



THE PLANNING ACT 2008
THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)
RULES 2010

HORNSEA PROJECT THREE OFFSHORE WIND FARM

Planning Inspectorate Reference: EN010080

NATURAL ENGLAND

Written Submission for Deadline 7

Annex B: Statutory Nature Conservation Bodies (SNCB's) advice in relation to colonisation of *Sabellaria spinulosa* reef on artificial substrate being considered as Annex I reef and contributing to the favourable condition status as reef

14 March 2019

1. Introduction

- 1.1. This note provides SNCB's advice in relation to colonisation of *Sabellaria spinulosa* reef on artificial substrate being considered as Annex I reef and contributing to the favourable condition status of Annex I reef.
- 1.2. Please note should further evidence be presented then this position may change.

2. Increase in *Sabellaria spinulosa* reef feature vs. loss of another Annex I habitat

- 2.1. Areas of Annex I features within Marine Protected Areas (MPAs) are delineated as much as possible at the time of designation with reference to any supporting habitats/sediments and/or sub features. All Annex I habitats have equitable protection, therefore it is not appropriate to trade one habitat in a site for another. For example, if the site is designated for both sandbanks and reef and rock protection is placed on the sandbank feature and then *Sabellaria* reef colonises this rock protection it cannot be considered as a benefit to the site that you have taken one feature in the site and swapped it for another.
- 2.2. Furthermore, possible gain of *Sabellaria spinulosa* reef and definite loss of sandbank feature is not acceptable mitigation under recent ECJ ruling. Please see [Briels judgement: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62012CC0521&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62012CC0521&from=EN).

3. Establishment of *Sabellaria spinulosa* reef on artificial substrata over laying suitable habitat for reef development

- 3.1. In theory this shouldn't happen as there is the standard marine licence mitigation condition to avoid reef or areas to be managed as reef at the time of construction. The developers first choice is also to use the appropriate tools to install the cable to the optimum cable burial depth so that further cabling activities i.e. reburial and protection are not required.
- 3.2. However, Natural England's 'Cables' paper (Natural England, 2018) which summarises our experience of cable installation over the last 10 years is demonstrating that cable installation is more challenging than predicted with the need for cable protection therefore on the increase to protect the developers assets.
- 3.3. Offshore windfarm developers are stating in their applications that rock protection can be colonised by *Sabellaria spinulosa* reef and therefore doesn't preclude the recovery of the reef features. Whilst Natural England (and other SNCBs) agree that *Sabellaria spinulosa* could colonise rock protection we consider the establishment of *Sabellaria spinulosa* reef on artificial substrate as

not "counting" towards favourable condition of the feature and/or site. This is because it is not a replacement for Annex I *Sabellaria spinulosa* reef on natural site sediment as set out at the time of designation and within the conservation advice package for the site.

4. Consideration of possible mitigation

- 4.1. The fact that new areas of habitat may be created elsewhere in the same site does not appear to be relevant, even if a net beneficial effect is predicted. There is still a possible adverse – even irreparable – effect on the existing natural habitat, and thus on the integrity of the site. The new habitat will be, to some extent, artificially created and cannot become a true natural habitat for some, possibly quite considerable, time.
- 4.2. As was pointed out by counsel for the Stichting hearing, there can be no certainty that steps to create a new area of a particular habitat will in fact ever achieve the desired outcome and, in application of the precautionary principle, absence of uncertainty is a condition for approval in the context of Article 6(3) of the Habitats Directive. Outcomes cannot be guaranteed in heavily- managed agriculture; it is all the more difficult to guarantee them when seeking to encourage nature to take its course. The Court has stated that there must be no remaining scientific doubt before it can be concluded that there are no lasting adverse effects on the integrity of a site. The same standard must in Natural England's view be applied to predictions of success for planned new areas of created 'natural' habitat.
- 4.3. NB: Whilst this case law is primarily in relation to mitigation vs compensation when avoiding adverse effect on integrity; it still serves as underpinning the general principal of not considering the possible creation of new habitat as in some way reducing the consideration of habitat loss elsewhere.

5. Decommissioning

- 5.1. Offshore windfarm developers have suggested that views on the acceptability of colonisation of rock armouring may have changed by the time of decommissioning, including a potential argument to retain the rock armouring in situ within designated sites. Whilst, Natural England acknowledges this may be the case, we can't foresee what will happen over the next 20 - 30 years and a further assessment would need to be made at that time. **Therefore, based on best available evidence our advice remains unchanged that *Sabellaria spinulosa* on artificial substrate is not Annex I reef.**
- 5.2. It should also be noted that should decommissioning happen there are still no guarantees that site/features will be returned to pre impact states, thus further hindering the recovery of Annex I reef features.

6. References

Natural England (2018) Natural England Offshore wind cabling: ten years experience and recommendations.