



Department for
Business, Energy
& Industrial Strategy

Dogger Bank Teesside A and B Wind Farm Order 2015 (as amended) – Non Material Change Application

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



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1.0 Introduction and Background

1.0.1 This is a record of the updated Habitats Regulations Assessment (“HRA”) that the Secretary of State (“the Secretary of State”) for Business, Energy and Industrial Strategy (“BEIS”) 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 application for Non-Material Changes (“the change application”) to be made to the Development Consent Order (“DCO”) for the Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 (as amended) (“the Order”). For the purposes of the above Regulations, the Secretary of State is the competent authority.

1.0.2 Dogger Bank Offshore Wind Farm Project 3 Projco Limited (“the Applicant”) is seeking a Non-Material Change to the Order in respect of the Teesside A parts for:

- **An increase in the permitted rotor diameter for individual wind turbine generators from 215m to 280m.** Whilst the Applicant is seeking to increase the maximum rotor diameter permitted by the DCO, it is not seeking to increase the maximum number of wind turbines or the total rotor-swept area of 4.35 square kilometres. Therefore, the total number of wind turbines which can be installed will continue to be constrained by these DCO parameters. However, whilst the Non-Material Change application would permit fewer, larger turbines, Teesside A would retain the ability to deliver up to 200 turbines with a 167m rotor diameter as assessed and currently consented under the Order.
- **The removal of the stated gross electrical output capacity of up to 1.2 gigawatts for Teesside A.** No changes are being sought to the other parameters of Teesside A to necessitate this amendment (for example to pile diameter and hammer energy). It is envisaged that the change in the electrical output capacity will be achieved through the utilisation of more efficient wind turbines.

1.0.3 To assess the effect of these changes, the Applicant provided an Environmental Report¹ within the change application. In undertaking this updated HRA, the Secretary of State has cross referenced this Environmental Report with the original HRA published for the DCO (“the DCO HRA”) and the original Environmental Statement (ES). Having considered these reports together the Secretary of State is content that the Applicant has demonstrated that the effects of the changes will not be greater than those originally assessed i.e. the conclusions of the 2015 HRA and ES will be unaffected by the change application.

1.0.4 However, since publication of the DCO HRA, the UK Government has increased the number of protected areas within the marine environment that have not been previously considered. This includes the classification of the Flamborough and Filey Coast Special Protection Area (“FFC SPA”), the extension of the Teesmouth and Cleveland Coast SPA (“TCC SPA”) and the designation of the Southern North Sea Special Area of Conservation (“SNS SAC”). As such, this updated HRA contains the Secretary of State’s conclusions on the effects of the DCO – together with the changes requested within the change application – on protected habitats and species within these sites.

¹ https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010051/EN010051-002385-DB%20Teesside%20A_Environmental%20Report.pdf

1.0.5 For the remainder of this document, the DCO, together with the proposed changes requested within this application, will be referred to as “**the Project**”.

2.0 Updated Habitats Regulation Assessment (HRA)

2.0.1 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 conservation of certain species and habitats by protecting them from possible adverse effects of plans and projects.

2.0.2 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.

2.0.3 In the UK, the Habitats Regulations transpose the relevant obligations in the Habitats and Birds Directives into national law as far as the 12 nautical mile limit of territorial waters. Beyond territorial waters, the Offshore Habitats Regulations serve the same function for the UK’s offshore marine area, and include some matters contained in other pieces of domestic legislation that only apply out to the seaward limit of territorial waters. The project that is the subject of the change application covers areas within and outside the 12 nautical mile limit, so both sets of Regulations apply.

2.0.4 Regulation 63 of 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.

2.0.5 And that: *In the light of the conclusions of the assessment, and subject to regulation 64 [IROPI], the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).*

2.0.6 Regulation 28 of 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.*

2.0.7 And that:

In the light of the conclusions of the assessment, and subject to regulation 29 [IROPI], the competent authority may agree to the plan or project only if it has ascertained that it will not adversely affect the integrity of the European offshore marine site or European site (as the case may be).

2.0.8 The Project 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 a 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.

