

From: [Tania Davey](#)
To: [Norfolk Vanguard](#)
Cc: [Joan Edwards](#); [Lissa Batey](#)
Subject: Deadline 8: TWT response
Date: 29 May 2019 15:07:57
Attachments: [TWT response to NV deadline 8.pdf](#)

Dear Sir/Madam

Please find attached a response to deadline 8 for Norfolk Vanguard Offshore wind farm.

Kind regards

Tania

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Ms Ridge
National Infrastructure Planning
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The Wildlife Trust reference: 20012715

BY EMAIL

29 May 2019

Dear Ms Ridge

Deadline 8: Response from The Wildlife Trusts on Norfolk Vanguard Offshore Wind Farm

The Wildlife Trusts (TWT) have reviewed the following documents and include comments within this letter:

- Report on the Implications for European Sites
- Draft Development Consent Order (version 4) for Norfolk Vanguard Offshore Wind Farm.

In addition, we have included a copy of the statement released by JNCC on a regulator and SNCB workshop on underwater noise management in appendix A, as requested by the Examiner at deadline 4. We have provided further comments on this in section 3 of this letter.

1. Report on the Implications on European Sites

TWT confirm that we cannot conclude no adverse effect on the Southern North Sea SAC for the following reasons:

- a) We do not agree with the SNCB advice on underwater noise disturbance management within the SAC. It is underpinned by weak evidence and provides weaker management than other North Sea countries.
- b) The approach will be practically very difficult to implement.
- c) We agree with the principle of a Site Integrity Plan (SIP) but there are no mechanisms in place to ensure regulation and compliance.
- d) The monitoring of underwater noise and the impacts on harbour porpoise outlined in the Development Consent Order and In-principle Monitoring Plan are not adequate to understand the effectiveness of mitigation to be delivered through the SIP.

2. Draft Development Consent Order

2.1. SIP for the Southern North Sea SAC

(Conditions included in Schedule 9&10 (14)(1)(m) and Schedule 11&12 (9)(1)(L))
In the event that piled foundations are proposed to be used, the licensed activities, or any phase of those activities must not commence until a site integrity plan which

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accords with the principles set out in the in principle Norfolk Vanguard Southern North Sea candidate Special Area of Conservation Site Integrity Plan has been submitted to the MMO and the MMO is satisfied that the plan, provides such mitigation as is necessary to avoid adversely affecting the integrity (within the meaning of the 2017 Regulations) of a relevant site, to the extent that harbour porpoise are a protected feature of that site.

TWT is concerned that this condition is only relevant in the event of the use of piled foundations. There are other noise producing activities, such as UXO clearance, which may cause an adverse effect on the Southern North Sea SAC due to cumulative underwater noise impacts. To ensure no adverse effect on the Southern North Sea SAC, this condition should not be limited to piled foundations.

With regards to UXO clearance, TWTs concerns have increased following the results of PTS impacts zones using the updated noise thresholds¹. We understand that it is standard practice for developers to apply for a licence to undertake UXO clearance post-consent, hence why this activity is not included in the Development Consent Order. However, now that the Southern North Sea SAC has been designated, a full picture of the cumulative impacts on the SAC is required to ensure no adverse effect. We appreciate that UXO clearance has been considered in the in-combination assessment. However, baseline data on the number and location on UXO clearances is lacking. Based on these points, TWT suggests that UXO clearance should be included as a deemed Marine Licence within the Development Consent Order and the within the SIP condition.

If changes to the Development Consent Order are made to reflect these comments, consistency should be ensured with other offshore wind farm Development Consent Orders e.g. Hornsea Three Offshore Wind Farm.

2.2. Monitoring within the Southern North Sea SAC

TWT continues to hold concerns regarding the level of underwater noise and marine mammal monitoring proposed within the Southern North Sea for this application. The current understanding of harbour porpoise activity within the Southern North Sea SAC is poor and there is low confidence in current monitoring to detect changes in the population². The current understanding of how harbour porpoise respond to noise produced from offshore wind farm construction within the SAC is also poor.

The monitoring outlined in the Development Consent Order in relation to underwater noise is not adequate for the Southern North Sea SAC (Conditions included in schedule 9 (19)(1), schedule 10 (19)(1), schedule 11 (14)(1) and schedule 12(14)(1):

“In the event that driven or part-driven pile foundations are proposed, such monitoring must include measurements of noise generated by the installation of the first four piled foundations of each piled foundation type to be installed unless the MMO otherwise agrees in writing.”

Our understanding is that the monitoring outlined in this condition is undertaken to verify the predictions of underwater noise modelling. However, this condition will not provide any information on the noise emitted into the environment during the lifetime of the construction period, a currently inadequate dataset required for the management of the Southern North Sea SAC. In addition, no conditions are included to monitor harbour porpoise activity in relation to underwater noise produced during to construction period.

¹ NMFS (National Marine Fisheries Service) (2016). Technical guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing: Underwater Acoustic Thresholds for Onset of Permanent and Temporary Threshold Shifts. U.S. Dept of Commer., NOAA. NOAA Technical Memorandum NMFS-OPR-55, 178 p.

