



Philip Asquith  
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5<sup>th</sup> October 2016

BY EMAIL

Dear Mr Asquith

**EN010056 Application by East Anglia Offshore Ltd for an Order Granting Development Consent for the East Anglia THREE Offshore Wind Farm: Response to second written questions**

**The Wildlife Trusts Reference 10032129**

Please find below our response to the Examining Authorities second written questions.

**ECMM17, Applicant**

*In its post-hearing submission for Deadline 4 [REP4-032] the MMO states that it would not expect the Secretary of State to instruct the MMO who to consult. MMO suggests it more appropriate for the Applicant to consult with The Wildlife Trusts (TWT) during drafting, and the Trusts should be named in the draft Deemed Marine Licence (dDML). Is the Applicant willing to name TWT and WDC in the dDML?*

- 1.1 We welcome the willingness of the applicant to involve The Wildlife Trusts in the post consent schedule in the Site Integrity Plan (SIP) and would be pleased to take part in the drafting process with the Applicant. However, we would like to reiterate our strong concerns about the lack of publicity clause in mitigation protocols/EPS licence applications/SIP where decision making is passed solely to the MMO. It is ultimately the MMO who have the responsibility to ensure mitigation measures will be in place to prevent an adverse effect on site integrity of the Southern North Sea pSAC. It is therefore public consultation on this stage of the process, rather than just drafting by the Applicant, which we believe is required.
- 1.2 We draw your attention to the precedent set in the Hornsea 2 DMLs and compliance with the Aarhus Convention (pillar 2 on public participation and decision making). We wish to pursue the same level of consultation here.

**The Wildlife Trusts**

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## **HRA13, All interested parties**

*The ExA invites responses related to the Applicant's assessment of effects on the Southern North Sea pSAC [REP4-016], the draft Site Integrity Plan (SIP) [REP4-013] and the drafting of Condition 13 of the dDMLs to secure the SIP [REP4-003 and 004].*

## **Information on the Habitats Regulations Assessment: Marine Mammal Assessment Southern North Sea pSAC [REP4-16]:**

### **Likely Significant Effect (LSE) Alone**

- 1.3 We have concerns that the LSE test on the impact of East Anglia Three has been assessed against only the Management Unit reference population for harbour porpoise. The European Commission has made clear in guidance 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 remain favourable within the European territory of the Member State”<sup>1</sup>. Based on this guidance, to understand the impact on the integrity of the site, we believe a site-based assessment on the impact of the project on harbour porpoise is required rather than assessing the impact in relation to the Management Unit.

We understand that the site-based approach is also advised by the SNCBs. JNCC have made it clear in discussions around the pSACs, that in HRAs, the disturbance impact should be considered in terms of the amount of habitat which would become temporarily unavailable to harbour porpoise through displacement due to piling. We therefore, disagree with the conclusions in paragraph 89 that there is no likely significant effect in relation to conservation objective 1 and 2.

- 1.4 In paragraph 86 of the Information on the Habitats Regulations Assessment document, the applicant states “*There is no evidence that harbour porpoise displaced from windfarms, or by vessels, suffer any mortality as a consequence of displacement; any mortality due to displacement would most likely be a result of increased density in areas outside the affected area, resulting in increased competition for food where density was elevated*”. We do not agree with this statement and believe there is considerable uncertainty around both the individual and population consequences of displacement. The effort being put into projects such as DEPONS and the Interim PCoD model highlight these high levels of uncertainty. In fact, there is evidence to suggest that harbour porpoise feed continuously day and night to meet their energetic demands. This leaves little margin for compensation when foraging if faced with disturbance and could have severe fitness consequences at an individual or population level<sup>2</sup>. Considering the displacement area as part of the assessment further backs up the argument to undertake a site based assessment of this nature.

### **Likely significant effect in-combination**

- 1.5 We welcome the proposal by the applicant to produce a SIP to identify mitigation and management measures in relation to the pSAC and agree that no LSE can be ruled out in relation to the in-combination effect from piling activity.
- 1.6 As highlighted in paragraph 111 and 112, there is uncertainty in the assessment process at the project level and in-combination assessment. There is a clear need for strategic assessment of in-combination effects on marine mammals across the pSAC and this should be undertaken at the

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<sup>1</sup> EC, 2000: Managing Natura 2000 Sites: The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC

<sup>2</sup> Wisniewska et al., 2016, Current Biology 26, 1–6

earliest opportunity to inform both the management proposals for the site and the assessments for activities within it.