2.1 Teesmouth and Cleveland Coast SPA

2.1.1 In January 2020, the Secretary of State in the Department for Environment, Food and Rural Affairs (“Defra”) re-classified the Teesmouth & Cleveland Coast Special Protection Area in January 2020. This extended the TCC SPA boundary into the subtidal environment and into previously undesignated intertidal areas, in order to protect important foraging habitats for little tern and common tern.

2.1.2 The relevant Statutory Nature Conservation Body, Natural England (“NE”), published conservation objectives² for the TCC SPA. These are set out in Table 1 below.

Table 1: Conservation Objectives for TCC SPA.

Conservation Objectives	<p>Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;</p> <ul style="list-style-type: none"> • The extent and distribution of the habitats of the qualifying features • The structure and function of the habitats of the qualifying features • The supporting processes on which the habitats of the qualifying features rely • The population of each of the qualifying features, and, • The distribution of the qualifying features within the site.
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2.1.3 The extended TCC SPA was not a material consideration at the time of the Applicant’s original ES. The Dogger Bank Teesside A export cable route and intertidal landfall site now fall within the TCC SPA.

2.1.4 Whilst the boundary of the TCC SPA has changed, the proposed construction, operation and decommissioning works associated with the Project remain the same as assessed at the time of consent (NB. For the reason set out in section 1, the export cable route and landfall site are not affected by the change application).

2.1.5 Other than common tern, there is no evidence that the landfall location is used by any qualifying species of the TCC SPA, including non-breeding waterbirds and there is no evidence of this area supporting important habitats or concentrations of prey species identified within the Departmental Brief².

2.1.6 Due to a combination of the relatively low numbers of common tern expected to be present (the relative predicted usage of this area was the lowest of that which was designated as SPA habitat²), the relative insensitivity of this species to the activities that will occur during

² <http://publications.naturalengland.org.uk/file/5534523496595456>

construction (which are short term and temporary^{3 4}), and the evidence that common tern do not utilise intertidal habitats where the cable landfall is located for foraging², the Applicant considers that likely significant effects on this species due to Project activities can be ruled out.

2.1.7 In response to the consultation on this Non-Material Change application, NE came to the same conclusion, by stating that it did not anticipate any likely significant effects on the SPA on the basis of the information before it.

2.1.8 In view of the above information, the Secretary of State has concluded that the Project alone is not likely to have a significant effect on the TCC SPA. Furthermore, due to the lack of any effect from the Project alone, a significant in-combination effect is considered by the Secretary of State to be unlikely.

2.2 Flamborough and Filey Coast SPA

2.2.1 In August 2018, the Secretary of State for Defra formally designated the Flamborough and Filey Coast as an SPA. This SPA represents an extension to the existing Flamborough Head and Bempton Cliffs SPA and new species were 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. NE published conservation objectives⁵ for the FFC SPA in November 2018. These are set out in Table 2 below.

Table 2: Conservation Objectives for FFC SPA.

Conservation Objectives	<p>Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;</p> <ul style="list-style-type: none"> • The extent and distribution of the habitats of the qualifying features • The structure and function of the habitats of the qualifying features • The supporting processes on which the habitats of the qualifying features rely • The population of each of the qualifying features, and, • The distribution of the qualifying features within the site.
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2.2.2 The FFC SPA had not been classified at the time the Order was granted. However, the DCO HRA considered the site’s draft conservation objectives and concluded that the Project will not have an adverse effect on its integrity. As the final conservation objectives are the same as those used in the 2015 HRA, and the changes proposed would not compromise the 2015 HRA’s conclusions, the Secretary of State is satisfied that the Project alone will not have an adverse effect on the integrity of the FFC SPA.

2.2.3 However, since the 2015 HRA, further windfarm developments have been consented which must be taken into account for an in-combination assessment. The East Anglia Three HRA⁶ was published on 7th August 2017 and it incorporated the revised site designation and population numbers together with an up to date list of projects for the in-combination

³https://www.researchgate.net/publication/235775466_Assessing_vulnerability_of_seabird_populations_to_offshore_wind_farms

⁴ <https://besjournals.onlinelibrary.wiley.com/doi/full/10.1111/j.0021-8901.2004.00918.x>

