

Date: 21 January 2022
Our ref: 376659
Your ref: EN010080



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VIA WEBSITE ONLY

Dear Mr Leigh

**HORNSEA THREE OFFSHORE WIND FARM ORDER 2020 (AS AMENDED) (“the Order”)
SUBMISSION OF SANDBANKS IMPLEMENTATION PLANS UNDER PART 2 OF SCHEDULE 14 TO
THE ORDER**

Thank you for your consultation dated 03 December 2021 inviting comments on the Hornsea Project Three Offshore Wind Farm Order 2020 (as amended) submission of Sandbank Implementation Plans dated 3 December 2021. Natural England and JNCC provide these comments in accordance with paragraph 14, Part 2 of Schedule 14 to the Order.

Natural England’s remit is to ensure sustainable stewardship of the land and sea so that people and nature can thrive. We are working to achieve a healthy and biodiverse marine environment which can enable a truly sustainable UK offshore wind sector, to support the achievement of ‘net zero’ and address the climate change emergency. This is underpinned by our vision for thriving marine and coastal nature alongside low impact offshore wind energy, tackling both climate and biodiversity emergencies as set out in our [REDACTED] Aligned to the four aims of our Approach, we use our expertise to help facilitate offshore windfarms that are sensitively located and constructed, whilst protecting marine ecosystems from proposals with significant environmental impacts through our statutory advice. This, coupled with mechanisms for nature enhancement, will allow marine nature recovery and help mitigate the negative impacts of climate change.

JNCC’s advice is provided as part of our statutory advisory role to the UK Government and devolved administrations on issues relating to nature conservation in UK offshore waters (beyond the territorial limit). We have subsequently concentrated our comments on aspects of the document that we believe relate to offshore waters (with particular reference to the Sandbank Implementation Plan for North Norfolk Sandbanks and Saturn Reef (NNSSR) Special Area of Conservation (SAC) and supporting

documentation) and defer to comments provided by Natural England (NE) for aspects relating to inshore waters.

In providing this advice we have reviewed the following documents:

- NNSR SAC Sandbank Implementation Plan ('SBIP') (Version 3.0, dated 1/12/21)
- WNNC SAC SBIP (Version 3.0, dated 1/12/21)
- Appendix 1 Marine Debris Removal Campaign Desktop Study (Version 3.0, dated 1/12/21)
- Appendix 2 Environmental Monitoring Plan for Impacts Associated with Cable Protection (Version 3.0, dated 1/12/21)
- Appendix 3 Indicative Disposal Location Study Sandwave Levelling and Seabed Preparation (Version 3.0, dated 1/12/21)
- Compensation Consultation Summary (Version 3.0 dated 1/12/21)

1 Summary

Natural England and JNCC do not support the requirement to remove abandoned fishing gear and/or marine litter as compensation for lasting/permanent habitat loss of Annex I habitats from cable protection. This is because:

- The presence of marine litter has never been raised as something hindering the conservation objectives for either site;
- The amount of marine litter located and removed within both designated sites is likely to be limited;
- The one-off removal of marine litter will be extremely unlikely to compensate for lasting impacts from cable protection over the lifetime of the project i.e. 30 years;
- It is unclear how it will be demonstrated that the removal of litter is compensating for habitat loss;
- It is unclear how the educational package with key stakeholders i.e. fishermen, is effectively compensating for habitat loss; and
- There is no adaptive management clause to change approach and/or compensation measures if it is demonstrated that compensation is not delivering.

In this context we feel obliged to highlight that the lack of appropriate compensatory measures to address impacts on the two SACs may pose challenges to future regulatory decisions on projects where there is any potential for in-combination impacts on Annex I sandbanks with those of Hornsea Project Three's cable protection.

We also highlight that should the cable protection not be removable at the time of decommissioning, further compensation measures are likely to be required as the impacts will no longer be long-term but permanent.

However, Natural England and JNCC do acknowledge that Hornsea Project Three's submitted SBIPs meet the Secretary of State's requirements as laid out in the Development Consent Order ('DCO').

