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Gareth Leigh
Department for Business, Energy and Industrial Strategy

The Wildlife Trust reference: 20010531

BY EMAIL

22 April 2020

Dear Gareth

Response from The Wildlife Trusts on further information submitted by Hornsea Three to the Secretary of State for Business, Energy and Industrial Strategy

The Wildlife Trusts (TWT) welcomes the opportunity to respond to the further information provided by the applicant on the 14th February 2020.

TWT support the UK's current targets to reduce greenhouse gas emissions and the government's ambitions to tackle climate change and increase the proportion of overall energy generated from alternative sources. However, we do not believe that this should be at the expense of the environment and firmly believe that it needs to be 'right technology, right place'.

TWT's response to the further information can be found below with detailed comments included in Appendix A. Overall, we currently do not support the proposed compensation and Measures of Equivalent Environmental Benefit (MEEB) measures and would like to emphasise that the alternatives test has not yet been met. As a result, the Hornsea Three Development Consent Order cannot yet be granted. However, we wish to work with Hornsea Three and other stakeholders to identify the best mechanisms to allow this development to take place.

1. Reduction of Hornsea Three envelope

We welcome the measures the applicant has taken to reduce the envelope including removing all infrastructure from Markham's Triangle MCZ and reducing the percentage of rock protection within The Wash and North Norfolk Coast (WNNC) SAC, North Norfolk Sandbanks and Saturn Reef (NNSR) SAC and Cromer Shoal Chalk Beds (CSCB) MCZ.

TWT would like to raise that many issues arise from the Rochdale Envelope approach across all projects. The broadness of the envelope which developers present creates a great deal of uncertainty on the environmental impacts and results in worst case scenarios which developers regularly present as unrealistic. However, we have to base our comments on the worst-case scenario to ensure the strictest protection of the environment. It is widely accepted that cumulative impacts on the environment from the scale of offshore wind farm development predicted is the greatest concern. To plan and manage the cumulative environmental impact, more realistic scenarios need to

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presented. We appreciate the issues regarding the Rochdale Envelope go beyond this project and needs to be dealt with at a strategic level.

2. Alternatives

TWT believe that safeguards provided for by the Habitats Directive, such as the consideration of viable alternatives, have not been exhausted. There are three alternatives which TWT consider relevant and require further consideration:

2.1. No rock protection in Marine Protected Areas (MPAs)

TWT does not support the use of rock protection in MPAs. Rock protection causes the permanent loss of habitat, often in MPAs which are already in unfavourable condition.

No rock protection over cables in MPAs is a viable alternative that can be delivered through the creation of a safety zone to allow the delivery of the project whilst greatly reducing the environmental impact. It therefore must be considered in more detail as a viable alternative.

The applicant has discounted this alternative based on technical grounds in that it would not meet the Hornsea Three objective for the project to be delivered in a safe and efficient manner. TWT conclude that this objective can be met based on the following evidence:

a) Lincs and Lyn offshore wind farms

We are aware that both these offshore wind farms have cables which are exposed and have no rock protection.

b) Telecommunications cables

Although we appreciate telecommunication cables are smaller than offshore wind farm cables, as far as we are aware, no telecoms cables are protected by rock.

This evidence shows that cables can be placed safely on the seabed without cable protection and therefore TWT concludes that this alternative should be further explored. We have provided further comments on this in section 2.2 of Appendix A.

2.2. Commitment to HVDC

Hornsea Three must make a commitment to the use of HVDC only, to reduce the number of cables going through MPAs. Norfolk Vanguard¹ has made this commitment as part of their response to the Secretary of State on the derogation process, and the Dogger Bank Offshore Wind Farms have also committed to HVDC.

2.3. Shared cabling route with other offshore wind farm developers

There are numerous projects with proposed cable routes along the Norfolk coast (Hornsea Three, Norfolk Vanguard, Norfolk Boreas, Sheringham and Dudgeon Extension). TWT proposes a pause in the Hornsea Three project alongside these projects to review alternatives, compensation and MEEB proposals. We suggest a shared cable route with other developers should be considered as part of this.