² Wilson, L.J., Booth, C.G., Burt, L., Verfuss, U.K. & Thomas, L. (2019) Design of a monitoring plan for the Southern North Sea candidate Special Area of Conservation and wider area. JNCC Report No: 629

The in-principle monitoring plan outlines that “*the applicant will follow the relevant guidelines at the time in relation to a strategic approach to construction and monitoring in the development of a Piling MMMP*”. We welcome the applicants support of a strategic approach to monitoring. However, there is no commitment to monitoring to ensure no adverse effect on the Southern North Sea SAC within the In-principle Monitoring Plan or the Development Consent Order which is relevant to the SIP. Due to the high level of uncertainty on harbour porpoise use of the Southern North Sea SAC and impact of construction noise of harbour porpoise within this area, commitment to monitoring is essential. This should include pre-construction, construction and post-construction of noise and harbour porpoise activity monitoring.

The following text of the European Commission Article 6 Habitats Directive Guidance from 21st November 2018³ (page 52) establishes the obligation to monitor 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. Information should also be provided of how, when and by whom they will be implemented, **and what arrangements will be put in place to monitor their effectiveness and take corrective measures if necessary.**”*

3. Regulators note on underwater noise management.

At deadline 4, the Examiner requested a copy of the statement released by JNCC on a regulator and SNCB workshop on underwater noise management. This is included in appendix A.

We are pleased that the Regulators have committed to meet regularly to discuss underwater noise management. However, as stated previously, TWT is concerned that no mechanism exists to manage the multiple SIPs that will be in place to ensure site integrity for the Southern North Sea SAC. The logistics of how multiple SIPs will be managed will be complex and we envisage additional resources will be required. Therefore, we continue to hold serious concerns on how Regulators will be able to deliver and ensure compliance with the SNCB guidance. As a result, TWT still cannot rule out no adverse effect on the Southern North Sea SAC from cumulative underwater noise impacts. Multi-stakeholder engagement is urgently required to find a practical solution to underwater noise management, including a discussion around alternative, more practical options.

Thank you for considering our response. We are happy to provide further detail if required.

Yours sincerely



Joan Edwards
Director, Public Affairs and Living Seas
The Wildlife Trusts

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

SNCB Noise Guidance Workshop

Wednesday 7th November 2018

Background

The public consultation on the possible Special Areas of Conservation (pSACs) for harbour porpoise ran from 19th January to 3rd May 2016. The Statutory Nature Conservation Bodies (SNCBs) produced a consultation report and sent final advice on site selection to Defra and the Devolved Administrations on 28th Sept 2016. It was noted that potential management options were provided within the draft socio-economic impact assessment as part of the public consultation, but these were very high level.

On the 6th October 2017 JNCC advised relevant Regulators that they were intending to publish SNCB Noise Disturbance Guidance later October 2017. It was agreed with Defra that the guidance would not be published until Regulator concerns and issues were resolved. A workshop for Regulators to openly discuss their views and concerns was held on the 1st May 2018.

On the 7th November 2018 the SNCB's and the relevant Regulators held a further workshop to discuss the outcomes of the previous workshop with the aim to determine a way forward for the implementation of the SNCB noise guidance across industry sectors and the relevant Regulators.

Key Messages

- 1 There was agreement by Regulators to take account of SNCB guidance and the area/time threshold approach in their consent decisions. It was acknowledged that this needs to be alongside other approaches as the regulators deem appropriate for their specific remit and decision-making processes.
- 2 An action was agreed that the SNCBs would clarify aspects of the wording of the guidance as highlighted at the workshop:
 - i. adaptive management is key to the approach (and involves validation of assumptions through monitoring which will feedback to noise management approach).
 - ii. the guidance should encourage best practice mitigation for noise reduction overall,
 - iii. the area/time threshold approach is SNCBs' considered advice in light of the uncertainty surrounding disturbance and its effects,
 - iv. a case specific Effective Deterrence Range (different from the advised precautionary 26km) can be used if well justified and based on supporting evidence).
 - v. Whilst the area/time thresholds themselves will not be changed, the revised guidance wording will provide further clarity and context on aspects of the guidance.
- 3 There was agreement by Regulators to set up a regular working group to share information on industry operations and work towards strategic planning and the management of noise (e.g. in-combination effects. The exact Terms of Reference are to be agreed, but it has been agreed that meetings will be held monthly in the first instance. It was agreed that the working group would focus on the SNS HP SAC in the first instance with the view to implement any practices across other HP SAC's. External communication from such meetings, as appropriate, to wider stakeholders also needs to be agreed.
- 4 It was agreed by all parties that the SNCB guidance should only be currently used in an adaptive management context in order to improve our collective evidence base and consequently management approaches. The research and monitoring (for both noise and biological aspects) needed to improve the

evidence base needs to be a collaborative effort across all stakeholders. Government and industry will work together to enable strategic monitoring which would include wider stakeholders e.g. industry, academia and NGO's. A meeting to further discuss this is to be arranged.

- 5 SNCBs and regulators are to consider a meeting with industry to discuss potential noise mitigation options within the SAC for the different activities.
- 6 JNCC to organise a meeting with Oil and Gas UK to present and discuss the SNCB guidance. Meeting to be arranged asap after SNCB guidance finalisation.