

From: [Tania Davey](#)
To: [Hornsea Project Three](#)
Cc: [Joan Edwards](#); [Lissa Batey](#)
Subject: Hornsea 3 - TWT Response to Examiner's Questions: deadline 4
Date: 14 January 2019 16:46:09
Attachments: [TWT response to HO3 EXA 2nd written questions.pdf](#)

Dear Sir/Madam

Please find attached a response from The Wildlife Trusts to the Examiner's questions for Hornsea 3 for deadline 4.

This email will be followed with supporting evidence which is referenced in the attached response. Please do let me know if you do not receive this information

Kind regards

Tania

Tania Davey
Living Seas Sustainable Development Officer
The Wildlife Trusts
Tel: 01507 528388
[REDACTED]
Banovallum House
Manor House Street
Horncastle
Lincolnshire
LN9 5HF



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Royal Society of Wildlife Trusts, The Kiln, Waterside, Mather Road, Newark, Nottinghamshire NG24 1WT. Registered Charity Number 207238

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Mr Prentis
National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

The Wildlife Trust reference: 20010531

BY EMAIL

14 January 2019

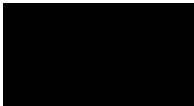
Dear Mr Prentis

Examiner's written questions for Hornsea Three offshore wind farm: deadline 4

Thank you for inviting The Wildlife Trusts (TWT) to respond to questions for Hornsea Three Offshore Wind Farm. Our response is outlined in appendix A

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

Yours sincerely



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

The Wildlife Trusts

*The Kiln
Waterside
Mather Road
Newark
Nottinghamshire
NG24 1WT
Tel (01636) 677711
Fax (01636) 670001
Email
info@wildlifetrusts.org*

*Website
www.wildlifetrusts.org*

Patron
*HRH The Prince of Wales
KG KT GCB OM*
President
Tony Juniper CBE

*Royal Society of Wildlife Trusts
Registered Charity no. 207238
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Appendix A: TWT response the Examiner’s Questions for Hornsea Offshore Wind Farm: Deadline 4

Reference	Question	TWT response to question
Benthic Ecology		
Q2.2.51	Your representation [RR-047] states that more realistic expectations of cable burial and protection within The Wash and North Norfolk Coast SAC are required. Does the information submitted by the Applicant at Deadline 1 [REP1-138] and Deadline 2 [REP2-004] give you the clarity you are seeking on the potential effect of cable burial on the SAC?	<p>TWT is concerned after reviewing Natural England’s “Post hearing submissions including written submissions of oral cases - Issue Specific Hearing 2 Part 2 – Benthic Site” (REP3-077) that The Wash and North Norfolk Coast SAC has been reclassified to unfavourable declining condition due to ongoing cable installation activities and a lack of management/restoration plan to allow recovery. Further assessment is required in line with Article 6(2) and 6(3) to understand if the installation of the Hornsea Three cables can go ahead whilst allowing the recovery of the site, or if the alone and in-combination effects will result in further decline. We are ingoing discussion with the applicant on this issue.</p> <p>We welcome that the condition assessment for The Wash and North Norfolk Coast SAC will soon be published and we are happy to make further comments once we have reviewed this information.</p>
Marine Mammals		
Q2.2.65	You stated in [REP1-023] that it was not appropriate to use the Booth et al (2017) paper as the basis for determining the significance of cumulative underwater noise impacts on harbour porpoise because the model heavily relies upon expert opinion rather than empirical data. The Applicant has since run an updated version of the iPCoD model,	<p>TWT was not aware that the applicant had run an updated version of the iPCoD model. TWT would welcome a summary of the results. TWT would also like to review the new empirical evidence which has been used in the updated model before we make any further comments. We have asked the applicant for further information.</p>

	<p>incorporating all available empirical information on harbour porpoise energetics, diet and responses to piling noise. The Applicant has stated in [REP2-004] that this has a similar or lower magnitude of effect for an equivalent scenario. Consequently, the appellant maintains that the ES outcomes that were based upon Booth et al (2017) remain valid and no long term population level impact is expected. What are your views on this additional analysis and how does it affected your stated position? Please provide copies of any publications you wish to rely upon in evidence that have not already been provided.</p>	
<p>Q2.2.71</p>	<p>TWT You highlighted a methodology in Heinänen & Skov (2015) [REP1-023] that could be used to assess the cumulative impacts of shipping. You then concluded that this would not be possible here because of a lack of appropriate detail on other projects. Under these circumstances how do you suggest the approach is used? Please submit a copy of Heinänen & Skov (2015).</p>	<p>The applicant was able to apply the Heinänen & Skov metric to the Hornsea Three alone assessment. The applicant stated in the Statement of Common Ground with TWT that <i>“this was not possible at the cumulative assessment level due to the lack of appropriate detail on all the other projects”</i>. The only way to apply the Heinänen & Skov metric to cumulative assessments is to undertake a strategic approach, which is current unavailable. We accept this is outside the scope of this application, but we wish to highlight this as a wider issue.</p>