3. Lack of analysis of compensation and MEEB

Neither compensation for WNNC and NNSSR SAC or MEEB for CSCB MCZ have been considered against the conservation objectives for the Sites to determine if the proposed measures actually provide for the loss and damage to the Sites. The only analysis which has been undertaken is against the extent

¹ Norfolk Vanguard Outline Norfolk Vanguard Haisborough Hammond and Winterton Special Area of Conservation Cable Specification, Installation and Monitoring Plan section 4.1.1 <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010079/EN010079-004224-8.20%20Haisborough%20Hammond%20and%20Winterton%20Special%20Area%20of%20Conservation%20Cable%20Specification%20Installation%20and%20Monitoring%20Plan.pdf>

objective; this is not adequate, especially when numerous Sites are already in unfavourable condition. Consideration of in-combination impacts and the condition of the Sites must also be taken into account.

It is also essential that analysis is undertaken to assess the success of compensation/MEEB against the coherence of the Natura 2000 network and UK network of MPAs. There is a lack of policy and guidance on assessing impacts and compensatory measures against the coherence of the UK MPA network and we suggest this is required to meet section 123 of the Marine and Coastal Access Act 2009. The consideration against the MPA network is also outlined in Defra guidance².

4. Views on proposed compensation

Based on our review of the proposed compensation measures, we cannot agree that the proposals are adequate to provide compensation. Defra guidance states that compensation:

- should offset the negative effects caused by the plan or project
- provides comparable habitats
- provides confidence that the compensatory measure will be sufficient to offset the harm and is supported by robust evidence³.

Overall, the measures do not meet the criteria outlined in the Defra guidance and if delivered may still result in an overall decline of the sites affected. Even a 'package of measures' as proposed could still result in site decline as they do not provide compensation against the conservation objectives for the site.

Annex 1 of the Defra (2010) guidance clearly shows that if compensation cannot ensure the overall coherence of the network of European sites then authorisation cannot be granted. As TWT concludes that the compensatory measures cannot ensure no decline in the condition of sites affected, we also conclude that the coherence of not only the Network of European Sites but also the UK network of MPAs will not be achieved. In conclusion, as the compensation proposals cannot meet this criterion, consent cannot be granted by the Secretary of State at this stage.

TWTs views on each of the compensation measures can be found in Section 4 of Appendix A.

5. Views on proposed Measures of Equivalent Environmental Benefit (MEEB)

Our interpretation of section 126 of the Marine and Coastal Access Act 2009 is significantly different to the applicant. The current guidance⁴⁵ available is not fit for purpose to expect the developer to satisfy Section 126(7) of the Marine and Coastal Access Act 2009. Stage 2 guidance is urgently required to progress the identification of appropriate MEEB measures and TWT suggests that MEEB measures cannot be signed off until guidance is available.

TWT's view of Section 126 of the Marine and Coastal Access Act 2009 is that it should apply the same principles of Article 6(4) of the Habitats Directive. Without the same standard being applied to MCZs, sub-standard MEEB could be agreed which does not provide for the loss and damage to an MCZ and causes a deterioration of not only the Site, but of the UK MPA network thus undermining section 123 of the Marine and Coastal Access Act 2009.

TWTs views on proposed MEEB can be found in Section 5 of Appendix A.

² Guidance on the duties which will be placed on public authorities in relation to Marine Conservation Zones under Part 5 of the Marine and Coastal Access Act 2009 (2010). Defra.

³ Habitats and Wild Birds Directives: guidance on the application of article 6(4) Alternative solutions, imperative reasons of overriding public interest (IROPI) and compensatory measures (2012). Defra

⁴ Marine Conservation Zones and Marine Licensing (2013). Marine Management Organisation

⁵ Guidance on the duties which will be placed on public authorities in relation to Marine Conservation Zones under Part 5 of the Marine and Coastal Access Act 2009 (2010). Defra.

6. Strategic measures

TWT would like to emphasise the importance of strategic measures to allow the growth of offshore wind to meet the 2030 targets. We appreciate that some strategic measures cannot be delivered at a project level. However, delivery at a strategic level would allow environmental head room to grant offshore wind farm development at a project level.

