

Norfolk Boreas Offshore Wind Farm

Statement of Common Ground

**The Wildlife Trusts and Norfolk Wildlife
Trust**

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Glossary of Acronyms

AEOI	Adverse Effect on Integrity
CIA	Cumulative Impact Assessment
CWS	County Wildlife Sites
DCO	Development Consent Order
DML	Deemed Marine Licence
EclA	Ecological Impact Assessment
EIA	Environmental Impact Assessment
EMP	Ecological Management Plan
ETG	Expert Topic Group
ES	Environmental Statement
GCN	Great Crested Newt
HRA	Habitats Regulations Assessment
HDD	Horizontal Directional Drilling
HVAC	High Voltage Alternate Current
HVDC	High Voltage Direct Current
JNCC	Joint Nature Conservation Committee
LSE	Likely Significant Effect
MMMP	Marine Mammal Mitigation Protocol
MMO	Marine Management Organisation
NDC	Norfolk District Council
NWT	Norfolk Wildlife Trust
OLEMs	Outline Landscape and Environmental Management Plan
PEIR	Preliminary Environmental Information Report
PTS	Permanent Auditory Injury
RoC	Review of Consents
SAC	Special Area of Conservation
SIP	Site Integrity Plan
SNCB	Statutory Nature Conservation Body
SoCG	Statement of Common Ground
TWT	The Wildlife Trust
UXO	Unexploded Ordnance

Glossary of Terminology

Array cables	Cables which link wind turbine to wind turbine, and wind turbine to offshore electrical platforms.
Landfall	Where the offshore cables come ashore at Happisburgh South.
Mobilisation area	Areas approx. 100 x 100m used as access points to the running track for duct installation. Required to store equipment and provide welfare facilities. Located adjacent to the onshore cable route, accessible from local highways network suitable for the delivery of heavy and oversized materials and equipment.
Necton National Grid substation	The grid connection location for Norfolk Boreas and Norfolk Vanguard.
Norfolk Boreas site	The Norfolk Boreas Offshore Wind Farm boundary. Located offshore, this will contain all the wind farm array.
Offshore cable corridor	The corridor of seabed from the Norfolk Boreas site to the landfall site within which the offshore export cables will be located.
Offshore electrical platform	A fixed structure located within the Norfolk Boreas site, containing electrical equipment to aggregate the power from the wind turbines and convert it into a suitable form for export to shore.
Offshore export cables	The cables which transmit power from the offshore electrical platform to the landfall.
Offshore service platform	A fixed structure (if required) providing accommodation for offshore personnel. An accommodation vessel may be used instead.
Onshore cable route	The up to 35m working width within a 45m wide corridor which will contain the buried export cables as well as the temporary running track, topsoil storage and excavated material during construction.
Onshore project substation	A compound containing electrical equipment to enable connection to the National Grid. The substation will convert the exported power from HVDC to HVAC, to 400kV (grid voltage). This also contains equipment to help maintain stable grid voltage.
Offshore project area	The area including the Norfolk Boreas site, project interconnector search area and offshore cable corridor.
Project interconnector search area	The area within which project interconnector cables would be installed.
The Applicant	Norfolk Boreas Limited has made an application for development consent for the Norfolk Boreas Offshore Wind Farm. Therefore, Norfolk Boreas Limited is the Applicant.
The Project	The Norfolk Boreas Offshore Wind Farm.
Trenchless crossing zone (e.g. HDD)	Areas within the onshore cable route which will house trenchless crossing entry and exit points.
Scenario 1	Norfolk Vanguard proceeds to construction and installs ducts and other shared enabling works for Norfolk Boreas.
Scenario 2	Norfolk Vanguard does not proceed to construction and Norfolk Boreas proceeds alone. Norfolk Boreas undertakes all works required as an independent project.

