



East Anglia TWO Case Team
National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
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The Wildlife Trust reference: 20024818

BY EMAIL

2 November 2020

Dear East Anglia TWO Case Team

Written Representation by The Wildlife Trusts for East Anglia TWO Offshore Wind Farm

The Wildlife Trusts (TWT) welcome this opportunity to comment further on the East Anglia TWO Offshore Wind Farm application. Alongside this Written Representation, we have developed a Statement of Common Ground with the applicant.

TWT, with more than 850,000 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.

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'.

TWT has engaged with the applicant throughout the evidence plan process with representation on the Marine Mammals Expert Topic Group.

As a summary, our concerns regarding East Anglia Offshore Wind Farm are as follows:

- **Impacts on the Southern North Sea SAC – UXO Detonation and piling:** TWT highlights that careful planning/scheduling of underwater noise will be required if one project is undertaking UXO clearance whilst the other is undertaking piling activity. The applicant should clarify their definition of a 24 hour period for each activity, as this could affect the 20% threshold of the SAC.
- **Impacts on the Southern North Sea SAC - Mitigation:** TWT does not agree with the SNCB proposed approach to underwater noise management and therefore cannot agree with the results of the assessment, especially for in-combination impacts. We are pleased the applicant has included TWT as a consultee on the Draft (MMMP) and In-Principle Site Integrity Plan (SIP) and

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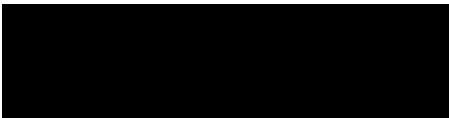
we welcome the opportunity to discuss mitigation further with the applicant.

- **Marine mammal monitoring – Strategic Level:** TWT advocates a strategic approach to marine mammal monitoring, particularly of the Southern North Sea SAC where monitoring of both harbour porpoise and underwater noise pre construction, construction and post construction is necessary to ensure that mitigation is effective. However, an industry-wide mechanism to deliver monitoring is currently lacking.
- **Marine Mammal monitoring – Certainty:** As part of the SoCG, TWT have asked for the inclusion of the Final Investment Decision (FID) and Contract for Difference (CfD) across all SIPs prepared by the offshore wind industry. This is to ensure that decisions made at these milestones do not limit the mitigation required to ensure no adverse effect. Monitoring requirements also need to be taken into account in relation to these milestones. The inclusion of FID and CfD milestones in the In-principle SIP is currently under consideration by the applicant.
- **Inclusion of fishing in in-combination assessments:** Fishing has not been included in in-combination assessments. Fishing is a licenced activity that can have an impact on the marine environment. To meet Article 6(3) of the Habitats Directive, fishing must be included in the in-combination assessments.

We have included detailed comments on the above points in Appendix A.

Thank you for taking our comments into consideration. We are happy to provide more details if required.

Yours sincerely,



Lissa Batey
Head of Marine Conservation
The Wildlife Trusts

Appendix A

1. Impacts on the Southern North Sea SAC

UXO Detonation and Piling

TWT highlights that careful planning/scheduling of underwater noise will be required if one project is undertaking UXO clearance whilst the other is undertaking piling activity.

Further to the point, TWT agrees with Natural England's suggestion in their relevant representation [RR-059] that piling activities and UXO detonations should be limited to 1 on any given day, to ensure that 20% threshold of the Southern North Sea SAC is not exceeded. The Applicant should clarify their definition of a 24 hour period in each case, as this could affect adherence to the 20% threshold in the Southern North Sea SAC.

Mitigation

Proposed SNCB advice on underwater noise management

TWT recognises that significant progress has taken place over the past year in underwater noise management in the Southern North Sea, however we do not agree with the proposed SNCB advice¹. The current approach is based upon the carrying capacity of the Southern North Sea SAC. We have no understanding as to what the carrying capacity of harbour porpoise is in the Southern North Sea SAC. The science underpinning the advice is weak and we believe the proposed approach will be difficult to deliver.

Defra and the Southern North Sea Regulators Working Group are taking positive steps to develop effective management for in-combination underwater noise impacts and TWT will continue to work closely with all stakeholders on this. However, as regulatory management mechanisms are currently not in place. We appreciate that the development of the regulatory mechanism is outside the control of this examination, however we suggest the Planning Inspectorate and the Secretary of State considers what controls need to be put in place to ensure no adverse effect on the Southern North Sea SAC at this current time.

TWT are currently advocating the underwater management approach used in Germany². The approach sets noise limits at which piling activity must not exceed. These noise limits are based upon scientific evidence. Germany has stricter noise protection outside their SACs to what is being proposed within UK harbour porpoise SACs. Noise limits are also used in the Netherlands and Belgium. TWT has expressed this opinion widely with industry, SNCBs, regulators and government.

Assessment results

As a result of our concerns highlighted above, we cannot agree with the in-combination assessment conclusions of no adverse effect on the Southern North Sea SAC.

We are pleased the applicant has included TWT as a consultee on the Draft (MMMP) and In-Principle Site Integrity Plan (SIP) and we welcome the opportunity to discuss mitigation further with the applicant. TWT would like to see more detail on the potential effectiveness of the mitigation measures mentioned on the In-principle SIP. This should include referenced examples of how the implementation of mitigation will reduce underwater noise disturbance impacts within the Southern North Sea SAC. TWT will reassess our satisfaction when we see the updated Draft MMMP and the In-principle SIP at Deadline 3.