The issue in delivering the scale of offshore wind in combination with other damaging human activities is to ensure that environmental capacity is not exceeded. One way to ensure this is to balance the number and types of damaging activities taking place within the marine environment. As an example, fisheries management could take place within an MPA to reduce the damaging pressure from this activity to allow other activities such as offshore wind, which are essential in tackling climate change, to take place.

TWT agrees that compensatory measures should be in addition to site management measures. However, it is important to recognise that even if site management measures, such as fisheries management, take place to bring sites into favourable condition, offshore wind farm development has the potential to cause adverse effect within sites which would result in further deterioration. It is recognised that compensation is very difficult to deliver in the marine environment and therefore there is a requirement to think more broadly on how sites can be managed to allow renewable development and favourable condition of sites/Good Environmental Status of the UK marine environment to be achieved. The delivery of both; (1) management of pressures which are the current responsibility of external organisations (i.e. IFCA and MMO) and; (2) additional measures which go beyond the scope of current responsible bodies may be the only way to achieve this. However, TWT does not class the delivery of these measures as compensation.

We appreciate that many tools, regulatory mechanisms and policy will be required to achieve this. In addition, marine spatial planning will be essential in the delivery of this mechanism to achieve UK climate change targets. However, without this approach, we do not believe that offshore wind farm targets can be achieved without causing a decline in the condition of the marine environment.

Discussions regarding strategic approaches must run in parallel to project level discussions on compensation and MEEB and be considered seriously as a way to allow offshore wind farm developments at a project level to progress. We recommend a pause in decision making for Hornsea Three to allow these discussions to evolve and be applied to this application.

7. Other projects considering derogation

TWT is aware of other projects, such as Norfolk Vanguard, currently considering derogation in relation to Article 6(4) of the Habitats Directive. TWT will respond separately to consultation in relation to Norfolk Vanguard. However, we would like to stress the importance of consistency in the approach to the derogation process for offshore wind farm developments and would like to better understand the mechanisms which will be put in place to ensure this.

8. Future engagement

Orsted and TWT have continued to meet and discuss Hornsea Three since the close of examination. Whilst we welcome our engagement with the applicant, more transparency is required on the development of compensation and MEEB measures for Hornsea Three. Ordinarily, TWT would have been involved in discussions alongside the Applicant, Natural England and the MMO regarding compensation and MEEB through the various evidence plan topic groups we participated in. However, as the discussions on derogation have only taken place since the close of examination, we have not had the opportunity to engage in the group discussions.

We have discussed the idea of re-establishing the Expert Topic Groups with an independent chair to progress the discussions around derogation for Hornsea Three. The Applicant appeared open to this and we would welcome this as the next step. Due to our outstanding comments on alternatives and current lack of support for the current proposals for compensation and MEEB, we do not consider that the

derogation process can progress without these group discussions taking place. This would also ensure compliance with the Aarhus Convention⁶ to ensure public participation in environmental decision making.

9. Recommendations

Due to the issues highlighted in our response, the Secretary of State cannot yet make a decision on this application. We recommend a pause in decision making so the following 4 points can be worked through:

- To review the alternatives that have been highlighted in this letter and any evidence which exists on the viability of these options.
- The following must take place in parallel:
 - a) Establish a project level working group with an independent chair to work through the issues identified by stakeholders on the derogation process for Article 6(4) of the Habitats Directive and Section 126 of the Marine and Coastal Access Act 2009.
 - b) A strategic level group to identify solutions and delivery mechanisms in relation to Article 6(4) of the Habitats Directive and Section 126 of the Marine and Coastal Act 2009.
- The production of guidance on how to assess the suitability of proposed compensation and MEEB measures against the conservation objectives for a site.
- The production of guidance on the stage 2 MCZ assessment process before MEEB proposals can be signed off.

Thank you for considering our response. TWT would be more than happy to provide further detail and answer any questions. We look forward to continuing to engage with the applicant and other stakeholders on the Hornsea Three project.

