43 It was concluded that for the project alone that there is no pathway linking underwater noise to the habitat characteristics of the seabed and water column, with potential impacts identified on fish receptors being localised, short term and reversible. On basis that the impact from the project alone would be undetectable, the Secretary of State is content that the underwater noise generated from the project in-combination with other plans and projects will not have an adverse effect on the supporting habitats and processes relevant to harbour porpoises and their prey.

**Conclusion – In-combination**

- 5.44 **The Secretary of State concludes that the anthropogenic underwater sound from the construction of the project in-combination with other plans and projects will not result in adverse effect on the integrity of the cSAC.**

## **Consultation Responses on the Southern North Sea cSAC**

- 5.45 The Secretary of State consulted on the information submitted by the developer as part of the change application. Two consultation periods ran between 20<sup>th</sup> February 2018 and

20<sup>th</sup> March 2018, and 29<sup>th</sup> June 2018 and 12<sup>th</sup> July 2018. Comments relevant to this HRA were received from Natural England, the Wildlife Trusts and Whale and Dolphin Conservation, and all were made in respect of the Southern North Sea cSAC. These comments are summarised below.

### **Natural England and the Joint Nature Conservation Committee**

5.46 The JNCC responded to the second consultation to say that it would be advising Natural England ‘behind the scenes’ and would not submit a separate response. Natural England provided technical comments<sup>8</sup> on the Applicant’s Report to Inform Appropriate Assessment<sup>3</sup> on 19<sup>th</sup> April 2018. The Applicant responded to all comments in a letter to Natural England dated 25<sup>th</sup> May 2018<sup>9</sup>. The letter provided evidence that all matters had been agreed between the two parties in light of the Applicant’s responses. Natural England provided no further comment during the second consultation period. The Secretary of State is content that no further matters need to be resolved.

### **The Wildlife Trusts**

5.47 The Wildlife Trusts commented<sup>10</sup> that it does not support the assessment approach to harbour porpoise disturbance referred to in this HRA as “draft advice from SNCBs”. As noted in paragraph 3.31, this advice is still in draft form and is not yet published. While the draft advice is subject to ongoing discussion among the relevant bodies, the Secretary of State considers that it can be used as an indicative management tool to limit the spatial distribution of noise from offshore wind operations within the SNS cSAC. In coming to his conclusion for this HRA the Secretary of State has taken account of several factors, including the project’s location (22.93 km from the SNS cSAC) and the results calculated using the draft advice from the SNCBs.

### **Whale and Dolphin Conservation**

5.48 In a letter dated 12<sup>th</sup> July 2018<sup>11</sup>, Whale and Dolphin Conservation commented on a reduced impact to cetacean species due to the reduced project parameters proposed within the change application. However, in line with the Wildlife Trusts submission, Whale

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<sup>8</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010005/EN010005-000894-WORK\\_31325133\\_1\\_Natural%20England%20-%20further%20comments%20on%20RIAA%20for%20NMC%20-19%20April%202018.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010005/EN010005-000894-WORK_31325133_1_Natural%20England%20-%20further%20comments%20on%20RIAA%20for%20NMC%20-19%20April%202018.pdf)

<sup>9</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010005/EN010005-000896-WORK\\_31555286\\_1\\_TK%20Response%20to%20NE%20SNS%20cSAC%20RIAA\\_250518.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010005/EN010005-000896-WORK_31555286_1_TK%20Response%20to%20NE%20SNS%20cSAC%20RIAA_250518.pdf)

<sup>10</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010005/EN010005-000887-The%20Wildlife%20Trusts.pdf>

<sup>11</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010005/EN010005-000897-WDC\\_TK\\_NONMaterialChange\\_Response\\_July2018.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010005/EN010005-000897-WDC_TK_NONMaterialChange_Response_July2018.pdf)

and Dolphin Conservation also indicated its lack of support for the draft advice from the SNCBs on harbour porpoise disturbance.

5.49 Whale and Dolphin Conservation also referenced the Secretary of State's forthcoming review of offshore wind farm consents and highlighted the requirement to consider all projects cumulatively within the review. Whale and Dolphin Conservation also provided a paper with several of recommendations for the review.

5.50 The Secretary of State's review has not yet been published and it would be inappropriate to comment on its conclusions at this time. However, it is noted that the recommendation paper provided by Whale and Dolphin Conservation has already been submitted as part of the review's call for information, which took place in October 2017. As such the Secretary of State will consider these recommendations as part of the review of consents process.

5.51 At this time the Secretary of State can confirm that, on the basis of his HRA conclusions, the Triton's Knoll's project consent does not require further review against the SNC cSAC conservation objectives. However, the effects of project on the SNS cSAC will be considered cumulatively as part of the as part of the review's in-combination assessment.

## Conclusions

- 6.1 The Secretary of State has carefully considered all of the information presented within the non-material change application and the representations made by all stakeholders. He considers that the project has the potential to have an LSE the Southern North Sea candidate Special Area for Conservation when considered alone and in-combination with other plans or projects.
- 6.2 The Secretary of State has undertaken an Appropriate Assessment in respect of the site's Conservation Objectives to determine whether the Project, either alone or in-combination with other plans or projects, will result in an adverse effect on integrity.
- 6.3 The Secretary of State has undertaken a robust assessment using all of the information available to him, not least the advice from the SNCBs and the views of Interested Parties including the Applicant. Having considered all of the information available to him and the mitigation measures secured through the DCO and dMLs, the Secretary of State has concluded that the Project will not have an adverse effect on integrity on any European Site, either alone or in-combination with other plans or projects.
- 6.4 The mitigation for the project referred to in this HRA will be secured and delivered through Condition 9(7) of the deemed Marine Licences.

**Author: David Still, Environmental Manager**

**Energy Infrastructure Planning Team**

**Department for Business, Energy and Industrial Strategy**

**Date: 3 August 2018**

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