1 INTRODUCTION

1. This Statement of Common Ground (SoCG) has been prepared between The Wildlife Trusts (TWT), Norfolk Wildlife Trust (NWT) and Norfolk Boreas Limited (hereafter the Applicant) to set out the areas of agreement and areas of ongoing discussion in relation to the Development Consent Order (DCO) application for the Norfolk Boreas Offshore Wind Farm (hereafter ‘the project’).
2. A full description of the project can be found in Chapter 5 of the Environmental Statement. Document reference 6.1.5 of the Application, APP-218. This includes an explanation of the different works that would occur under Scenario 1 and Scenario 2.
3. This SoCG comprises an agreement log which has been structured to reflect the topics of interest to the TWT (Marine Mammals) and NWT (Onshore Ecology and Ornithology) with regard to the Norfolk Boreas DCO application (hereafter ‘the Application’). The agreement logs (section 2) outline all topic specific matters agreed and those of ongoing discussions between TWT or NWT and the Applicant. NWT has provided their position for onshore ecology and TWT supports these positions.
4. The Applicant has had regard to the Guidance for the examination of applications for development consent (Department for Communities and Local Government, 2015) when compiling this SoCG.

1.1 Consultation

5. The Applicant has engaged with TWT and NWT concerning the project on multiple occasions during the pre-application and post-application periods. This has included both informal non-statutory engagement and formal consultation carried out pursuant to Section 42 of the Planning Act 2008. Due to similarities between the Norfolk Boreas project and its ‘sister’ project Norfolk Vanguard, which is being developed one year ahead of Norfolk Boreas, early consultation with stakeholders was conducted for both projects concurrently. Although latterly, consultation has been undertaken separately for the two projects Norfolk Boreas has had regard to the Norfolk Vanguard consultation and many of the agreements achieved for the Norfolk Vanguard project also apply to the Norfolk Boreas project. For further information on the pre-application consultation process please see the Consultation Report (document reference 5.1 of the Application, APP-027).

1.1.1 Consultation with The Wildlife Trust

6. During Norfolk Boreas formal (Section 42) consultation, TWT provided comments on the Preliminary Environmental Information Report (PEIR) by way of a letter dated 7th December 2018.

7. Further to the statutory Section 42 consultation, meetings were held with TWT through the Evidence Plan Process. These are referred to throughout the SoCG and minutes of the meetings are provided in Appendices 9.43 and 9.45 (pre-Section 42) and Appendices 28.1 (post-Section 42) of the Consultation Report (document reference 5.1 of the Application APP-027).
8. Table 1 provides an overview of meetings and key correspondence undertaken with TWT regarding marine mammals.

Table 1 Summary of consultation with The Wildlife Trusts in relation to marine mammals

Date	Contact Type	Topic
Pre-Application		
10 th to 24 th November 2016	Workshops, meetings calls and email correspondence.	Explanation and agreement on the methods used for data collection within the Norfolk Boreas and Norfolk Vanguard wind farm sites.
5 th February 2018	Email from the Applicant	Provision of the Marine Mammals Method Statement (Appendix 9.26 of the Consultation Report).
12 th March 2018	Marine Mammals Pre-PEIR ETG Meeting	Agreement on the methods used to conduct the assessment.
17 th October 2018	Email from the Applicant	Early provision of the marine mammals PEIR chapter.
7 th December 2018	Letter from The Wildlife Trusts	PEIR feedback on marine mammals' chapter and HRA screening.
21 st February 2019	Marine mammal ETG meeting	Comments on PEIR and approach to Habitats regulations Assessment (HRA).
22 nd March 2019	Email from the Applicant	Provision of draft Norfolk Boreas Information to Support Habitats Regulations Assessment (HRA) (document 5.3).
26 th March 2018	Email from TWT	Comments on the draft HRA.
Post-Application		
22 nd August 2019	Relevant Representation submitted	Initial feedback on the DCO application
September/ October 2019	Email	Correspondence agreeing initial draft and second draft of the SOCG
26 November 2019	Meeting	Meeting between Vattenfall and TWT to discuss the Memorandum of understanding

1.1.2 Consultation with Norfolk Wildlife Trust

9. Norfolk Wildlife Trust were consulted through the statutory Section 42 consultation and the Norfolk Boreas Evidence Plan Process and provided comments on the methodology to be used in the EIA through an agreement log. Table 2 provides an overview of meetings and key correspondence undertaken with NWT regarding onshore ecology.