Yours sincerely



Joan Edwards
Director, Public Affairs and Marine Conservation
The Wildlife Trusts

⁶ <https://ec.europa.eu/environment/aarhus/>

Appendix A: The Wildlife Trusts (TWT) detailed response to the further information submitted by Hornsea Three on 14th February 2020

| Issue number | TWT comments | Reference in HO3 documentation | Conclusion/recommendation |
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| 1. TWT position at the end of examination | | | |
| 1.1 | TWT remained uncertain that the impact of cabling within The Wash and North Norfolk Coast (WNNC) SAC would cause an adverse effect. This was particularly due to the fact that the Site was classified in unfavourable condition and concerns regarding in-combination impacts with other projects such as cables from Race Bank Offshore Wind Farm. In addition, there was a lack of data to determine sediment veneer over rock within the cable corridor within WNNC SAC; presence of rock would have the potential to increase cable burial difficulty. | | |
| 1.2 | <p><u>Current position</u> Despite further evidence on the benthic habitats, there is still uncertainty over the amount of the sediment veneer over rock, especially within the nearshore part of the WNNC SAC. This gives rise to uncertainty on burial difficulties and subsequent requirements for rock protection.</p> <p>There is still uncertainty that the site will not deteriorate further in-combination with other activities which take place within the Site.</p> | Annex D within Appendix 4 | Summary to clarify the geotechnical data available to give certainty on the success of cable burial within the WNNC SAC |
| 2. Alternatives test | | | |
| 2.1 | TWT believe that safeguards provided for by the directive, such as the consideration of viable alternatives, have not been exhausted ¹ . The need to consider less harmful alternatives is supported by numerous caselaw examples e.g. C-304/05, C-399/14, C-387/15. There are alternative solutions which TWT suggest require further consideration. These are outlined below. | | |

¹ Page 61. Commission notice "Managing Natura 2000 sites The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC" (2018)

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| <p>2.2</p> | <p><u>No cable protection</u> Due to the potential impacts of cable protection on Marine Protected Areas (MPAs) and the scale of future offshore wind farm development, TWT does not support cable protection within MPAs.</p> <p>TWT understands the potential risk to an exposed cable. However, we are aware that both Lincs and Lynn offshore wind farms have no cable protection on parts of the cable. Further information is required as to why these offshore wind farms are able to have exposed cabled and management measures which have been put in place to ensure no damage to the cable.</p> <p>In addition, although we appreciate telecommunication cables are smaller than offshore wind farm cables, as far as we are aware, no telecoms cables are protected by rock.</p> <p>No cable protection within an MPA 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 network². 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.</p> <p>European Guidance states that compensation constitutes the last resort, when all other measures to avoid adverse effect have been considered³. By excluding cable protection from MPAs, compensation measures would not be required. Compensation in the marine environment is difficult to deliver. This further supports the need to fully explore no cable protection in MPAs to ensure no decline of the site, Natura 2000 and UK MPA network.</p> <p>It is important to highlight that Eastern IFCA have approved fisheries exclusions for the majority of bottom towed fishing activity within the Wash and North Norfolk SAC where</p> | <p>Appendix 1: Shadow HRA Derogation Case paragraphs pages 37-38.</p> | <p>Information on why existing operational wind farms and telecommunications have exposed cables.</p> <p>Information on management measures for current exposed cables.</p> <p>Better justification on why cables cannot be left exposed within MPAs.</p> <p>Information on further management measures required to ensure a safety zone for Hornsea Three exposed cables.</p> |
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² Page 57. Commission notice "Managing Natura 2000 sites The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC" (2018)

³ Page 61. Commission notice "Managing Natura 2000 sites The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC" (2018)

