



Gareth Leigh  
Department for Business, Energy and Industrial Strategy

The Wildlife Trust reference: 20012715

BY EMAIL

19 November 2021

Dear Gareth

### **Response to Norfolk Vanguard re-determination**

The Wildlife Trusts (TWT) welcome the opportunity to engage in the Norfolk Vanguard Offshore Wind Farm redetermination process. Our comments in this response focus on the impacts of cabling on Haisborough, Hammond and Winterton SAC.

#### **1. TWT position on cabling impacts on Haisborough, Hammond and Winterton SAC**

TWT position is that compensation will be required for cable protection impacts on the SAC. Up to 20,000m<sup>2</sup> of cable protection within the SAC has been requested within the consent. This is the equivalent of a residential road running for 4km. The SAC is already in unfavourable condition and therefore any future cable protection, no matter how small, both alone and in-combination will impede the recovery of this site to favourable condition until decommissioning is possible.

Compensation is required to meet the requirements of the Habitats Regulations. This position reflects the principles of the Hornsea Three decision<sup>1</sup> with regards to the impacts of cable protection on The Wash and North Norfolk Coast SAC and North Norfolk Sandbanks and Saturn Reef SAC in that habitats subject to cable protection:

- a. will experience the effects of habitat loss, habitat modification and changes in epifauna communities
- b. will be impacted in the long-term
- c. will impede the restoration of the Annex I habitats for the duration that cable protection is in place, and
- d. will not meet the Conservation Objectives for the protected site.

The principle of the Secretary of State's decision is supported by TWT, and is clearly outlined in a letter sent by our solicitors<sup>2</sup> in August 2020. Again, although this letter is specific to Hornsea Three, the principles apply to any cable development within a Marine Protected Area. It is important that the Secretary of State considers all impacts on the conservation objectives for the site and not only extent.

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<sup>1</sup> [Hornsea Three decision letter, December 2020](#)

<sup>2</sup> [Letter from Leigh Day on behalf of TWT, Hornsea Three, August 2020.](#)

The applicant has stated that it is considered unlikely that cable protection will be required but it remains within the envelope of the project. If the applicant is to receive consent for cable protection based on the scenarios of the Rochdale Envelope, then a commitment to compensation must be made. It is TWTs position that compensation must be delivered before the adverse impact takes place.

## **2. TWT position on compensation for Haisborough, Hammond and Winterton SAC**

It is TWT position that benthic compensation is very difficult to deliver at a project level. We do not support the compensation proposals outlined by Norfolk Vanguard and provide reasoning for this in section 2.2-2.5. TWT continue to support fisheries management as a compensation measure, as outline in section 2.1 below.

### **2.1. TWTs preferred compensation option – fisheries management**

TWTs preference as a compensation measure would be the implementation of fisheries management measures. The removal of fisheries pressure will have one of the biggest impacts in providing environmental head room for further development. Evidence is also available to support ecosystem recovery following the removal of fishing pressure e.g. Lyme Bay<sup>34</sup>.

We do not agree with the applicant that *“no authority has the jurisdiction to deliver fisheries management areas as compensation<sup>5</sup>”*. TWT is seeking legal advice on provisions available to deliver fisheries management as marine compensation. Our initial advice suggests that there are several powers available which enable a strategic approach to be taken to managing fishing in Marine Protected Areas (“MPAs”) as compensation for damage caused by offshore wind projects. In particular, the Fisheries Act 2020 requires the Secretary of State to prepare and publish a fisheries statement which outlines policies aimed at achieving fisheries objectives (section 2). Those objectives include environmental sustainability, an ecosystem-based approach and minimising the impact on climate change (section 1). A fisheries statement could therefore include a policy relating to strategic compensatory measures, which could be implemented by the Marine Management Organisation (MMO), which has the power to grant and vary fishing licences (sections 15 and 17). There are many other statutes which contain similar provisions with similar objectives. For example, the Marine and Coastal Access Act 2009 confers broad authority on the Secretary of State and/or the MMO to take any action necessary or expedient for furthering environmental purposes (e.g. section 2(2) MCAA 2009).

TWT is happy to share further information once we receive full legal advice.

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<sup>3</sup> Attrill MJ *et al.* 2012. Lyme Bay – a case-study: measuring recovery of benthic species; assessing potential “spillover” effects and socio-economic changes, three years after the closure. Report 1: Response of the benthos to the zoned exclusion of bottom towed fishing gear in Lyme Bay. Report to the Department of Environment, Food and Rural Affairs from the University of Plymouth-led consortium. Plymouth: University of Plymouth Enterprise Ltd.

<sup>4</sup> Sheehan, E.V. *et al.* 2015. Lyme Bay – a case-study: Response of the benthos to the zoned exclusion of towed demersal fishing gear in Lyme Bay; 6 years after the closure. Report to Natural England from Plymouth University Marine Institute.

