

Norfolk Vanguard Offshore Wind Farm

Proposed Fisheries Management Area Areas – Norfolk Vanguard position statement

Written Summary of Oral
Submissions: Issue Specific Hearing 6 –
Appendix 2

Applicant: Norfolk Vanguard Limited
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Deadline 7

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Photo: Kentish Flats Offshore Wind Farm



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1 PROPOSED FISHERIES MANAGEMENT AREA AREAS – NORFOLK VANGUARD POSITION STATEMENT INTRODUCTION

1. This document has been produced by the Applicant to provide a summary of the Applicant's understanding regarding the proposed Eastern Inshore Fisheries and Conservation Agency (IFCA) byelaw area and the Department for Environment, Food and Rural Affairs' (DEFRA) joint recommendation area.
2. This document also provides additional information further to Action Point 26 from Issue Specific Hearing 6 (ISH6, Environmental Matters) by providing information relating to the procedure for closures under the Common Fisheries Policy in certain Marine Protected Areas, for which the Applicant has submitted an assessment at Deadline 7 (Evaluation of the Implications of the Proposals for Closed Areas, document reference ExA; ISH6; 10.D7.14).

1.1 DEFRA Joint Recommendation

3. The Marine Management Organisation (MMO)'s Deadline 6 submission makes the following points at paragraph 3.1.1:
 - *“Under the Common Fisheries Policy (CFP) fisheries management areas for MPAs must be agreed by other Member States with an active interest in the site. However, because other Member States with a direct management interest have not yet consented to our proposals, therefore, we [DEFRA] have not yet been able to introduce measures.”*
 - *“The MMO considers that irrespective of the byelaws, this issue is related to the need to appropriately assess the impacts to the HHW SAC prior to making a determination. The data underpinning the byelaw could be included as part of this assessment.”*
4. The Applicant notes that there is therefore significant uncertainty as to whether the DEFRA joint recommendation will be approved, and if approved, the associated timescales for implementation. Additionally, the Applicant agrees with the MMO that, irrespective of the status of the DEFRA joint recommendation and the proposed Eastern IFCA byelaws (discussed in Section 1.2), this issue relates to the need for the Project to determine no Adverse Effect on Integrity (AEoI) in relation to the Conservation Objectives of the HHW SAC. This element has been addressed through the Outline HHW SAC Site Integrity Plan (SIP) (document reference 8.20, submitted at Deadline 7).
5. The Draft Joint Recommendation prepared by DEFRA contains a proposal for the regulation of fisheries activity for submission to the European Union (EU) to ensure the protection of Annex 1 Reefs and Annex 1 Sandbanks slightly covered by seawater all the time, beyond the 12nm limit and within the HHW SAC from impacts associated with fisheries using demersal towed gears or dredging.

6. The Common Fisheries Policy recognises that conservation measures which affect fishing interests may need to be adopted in order to comply with obligations in relation to environmental legislation¹.
7. The purpose of the joint recommendation process is to meet the obligations under Article 6 of the Habitats Directive. As well as the requirement for appropriate assessment of plans and projects, Article 6 requires the establishment of necessary conservation measures (including through management plans) and avoidance of the deterioration of natural habitats.
8. The Draft Joint Recommendation for the HHW SAC (dated October 2016) made under the Common Fisheries Policy relates only to restrictions on fishing activities, and particularly on use of certain types of fishing gear. In particular paragraph 1.1 of the supporting information notes:
 - *" Commercial fishing has been identified as an activity which could adversely impact the integrity of the sites' features and as such requires being assessed and, if necessary, managed to reduce its impact."*
9. At paragraph 1.2 the overall aim is stated as:
 - *"The overall aim of the present proposal is to ensure adequate protection of the designated features 1170 Reef and 1110 Sandbanks which are slightly covered by seawater all the time from fishing activities and thereby to contribute to the obligation of achieving or maintaining their favourable conservation status in accordance with Article 6(2) of the Habitats Directive; which states that Member States shall take appropriate steps to avoid the deterioration of natural habitats for which the areas have been designated."*
10. In relation to pressures from other activities it is stated under section 4.3:
 - *"A considerable number of oil and gas developments overlap the Haisborough, Hammond and Winterton MPA, including many fields, pipelines, wells and associated infrastructure. Additionally commercial aggregate extraction takes place along the site boundary. Whilst none of the licence areas are coincidental with designated features, two licence areas and one application area are located within the southern part of the site. Existing licensed activities that take place within Haisborough, Hammond and Winterton MPA will continue to be managed in line with the relevant legislation and application processes by the competent authorities."*

¹ Articles 11 and 18 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy

11. It is clear from the information above that the management proposals currently being considered for the HHW SAC relate to fishing activities only. On this basis and as stated above, the Applicant agrees with the MMO's Deadline 6 submission that, irrespective of the bye-laws, this issue relates to the need to determine no AEOL in relation to the Conservation Objectives of the site. The Applicant has addressed this in the Outline HHW SAC SIP (document reference 8.20) submitted at Deadline 7.

