



NORFOLK BOREAS OFFSHORE WIND FARM

Planning Inspectorate Reference: EN010087

Deadline 9

Deadline: 29th April 2020

**Natural England's comments on Additional information for the HHW SAC position
paper**

Our Ref: NE.NB.D9.04.HHW

Contents

1	Introduction	3
2	Summary.....	3
3	Detailed Comments	4

1 Introduction

1.1 Please find below Natural England’s comments on Additional information for the HHW SAC position paper [REP6-016].

2 Summary

2.1 Natural England welcomes the comprehensive consideration of and commitment to the additional mitigation measures by the Applicant. However, Natural England continues to have concerns in relation to the deliverables of the proposed mitigation as set out below and in more detail in the table below. Within the table each proposed mitigation has been considered against the question in the first column and have been assigned to an answer column.

	Yes to an acceptable level	Yes to an acceptable level, but with caveat	Yes, but still concern over residual impact
Are the proposed measures likely to successfully reduce the impacts?	Demonstrated that Permanent Habitat loss is avoided by keeping sediment within site during sandwave levelling	If Sandwave levelling reduces the requirement for cable protection whilst not hindering recovery. However, we note limited evidence over longer timeframes of success, ability to deploy at significantly greater scale and applicability to different sites to the one where it has currently been used	Reduction in cable protection within site crossings and within ‘priority’ areas
	Additional impacts associated infrastructure is reduced such as no jack up barge in SAC	Micro siting if it is possible	Reduction in the number of cables
		Reburial if outside of Annex I areas	Agreement of location etc. of cable protection so have further opportunity to reduce impacts
			If restricted to concrete mattress or similar product that can be successfully modified to achieve removal at time of decommissioning then impacts will no longer be permanent, but will remain lasting for 30 yrs. Also would need to limit the type of cable protection in DCO/DML

3 Detailed Comments

Para.	Page	Comment	RAG
2.1	39 and 72	Please note that the Haisborough Hammond Winterton Special Area of Conservation (HHW SAC) restore objective for Annex I reef is not just in relation to the fisheries impacts. Therefore the placement of cable protection outside of the Applicant's identified 'priority' areas for fisheries management may still have an effect on the restore objective of the HHW SAC. For example if Annex I reef is impacted through cable installation outside of priority areas then there will be a further area that needs to recover in addition to those being managed to restore the impacts from fisheries.	Yellow
2.1		Decommissioning of cable protection Please see our submission in response to Cable Protection Decommissioning as submitted at D9 for further details.	Yellow
2.2		Removal of disused cables Natural England welcomes the removal of disused cable to further reduce the need for cable protection at crossing locations within the HHW SAC.	Green
3.		HHW SAC Control Document 8.20 Please see Natural England's comments on the HHW Site Integrity Plan (SIP) and Cable Specification, Installation, and Monitoring Plan (CSIMP) in a separate document and Position Statement as submitted at D9.	Red

3.2.5.2		<p>HHW SAC CSIMP</p> <p>Natural England has concerns about (a) the practical suitability of the proposed Grampian condition and (b) the legality of the use of this condition. Please see Natural England’s Position Statement . These concerns remain and are repeated. It is for the Secretary of State to determine, on the basis of an Appropriate Assessment, whether the information provided by the Applicant actually supports the conclusion of no AEoI. In making this judgement the decision maker will have to bear in mind that the evidence to hand is essentially snap-shot and that things are likely to have changed during a realistic timescale.</p> <p>The Applicant points out that the purpose of the Grampian condition is to “verify previous assessments”. Natural England responds to this by noting that there is a possibility that the condition’s mechanism will not verify previous assessments, because previous assessments may be superseded by events. There is not “every prospect that the Grampian condition can be discharged in the timescales ...” – because there is some prospect that it can’t.</p> <p>It is not appropriate to equate the use of the SIP process in this case to its use in the SNS SAC, in relation to the disturbance of marine mammals. In that case NE is sure that if works etc are suitably timetabled and carried out in the right way there will be no AEoI. That certainty is based on confidence in existing technologies and mechanisms for ensuring sensitive timetabling. In this case the contingencies are greatly less knowable at this range.</p>	
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57 (cont).	<p>The proposal to use a Cable Specification, Installation and Monitoring Plan (CSIMP), which has to be submitted to and approved by the MMO, does not cure the problems of uncertainty. For legal purposes a future CSIMP will represent a plan or project that will have to be subjected to Appropriate Assessment during the process of approval by the MMO. Depending on circumstances existing at the time of submission of a CSIMP to the MMO the Appropriate Assessment is capable of concluding that AEol will be caused, exactly as with the SIP process.</p> <p>To amplify this point: the proposed condition describes a process by which cable laying cannot commence until a plan for it has been submitted to and approved in writing by the MMO. This is a situation contemplated for by reg. 28 (1) of the Conservation of Offshore Habitats and Species Regulations 2017, which provides that “Before deciding to undertake, or given any consent, permission or other authorisation for, a relevant plan or project, a competent authority must make an appropriate assessment of the implications of the plan or project for the [SAC] in view of that [SAC’s] conservation objectives”. By reason of reg. 5 of the 2017 Regulations the MMO is plainly a (or the) competent authority in this situation and the subject matter of a CSIMP is plainly a “relevant plan or project” for the purposes of reg. 28 (2) as all three of reg. 28 (2) (a), (b) and (c) are fulfilled. It therefore follows that on receipt of a CSIMP, and before that it can approve it, the MMO will have to carry out its own appropriate assessment of the Applicant’s plan for specifying, installing and monitoring cables within the HHW SAC. It cannot be said that these things have received appropriate assessment at the time of the making of the DCO, because at that time the necessary details had not been specified.</p> <p>It may be that at the point of submission of a CSIMP it will indeed be possible to micro-site the cable in a manner that is neutral as to protected features, but the significant effect on the site cannot be ruled out</p>	
24	<p>HHW SAC CSIMP</p> <p>Natural England doesn’t agree with the Applicant’s conclusions that the mitigation secured in the CSIMP will rule out adverse effect on integrity as set out by the attached documents</p>	
26	<p>The only time that the CSIMP condition is considered to be appropriate is if no AEol is determined by the competent Authority and/or AEol is removed by the securing of compensation measures. Please see D9 submissions and Position Statement in relation to the SIP and CSIMP [NE.NB.D9.03.SIP]</p>	

35	<p>HHW SAC Habitat Loss</p> <p>Whilst we can agree that decommissioning cable protection would change the impact to temporary there is still a further consideration of significant temporal impacts from a lasting impact for >30 years. There is no evidence presented of what the impacts area likely to be on Annex I habitats and site conservation objectives from such a temporally long time and that habitat recovery is achievable to its pre-impacted state. It therefore can't be considered with certainty to be a temporary impact. In addition, it is our view that 30 years of change in habitat can't be considered to be a small scale loss/change.</p>	
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