<p>Q2.2.72</p>	<p>In [RR-047] TWT stated that fishing activity should be included in the in combination assessment rather than in the ES baseline. Paragraph 4.4.3 of EU guidance¹ suggests that completed plans or projects do not form part of the in combination assessment required by Article 6(3) but that their effect should still be considered if they have continuing effects on the site. Even if TWT considers fishing as a plan or project that has not been completed why would an in combination assessment not result in double counting if fishing has been included in the baseline? Has a distinction been made between existing and future fishing activity in any of the Hornsea Project Three evidence? How can future fishing be taken into account before the outcome of any future licensing is known? What evidence does TWT have to suggest that the outcome of future licensing will intensify or extend fishing?</p>	<p>It must be noted that these comments are not specific to the Southern North Sea SCI. Fishing must be included in all in-combination assessments to meet Article 6(3) of the Habitats Directive.</p> <p>Fishing is an ongoing human activity which can change in level, type and location regularly and is not currently spatially controlled in offshore Marine Protected Areas (MPAs) (further details below). It is not part of the baseline and therefore cannot be considered as double counting. If fishing was part of the baseline, it would mean there is no impact from this activity on the environment. However, the Defra policy¹ document on managing fisheries in European Marine Sites² (EMS) recognises that fishing is a damaging activity within EMSs and must be assessed and managed to ensure Article 6(3) of the Habitats Directive is met:</p> <p><i>“In order to ensure that EMSs receive the requisite level of protection and ensure compliance with the EU Birds and Habitats Directives, Government has decided to revise the approach to the management of commercial fisheries affecting EMS.</i></p> <p><i>Government and Fishery Regulators in England (primarily the Marine Management Organisation (MMO) and Inshore Fisheries and Conservation Authorities (IFCAs)) have legal obligations to ensure that fishing activities (including existing fishing activities), which could adversely affect EMSs are managed in a manner that secures compliance with the requirements of Article 6 of the EU Habitats Directive.</i></p> <p><i>Fishing activity which is prohibited or restricted within EMSs under the revised approach could be allowed through a permitting mechanism at the site level. Any such permitting would be subject to the Article 6(3)-(4) processes described in Part 6 of the Conservation of Habitats and Species Regulations 2010. The regulatory authorities should also ensure ongoing management of commercial fishery activities <u>remains compatible with the conservation objectives of the site in line with their obligations to secure compliance with Article 6(2) of the Habitats Directive.</u>”</i></p>

¹ 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

² European Marine Sites are defined by the Habitats Regulations as marine SACs or SPAs <http://jncc.defra.gov.uk/page-4215>

		<p>It must be noted that management within EMSs is subject to ongoing negotiation with the European Union as part of the Common Fisheries Policy (CFP) which is also outlined in the Defra policy document:</p> <p><i>“EMS outside 12nm will require legislative measures to be proposed by the European Commission in accordance with the CFP to ensure adequate protection. For these sites, the Department, taking account of any relevant guidance, intends to submit proposals to the European Commission for any fishery measures needed to ensure site protection is consistent with Article 6 of the Habitats Directive, so that appropriate Regulations are in place in 2016.”</i></p> <p>As stated, TWT does not consider fishing to be part of the baseline. Due to the complicated negotiating CFP process, fishing within offshore MPAs (beyond 12nm) may be taking place at damaging levels since management is not yet in place. In addition, fishing is a constantly changing activity which requires regular monitoring to understand the ongoing effects on protected areas. Due to this ongoing uncertainty on the effects of fishing on designated sites, as a principle the inclusion in in-combination assessments is necessary to understand the additive effects of all activities on the conservation status of a site to meet Article 6(3) of the Habitats Directive.</p> <p>A distinction has not been made on existing and future fishing activity in any of the Hornsea Project Three evidence as fisheries in-combination assessments have not taken place. The level of existing fishing activity must be the first consideration when undertaking cumulative impacts assessments. This information can be gathered from VMS data. In terms of understanding the level of future fishing activity, this is very difficult to predict, especially taking account the impacts of Brexit.</p> <p>TWT recognises that assessing the cumulative impact of offshore wind farm development and fishing is complicated. To develop the revised approach to fisheries assessment and management in EMS, an Implementation Group was established with a range of expert stakeholders to develop a process to tackle this complicated issue. TWT recommends that</p>
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		something similar is required to develop an effective approach to assess the cumulative impacts of offshore wind farm development and fisheries.
<p>Q2.2.75</p>	<p>In [REP1-023] you highlight the fact that you are advocating an approach to underwater noise management that is used in other countries and that you do not support the SNCB advice. If the Applicant has acted on SNCB advice and concluded that there would not be a likely significant effect on harbour porpoise populations in the cSAC as set out in [APP-051], why is more strict mitigation at source necessary? What scientific evidence do you have to suggest the existing SNCB advice or current industry standards are inadequate? Please provide copies of any publications you wish to rely upon in evidence that have not already been provided.</p>	<p>Stricter mitigation at source is required as TWT does not think that the proposed SNCB advice is precautionary enough. The area-based threshold figures proposed by the SNCBs are based on the carrying capacity of the harbour porpoise SCIs. There is no scientific evidence to understand what the carrying capacity is for harbour porpoise within the Southern North Sea SCI. Therefore, there insufficient evidence to show that the proposed area-based threshold figures will meet the conservation objectives for these sites of (i) ensuring the harbour porpoise remains a viable component of the site; and (ii) avoiding significant disturbance of the species.</p> <p>TWT supports the use of noise limits, as scientific information is available to support this approach. For example, information is available on noise thresholds for harbour porpoise for Permanent Threshold Shift (PTS), Temporary Threshold Shift (TTS)³⁴ and disturbance⁵. Exceeding noise thresholds has the potential to cause death, injury and disturbance. If these noise limits are exceeded, this is likely to result in the non-achievement of the conservation objectives for these sites, resulting in negative impacts on the Favourable Conservation Status of harbour porpoise, in breach of the Habitats Directive.</p> <p>TWT also highlight that management approach proposed by SNCBs results in a weaker management regime for noise <i>inside</i> harbour porpoise SACs than other North Sea countries have <i>outside</i> of their own harbour porpoise SACs. As harbour porpoise are a mobile species, an approach that is cohesive with our European neighbours is required in order to ensure the Favourable Conservation Status of harbour porpoise and comply with Habitats Directive requirements relating to the strict protection of this species throughout its range. The UK is</p>