Regarding the implementation of the SBIPs, Natural England and JNCC have outstanding concerns in relation to the certainty that:

- further significant impacts to the designated site features from the removal can be suitably minimised; and
- the proposed monitoring will be able to provide the necessary evidence that an adverse effect on integrity (AEoI) has been adequately compensated for.

2 Main concerns with assessment of SBIPs as compensation

In providing our advice on the final SBIP to the Secretary of State, Natural England and JNCC have considered the extent to which SBIPs meet the draft Principles of Compensatory Measures set out in DEFRA's recently published [REDACTED] (July, 2021). The full assessment is included within Appendix 1 and our main concerns summarised below:

2.1 Relevance to SAC Conservation Objectives

Whilst marine litter removal is undoubtedly useful in terms of the wider environmental requirements under the Marine Strategy Framework Directive and Marine Plans, the presence of marine litter has not been identified as a pressure in terms of the conservation objectives for WNNC or NNSSR SAC. As such, we have a high degree of concern that any litter removal and/or awareness campaign will not make a positive difference to the conservation objectives of the SACs and therefore cannot be considered an appropriate or successful compensation measure.

2.2 Effectiveness of Debris Removal for Designated Site Ecological Function and Network Coherence

We note that Hornsea Project Three predict that within the proposed 6-week marine debris removal campaign period proposed approximately 168 targets may be removed from one of the SACs. Assuming an average size of 5 m² per target, then the campaign might remove debris covering an area of approx. 4,200 m² (i.e. less than half a hectare). Whilst we note that the survey period may be extended, this area is considerably less than the worst-case scenario (WCS) area of impact of 41.80 ha in NNSSR SAC and 2.77 ha in WNNC SAC. [REDACTED] states that "compensation ratios of 1:1 or below should only be considered when it is demonstrated that with such an extent, the measures will be 100% effective in reinstating structure and functionality within a short period of time". We do not believe that sufficient evidence has been provided to suggest this is the case. As well as not

being relevant to the SAC conservation objectives, Statutory Nature Conservation Bodies (SNCBs) advise that the SBIPs do not meet the minimum 1:1 compensation ratio criterion, and do not consider that the measures proposed within the SBIP will be 100% effective in reinstating structure and functionality of Annex I Sandbank feature within the designated site and/or maintain the coherence of the national site network.

2.3 Effectiveness of Marine Awareness Campaign

Natural England and JNCC welcome industry undertaking a marine debris reduction and awareness campaign for the lifetime of the project, as per requirement 13d. However, we highlight that there is no certainty on the uptake of the campaign, or any impacts by the life of the project. The awareness campaign, transponders and rapid retrieval methodologies may offer some environmental benefit, but any success factors measured through an increase in stakeholder understanding in relation to the impacts of marine debris, buy in, or stakeholder behaviour change will be very difficult to measure and will unlikely be evident by the time of construction. We are also unsure how quantitative uptake of the measures could be used to infer the amount of debris that would have otherwise been discarded into the marine environment, and how that has offset long term/permanent habitat loss.

2.4 SNCB Conclusions

Having carefully reviewed the SBIPs against the draft Principles the SNCBs remain of the opinion that the SBIPs do not offer adequate compensation for the AEoI caused by the lasting/permanent loss to Annex I Sandbank feature in the Wash and Norfolk Coast Special Area of Conservation (SAC) or North Norfolk Sandbanks and Saturn Reef SAC. The implementation of the SBIPs may potentially offer environmental benefits or 'Net Gain', but is not fit for purpose to provide compensatory measures for the predicted impacts.

3 Assessment of SBIP against SoS request

Hornsea Project Three have worked closely with the Benthic Steering Group to develop the SBIP proposals, and we appreciate their efforts in taking many of the SNCBs comments on board. Natural England and JNCC believe Hornsea Project Three have demonstrated they can meet the SoS's requirements as laid out within the DCO.

Our detailed comments on the SBIP are included in Appendix 2, with our main outstanding issues summarised here:

3.1 Monitoring

Natural England and JNCC welcome the inclusion of an Environmental Monitoring Plan. However, we have a number of outstanding concerns regarding the efficacy of the monitoring programme proposed.

We believe the monitoring as proposed will not allow Hornsea Project Three to demonstrate the extent to which compensation has been successful in addressing the adverse effects.