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| | <p>the cable would be located⁴. The Eastern IFCA byelaw is currently awaiting sign off by Defra.</p> <p>Developers cannot continue to deliver projects in the way which they have over the past 20 years if the UK network of MPAs is to be maintained. We challenge this applicant and all offshore wind farm developers, who have extensive resources and skilled engineers, to develop alternative solutions and invest in the gathering of data to give better certainty that there will be minimal impacts on the marine environment from offshore wind farm development. We also expect engagement with the Offshore Transmission Owners (OFTO) as to their position on exposed cables within MPAs.</p> | | |
| 2.3 | <p><u>Commitment to HVDC</u> Hornsea Three must make a commitment to the use of HVDC cables only. This will reduce the number of cables going through MPAs. Norfolk Vanguard⁵ has made this commitment as part of their response to the Secretary of State on the Derogation process, and the Dogger Bank Offshore Wind Farms have also committed to HVDC cabling.</p> | Appendix 1: Shadow HRA Derogation Case paragraphs page 48 | Commitment by Hornsea Three to HVDC to reduce the number of cables within MPAs and thus reducing impact. |
| 2.4 | <p><u>Shared cabling route</u> The National Policy Statement for renewable energy infrastructure (EN-3) states that “Where cumulative effects on subtidal habitats are predicted as a result of the cumulative effects of multiple cable routes, it may be appropriate for applicants for various schemes to work together to ensure that the number of cables crossing the subtidal zone is minimised”.</p> <p>There are numerous projects with proposed cable routes along the Norfolk coast (Hornsea Three, Norfolk Vanguard, Norfolk Boreas, Sheringham and Dudgeon</p> | | Conversations required at both a project and strategic level on the potential for shared cable routes to reduce environmental impacts. |

⁴ Eastern IFCA Marine Protected Byelaw 2019 (see page34 for map of closed area overlapping cable) https://www.eastern-ifca.gov.uk/wp-content/uploads/2019/06/2019_05_15_Item_13_Marine_Protected_Area_Byelaw_2019_draft.pdf

⁵ Norfolk Vanguard Outline Norfolk Vanguard Haisborough Hammond and Winterton Special Area of Conservation Cable Specification, Installation and Monitoring Plan section 4.1.1 <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004224-8.20%20Haisborough%20Hammond%20and%20Winterton%20Special%20Area%20of%20Conservation%20Cable%20Specification%20Installation%20and%20Monitoring%20Plan.pdf>

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| | Extension). TWT proposes a pause in the Hornsea Three project to review alternatives and compensation and MEEB proposals. We suggest a shared cable route with other developers should be considered as part of this. | | |
| 2.5 | The alternatives above require further analysis against the MPA in question as outlined in European Commission guidance "All feasible alternatives that meet the plan or project aims, in particular, their relative performance with regard to the site's conservation objectives, integrity and contribution to the overall coherence of the Natura 2000 network have to be analysed " ⁶ | Not included in principles to identify alternatives in paragraph 3.3 on page 27 of Appendix 1: Shadow HRA derogation case | Analysis of alternatives against site conservation objectives, integrity and contribution to coherence of Natural 2000 network (and MPA network) required |
| 3. Review of impacts | | | |
| 3.1 | <u>Analysis against extent only</u> The applicant has focused the impact of cabling activity on extent only. This is only one attribute which contributes to the overall conservation objectives of a site. It gives a skewed of impacts on a site. An overview must be provided on the range of impacts on attributes for sites affected. | Appendix 1, Appendix 2, Appendix 3 | To review and summarise impacts against conservation advice for MPAs |
| 3.2 | <u>Rock protection impacts are not temporary</u> TWT does not consider rock protection impacts to be temporary. Rock protection will be in place for the lifetime of the project which will there cause a loss of habitats over the period of the project, which is 35 years. | Appendix 1, Appendix 3 | Clarity from SNCBs/BEIS/Defra on position of permanence of cabling impacts |
| 3.3 | <u>The analysis has not recognised in-combination impacts or site condition</u> The WNNC SAC is in unfavourable condition which is due to in-combination impacts from fishing and offshore wind farm cables. The summary analysis presented in the | Appendix 1, Appendix 3 | To analyse and summarise if alone or in-combination, cabling from Hornsea Three will not cause further decline of the site. |

⁶ Commission notice "Managing Natura 2000 sites The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC" (2018)