Table 2 Summary of Consultation with NWT regarding onshore ecology and ornithology

Date	Contact Type	Topic
Pre-Application		
8 th December 2017	Email from Norfolk Wildlife Trust	PEIR feedback to the Norfolk Vanguard S42 consultation.
22 nd January 2018	Email to Norfolk Wildlife Trust	Provision of the Onshore Ecology and Ornithology Method Statement (Appendix 9.26 of the Consultation Report, document reference 5.1 APP-027).
12 th February 2018	Email from Norfolk Wildlife Trust	Completed Agreement log returned following review of method statement.
Post-Application		
14 th August 2019	Email to Norfolk Wildlife trust	Provision of first draft of the SoCG
15 th August 2019	Email from Norfolk Wildlife Trust	Approval of the SoCG

2 STATEMENT OF COMMON GROUND

10. Within the sections and tables below the different areas of agreement and areas of ongoing discussion between TWT, NWT and the Applicant are set out. Within the table below, the different topics and areas of agreement (marked as green) and areas for ongoing discussion (marked as orange) between TWT and the Applicant are set out. Areas where agreement cannot be reached will be marked as red.

2.1 Marine Mammals (TWT and the Applicant)

11. The project has the potential to impact upon Marine Mammals. Chapter 12 of the Norfolk Boreas Environmental Statement (ES) (document reference 6.1.12 of the Application, APP-225) provides an assessment of the significance of these impacts.
12. Table 3 provides areas of agreement (common ground) and areas of ongoing discussion regarding marine mammals.

Table 3 Agreement Log - Marine Mammal Ecology

Topic	Norfolk Boreas Limited's position	The Wildlife Trusts' position	Final position
Environmental Impact Assessment			
Existing Environment	Survey data collected for Norfolk Boreas for the characterisation of marine mammals are suitable for the assessment.	Agreed	Agreed
	The ES adequately characterises the baseline environment in terms of marine mammals.	Agreed	Agreed
Assessment methodology	Appropriate legislation, planning policy and guidance relevant to marine mammals has been used.	Agreed although TWT notes that some of the latest Statutory Nature Conservation Body (SNCB) guidance should be updated, e.g. the JNCC 2010 'Statutory nature conservation agency protocol for minimising the risk of injury to marine mammals from piling noise' which is based on smaller wind farms and the JNCC 2010 'Guidelines for minimising the risk of injury to marine mammals from using explosives' does not take into account the NOAA thresholds and the need for additional mitigation.	Agreed
	The list of potential impacts on marine mammals assessed is appropriate.	Agreed	Agreed
	Harbour porpoise, grey seal and harbour seal are the only relevant species of marine mammal required to be considered further in the full impact assessment. As agreed in the Expert Topic Group meeting on the 12 th March 2019 consideration has been given to white-beaked dolphin and minke whale and baseline information has been included in Appendix 12.2 of the ES. However, given the low numbers and infrequent sightings of these species in and around the Norfolk Boreas site, it has been concluded that there is a very low risk of any significant impacts and	Agreed	Agreed

Topic	Norfolk Boreas Limited's position	The Wildlife Trusts' position	Final position
	therefore it was not deemed necessary for these species to be subject to a full assessment.		
	The reference populations as defined in the ES are appropriate as agreed in the Expert Topic Group meeting on the 12 th March 2018.	Agreed	Agreed
	The approach to assessment of impacts from pile driving noise for marine mammals follows current best practice and is therefore appropriate for this assessment, as agreed with during the expert topic group meeting in March 2018.	Agreed	Agreed
	The impact assessment methodology is appropriate as discussed in the ETG meeting in 12 th March 2018.	TWT has some concerns regarding the inconsistent use of sensitivity and magnitude criteria used by developers.	TWT concerns are acknowledged, however, as there is no current guidance, the approach is based on the best available information and TWTs concerns are not directed specifically at the Norfolk Boreas project.
	The worst case scenarios used in the assessment for marine mammals is appropriate.	Agreed	Agreed
Assessment findings	The characterisation of receptor sensitivity is appropriate.	Please refer to our comments on the sensitivity and magnitude criteria.	Final Position is as per that of two rows above
	The magnitude of effect is correctly identified.	Please refer to our comments on the sensitivity and magnitude criteria.	Final Position is as per that of three rows above
	The impact significance conclusions of negligible or minor for Norfolk Boreas alone are appropriate.	Agreed although please refer to our comments on the sensitivity and magnitude criteria.	Agreed
Cumulative Impact	The plans and projects considered within the CIA are appropriate.	Not agreed on the basis that commercial fisheries should be included in the CIA. The Wildlife Trusts do not	Not agreed