1.2 Proposed Eastern Inshore Fisheries and Conservation Authority Byelaw

12. In their Deadline 6 submissions the MMO, Natural England and the Eastern IFCA are clear that the proposed byelaw areas relate to restrictions on bottom towed fishing gear only. The Eastern IFCA Deadline 6 submission states:

- *"Eastern IFCA regulates fishing in coastal waters (0-6nm). Regulators are required to ensure licensed activities do not impact on conservation objectives for protected features in marine protected areas such as SACs. Natural England has advised EIFCA to consider a number of areas within the 0-6nm part of Haisborough, Hammond and Winterton SAC for management as Sabellaria spinulosa reef – a conservation feature that is sensitive to physical damage or loss by abrasion such as that caused by bottom-towed fishing gear. IFCAs do not have powers to regulate activities other than fishing."*

13. Inshore Fisheries and Conservation Authorities² have the ability to make byelaws within 6nm, subject to confirmation of the byelaw by the Secretary of State³. Paragraph 3.3 of the IFCA byelaw guidance⁴ states:

- *"The MMO will act as a policy and legal advisor on the process of making IFCA byelaws. The IFCA will consult the MMO at various stages of the byelaw making process."*
- *The MMO will undertake quality assurance of byelaws and supporting evidence, before referring them to Defra for sign off by the Secretary of State, including holding hearings, if deemed necessary by the Secretary of State."*

14. The scope of IFCA byelaws is restricted to furtherance of their duties, and is therefore restricted to managing sea fisheries resources and protecting marine ecosystems from the impact of fishing⁵.

² Section 153 of the Marine & Coastal Access Act 2009 places a duty on IFCAs to sustainably manage sea fisheries resources and to protect marine ecosystems from the impact of fishing

³ Section 155 of the Marine & Coastal Access Act 2009 applies the power to make byelaws to MCZs but also applies it in relation to furthering IFCAs' duties to manage inshore fisheries more generally

⁴ IFCA Byelaw Guidance, guidance on the byelaw making powers and general offence under Part 6, Chapter 1, sections 155-164 of the Marine and Coastal Access Act, March 2011, published by the Department for Environment, Food and Rural Affairs

⁵ Section 155 of the Marine & Coastal Access Act 2009

15. Section 10 of the Guidance, dealing with consultation, states:

- *"10.2 Consultation should not unduly delay the byelaw making process and the existence of outstanding objections will not preclude a byelaw being made or submitted to the Secretary of State for confirmation. It will be especially important for the IFCA to engage with the following stakeholders at an early stage in the following circumstances:*
 - *Those who are likely to be affected by the proposed controls eg fishermen (both commercial and recreational), coastal businesses, recreational groups (eg sea anglers, divers), environmental groups;*
 - *Statutory Nature Conservation Bodies (SNCBs), primarily Natural England, for advice about activities which may cause damage or deterioration to MCZs and European Marine Sites (EMSs) and in relation to furthering the conservation objectives of those sites;*
 - *The MMO, for advice on procedural aspects of the process and in relation to possible management measures to further the conservation objectives of MCZs and European Marine Sites (EMSs);*
 - *...*
 - *Any other public body that regulates/authorises licences for activities which are likely to be affected by the making of a byelaw. English Heritage, for example, will need to be consulted if byelaws will affect their licensing of access to wrecks and other marine heritage sites. Similarly, Department of Energy & Climate Change (DECC) should be contacted if byelaws are likely to affect the deployment of renewable energy installations."*

16. The Applicant notes that it was not a consultee in the informal consultation process for the proposed byelaw areas and therefore does not consider that it is directly affected by the proposed controls. The Applicant acknowledges that through on-going engagement with Eastern IFCA it was informed that the consultation was underway and made welcome to provide feedback.

17. The Eastern IFCA advised within their Deadline 6 response that the outcomes of the informal consultation would be reviewed on 15th May 2019 to determine whether to proceed with the proposals. If accepted internally within the Eastern IFCA, formal public consultation would follow (to last approx. 28 days). The byelaw(s) would then be submitted to the MMO and DEFRA for scrutiny and ultimate sign-off (estimated 6-9 months). It is therefore unlikely that the byelaw will be in place at the time of consent determination for Norfolk Vanguard. After the byelaw is implemented, the areas closed to bottom-towed fishing gear will be reviewed and could be increased or decreased, where evidence supports such a change.

18. One of Eastern IFCA's proposed closure areas coincides with the Norfolk Vanguard offshore cable corridor, as shown in Annex 1 of the Eastern IFCA's Deadline 6 submission (REP6-025) (shown in Figure 1 below). The Eastern IFCA Deadline 6 submission notes that it is not intended that all of the area currently being informally consulted on will become the Byelaw area, rather the Box is a management focus area for which the Eastern IFCA is seeking information on fishing activity.
19. In accordance with the MMO's Deadline 6 submission, the Applicant maintains that, irrespective of the byelaws, this issue relates to the need to determine no AEoI in relation to the Conservation Objectives of the site. The Applicant has addressed this in the Outline HHW SAC SIP (document reference 8.20) submitted at Deadline 7.

