

From: [Brown, Emma](#)
To: [Hornsea Project Three](#)
Subject: Hornsea Project Three - Deadline 9 Response from Natural England
Date: 26 March 2019 19:14:13
Attachments: [SouthernNorthSeaDRAFTConservationObjectivesAndAdviceOnActivities.pdf](#)
[EN010080 Hornsea Project Three Deadline 9 Natural England Comments on ExA Q F3.1.pdf](#)
[EN010080 Hornsea Project Three Deadline 9 Natural England Correction to REP7-078.pdf](#)
[EN010080 Hornsea Project Three Deadline 9 Natural England Response to ExA Q F4.1, F4.2 and F4.3.pdf](#)
[EN010080 Hornsea Project Three Deadline 9 Natural England's Response to ExAO F6.1.pdf](#)
[EN010080 Hornsea Project Three Deadline 9 Natural England's comments on the Applicant's D7 Submissions.pdf](#)
[OffshoreRegisterEntry_SouthernNorthSea \(Citation\).pdf](#)

Good Evening,

Please find attached Natural England's Deadline 9 Response.

This includes:

- Natural England's Comments on the Applicants D7 submissions
- Natural England's Comments on ExA Q F3.1
- Natural England's Response to ExA Qs F4.1, F4.2 and F4.3
- Natural England's Response to ExA Q F6.1
- Offshore Register Entry for the SNS SAC (Citation)
- SNS SAC Draft Conservation Objectives and Advice on Activities

Kind regards,

Emma

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Please note I currently work Monday - Thursday

<http://www.gov.uk/naturalengland>

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Date: 25 March 2019
Our ref: HOW3 D9
Your ref: EN010080



**Hornsea Project Three Case Team
Planning Inspectorate**

Customer Services
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BY EMAIL ONLY

Dear Sir or Madam,

Planning Act 2008, Ørsted Hornsea Project Three Limited, Proposed Hornsea Project Three Offshore Windfarm Order

Natural England has reviewed the Applicant's submissions at Deadline 7 and overall our advice in relation to this project remains unchanged.

As our advice has already been well documented throughout the course of the Examination, we have not sought to repeat this, but rather highlight points of clarification and signpost to where more detailed comments can be found in response to Examining Authority Written Questions.

As an additional point, we have noted that throughout these more recent submissions, there reference to Natural England's advice being (for example) 'extreme' or 'at the extreme end of the spectrum' and 'representing a gross overestimate'.

We would like to take this opportunity to state that Natural England's advice on this project is in line with the requirements of the relevant legislation and consistent with our advice on similar plans or projects.

Yours sincerely

Emma Brown
Natural England
[Click here to enter text.](#)

1. Natural England's comments on the Applicants comments on the RIES [REP7-006]

1.1. Natural England has reviewed the Applicant's submission, and would like to clarify a few points raised.

1.2. Introduction

1.2.1 Natural England does not agree with the applicant's comments that they have taken a 'highly precautionary' approach to their assessment of impacts to European sites. Whilst they may have taken a precautionary approach to establishing their maximum design parameters to allow increased flexibility, they have for example screened out features of sites based on their impacts alone, without consideration of the in-combination impacts.

1.2.2 Within the introductory section, the Applicant has criticised Natural England for not providing a definitive view on the screening of Likely Significant Effects, or on the Risk of Adverse Effect on Integrity. Natural England would like to highlight that we have done this where it has been possible to do so. Where Natural England have not been able to provide a definitive view on such matters this is due to insufficient evidence provided by the Applicant, or because a feature has been screened out of further consideration in the RIAA without sufficient evidence and justification. In these instances Natural England's advice has been that there is not sufficient evidence to rule out Adverse Effect on Integrity beyond reasonable scientific doubt.