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| | <p>further information has not taken account in-combination impacts nor the potential for site recovery from existing activities in-combination with Hornsea Three.</p> <p>This is an essential consideration when deciding if compensation is adequate to ensure that there will be no further decline of WNNC SAC either alone or in-combination.</p> | | <p>Is the identified compensation enough to give this certainty?</p> |
| <p>4. Subtidal Sandbank Compensation</p> | | | |
| <p>4.1</p> | <p><u>TWT broad comments on compensation</u> <i>N.B TWT suggests the following points should also apply to MCZs to meet Section 126 of the Marine and Coastal Access Act 2009.</i></p> <ol style="list-style-type: none"> 1) TWT has identified alternatives that need to be further explored which would negate the need to provide compensation for cabling impacts within MPAs. 2) Guidance outlines that if no alternatives exist and if IROPI can be proved, compensation must be delivered to ensure the overall coherence of the Natural 2000 network is protected. TWT highlight that the coherence of the MPA network, made up of a European Site, SSSI, Ramsar Site and MCZs, should also be a consideration in relation to the delivery of compensation measures⁷. If not applied, then there is potential for deterioration of the UK MPA network and Good Environmental Status (MSFD). 3) The applicant has not undertaken an analysis of the compensation measures against the conservation objectives for the site. This must include an analysis against the Supplementary Advice on Conservation Objectives; currently the applicant has only focused on providing for the loss of extent of the feature, but there are many other attributes which require consideration. 4) European Guidance states that compensation measures aim to offset precisely the negative impact of a plan or project on the species or habitats concerned⁸. The compensation measures proposed by Hornsea Three do not precisely offset the negative impacts of the project and therefore risk the decline in condition of | | <p>Exploration of the alternatives identified by TWT must be explored before compensatory measures are further developed.</p> <p>Consideration of the appropriateness of the compensation measures on the coherence of the UK network of MPAs must be considered.</p> <p>Analysis against the conservation objectives using conservation advice must be undertaken to determine if compensation proposed will ensure no deterioration of a Site.</p> |

⁷ Section 123 of the Marine and Coastal Access Act 2009

⁸ Page 61. Commission notice "Managing Natura 2000 sites The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC" (2018)

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| | <p>MPAs. In fact, the compensation measures proposed do not relate to the damage cause by Hornsea Three.</p> <p>5) European Guidance states that compensatory measures must “a) address, in comparable proportions, the habitats and species negatively affected; and b) provide functions comparable to those which had justified the selection criteria for the original site, particularly regarding the adequate geographical distribution.”⁹ TWT does not consider that these criteria have been met through the proposed compensation measures. The compensation proposed does not provide comparable habitat or function to that which will be lost through Hornsea Three cabling works and would continue to result in a net loss of subtidal sandbanks/sub features of the site.</p> | | |
| 4.2 | <p><u>Habitat Measure 1: Blue mussel bed restoration and biosecurity</u></p> <p>TWT does not support blue mussel bed restoration as a compensation measure. This is for the following reasons:</p> <ul style="list-style-type: none"> • Although blue mussels are found within the WNNC SAC, as far as we are aware, they are not associated sublittoral habitats which will be affected by Hornsea Three cabling works. In fact, Conservation Advice for the Site highlights that subtidal mussel beds on The Wash and North Norfolk coast are ephemeral, often persisting for only 1-3 years mainly due to high levels of predation from common starfish and loss due to wave action and storm events¹⁰. The main blue mussel beds are found within of the embayment area of WNNC SAC within the intertidal zone. • We agree that mussels play an important role in the functioning of the WNNC SAC as a whole, but the fact remains is that they are not a feature affected by cabling works. Therefore, the restoration of blue mussels within The WNNC SAC does not provide compensation for the loss habitat and associated species. This measure does not offset precisely the negative impact of the project nor | Appendix 2 | This measure cannot be taken forward as it does not offset the negative impacts of the project within the WNNC SAC, meet EU and Defra guidance on compensation and is completely unrelated to the features of NNSSSR SAC. |

⁹ Page 63. Commission notice "Managing Natura 2000 sites The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC" (2018)

¹⁰ Supplementary advice on conservation objectives for Wash and North Norfolk Coast SAC

