



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

NORFOLK BOREAS OFFSHORE WIND FARM

Planning Inspectorate Reference: EN010087

Deadline 5

**Natural England's response to the Applicant's summary of Oral
Representations at Issue Specific Hearing 4 - Agenda Item 6a(i)**

26th February 2020

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1 Introduction

1. This document is provided in response to the Applicant's summary of Oral Representations at Issue Specific Hearing 4 on 22nd January 2020 Benthic Ecology Agenda item 6a(i) and the points raised by their specialist Charlotte Johnston in respect of scientific uncertainty in Natural England's advice [Rep4 – 014]

2 Detailed Comments

2. Firstly, it should be observed that in order for the proposed works to gain consent the decision-maker must, on the basis of the available evidence and by way of an appropriate assessment, be able to ascertain that those works will not have an adverse effect on the integrity of the site. That appropriate assessment must have no lacunae and must contain complete, precise and definitive findings and conclusions capable of dispelling all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned.¹ There is no requirement to prove that proposed works *will* have adverse effect and where reasonable scientific doubt remains consent ought not to be granted (save by way of the derogations route and the associated requirements to consider alternatives, imperative reasons of overriding public interest and compensatory measures).
3. Please also refer to Natural England's "Position Statement Regarding the Proposed Site Integrity Plan for the Haisborough Hammond and Winterton Special Area of Conservation" dated 20th July 2020 (REP4-041).
4. We note that Ms. Johnston has identified three areas of scientific uncertainty in the evidence underlying Natural England advice on Annex I habitats within the Haisborough, Hammond and Winterton Special Conservation Area (HHW SAC), which we will address in turn below

i) '...Uncertainty in accurately defining the extent and distribution of Annex I reef (see Annex A of NE & JNCC advice to MMO 11 Sept 2015 provided as part of Natural England's Relevant Representation (RR-099), leading to identification of "area to be managed as reef" based on sediment characteristics and modelling with precautionary margins added around records of reef...'

¹ *Grace and Sweetman v An Bord Pleanála* CJEU C-164/17.

5. Natural England doesn't disagree that there is a degree of inherent uncertainty in relation to the current evidence base for all large offshore designated sites due to their size and the extent of survey effort. And when providing our advice to fisheries regulators we have always been open and transparent about the implications this has on the degree of confidence that can be placed on the evidence. But we would argue that our advice is based on the best available evidence and that modelling is a valid and necessary approach to assessing all offshore site features. In addition, for this particular site the chosen model was based on the consideration of several models and was underpinned by extensive data collection providing the greatest possible certainty.

ii) '...Uncertainty in determining the spatial extent and degree of impact of fishing activities on reef within the site...'

6. In 2012 Defra revised the approach to fisheries management and in response to that the Marine Management Organisation developed a 'Risk Matrix' (2014) to consider the interactions between fishing activities and site features. 'Red Risk' interactions are those which were found to be incompatible with the ongoing maintenance of a feature, and so it was concluded that restoration measures were required in the form of closed areas. As part of this work it was found that towed (demersal) gear on Annex I *S. spinulosa* reef is a red risk interaction. Therefore, while we agree that it is difficult to determine the spatial extent bottom trawling is having on *Sabellaria spinulosa* reef, the evidence is demonstrating that there is an impact. This is also supported by the feature being downgraded to unfavourable condition – recovering in 2019 condition assessment.

7. As set out in RR-099 these closure areas are subject to review and therefore if at any point they are considered to be insufficient to secure the restoration of reef within the HHW SAC, then further action will need to be taken.

iii) '...Uncertainty as to the current condition of Annex I habitat within the site, reflected in the need for indirect assessment by vulnerability rather than use of actual monitoring data on habitat condition...'

8. Please be advised that a 'Vulnerability Assessment' is considered a valid approach by the Statutory Nature Conservation Bodies (SNCBs) and is the best available option for large offshore sites. In undertaking site management work we need to be realistic about the possible benefits/ecological gain in undertaking data collection vs. the cost of collecting the data.