1.2.3 The Applicant also refers to Natural England failing (in their opinion) to deduce 'any evidence in support of its position'. Natural England would highlight that under the Habitat's Regulation's the onus is on the Applicant to provide evidence and justification for their conclusions. Whilst we recognise that the Applicant believes they have provided sufficient evidence to support their conclusions, there remains uncertainties in relation to the scale of impacts and the likelihood of any proposed mitigation removing the potential for an Adverse Effect on Integrity (AEol). Case Law has highlighted the need for certainty beyond reasonable scientific doubt that impacts can be adequately mitigated. This is currently not the case here. Notwithstanding this point, Natural England considers the advice we have provided to be evidence based and consistent with our advice on other projects.

1.3. Natural England note that in paragraph 2.2.2 the Applicant highlights that their Digital Aerial survey methodology was presented to and agreed by NE and RSPB at the Expert Working Group with specific discussion on precision and coverage. Natural England have not disputed this. However, from the small amount of information available during subsequent EWGs it appeared that the Applicant were not achieving the level of precision they had previously indicated they would. Natural England have made repeated requests throughout this examination for the Applicant to provide information on the precision of their monthly population estimates but this has not been forthcoming.

1.4. With Reference to the Applicant's comment on Stage 2 Matrix 6 point b, Natural England would reiterate that there is currently no agreed/ legally secure process for identifying the potential headroom within consented plans or projects. As such, we do not consider the approach the applicant has taken to be Habitat Regulations compliant.

2. Natural England's comments on the Applicant's comments on Interested Parties responses at Deadline 6 [REP7-007]

2.1. Natural England has reviewed the comments in REP7-007. We note that we remain in

disagreement with the applicant in a number of areas (as reflected in our SoCGs with the Applicant, which we believe the Applicant intend to submit at Deadline 8).

2.2. In relation to our benthic concerns, we welcome the Applicant's clarifications and responses to the questions we posed in relation to the Cable Specification and Installation Plan (CSIP) and Preliminary PTA. However, in most instances Natural England disagree with the Applicant, or do not consider that the Applicant's response provides sufficient evidence to allay our concerns. Consequently, our advice as set out in our Deadline 7 response [REP7-066, REP7-067, REP7-070, REP7-073] remains unchanged. Natural England's view in relation to European Sites remains that it is not appropriate to rely on post consent surveys to inform mitigation decisions where it cannot be demonstrated with certainty beyond reasonable scientific doubt that such mitigation would exclude significant impacts.

3. Natural England's comment's on the Applicant's written submission of representations made at ISH 7 [REP7-009]

3.1. Natural England has reviewed the Applicant's submission and our position/advice remain unchanged. As we feel our advice has been sufficiently documented throughout this examination, we are not proposing to comment on the detail of this submission, but would like to clarify a few points that the applicant has raised in our absence regarding discussions held outside of formal hearings.

3.1.1 In relation to paragraph 3.1, Natural England would like to highlight that the applicant had, prior to the call on 27th February, substantially revised the structure of the Benthic Ecology and Marine Processes Statement of Common Ground, providing a summary of advice under the broad headings requested by the ExA. Natural England's feedback on this revised format had been that this new structure had lost its specificity in relation to designated sites, and that consequently where Natural England might be able to agree to some parts of statements for some sites, we would have to disagree overall. Both parties agreed that this would not be helpful to the ExA. In discussing a way forward, Natural England advised the Applicant that we were working on summaries of our advice on each benthic site that we hoped to submit at Deadline 7, but that this could slip depending on the amount of time required to complete the SoCG. The Applicant felt that this would be helpful in informing the structure of the SoCG, and consequently it was mutually agreed during discussions with Natural England's project team including our benthic specialist, that Natural England would focus efforts on completing these summaries, with a view to submitting the SoCG at a later deadline..

3.1.2 In relation to paragraph 6.2, Natural England would like to highlight that this list of information was previously provided within our Written Representation at Deadline 1, and resubmitted at Deadline 4. We are unclear as to why the applicant has been unable to provide this information within the examination timeframe.