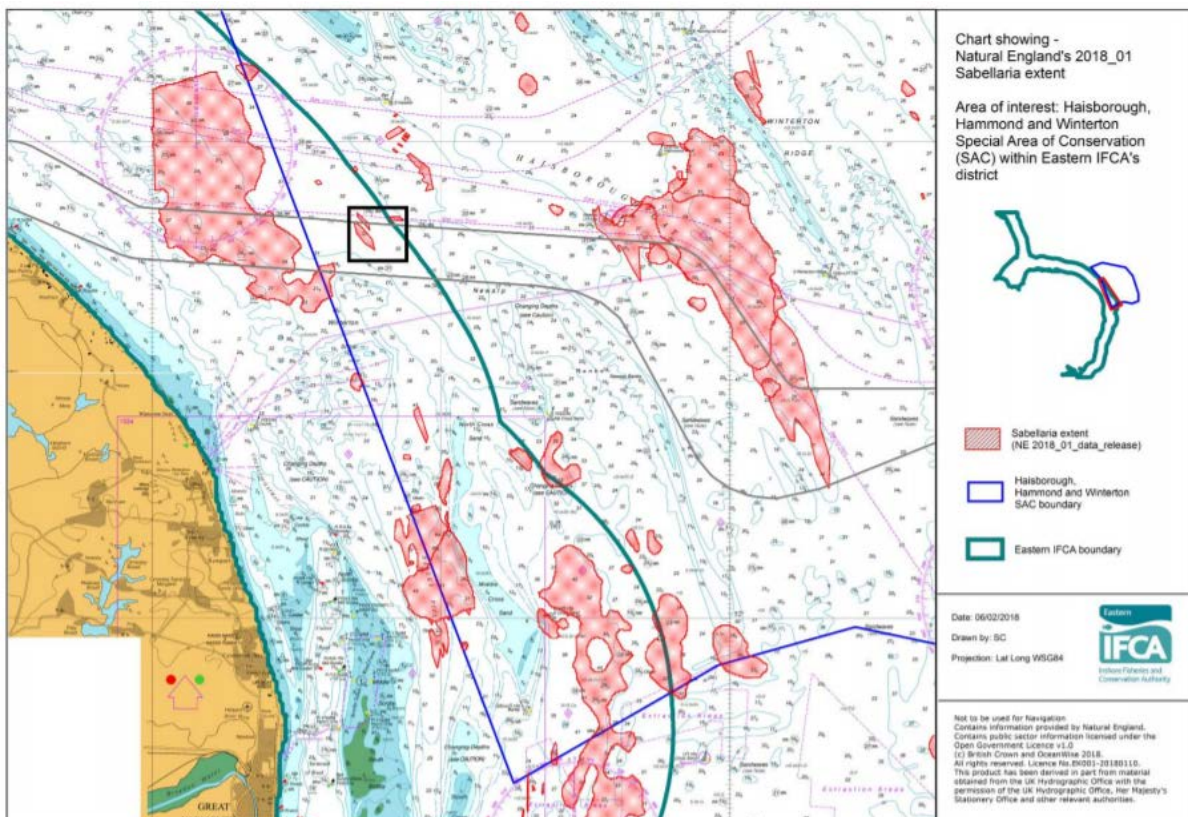


Figure 1 Norfolk Vanguard cable corridor (grey lines), Sabellaria reef feature extent (red polygons), and Eastern IFCA management focus area Box 1 (black box) (Source: Annex 1 of REP6-025)

1.3 Conclusion

20. It is clear from the information above that the management proposals currently being considered for HHW SAC, whether through the DEFRA Joint Recommendation or the proposed Eastern IFCA byelaw, relate to fishing activities only and, equally, focus on repeat disturbance as a result of fishing activities, namely the effects of bottom-towed fishing gear on *Sabellaria spinulosa* reef in the form of physical damage or loss by abrasion. The management proposals do not seek to control any other non-repeat

activities within the HHW SAC such as cable laying and therefore the restrictions do not apply to Norfolk Vanguard.

21. The Applicant has considered the cumulative impacts of potential restrictions on bottom-towed fishing gear in relation to commercial fisheries and has submitted an Evaluation of the Implications of the Proposals for Closed Areas (document reference ExA; ISH6; 10.D7.14) at Deadline 7.
22. In addition, the Applicant includes consideration of the Areas to be Managed as Reef that underpin the DEFRA Joint Recommendation and the proposed Eastern IFCA byelaw in the Outline HHW SAC SIP submitted at Deadline 7 (document 8.20).