- 1.7 We do not agree with the conclusion of no potential LSE in-combination effects in relation to prey species as identified in section 5.5.3. as a fully quantified assessment has not been undertaken. Commercial fishing has not been included in this assessment.
- 1.8 We do not agree with the conclusion of no potential in-combination effects to collision risk as identified in 5.5.4 as a fully quantified assessment has not been undertaken.
- 1.9 In order to be able to conclude no adverse in-combination effects there can be no scientific doubt. We assert that there are considerable levels of uncertainty around many aspects of the in-combination assessment.

**Draft Site Integrity Plan (SIP) [REP4-013]**

- 1.10 The Wildlife Trusts welcome the SIP as an approach to the delivery of mitigation and management measures to address the impact of the in-combination effects of pile driving noise on the Southern North Sea pSAC. At this stage we cannot agree with the conclusion of no LSE for the project alone. Therefore, the SIP may also be required to deliver mitigation measures for the project alone.
- 1.11 The Wildlife Trusts support the mitigation measure principles as outlined in section 5.4.1 to 5.4.4 of the SIP. The applicant has outlined themselves that detailed mitigation and management measures cannot be fully defined until a number of parameters have been agreed or defined, e.g. construction methodology, assessment against final conservation objectives and management advice for the pSAC. Due to this uncertainty, we would welcome a SIP expert working group to assist in the development and delivery of this document post consent. It would be useful to see further detail of the mitigation in future iterations of the SIP.
- 1.12 Section 5.4.5 outlines that seasonal restrictions on pile driving are not included in the Plan because the project lies within both summer and winter areas of the pSAC. However, we believe it would be beneficial to include some consideration on seasonality of piling activity. Specifically, we know very little in relation to seasonality with regards to breeding and calving<sup>3</sup> and as more information becomes available, it would be useful to consider this.
- 1.13 The Schedule of Agreement of the plan in section 2.3 provides useful indicative timescales for key milestones and we are pleased to see The Wildlife Trusts listed as a consultee in some sections. However, we would request to be fully listed in the “final submission and review of the draft Plan and any associated documentation” (not only draft), and also be listed under “noise prognosis”, “final design” and “Final plan sign-off”. We also feel that noise prognosis and final design should be listed before the submission and review of draft Plan and associate documents and the timescales altered to reflect this. We consider it appropriate for the timescales to be listed as a condition of the application.

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<sup>3</sup> Harbour Porpoise (*Phocoena phocoena*) possible Special Area of Conservation: Southern North Sea Draft Conservation Objectives and Advice on Activities January 2016. JNCC/Natural England

1.14 The applicant notes in paragraph 35 that *“the dMMMP is in line with the current best practice to prevent mortality and injury to marine mammals from pile driving”*. We would like to note that we believe this guidance is out of date and is not fit for purpose for such large-scale wind farm developments. We accept that the Applicant has no other guidance to go on, but this is why we advocate strong precaution in relation to mitigation.

1.15 Please refer to our point in paragraph 1.1 and 1.2 of our response that The Wildlife Trusts request to be included as a named consultee in relation to the SIP.

**Drafting of Condition 13 of the dDMLs to secure the SIP [REP4-003 and 004]**

1.16 In a previous iteration which we viewed of the SIP, the following text was included in terms of the draft dDMSLs *“consulting such persons as the Secretary of State may specify”*. We request this text is included and that the Secretary of State is minded to include The Wildlife Trusts as a named consultee (please see our previous comments regarding question ECMM17).

1.17 We welcome the clarification in paragraph 10 of the SIP in relation to the requirements of the DMLs. *“Any requirement for capturing mitigation requirements in relation to mortality and injury to marine mammals is captured by the MMMP (and secured in Condition 13(f) of the DML). Any requirements to reduce acoustic disturbance in relation to European Protected Species (EPS) will be captured through the EPS Licencing process (see Section 5.3.1) and any requirements in relation to the Southern North Sea pSAC will be secured by conditions 13-(2) to 13-(4) of the DML.”* We understand that the MMO has provided the Applicant with a letter of comfort that they see no objections to the granting of an EPS licence. However, we would like to highlight concern for the potential cumulative effects of multiple EPS licences which may be granted by the MMO for wind farm developments and the potential risk that this would have for the harbour porpoise population.

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



Joan Edwards  
Head of Living Seas  
The Wildlife Trusts