



ENGLAND

The Wildlife Trusts

The Kiln

Waterside

Mather Road

Newark

Nottinghamshire

NG24 1WT

Tel (01636) 677711

Fax (01636) 670001

Email

info@wildlifetrusts.org

Website

www.wildlifetrusts.org

Prof. J Glasson
The Planning Inspectorate
3/18 Eagle Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

BY EMAIL

14th July 2015

Dear Prof Glasson,

**Re: EN010053 Application by Smart Wind Ltd for an Order Granting
Development Consent for Hornsea Offshore Wind Farm (Zone 4) - Project Two**

The Wildlife Trusts: Reference 10031157

Written Representation

1 Introduction

- 1.1 The Wildlife Trusts (TWT) welcome this opportunity to comment further on this application. This follows the submission of a relevant representation and alongside the progression of a Statement of Common Ground with the applicant. This written representation builds on the issues raised in these documents.
- 1.2 The Wildlife Trusts, with more than 800,000 members are the largest UK voluntary organisation dedicated to conserving the full range of the UK's habitats and species, whether they be in the countryside, in cities or at sea. TWT manages 2,300 reserves covering more than 90,000 hectares of land including coastal reserves; TWT stand up for wildlife, inspire people about the natural world and foster sustainable living.
- 1.3 TWT support the UK's current targets to reduce greenhouse gas emissions and the government's ambitions to tackle climate change and increase the proportion of overall energy generated from alternative sources. However, we do not believe that this should be at the expense of the environment and firmly believe that it needs to be 'right technology, right place'.

Patron

HRH The Prince of Wales

KG KT GCB OM

President

Simon King OBE

Royal Society of Wildlife Trusts

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2 Marine Mammal Impact Assessment

- 2.1 Data limitations mean the Applicant has rightly taken a precautionary approach to impact assessment. There is uncertainty as to the baseline harbour porpoise population itself, including the population size, distribution and structure. Whilst the management unit for the reference population has been agreed as the North Sea, it should be noted that this is still based on limited evidence. Genetic evidence also points towards further sub-divisions of the population, although there is currently not enough certainty to make more accurate divisions.
- 2.2 TWT accept that, in relation to the impact of injury/death, mitigation is already provided for by the inclusion of a MMMP in the DCO. Whilst there is still uncertainty as to the success of this mitigation, we accept that the number of animals impacted to this degree of severity will be minimised. However, in relation to disturbance of harbour porpoise we do not agree that the mitigation so far proposed is adequate.
- 2.3 Site specific surveys carried out by the Applicant have shown the area to be incredibly important for harbour porpoise, with the area clearly being a hotspot within the North Sea. The range of densities across the whole North Sea is quoted as being 0.125 – 0.598 animals/km². The Subzone 2 density, as calculated by the applicant is 1.628/1.995 animals/km² (depending on whether based on visual or acoustic surveys respectively) and the whole Hornsea zone density is 1.726/2.263 animals/km². Even the most conservative of these figures shows a density over two times the highest end of the North Sea range.
- 2.4 It can be assumed that the high density of animals reflects the area being of prime foraging opportunity for the species; therefore any displacement could represent a more significant consequence for those animals than if they were displaced from a less important area. The high energetic demands of the harbour porpoise mean that they need to feed regularly and are not able to survive prolonged periods of reduced food intake. Foraging hotspots, such as the Hornsea zone, therefore take on a high degree of significance for the species. Currently, little is understood about what the consequences would be of displacement from such a prime foraging area. Alternatively, animals may trade-off the noise disturbance in order to continue to exploit the food resource; the consequences of the noise impacts in this case are also not understood. There is therefore high uncertainty as to the consequences of disturbance to the affected individuals and what this means for the population.
- 2.5 Whilst the DEPONS project, which the Applicant references, aims to address the high uncertainty of population consequences of disturbance, it is currently not advanced enough to draw meaningful conclusions. The authors of the DEPONS initial report accept that, at present, there is uncertainty as to the values for many of the input parameters. It should also be noted that currently the values calculated for two of the parameters in the model are based on data collected during the real installation of an offshore wind farm. During its construction, mitigation measures of porpoise pingers and bubble

curtains were used, which may have influenced the measurements recorded. Currently, neither of these mitigation measures are proposed for this application.