<https://designatedsites.naturalengland.org.uk/Marine/SupAdvice.aspx?SiteCode=UK0017075&SiteName=&SiteNameDisplay=The+Wash+and+North+Norfolk+Coast+SAC&countyCode=&responsiblePerson=&SeaArea=&IFCAAarea=&NumMarineSeasonality=2%2c2>

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| | <p>provide comparable function to the habitats lost within WNNC SAC and is completely unrelated to North Norfolk Sandbanks and Saturn Reef SAC.</p> <ul style="list-style-type: none"> • TWT recognise the current 'restore' objective for blue mussels within the WNNC SAC and agree that a mussel restoration project would improve site condition. Whilst we see the benefit of a project like this to the Site, it does not deliver compensation. As highlighted by the applicant and confirmed in EU guidance "Compensatory measures should be additional to the actions that are normal practice under the Habitats and Birds Directives, or obligations laid down in EU law."¹¹ • We are concerned that the applicant is placing a higher biodiversity value upon blue mussel beds than the subtidal sandbank that they would be affecting through cabling works. The applicant is providing this as justification for only providing a ratio value of 1:1 (5.14/5.15 appendix 2). • We highlight that previous projects to restore mussel beds within the WNNC SAC have not succeeded¹² and therefore there is a risk that this compensation measure will not be technically feasible, a key element of consideration in EU guidance¹³. Due to this risk, the compensation is not viable and a ratio of 1:1 would be inadequate. | | |
| 4.3 | <p><u>Habitat Measure 2: Litter removal and measures to increase the recovery of lost gear</u> TWT does not support this as a compensation measure for the following reasons:</p> <ul style="list-style-type: none"> • Litter removal as a compensation measure by no means equates to the loss of habitat caused by cabling activity. • As far as we are aware, litter removal is not an issue in terms of meeting site conservation objectives for either WNNC SAC or NNSR SAC. • We are unclear as to the definition of 'litter removal' as a compensation measure. Is it the removal of fishing gear or other structures within the SACs? | Appendix 2 | This measure cannot be taken forward as it does not offset the negative impacts of the project within the WNNC SAC or NNSR SAC and does not meet EU and Defra guidance on compensation. |

¹¹ Page 60. Commission notice "Managing Natura 2000 sites The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC" (2018)

¹² http://www.eastern-ifca.gov.uk/wp-content/uploads/2016/03/WS02_2014_Mussel_regeneration_study_report.pdf

¹³ Page 65. Commission notice "Managing Natura 2000 sites The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC" (2018)

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| | <ul style="list-style-type: none"> Removal of litter does not compensate for the impact on extent, presence and spatial distribution of biological communities, or the structure and function of key communities caused by cabling activities for Hornsea Three. | | |
| 4.4 | <p><u>Contingency Habitat Measure 1: Eelgrass Restoration</u></p> <p>TWT does not support this as a compensation measure for the following reasons:</p> <ul style="list-style-type: none"> Eelgrass is not impacted by Hornsea Three cabling activities and therefore not compensating for any loss or damage to this species. TWT recognises the importance of eelgrass restoration nationally and recognise the broad benefits of such a project but this proposal does not provide compensation as it does not address that habitat and species negatively affected. We disagree with the applicant that “<i>Eelgrass provides a similar ecosystem function to subtidal sandbanks (e.g. as a fisheries nursery) in terms of its contribution to the Nature 2000 network</i>”. Eelgrass grows in shallow muddy/sand habitats. This is different from the habitats impacted by Hornsea Three cabling activity and form different community structures and functions. | Appendix 2 | This measure cannot be taken forward as it does not offset the negative impacts of the project within the WNNC SAC or NNSSSR SAC and does not meet EU and Defra guidance on compensation. |
| 4.5 | <p><u>Contingency Habitat Measure 2: Removal of litter/debris</u></p> <ul style="list-style-type: none"> TWT is not clear how this measure differs from habitat measure 2. | Appendix 2 | Clarity is required on how this measure differs from Habitat Measure 2: Litter removal and measures to increase the recovery of lost gear |
| 5. Measures of equivalent Environmental Benefit (MEEB) | | | |
| 5.1 | <p><u>Litter removal within the Cromer Shoal Chalk Beds (CSCB) MCZ</u></p> <p>TWT does not support this as a MEEB for the following reasons:</p> <ul style="list-style-type: none"> TWT does not agree with the applicant’s interpretation of MEEB. TWT acknowledges that some guidance¹⁴¹⁵ is available on the MCZ assessment process, but this is not adequate for the applicant to undertake a stage 2 MCZ | Appendix 3, Appendix 3A | Guidance on MEEB should be published before any further development or agreement on MEEB for Hornsea Three. |

¹⁴ Marine conservation zones and marine licensing. 2013. Marine Management Organisation.