Topic	Norfolk Boreas Limited's position	The Wildlife Trusts' position	Final position
Assessment (CIA)	By-catch by commercial fisheries is considered part of the baseline. The Review of Consents (RoC) ¹ (BEIS, 2018) concluded that a quantitative assessment is not possible on the basis that there have been no quantified assessments undertaken on the extent of impacts from commercial fishing and therefore information is not available to inform the assessment. The RoC does however note that commercial fishing has occurred within the SAC for many years and has had, and will continue to have, direct and indirect impacts on harbour porpoise and that there are no known plans to suggest that the level of fishing within the SAC will significantly increase beyond those in the baseline.	consider fishing to be part of the baseline. See supporting text in Appendix 1.	
	The CIA methodology is appropriate.	Agreed, with the exception of commercial fisheries within the project list (see above). It is difficult to predict which offshore wind farms will be constructing at a similar time to Norfolk Boreas. Therefore, we would expect an updated cumulative impact assessment to be undertaken before marine mammal documents are signed off by the MMO e.g. MMMP, SIP, marine mammal monitoring.	Agreed, with the exception of commercial fisheries
	The cumulative impact conclusions of negligible or minor significance (following mitigation) are appropriate.	Not agreed for the following reasons: <ul style="list-style-type: none"> Commercial fisheries should be included in the CIA. TWT does not consider fishing to be part of the baseline (see Appendix 1). As outlined above TWT has some concerns about the sensitivity and magnitude criteria. The number of animals potentially effected by disturbance is 	Not agreed, as outlined above.

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753026/RoC_SNS_cSAC_HRA_5.0.pdf

Topic	Norfolk Boreas Limited's position	The Wildlife Trusts' position	Final position
		high and there is little evidence to support that this will not have an adverse effect.	
Habitats Regulations Assessment (HRA)			
Screening of Likely Significant Effects (LSE)	<p>The Approach to HRA Screening is appropriate. The following sites are screened in for further assessment:</p> <ul style="list-style-type: none"> • Southern North Sea SAC • Humber Estuary SAC • The Wash and North Norfolk Coast SAC • Winterton-Horsey Dunes SAC • Klaverbank SAC • Noordzeekustzone SAC 	Agreed	Agreed
Assessment of Adverse Effect on Integrity of the Southern North Sea SAC	<p>The list of effects considered in the Information to Support HRA report (document 5.3) are appropriate.</p> <p>Clearance of Unexploded Ordnance (UXO) has been considered in order to provide a conservative assessment, however licencing of UXO works would be done following UXO surveys once the nature and extent of UXO clearance requirements are known. Further assessment and identification of appropriate mitigation would be undertaken at that time.</p>	<p>Agreed</p> <p>We welcome that UXO clearance has been considered in the assessment. UXO clearance is almost certain to take place post-consent and has the potential to cause an adverse effect on the Southern North Sea SAC without mitigation. Table 8.11 in the Information to Support the Habitats Regulations Assessment shows that PTS impacts could be up to 14.4km and currently there is little evidence to support the effectiveness of mitigation. To ensure site integrity, conditions analogous to those included for piling impacts should be included in the Development Consent Order for UXO clearance. In line with this, a draft MMMP for UXO clearance should be produced. It should also be made explicit in the SIP that the document is required to</p>	Agreed

Topic	Norfolk Boreas Limited's position	The Wildlife Trusts' position	Final position
		mitigate against in-combination impacts from both piling and UXO clearance.	
	<p>The approach to the assessment of adverse effect on site integrity is appropriate.</p> <p>The approach follows the Conservation Objectives (JNCC and Natural England, 2019²). That is:</p> <p>Displacement of harbour porpoise should not exceed 20% of the seasonal component of the SAC area at any one time and / or on average exceed 10% of the seasonal component of the SAC area over the duration of that season.</p>	Although we welcome that progress has been made on the assessment of underwater noise disturbance within the Southern North Sea SAC, TWT still has concerns regarding the proposed SNCB advice. The science underpinning the advice is weak and we believe the proposed approach will be difficult to deliver.	TWT concerns are acknowledged, however, the assessments are based on the current SNCBs guidance.
	<p>The reference populations as defined in the Information to Support HRA report are appropriate. The assessment is based on the North Sea Management Unit in accordance with advice from Natural England during the Evidence Plan Process and Conservation Objectives (JNCC and Natural England, 2019).</p>	TWT believes the assessment should be taken against a site population number.	TWT concerns are acknowledged, however, the assessments are based on the current SNCBs guidance.
	<p>The conclusions of the Information to Support HRA report are appropriate for Norfolk Boreas alone and in-combination based on the following:</p>	There are a number of outstanding issues which means that TWT cannot conclude for the Norfolk Boreas application that there will be no adverse effect beyond reasonable scientific doubt on the Southern North Sea	TWT position is acknowledged, although it should be noted that:

² JNCC and Natural England (2019). Harbour Porpoise (*Phocoena phocoena*) Special Area of Conservation: Southern North Sea Conservation Objectives and Advice on Operations. March 2019. Advice under Regulation 21 of The Conservation of Offshore Marine Habitats and Species Regulation 2017 and Regulation 37(3) of The Conservation of Habitats and Species Regulations 2017.

Topic	Norfolk Boreas Limited's position	The Wildlife Trusts' position	Final position
	<ul style="list-style-type: none"> The approach follows the Statutory Nature Conservation Body (SNCB)'s current advice on the assessment of impacts on the Southern North Sea harbour porpoise SAC (Natural England, June 2017) and Conservation Objectives (JNCC and Natural England, 2019); and The Site Integrity Plan (SIP), in accordance with the In Principle SIP (document reference 8.17 of the Application, APP-708) is secured through condition [14(m)] of the Generation Deemed Marine Licence (DML)s and [9(l)] of the Transmission DMLs. As such, construction cannot commence until the Regulator is satisfied that there will be no Adverse Effect on Integrity (AEOI) beyond reasonable scientific doubt. <p>Appropriate mitigation of underwater noise effects associated with UXO clearance will be determined as part of the licencing of these works (not included in the current DCO application). This will be undertaken once the nature and extent of clearance works are known, following the UXO survey.</p>	<p>SAC. Firstly, the SIP lacks detail and therefore in its current form it is not adequate. More detail should be provided on the effectiveness of the proposed mitigation as outlined in the SIP. This should include referenced examples of how the implementation of mitigation will reduce underwater noise disturbance impacts within the Southern North Sea SAC. Noise modelling should also be undertaken to demonstrate the degree of noise reduction which could be achieved through mitigation.</p> <p>Secondly, we cannot conclude no adverse effect on the Southern North Sea SAC due to the lack of regulatory mechanism to manage in-combination underwater noise impacts. Defra and the Southern North Sea Regulators Working Group are taking positive steps to develop effective management for in-combination underwater noise impacts and TWT will continue to work closely with all stakeholders on this. However, as management mechanisms are currently not in place, we suggest the Planning Inspectorate and the Secretary of State considers what controls need to be put in place to ensure no adverse effect on the Southern North Sea SAC at this current time.</p> <p>Please see previous notes on UXO clearance and the need to include conditions within the DCO.</p>	<ul style="list-style-type: none"> The assessments are based on the current SNCBs guidance. The commitment to the SIP will ensure that adequate mitigation will be put in place and developing the SIP pre-construction will ensure that this is based on the latest scientific evidence and requirements. Developing the SIP pre-construction will also ensure the in-combination impacts can be assessed based on the latest and more accurate information for piling, UXO and other activities. The responsibility to define the management framework and potential methodologies for management lies with the regulator (MMO) to ensure no adverse effect on the Southern North Sea SAC.
Mitigation and Management			
Mitigation and Management	The Site Integrity Plan , in accordance with the In Principle SIP (document reference 8.17 of the Application, APP-708) provides an appropriate framework for management of effects on the	We welcome the production of a SIP. However, we continue to have outstanding concerns which are described above. In addition, at the time of consent, there are uncertainties regarding the in-combination	TWT position is acknowledged, although as previously outlined:

Topic	Norfolk Boreas Limited's position	The Wildlife Trusts' position	Final position
	<p>Southern North Sea SAC. The final SIP would be produced pre-construction taking account of the final design of the project and best scientific evidence at that time.</p> <p>The final SIP would provide the detail on the mitigation proposed in relation to the final design, including detail on the effectiveness of the mitigation proposed. The SIP will deliver the required mitigation to conclude no AEOI beyond reasonable scientific doubt, as secured through condition 14(m) of the Generation DMLs and 9(l) of the Transmission DMLs. Construction cannot commence until the Regulator is satisfied that there will be no AEOI beyond reasonable scientific doubt.</p> <p>UXO clearance is not included within the dDCO as it would be licenced separately once the nature and extent of UXO clearance is known, following preconstruction surveys. A UXO Marine Mammal Mitigation Protocol (MMMP) would be a condition of the UXO clearance Marine Licence. This is the approach that has been taken on other offshore wind farms to date.</p>	<p>disturbance impacts. This leaves TWT with uncertainty on the effectiveness of mitigation on the Southern North Sea SAC. Therefore, we request to be consulted rather than be provided with information on the SIP post-consent.</p> <p>As above, due to the in-combination impacts of piling and UXO clearance and the uncertainty regarding mitigation, TWT recommend that the SIP should also apply to UXO clearance.</p> <p>With regards to the standard of developers applying for UXO clearance licenses post consent, as UXO clearance alone has the potential to cause injury impacts and in-combination cause disturbance impacts, we no longer think this approach is adequate. To ensure site integrity, UXO clearance should be secured within the DCO alongside mitigation required such as the SIP and the MMMP. Please see our previous comments on UXO clearance as an explanation.</p>	<ul style="list-style-type: none"> • The commitment to the SIP will ensure that adequate mitigation will be put in place and developing the SIP pre-construction will ensure that this is based on the latest scientific evidence and requirements. • Developing the SIP pre-construction will also ensure the in-combination impacts can be assessed based on the latest and more accurate information for piling, UXO and other activities. • TWT will be consulted during the development of the SIP post-consent. • The requirements for any UXO clearance will be determined post-consent and at this time the potential impacts will be assessed based on the latest information and guidance, which will be used to agree the mitigation requirements in the MMMP and SIP.
	<p>The MMMP for piling, in accordance with the draft MMMP (document reference 8.13 of the Application, APP-704) provides an appropriate</p>	<p>Agree that the MMMP for piling is currently the best available approach although TWT highlights that current</p>	<p>It is agreed that the MMMP for piling is currently the best approach however the Applicant</p>

Topic	Norfolk Boreas Limited's position	The Wildlife Trusts' position	Final position
	<p>framework for the securing marine mammal mitigation measures for mortality and injury.</p>	<p>guidance to inform the development of this document is out of date and therefore not fit for purpose.</p> <p>As the detailed MMMP will not be available until post-consent, TWT request to be named as a consultee for the MMMP for piling and UXO clearance</p> <p>As outlined above, to ensure site integrity a MMMP for UXO clearance should be developed and included in the DCO.</p> <p>We request that Vattenfall engages with TWT on the development of EPS injury and disturbance licences post consent.</p>	<p>believe that, as UXO clearance would be subject to a separate licence, a MMMP for this activity should not be included within the DCO. TWT do not agree with this position and believe that a MMMP for UXO clearance should be included within the DCO.</p> <p>Vattenfall and TWT are working towards a Memorandum of Understanding to clarify and further the working relationship, particularly on the further work to be undertaken in the post-consent and pre-construction phase of The Project.</p>
Monitoring	<p>The In Principle Monitoring Plan (document 8.12), provides an appropriate framework to agree monitoring with the Marine Management Organisation (MMO). Norfolk Boreas Ltd would expect the MMO to consult with relevant consultees as required.</p>	<p>Table 4.3 only relates to MMMP. This must also refer to SIP. TWT understand that the Applicant will make this amendment in the next version of the IPMP.</p> <p>We welcome that the applicant is supportive of a strategic approach to marine mammal monitoring, which TWT also supports.</p> <p>TWT highlight that there are gaps in evidence to support the effectiveness of mitigation e.g. MMMP, effectiveness of mitigation for UXO clearance. This must be factored into the monitoring plan.</p>	<p>Agreed.</p> <p>The monitoring requirements will be determined post-consent and in consultation with the MMO, TWT, WDC and SNCBs.</p>