- 2.6 The Interim PCoD model framework was also developed to address the issue of consequences of disturbance. This is also currently not available to be used due to the uncertainty regarding input parameters.
- 2.7 Given the above, TWT do not find it acceptable that no further mitigation is proposed to reduce the 'moderate adverse' *disturbance* impact. This impact is concluded despite the designed in mitigation. We do not believe that the current securities of mitigation (marine mammal observers/passive acoustic monitoring/soft start) are adequate enough to reduce this impact. Whilst we agree that the details of the MMMP should be determined shortly before construction, to allow for better techniques and options to be developed, there is currently no guarantee that suitable mitigation will be available at the time of construction. Furthermore, whilst we welcome the amendment to the DML Condition 10(2)(e) to include *consideration* of noise reducing technologies, this also does not guarantee that they will either be available or be used. Without further guaranteed mitigation, we object to the inclusion of impact pile driving as a permitted foundation installation option. We believe the duty on decision makers set out in the National Policy Statement for Renewable Energy Infrastructure (EN-3) requires the reduction of significant disturbance to marine mammals through noise mitigation requirements.
- 2.8 Regarding the MMMP, we are also concerned that the detail of this is determined post consent and therefore not subject to transparent stakeholder engagement. During the Examination of the Dogger Bank Teesside A&B wind farm application, the applicant for that project agreed that TWT would be consulted during the preparation of that MMMP. Natural England and the MMO also agreed to this. Whilst we accept that we are not statutory consultees in this process and that statutory advice still lies with the SNCBs, being involved in the process gives us a degree of comfort. We would welcome the same involvement in the MMMP process for this application.
- 2.9 The inclusion of impact pile driving also has relevance for the European Protected Species (EPS) licensing process, which we believe will be necessary. One of the three criteria for the granting of the EPS licence is 'that there is no satisfactory alternative'. We would argue that there are other alternative foundation types already available, with the possibility of other options becoming available by the time of granting the EPS licence. We would argue that, even if pile driving without adequate mitigation for disturbance impacts was still a DCO option, there would not be strong enough justification for its use to fulfil this criteria and so the EPS licence could not be granted.

3 Cumulative Impact Assessment

- 3.1 TWT do not agree with the list of projects screened into the Cumulative Impact Assessment (CIA) for harbour porpoise, specifically (but not limited to) the exclusion of Scottish offshore wind farms due to being outside the 'regional study area'. The CIA is trying to assess the effects on the North Sea population of harbour porpoise, therefore

other projects which have the potential to impact that population need to be considered. The projects in Scottish waters fall into this category, hence why TWT believe they should be included.

- 3.2 Even with the CIA as it stands, a moderate adverse disturbance impact is predicted. Again, as with the project alone assessment, no further mitigation is offered. We believe that the applicant has a responsibility to address this cumulative impact, especially given the high proportion that their project will contribute. The reduction of this cumulative impact is another driver for the removal of pile driving as an installation option.

4 Habitats Regulations Assessment (HRA)

- 4.1 Regarding the HRA of the grey seal feature of the Humber Estuary SAC we welcome the Examining Authority's written question to the applicant and Natural England.
- 4.2 It is anticipated that there will be a Defra consultation on harbour porpoise Special Areas of Conservation (SAC) during the course of the Examination. It is further anticipated that, although the boundaries of these SACs are not yet publically known, that one of the sites will partially overlap with this project. There would therefore be direct impacts to the new SAC, as well as on animals derived from that protected SAC population.
- 4.3 We believe that the new harbour porpoise SAC needs to be adequately considered during the Examination of this application, through an addition to the HRA. We accept that this will only be possible once the details of the SAC are available. We believe it will also be necessary for the Secretary of State to include the new site in their AA.
- 4.4 As to the potential implications of the new site, we consider that it will mean that impact pile driving with no further mitigation would be incompatible with the designation and, as such, would be unacceptable as an option for foundation installation. We believe that, if impact pile driving was to be used, the significant disturbance to harbour porpoise would result in an adverse effect on site integrity. In reaching this conclusion, we draw on case law from the *Waddenzee* judgement¹, which states that 'where doubt remains as to the absence of adverse effects on the integrity of the site linked to the plan or project being considered, the competent authority will have to refuse authorisation'. In this case there is clearly doubt as to whether an adverse effect on integrity would occur, due to the uncertainties described above. Furthermore, EC Guidance² makes clear that 'the expression 'integrity of the site' shows that focus is here on the specific site. Thus, it [a plan or project] is not allowed to destroy a site or part of it on the basis that the conservation status of the habitat types and species it hosts will anyway remain favourable within the European territory of the Member State'. In this case, we believe this is a crucial distinction from the EPS licence criteria, which is concerned with maintaining the favourable conservation status of the population.

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62002CJ0127&from=EN>

² EC, 2000: Managing Natura 2000 Sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC

4.5 If adverse effect on site integrity were to be concluded, the *alternatives* decision would again come into effect and we believe that less noisy installation methods would have to be employed. Furthermore, even if it were justified that impact pile driving was required, we do not think that the final requirement for *compensatory measures* would be viable.

5 Ornithological Matters

5.1 We do not intend to comment directly on ornithology, although acknowledge that there are unresolved issues, in particular regarding displacement and collision risk of birds from the Flamborough Head and Bempton Cliffs SPA. We believe that these issues are also of significance and we defer to the greater expertise of the RSPB, whose position on ornithological matters we support.

5.2 After discussion with the RSPB, we concur with their approach to PVA or counterfactual modeling of impacts, as opposed to the PBR method preferred by the applicant. We understand that this may conclude significantly different outcomes to the modeling undertaken by the applicant. Not only should these outcomes be adequately considered, we believe it also raises doubt as to whether *no adverse effect on site integrity* can be concluded. The conclusions of the *Waddenzee* judgement regarding doubt are equally as applicable for this matter.

5.3 We support the RSPB's position that, in relation to ornithology, alternative options are available which would not incur the same damage to designated SPAs. We would urge the Examining Authority to consider this argument, with full regard also given to the need to consider other environmental features.

Thank you for your consideration of our submission,
Yours sincerely,

A black rectangular redaction box covering the signature of Joan Edwards.

Joan Edwards

Head of Living Seas
The Wildlife Trusts