3.2 Impacts from debris removal

We are concerned that there is currently insufficient detail within the 'decision tree' to demonstrate that the benthic ecologist would have sufficient guidance to undertake the survey and avoid impacts to other Annex I habitats during debris removal.

In addition, we have some concerns that there may be unintended impacts to habitats from the 'rapid retrieval' methods that the awareness campaign will be promoting.

4 Considerations on consenting

Natural England's advice is that adverse effects on site integrity should be addressed at the time of Application. If this is not possible and the decision-maker has recourse to the derogations under the Habitats Regulations to consent the project, there needs to be confidence that the compensatory measures are sufficient to maintain the coherence of the national site network, including addressing any unresolved uncertainties regarding the scale and nature of the adverse effects. Failing to do so would leave several substantial issues to be resolved by the Marine Management Organisation (MMO) through the post-consent discharge process that takes place prior to construction. This in turn risks considerable project delays prior to and during construction whilst proper processes are followed and these are finally resolved ([Natural England - Position Statement](#) within the Boreas OWF Examination, January, 2020). The Applicant must accept this consequence at their own risk.

Furthermore, and as raised in our previous advice ([response to SoS Consultation](#), April 2020), where uncertainty remains as to whether NSIP projects have been able to mitigate, reduce, avoid and compensate to a satisfactory level for predicted impacts, this will hinder Natural England's ability to advise on DCO/deemed Marine Licence (dML) condition discharge for future projects within these designated sites, including on the scale of impacts and likely success of any mitigation/compensation measures where there is an in-combination impact. In this context, added precaution in Natural England's advice is inevitable.

In this context, Natural England considers that MMO consents and/or marine licence discharges associated with Hornsea Project Three which might potentially contribute to in-combination impacts on these sites will therefore be highly challenging. Natural England advises that every effort should be made to avoid, reduce and mitigate the project impacts when discharging Development Consent Order/deemed Marine Licence and/or associated marine licence conditions, to allow robust conclusions of no AEoI to be drawn.

In addition, Natural England recognises that the MMO marine licence consenting process for other projects/plans affecting these SACs is likely to be challenging as a result of the potential in-combination impacts with Hornsea Project Three. Again, Natural England advises that every effort should be made to avoid, reduce and/or mitigate the plan/project impacts to a level where the contribution the project makes to in-combination impacts is negligible.

We therefore foresee that should the SBIP be approved as submitted, the MMO as regulator of Deemed Marine Licence condition discharge for Hornsea Three and other Marine Licences will find themselves in the difficult and unenviable position of considering the in-combination impacts from cable protection for this project and subsequent plans or projects within these designated sites.

Finally, based on our experience of the resource requirements from SNCB to input into the Benthic Steering Groups in 2021, it is likely that the ongoing input required over the lifetime of the project will be substantial. This is disproportionate to the resource required by other projects and we question how this will be resourced for the lifetime of the project.

5 Development of Alternative Compensatory Measures

In the light of the Secretary of State's decision letter for Norfolk Boreas (December 2021) the SNCBs understand that due to non-environmental constraints and concerns around certainty and implementation timescales, it is considered that there are limited alternative project-led benthic compensation measures which can be progressed to address impacts on MPAs. There is broad recognition that strategic approaches, particularly for benthic compensation, offer the best opportunity to deliver relevant and effective compensatory measures.

To help realise this, Natural England and JNCC are engaged and working proactively with stakeholders at various levels to develop more strategic approaches to marine compensation, including BEIS, Defra, the Crown Estate and offshore wind developers. Natural England and JNCC would welcome closer collaboration with and support for the BEIS Secretary of State in identifying appropriate strategic compensation for marine renewables and offshore development which facilitates the delivery of both Net Zero and 25 Year Environment Plan targets.

6 Additional Information

Our detailed comments are included as separate Appendices:

- Appendix 1 Assessment of SBIP against guidance for developing compensatory measures.
- Appendix 2 Detailed comments on SBIP.

For any queries relating to the content of this letter please contact me using the details provided below.

Yours sincerely,

Tamara Rowson
Norfolk and Suffolk Team