³ Southall, BL, Bowles, AE, Ellison, WT, Finneran, JJ, Gentrym RL, Greene, CR, Kastak, D, Ketten, DR, Miller, JH, Nachtigall, PE, Richardson, WJ, Thomas, JA and Tyack, PL, 2007. Marine Mammal Noise Exposure Criteria: Initial Scientific Recommendations. Aquatic Mammals, Volume 33, Number 4, 2007.

⁴ National Marine Fisheries Service, 2016 (NOAA). Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing: Underwater Acoustic Thresholds for Onset of Permanent and Temporary Threshold Shifts.

⁵ Lucke, K., U. Seibert, P.A. Lepper and M-A. Blanchet. 2009. Temporary shift in masked hearing thresholds in a harbour porpoise (*Phocoena phocoena*) after exposure to seismic airgun stimuli. Journal of the Acoustical Society of America, 125:4060 – 4070.

		<p>therefore applying management which is weaker than our neighbours and therefore not applying the Precautionary Principle in line with Article 6 of the Habitats Directive.</p> <p>Underwater noise management based on noise limits is a tried and tested method in countries such as Germany, Belgium and the Netherlands. Lessons should be learnt from the approach used in these countries.</p>
<p>Q2.2.78</p>	<p>The Applicant has submitted a Site Integrity Plan for the Southern North Sea SCI [REP1-181] that would be secured via Condition 13(5) in the generation assets DML and 14(5) in the transmission assets DML. The Applicant goes on to state [REP2-005] that the final assessment of the effectiveness of the various mitigation options can only be carried out once the final design is decided. The Applicant notes that the MMO is now satisfied that this approach will provide appropriate control measures to mitigate effects on marine mammals when used alongside the Marine Mammal Monitoring Plan which would also be secured via the dDCO. Is there now sufficient detail to address your</p>	<p>No, TWT require further details to alleviate our concerns. In its current form the SIP lacks detail on the effectiveness of the proposed mitigation methods. Therefore, TWT does not consider it adequate to ensure no adverse effect on the SNS SCI beyond reasonable scientific doubt. To achieve this, more evidence is required to detail the effectiveness of the proposed mitigation. This should include referenced examples of how the implementation of mitigation will reduce underwater noise disturbance impacts within the SNS SCI. Noise modelling should also be undertaken to demonstrate the degree of noise reduction which could be achieved through mitigation⁶.</p> <p>The following text of the European Commission Article 6 Habitats Directive Guidance from 21st November 2018⁷ (page 52) establishes the obligation to detail the effectiveness of mitigation measures.</p> <p><i>“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.”</i></p>

⁶ Faulkner, R.C., Farcas, A. & Merchant, N.D.(2018). Guiding principles for assessing the impact of underwater noise. Journal of Applied Ecology. 1–6.

⁷ 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

	concerns on this matter? If not what changes do you suggest?	
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