3.1.3 In relation to paragraph 6.3, Natural England wishes to highlight that we have engaged as much as we possibly could, given the current constraints. In recognition of the challenges faced by the Hornsea Project Three we have offered weekly meetings with Natural England's Senior Responsible Officer for their project which is an exception and not the norm for the other OWF NSIPs currently in examination

3.1.4 In relation to paragraph 6.4, Natural England notes that the Applicant stated that we 'rejected' a meeting to discuss mitigation. This statement is misleading and inaccurate. Natural England's response to the Applicant's initial request was that we would be unable to provide advice on a quantitative/site specific basis (given our position on the baseline dates) and that it would therefore be unlikely that we could offer any insight beyond the types of mitigation that could be considered. We highlighted that given the Applicant's consultant's (NIRAS) experience of other

projects which have explored potential mitigation (such as Hornsea 2), we would anticipate the Applicant would be fully aware of all of the existing mitigation measures and potential for these to be adopted by this project

When the Applicant continued to reiterate their request, Natural England requested further details of the proposed meeting and their desired outcomes. Unfortunately the Applicant's response to us was ill-timed, coinciding with Natural England needing to prioritise our statutory obligations for Deadline 7 and 9 submissions. Therefore we have not had the availability to consider this further and respond. However, Natural England would stress that we have not rejected the request of a meeting to discuss mitigation, and would be happy to do so if a clear set of objectives for such a meeting can be agreed and if our availability allows.

3.2 As context, Natural England has only a small team of 5 core people (including specialists) working on this case. Of these people, several work part time, and all have work commitments beyond Hornsea Project Three (including work on other projects in Examination). As there are three offshore windfarm NSIP cases in examination at present, there is no availability for any additional resource beyond this. As highlighted in our oral and written submissions, the number and length of additional documents submitted throughout the course of this examination has been vast, and consequently the task of responding to each of the statutory deadlines has been particularly challenging, with staff regularly working well beyond their contracted hours. Consequently, there has been little or no time available to engage in the 'non-statutory' elements of the examination, (i.e. dialogue with the Applicant). This serves to highlight the importance of making the best use of the Evidence Plan Process and Section 42 consultations on the PIER prior to the submission of an application.

3.3 In paragraph 6.34 of REP7-009 the Applicant refers to the counterfactual of final population size metrics that are derived from the Population Viability Analysis model results. The Applicant makes the point that the counterfactual metrics presented in slide 9 of REP7-009 are all "*higher than a number consented in Scotland, where the population of kittiwake is in a less favourable condition, and no adverse effect was concluded*". The Applicant further states that "*there is a lack of a hard threshold for determining effect, as this will not be provided by statutory nature conservation bodies*". Natural England note that the reason that there is no threshold that can be generically applied to a counterfactual metric for an SPA population is that whether a given level of population impact is considered to represent an AEOI is dependent on factors such as the status of the feature at the SPA and the specific conservation objectives for that feature at that site. The impacts that relate to the kittiwake feature of FFC SPA should be assessed against the status of, and Conservation Objectives for this feature at this site, and not to the status or conservation objectives pertaining to kittiwake at Scottish SPAs. Natural England also note that the kittiwake feature at FFC SPA is considered to be in *unfavourable condition* and so it is not clear what the Applicant means when they say that the population is in "less favourable condition" in Scotland. Further, Natural England do not agree with the values of the counterfactual metrics that the Applicant has presented in slide 9 (see Natural England's REP7-078 for information on the counterfactuals for the kittiwake population at FFC SPA against different impact scenarios).

4. Natural England's comments on the Applicant's Outline Landscape Plan [REP7-018]

4.1. Natural England has reviewed this document and provided feedback to the Applicant as through our ongoing discussions on our Statement of Common Ground for 'All other Matters'. (We anticipate this SoCG will be provided by the Applicant at Deadline 9)

5. Natural England's comments on the Applicant's position statement on ornithological mitigation options [REP7-030] and Ornithological Mitigation Scenarios [REP7 031]

5.1. Natural England has reviewed these documents in response to ExA Question F4.2

6. Natural England's comments on "Ornithological Data Request" [REP7 032]

6.1. Natural England has reviewed this document in response to ExA Question F4.1