Topic	Norfolk Boreas Limited's position	The Wildlife Trusts' position	Final position
<p>Post consent engagement</p>	<p>TWT will be provided with the draft and final Site Integrity Plan in accordance with the In Principle SIP (Document reference 8.17 of the Application, APP-708).</p> <p>In addition, Vattenfall and TWT are working on a Memorandum of Understanding to clarify and further the working relationship, especially on post-consent areas of work.</p>	<p>TWT request to be consulted post-consent on the development of marine mammal monitoring for this project.</p> <p>TWT has had a good working relationship with Vattenfall during the evidence plan process and we welcome the engagement during this process.</p> <p>However, due to the uncertainty on impacts on marine mammals and effectiveness of mitigation at the time of consent, we wish to continue working with Vattenfall post-consent on the development of the SIP, MMMP, marine mammal monitoring and marine mammal EPS licences. The MMO is likely to consult TWT on the development of these documents. However, we recommend that Vattenfall follows best practice which other developers follow and works with TWT during the development of the various documents to ensure that issues are resolved or noted before the MMO consults with TWT. This will avoid delays to the signing off of documents by the MMO.</p> <p>In addition, Vattenfall and TWT are working on a Memorandum of Understanding to clarify and further the working relationship, especially on post-consent areas of work. We hope the this can be developed over the coming months to provide clarity and develop the post-consent relationship before the end of the examination process.</p>	<p>Area for ongoing discussion</p>

2.2 Onshore Ecology and Ornithology (NWT and the Applicant)

13. The project has the potential to impact upon onshore ecology and ornithology. Chapter 22 and 23 of the ES, (document reference 6.1.22 and 6.1.23 of the Application, APP-235 and APP-236), provides an assessment of the significance of these impacts.
14. Table 4 provides areas of agreement (common ground) and areas of ongoing discussion regarding onshore ecology and ornithology.

Table 4 Agreement Log - Onshore Ecology and Ornithology

Topic	Norfolk Boreas Limited's position	TWT/NWT's position	Final position
Environmental Impact Assessment			
Survey methodology	Survey methodologies for Phase 1 Habitat Surveys are appropriate and sufficient.	Agreed	Agreed
	Survey methodologies for Phase 2 Surveys are appropriate and sufficient.	Agreed	Agreed
Existing Environment	Survey data collected for Norfolk Boreas for the characterisation of onshore ecology and ornithology are suitable for the assessment.	Agreed ecology NWT has no view regarding ornithology	Agreed
	The ES adequately characterises the baseline environment in terms of onshore ecology and ornithology.	Agreed ecology NWT has no view regarding ornithology	Agreed
Assessment methodology	Appropriate legislation, planning policy and guidance relevant to ecology and ornithology has been considered for the project (listed in section 22.2 and 23.2 in Chapter 22 Onshore Ecology (document reference 6.1.22 of the application, APP-235 and Chapter 23 Onshore Ornithology respectively (document reference 6.1.23 of the application, APP-0236)).	Agreed ecology NWT has no view regarding ornithology	Agreed
	The list of potential impacts on onshore ecology and ornithology assessed is appropriate	Agreed ecology NWT has no view regarding ornithology	Agreed
	The impact assessment methodologies used for the Ecological Impact Assessment (EclA) provide an appropriate approach to assessing potential impacts of the project.	Agreed	Agreed
	The worst case assumptions presented in the ES for Scenario 1 and Scenario 2, are appropriate for the project.	Agreed	Agreed
	The methodology adopted for the CIA and projects assessed for cumulative impacts with Norfolk Boreas is appropriate.	Agreed	Agreed
	Assessment findings	The assessment of impacts of both scenarios for construction, operation and decommissioning presented are appropriate and consistent with the agreed assessment methodologies.	Agreed