⁵ <http://publications.naturalengland.org.uk/publication/5400434877399040>

⁶ <https://infrastructure.planninginspectorate.gov.uk/projects/eastern/east-anglia-three-offshore-wind-farm/?ipcsection=docs>

assessment, including the Dogger Bank Teesside A and B DCO. Within the East Anglia THREE HRA the following wind farm projects were considered in-combination:

- Beatrice Demonstrator;
- Greater Gabbard;
- Gunfleet Sands;
- Kentish Flats;
- Lincs;
- London Array;
- Lynn and Inner Dowsing;
- Scroby Sands;
- Sheringham Shoal;
- Teesside;
- Thanet;
- Humber Gateway;
- Westermost Rough;
- Beatrice;
- Blyth (NaREC Demonstration);
- Dudgeon;
- East Anglia ONE;
- EOWDC (Aberdeen OWF);
- Firth of Forth Alpha and Bravo;
- Dogger Bank Creyke Beck A & B;
- Galloper;
- Hornsea Project 1;
- Inch Cape;
- Moray Firth;
- Neart na Goithe;
- Race Bank;
- Rampion;
- Dogger Bank Teesside A & B;
- Triton Knoll;
- Hornsea Project 2; and
- East Anglia THREE.

2.2.4 The East Anglia THREE HRA concluded that, in-combination with other plans and projects, the East Anglia THREE project would not have an adverse effect on site integrity. As the changes proposed within this change application will not cause an effect above that which was previously assessed, the Secretary of State considers that the changes proposed in the Project are not likely to compromise the conclusions of this in-combination assessment. **The Secretary of State is therefore satisfied that the DCO HRA's conclusion is still correct i.e. the Project, alone and in-combination, will not have an adverse effect on the FFC SPA.**

2.3 Southern North Sea SAC

2.3.1 The Southern North Sea (SNS) SAC is located to the east of England. This site stretches from the central North Sea (north of Dogger Bank) to the Straits of Dover in the south, covering an area of 36 951km². The site’s sole qualifying feature is harbour porpoise.

2.3.2 For the reasons set out in section 1 above, the effect of the changes proposed will not be greater than that which was previously assessed. However, the Secretary of State is aware that this site was not a material consideration at the time of the Applicant’s original ES, and so the effect of the Project alone and in-combination must be reviewed against this new site’s conservation objectives. The conservation objectives for the site are displayed in Table 3 below.

Table 3: Conservation Objectives for the SNS SAC.

Conservation Objectives	<p>To ensure that the integrity of the site is maintained and that it makes an appropriate contribution to maintaining Favourable Conservation Status (FCS) for harbour porpoise in UK waters. In the context of natural change, this will be achieved by ensuring that:</p> <ul style="list-style-type: none"> • Harbour porpoise is a viable component of the site; • There is no significant disturbance of the species; and • The condition of supporting habitats and processes, and the availability of prey is maintained.
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2.3.3 The Secretary of State is currently undertaking a “Review of Consents” that were granted before the designation became effective to ensure that there will be no adverse effect on the integrity of the SNS SAC from existing energy infrastructure consents. The Review of Consents is a separate process to this Application and covers multiple Southern North Sea consents considered both alone and in combination with other plans and projects (including Dogger Bank Teesside A). The Secretary of State considers that the SNS SAC Review of Consents is the appropriate mechanism for ensuring there is no adverse effect from the Project alone and in-combination with other plans and projects.

2.3.4 The Secretary of State considers that in order to ensure there can be no adverse effect on the integrity of the SNS SAC before the conclusion of the Review of Consents, the following additional requirement should be included in any Amendment Order that might be granted:

“(a) No Project A offshore works, or activities associated with them, that may have a significant effect on the Southern North Sea Special Area of Conservation may commence until the review of consents has been completed and the Secretary of State has affirmed, modified or revoked the decision in respect of the Project A offshore works or activities associated with them under regulation 33(4) of the Conservation of Offshore Marine Habitats and Species Regulations 2017 (S.I. 2017/1013).

(b) In this Requirement, “review of consents” means the review of those consents granted prior to the designation of the Southern North Sea as a Special Area of Conservation.”

With the inclusion of this requirement in any Amendment Order for the Project, the Secretary of State is satisfied that the Project, alone and in-combination with other plans and projects, will not have an adverse effect of the integrity of the SNS SAC.