¹ Guidance for assessing the significance of noise disturbance against Conservation Objectives of harbour porpoise SACs (England, Wales & Northern Ireland). June 2020.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/889842/SACNoiseGuidanceJune2020.pdf

² German Sound Protection Concept
http://www.ascobans.org/sites/default/files/document/AC21_Inf_3.2.2.a_German_Sound_Protection_Concept.pdf

The following text of the European Commission Article 6 Habitats Directive Guidance from 21st November 2018³ (page 52) establishes the obligation to detail the effectiveness of mitigation measures.

“For the competent authority to be able to decide if the mitigation measures are sufficient to remove any potential adverse effects of the plan or project on the site (and do not inadvertently cause other adverse effects on the species and habitat types in question), each mitigation measure must be described in detail, with an explanation based on scientific evidence of how it will eliminate or reduce the adverse impacts which have been identified.”

2. Marine Mammal Monitoring

Strategic Level Monitoring

TWT advocates for a strategic approach to marine mammal monitoring, particularly of the Southern North Sea SAC where monitoring of both harbour porpoise and underwater noise pre construction, construction and post construction of both noise levels and harbour porpoise activity is necessary to understand the impact of underwater noise on harbour porpoise as an EPS and on the Southern North Sea SAC. There is a great deal of uncertainty regarding the impacts of underwater noise on harbour porpoise in UK waters; very few studies have been undertaken.

TWT are concerned that if a strategic approach is not agreed, then monitoring across all projects will not be adequate. Under the current provisions for monitoring, no information will be recorded on the noise levels per day or during the course of the construction programme, which is essential for understanding the impacts of underwater noise on harbour porpoise as an EPS and the Southern North Sea SAC. Without effective monitoring we cannot determine the effectiveness of mitigation.

To provide more confidence, TWT recommends that all offshore wind farm developments should contribute funding and participate in the delivery of strategic monitoring. Developers all agree that a strategic approach to monitoring is the most effective approach but consistently highlight that a mechanism for delivery is lacking.

Monitoring Certainty

As part of the Statement of Common Ground, TWT have asked for the inclusion of the Final Investment Decision (FID) and Contract for Difference (CfD) across all SIPs prepared by the offshore wind industry. This is to ensure no adverse effect. Monitoring requirements also need to be taken into account in relation to these milestones. The inclusion of FID and CfD milestones in the In-principle SIP is currently under consideration by the applicant.

3. The inclusion of fishing in in-combination assessments

TWT is aware that that applicant has agreed with Natural England at an Expert Topic Group (ETG) Meeting on the 6th of March 2018, that fishing activity will be considered as part of the baseline. However, as TWT have stated across all offshore windfarm consultations as a principle, we believe fishing should be included in all in-combination assessment. Fishing is a licensable ongoing activity that has the potential to have an adverse impact on the marine environment. This is supported in the leading case C-127/02 **Waddenzee** [2004] ECR I-7405, the CJEU held at para. 6

³ Commission notice "Managing Natura 2000 sites The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/Provisions_Art._.nov_2018_endocx.pdf

“The act that the activity has been carried on periodically for several years on the site concerned and that a licence has to be obtained for it every year, each new issuance of which requires an assessment both of the possibility of carrying on that activity and the site where it may be carried on, does not itself constitute an obstacle to considering it, at the time of each application, as a distinct plan or project within the meaning of the Habitats Directive”.

This caselaw demonstrates that fishing is considered a plan or a project and therefore not part of the baseline. Fishing should be included in all in-combination assessments where there is an interaction with a designated feature. In-combination impacts must be taken into account in the same way as if they were removed and the total impact of all human activities considered.

Current Defra policy⁴ is to ensure that all existing and potential fishing operations are managed in line with Article 6 of the Habitats Directive. The current, risk-based, ‘revised approach’ to fisheries management in European Marine Sites is a compromise agreed by all to prevent the closure of fisheries during assessment. This approach further supports that fishing is considered a plan or a project and therefore must be included in the in-combination assessment in line with Article 6(3) of the Habitats Directive.

Following the commencement of judicial review proceedings by TWT against Dogger Bank Offshore Wind farms, TWT was given assurances that fishing would be included in future offshore wind farm assessments. We have raised this issue with the Planning Inspectorate over several planning applications (Hornsea 3, Norfolk Vanguard, Norfolk Boreas) and have also raised the issue with Defra and BEIS. We make this case for all MPAs assessed in this application.

4. Post-consent engagement with the applicant

We are pleased that the applicant has included TWT as a consultee on the Draft MMMP and the In-principle SIP in response to comments made in our Relevant Representation. We welcome this opportunity to formally engage with the applicant on the development of the plan post-consent and to discuss the implementation of mitigation and monitoring further.

⁴ Defra Policy to ensure that all existing and potential commercial fishing operations are managed in line with Article 6 of the Habitats Directive

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/345970/REVISED_APPROACH_Policy_and_Delivery.pdf