<sup>5</sup> [Paragraph 104. In Principle Habitats Regulations Derogation, Provision of Evidence Appendix 3 Haisborough, Hammond and Winterton SAC In Principle Compensation \(version 2\)](#)

## 2.2. Site extension

As a principle, TWT is not supportive of site extension as a compensation measure. This is for the following reasons:

- As acknowledged by the applicant, the process to extend or create new designated sites is lengthy and would require additional resource. There is no certainty at the end of the process that the site will be designated.
- By extending or designating new sites, it allows for the chipping away and deterioration of existing sites. This is not an acceptable nor sustainable mechanism, especially considering the scale of offshore wind farm development planned with potentially 75-140GW to be delivered by 2050 to meet net zero alongside the development of offshore grid infrastructure.
- As a principle, extending or creating new sites will create further problems in the future for offshore wind farm development, complicating the consenting process and further putting ecological integrity of the UK MPA network at risk.

Site extension does not support the ambitions of the Marine and Coastal Access Act to achieve a coherent network of MPAs, nor does it support the objectives of the 25-year Environment Plan to restore the loss of marine biodiversity.

## 2.3. Removal of disused infrastructure

TWT would like to withdraw support for the removal of oil and gas infrastructure at a project level. Although we provided in principle support in relation to a Norfolk Boreas submission in August 2021, we revert back to the position that the removal and decommissioning of infrastructure should follow the polluter pays principle and be delivered by the oil and gas industry, as stated under:

- Requirements to decommission under UNCLOS 1982
- OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations states that the leaving wholly or partly in place of disused offshore installations within the maritime area is prohibited.

From reading updated information from the applicant, there appears to be multiple issues in developing this as a measure within suitable timescales.

## 2.4. Identification and retrieval of marine debris:

TWT would like to emphasise that we do not support the removal of marine debris as a compensation measure. This has been made clear since our responses to compensation for Norfolk Vanguard and Hornsea Three since early 2020<sup>67</sup>. This measure does not equate to the habitat loss caused by cable protection. If implemented, site decline would still be expected and the coherence of the UK Sites Network would not be met.

## 2.5. Education, awareness and facilities to limit further marine debris

This is not a compensation measure. If implemented, site decline would still be expected and the coherence of the UK Sites Network would not be met.

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<sup>6</sup> [TWT response to further information for Norfolk Vanguard, April 2020.](#)

<sup>7</sup> [Section 4.3 TWT response to further information for Hornsea Three, April 2020.](#)

### **3. Alternatives**

TWT raised that alternatives must be further explored in a [letter dated 27<sup>th</sup> April 2020](#) in response to consultation on possible compensation measures for Norfolk Vanguard. It is TWTs position that alternatives have not been fully explored in line with the requirements of the Habitats Regulations.

These include:

- Offshore Transmission Network Review – early opportunities: TWT welcome further information from the applicant on the exploration of cable coordination. A coordinated cable route could result in avoiding Haisborough, Hammond and Winterton SAC resulting in no need for compensation. TWT suggest further exploration of the coordination opportunities to reduce consenting risk.
- Cable corridor with a safety exclusion zone
- No cable protection within the SAC must be considered as a viable alternative and European Guidance states that this must be considered against the site's conservation objectives, integrity and contribution towards the overall coherence of the Natura 2000 network. We suggest that this could be achieved by legally designating a safety/exclusion zone to all activities which have the potential to cause damage to cables. This would include anchoring from vessels, and fishing exclusion zones. TWT does still not consider that adequate information has been provided by the applicant on why this is not a viable option.

### **4. Other policy which must be used in decision making**

In decision making, the Government's 25 Year Environment Plan must be taken into account. Under the goal of thriving wildlife and plants, a resilient sea richer in wildlife and plants will be achieved through reversing and restoring the loss of marine biodiversity, better managing existing protecting sites, and ensuring seafloor habitats are productive and sufficiently extensive to support healthy, sustainable ecosystems.

Haisborough, Hammond and Winterton SAC is already in unfavourable condition. The placement of cable protection within this site will impede recovery and the goals of the 25 Year Environment Plan will not be met.

The UK Government also has national and international commitments to achieve an ecological coherent network of Marine Protected Areas (Marine and Coastal Access Act 2009, OPSAR). The impediment of recovery of Haisborough, Hammond and Winterton SAC threatens the achievement of an ecologically coherent network.

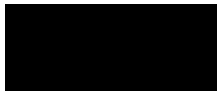
A number of elements in the East Marine Plan must also be taken into account in decision making, such as:

- Objective 7 To protect, conserve and, where appropriate, recover biodiversity that is in or dependent upon the East marine plan areas.
- Objective 8 To support the objectives of Marine Protected Areas (and other designated sites around the coast that overlap, or are adjacent to the East marine plan areas), individually and as part of an ecologically coherent network.

Finally, the strengthened Biodiversity Duty in the Environment Act must also be taken into account in decision making. General duties for protected sites are also outlined in Section 9 of the Habitats Regulations.

TWT looks forward to continuing to engage in the redetermination of Norfolk Vanguard.

Yours sincerely



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The Wildlife Trust