

**Response to Request for Comments by the Secretary of State on 28 April
2016
for
The Royal Society for the Protection of Birds**

13 May 2016

Planning Act 2008 (as amended)

In the matter of:

**Application by SMartWind for an Order granting Development Consent for the
Hornsea Offshore Wind Farm – Project Two**

**Planning Inspectorate Ref: EN010053
Registration Identification Ref: 10031166**



The RSPB has carefully considered the request for information issued by the Secretary of State on 28th April 2016.

We confine our response to the Applicant's response to Question 1 – Harbour Porpoise. There is a key contention submitted within this document that the RSPB is profoundly concerned with.

The following quotes are all taken from SMartWind's Appendix A submitted on 21st April:

In section 3:

"The presence of persistently high harbour porpoise densities in the SNS pSAC are attributed to an assumed availability of good feeding opportunities. The proposed Conservation Objective therefore brings a requirement that any disturbance across the site is managed, to ensure that any disturbance will not lead to harbour porpoise being excluded from a **significant portion of the site for a significant period of time**. *It is therefore, relevant to consider the potential effect on the SNS pSAC as a function of availability of habitat over time, rather than a consideration of numbers of individuals.*" (our emphasis in italics)

It then continues further below in section 3:

"It is understood that the SNCBs consider that so long as no more than 20% of the habitat were to be temporarily unavailable, sufficient habitat would remain to support sufficient individuals to maintain stocks at 80% of the carrying capacity and therefore to be sufficient to meet the requirements of the Conservation Objectives (based on Scheidat et al, 2013).

In terms of the interpretation of the "significant period of time" component, it is understood that a time period of six (6) years is advised by the SNCBs."

The RSPB has considered Scheidat et al., and note that it does not in any way back up the above insertion. Indeed, the paper explicitly criticises the use of such arbitrary thresholds:

"Setting limits based on fixed percentages of best estimates can be risky when there are large uncertainties and possible biases"

and also

"there seems no justification in continuing to use a fixed percentage".

In section 6 of Appendix A the Applicant distils its position to this:

"The Applicant understands that the current SNCB interpretation of the Conservation Objectives (in relation to disturbance) is based on ensuring that a significant portion (20%) of the habitat is not unavailable for a significant period (6 years) of time."

The RSPB does not accept that disturbance of up to 20% of this or any other proposed (or designated) Natura 2000 site for a period of up to 6 years can be regarded as an acceptable basis for concluding that there is no risk of harm to that site. The evaluation of risk to harm, through both the initial screening for likely significant effect and the subsequent appropriate assessment of whether there is likely to be an adverse effect on the integrity of the site, must be undertaken by clear reference to the distribution of the species within the protected area and the importance of

particular areas to the lifecycle of the species. An area significantly smaller than 20% of the site could be impacted for significantly less than 6 years (for instance a key breeding area over one breeding season) and lead to harm to the site. A reliance on arbitrary figures cannot possibly give the level of ecological understanding that is clearly required by the Habitats Directive, and we do not consider that use of these figures to exclude the risk of harm could properly be considered as an appropriate assessment of the likely harm arising from a proposed operation, whether alone or in combination with other schemes.

The RSPB considers that the Applicant must have misunderstood the advice of the Statutory Nature Conservation Bodies (SNCBs), as we have been unable to find any reference to the 20% or 6 year figures. We await the SNCBs' response to this particular point with interest.

From discussions with the Wildlife Trusts we understand that they share similar concerns.

In relation to more detailed points on the Applicant's response to Question 1 we defer to the Wildlife Trusts.