Topic	Norfolk Boreas Limited's position	TWT/NWT's position	Final position
	The assessment of cumulative impacts of both scenarios is appropriate and consistent with the agreed methodologies.	Agreed	Agreed
Mitigation and Management			
Approach to mitigation	All relevant mitigation measures required under both scenarios are outlined in the Outline Code of Construction Practice (document reference 8.1 of the Application APP-692) and Outline Landscape and Environmental Management Strategy (OLEMS) (document reference 8.7 of the Application, APP-698).	Agreed	Agreed
	Under Scenario 2 the use of trenchless crossing techniques at County Wildlife Sites (CWS) is acceptable subject to detailed design which will be completed post consent. Under Scenario 1 trenchless crossings will not be required as these will have been pre-installed by Norfolk Vanguard.	Agreed	Agreed
	The provision of an Ecological Management Plan (EcoMP) (based on the OLEMS submitted with the DCO application, document reference 8.7 of the Application, APP-698) is considered suitable to ensure potential impacts identified in the EclA are adequately mitigated.	Agreed	Agreed
Habitat Regulations Assessment			
Screening of LSE	The methodology and sites screened in for the HRA as presented in Appendix 5.2 of the Information to Support HRA report (Application document 5.3) are considered appropriate, considering sites within 5km of onshore infrastructure.	Agreed	Agreed

Topic	Norfolk Boreas Limited's position	TWT/NWT's position	Final position
	<p>The approach to HRA screening is appropriate. The following sites are screened in for further assessment:</p> <ul style="list-style-type: none"> • River Wensum; • Paston Great Barn; • Norfolk Valley Fens; and • The Broads SAC 	Agreed	Agreed
Assessment of Adverse Effect on Integrity	The approach to the assessment is appropriate.	Agreed	Agreed
	The conclusions of no adverse effect on site integrity for all sites in the Information to Support HRA report (document 5.3) are appropriate.	NWT has no view regarding the conclusions of the HRA.	NWT do not have a view on the conclusions of the HRA report.

The names inserted below are to confirm that these are the current positions of the two parties contributing to this SOCG

Printed Name	Joan Edwards
Position	Director of Living Seas and Public Affairs
On behalf of	The Wildlife Trusts
Date	21.10.19

Printed Name	John Hiskett
Position	Senior Conservation Office
On behalf of	Norfolk Wildlife Trust
Date	15 th August 2019

Printed Name	Jake Laws
Position	Norfolk Boreas Consents Manager
On behalf of	Norfolk Boreas Limited (the Applicant)
Date	21 st October 2019

APPENDIX 1 EVIDENCE PROVIDED BY TWT THAT FISHING SHOULD BE INCLUDED WITHIN CIA

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.

Fishing is a licensable activity that has the potential to have an adverse impact on the marine environment. This is supported in the leading case C-127/02 **Waddenzee** [2004] ECR I-7405, the CJEU held at para. 6

“The act that the activity has been carried on periodically for several years on the site concerned and that a licence has to be obtained for it every year, each new issuance of which requires an assessment both of the possibility of carrying on that activity and the site where it may be carried on, does not itself constitute an obstacle to considering it, at the time of each application, as a distinct plan or project within the meaning of the Habitats Directive”

This caselaw demonstrates that fishing is considered a plan or a project and therefore not part of the baseline.

Fishing as a principle should be included in all in-combination assessments. Fishing is not part of the baseline which is supported by a recent response by Natural England to deadline 4 of the Hornsea Three examinations in which they state *“fishing is mobile, variable and subject to change, fishing impacts may not be adequately captured in the baseline characterisation”*³.

Defra policy⁴ document on managing fisheries in European Marine Sites⁵ (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:

³Natural England response to Examiner’s questions for Hornsea Three: deadline 4
<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010080/EN010080-001479-Natural%20England%20-%20Response%20to%20the%20Examining%20Authority%E2%80%99s%20Further%20Written%20Questions%20and%20further%20information%20requested%20by%20the%20Examining%20Authority.pdf>

⁴ 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_AP_PROACH_Policy_and_Delivery.pdf

⁵ European Marine Sites are defined by the Habitats Regulations as marine SACs or SPAs
<http://jncc.defra.gov.uk/page-4215>

“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.

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.

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 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.”

A precedent was set for the inclusion of fishing in in-combination assessments when TWT began Judicial Review proceedings against the Department for Energy and Climate Change (DECC) in August 2015 against the approval of Dogger Bank Offshore Wind Farm Order due to the exclusion of fishing from the in-combination assessment as part of the HRA. TWT withdrew the claim due to assurances given by the government regarding the management of fishing within Dogger Bank SAC. One of those assurances was that steps would be put in place to ensure that this scenario would not happen again and that Defra and DECC would work together to ensure fishing would be included in future offshore wind farm impact assessments.

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 a similar approach is required to develop an effective mechanism to assess the cumulative impacts of offshore wind farm development and fisheries.