9. In addition, when repeated vulnerability analyses have been undertaken for HHW SAC, which take account of updated evidence and/or data, the same outcomes in relation to the favourable condition assessment for the site have been identified.

In respect of further points raised by Ms Johnston Natural England wishes to highlight the following:

10. The Conservation Objective to achieve recovery: Ms Johnston says that the 2013 JNCC Vulnerability assessment is only relevant to fisheries management, stating that:

'...The exposure assessment is highly precautionary based on the assumption that fishing effort occurs throughout the site and that it is currently not restricted (apart from the EIFCA area recently closed to bottom fishing). That level of precaution is appropriate for initial advice on the conservation interests of the site to highlight to developers and managers what they must consider in their various assessments and particularly for managers of marine activities such as fishing that are not licensed to a particular location or subject to prior environmental assessment. But that level of precaution is not merited when considering a licensed activity in a fixed location which has been subject to detailed assessment and mitigation...'

11. We believe that Ms Johnston is likely to be referring to the information included in the package that was created, under Regulation 35(3) of The Conservation of Habitats and Species Regulations 2010 (as amended), and Regulation 18 of The Offshore Marine Conservation Regulations (Natural Habitats, &c.) Regulations 2007 (as amended), at the time of designation between 2011 and 2017. At that time, the package was based on the best available evidence. However, since designation, further data collection has occurred to inform site management measures; Supplementary Advice on Conservation Objectives were published in 2018 ([Link](#)) and a site condition assessment was undertaken in 2019 ([Link](#)) all of which are now considered and referred to as the best available evidence/information. Thus Natural England does not accept that its approach is excessively precautionary.
12. In addition, Natural England highlights that the vulnerability assessment undertaken to inform the 2019 condition assessment took into account impacts from pipelines and other anthropogenic activities, as well as fisheries, and the site features were found to be in unfavourable condition. Therefore, that more recent assessment should be used to provide

context to the advice provided by Natural England, any Habitats Regulation Assessments and the decision making process. It is our view that until such time that it can be demonstrated beyond reasonable scientific doubt that management measures are improving the condition of the site and that any additional activities will not hinder the conservation objectives, unnecessary impacts are avoided and/or minimised to an acceptable level.

13. Boundary of Annex I features with HHW SAC: Natural England notes that Norfolk Vanguard and Boreas highlight only the delignated Sandbank feature and buffer zone as areas of Annex I Sandbanks that are to be managed for conservation as Sandbanks. However, the sediment between Sandbanks is also important for the functioning of the Sandbanks, as well as for Annex I Reef formation, and therefore impacts occurring between features may still be detrimental to the Annex I feature(s). The 2016 survey identified that the species composition in these areas was similar to that of the species composition within the Annex I features. Put simplistically, if these areas are sandy and dynamic they are considered important to / part of the Sandbank features and if stable and mixed sediment have the potential to support Reef habitat. The only areas thought not to be providing this important 'functionality' role is where exposed oil and gas pipelines transect the site

14. Temporary Effect: Natural England doesn't disagree that there is evidence to demonstrate that *Sabellaria spinulosa* reef can develop on disturbed ground including where cables have been installed. However, there is currently no evidence to support the recovery of existing/established Annex I reef from cable installation cutting through it. In addition, there is evidence from the Wadden Sea that where such impacts have been caused by bottom trawling activities, recovery has not occurred. Whilst we recognise that there are arguments about comparability; until it can be demonstrated that established Annex I reef can recover there remains a sufficient degree of uncertainty that an Adverse Effect on Integrity can be ruled out beyond all scientific doubt.

15. Use of the term 'Priority' Areas: Please note that Annex I Reef(s) within fisheries management areas are not considered to be any more important than any other areas of Annex I reef within the SAC. The fisheries management measures are proposed to be located in areas where Annex I reef has been recorded with sufficient confidence. Should other areas of Annex I reef be identified in future these will be of equal value in achieving the conservation objectives for the site Therefore, we disagree with the practice of referring

to some areas of Reef as 'Priority Areas", because all areas of Reef within the SAC have the same status and should be conserved.

References

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