¹⁵ Guidance on the duties which will be placed on public authorities in relation to Marine Conservation Zones under Part 5 of the Marine and Coastal Access Act 2009 (2010). Defra.

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| | <p>assessment and determine MEEB. We highlight that there is currently no definition in place on what MEEB should entail.</p> <ul style="list-style-type: none"> • With the lack of guidance on MEEB, TWTs view is that MEEB should be equivalent to compensation. This is vitally important when considering the impact from Hornsea Three on the coherence of the UK MPA network. If MEEB is delivered to a lower standard than compensation in European Sites, then not only is there potential for the decline in condition of CSCB MCZ but the coherence of the MPA network. • TWT cannot support the development of any MEEB measures without clear guidance in place. Each stakeholder involved in this area will have a different interpretation of MEEB which will ultimately result in disagreement between parties. • The proposed MEEB would improve the subtidal chalk feature of the MCZ, but it is the subtidal sand feature which is being impacted by Hornsea Three cabling. The MEEB proposed would not counteract the loss and damage caused by the cabling works. • TWT is aware that lost fishing gear within CSCB MCZ may be causing damage to subtidal chalk within the MCZ. However, this impact is currently under review by Eastern IFCA who are considering the evidence associate with this impact. If it is found that lost fishing gear is having an adverse effect on the Site, then this would be considered part of Eastern IFCA’s management responsibilities. | | <p>This measure cannot be taken forward as it does not offset the negative impacts of the project within CSCB MCZ.</p> |
| 6. Broad views on the delivery of compensation and MEEB | | | |
| 6.1 | <p>As TWT is not supportive of the proposed compensation and MEEB measures, we have not commented in detail on the delivery aspects of the measures. However, as broad principles:</p> <ul style="list-style-type: none"> • Ratios: Ratios of 1:1 for compensation/MEEB measures in the marine environment are not appropriate and European guidance acknowledges that ratios should be generally well above 1:1¹⁶. Compensation measures are extremely difficult to deliver in the marine environment which creates | Appendix 2, Appendix 3A | <p>Guidance is required on the delivery of compensation to ensure the success of projects and consistency between different projects.</p> <p>TWT requests engagement in the detailed planning on the delivery</p> |

¹⁶ Page 67. Commission notice "Managing Natura 2000 sites The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC" (2018)

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| | <p>uncertainty around the success of any measure. In addition, little evidence exists on the delivery and success of marine compensation measures.</p> <ul style="list-style-type: none"> • Timescales: Compensation measures must be in place before the damage takes place. It is also key to determine the lifespan of compensation required to allow review against the original objectives before sign off. • Delivery groups: Other compensation projects have established multi-stakeholder groups to engage in compensation e.g. Humber Estuary compensation projects. TWT supports the establishment of such groups to ensure checks and balances are in place to ensure the successful delivery of compensation. The role of such a group should be defined before compensation is agreed and included in any legal agreements. In our view, this group would be responsible for agreeing the detail of compensation, the detail and regular review of monitoring data, and advising on the success of compensation projects against the original objectives before any sign off can be agreed. • Legal mechanisms: it is essential that any legal agreements on how compensation will be delivered and signed off is done so before consent is granted. Of upmost importance is the creation of clear compensation objectives. It is also very important to identify action required if compensation is not successful. Clarity is required on who is the decision maker post-consent in relation to this. We propose that the delivery group should advise the decision maker through the delivery, monitoring and sign off of compensation. | | <p>of compensation measures. This includes the participation in compensation 'group's in relation to cabling impacts from Hornsea Three.</p> |
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