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NORFOLK BOREAS OFFSHORE WIND FARM

Planning Inspectorate Reference: EN010087

**Review of the Norfolk Vanguard and Hornsea Project Three
decision in relation to the Boreas examination advice on HRA
benthic considerations**

Deadline 14

25th August 2020

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Natural England has reviewed the Secretary of State (SoS) letter, Appropriate Assessment (AA) and the Examining Authority (ExA) report for Norfolk Vanguard and Hornsea Project Three to inform our submission at Deadline 14 for Norfolk Boreas in relation to Haisborough, Hammond and Winterton Special Area of Conservation (HHW SAC).

1. Summary

Please be advised that Natural England's (NE) advice provided at Deadline 9 of the Norfolk Boreas examination remains unchanged by the recent Norfolk Vanguard (NVG) and Hornsea Project Three (HP3) decisions.

However, we wish to emphasise certain points in relation to the Secretary of State (SoS) decision letter and Habitat Regulation Assessment (HRA) and the Examining Authorities (ExA) Report.

2. Use of SIP

Both the ExA Report and SoS HRA give a lot of weight to the NVG REP9 – 046 where it was concluded that Haisborough Hammond and Winterton Special Area of Conservation (HHW SAC) Site Integrity Plan (SIP) sufficiently restricted development of NVG until such time that an Adverse Effect on Integrity (AEol) could be excluded through the adoption of appropriate mitigation measures. Please note this is not the same as NE agreeing that an adverse effect on integrity could be excluded.

Subsequent to the NVG examination further internal legal guidance was provided on the use of a SIP to determine no AEol at the consenting phase, which resulted in our position being revised for the Boreas examination; such that we no longer support the use of a SIP to defer Habitat Regulation decisions until post consent. Our view was set out fully in Natural England's position statement submitted into Boreas examination at Deadline 4 [REP4-041] and provided to the Secretary of State on 27th April 2020 in relation to NVG. However, given the breadth of information/evidence submitted on 27th April 2020, the change in position by NE on the use of a SIP may have been overlooked by the SoS. We therefore advise that the legal view submitted into the Boreas examination remains unchanged i.e. NE doesn't support the reliance on the SIP to address Habitats Regulations Assessment concerns. NE considers that where an AEol can't be ruled out beyond all scientific doubt in relation to Annex I sandbanks and Annex I reef features of the HHW SAC we advise that this is addressed now as part of the consenting phase not pushed to post consent.

NB: This view is in line with the MMO's view throughout both the NVG and Boreas Examinations [REP13 – 035].

3. Certainty in recovery and reversibility

In addition as set out in our Boreas submission at Deadline 9 and our post examination advice to the SoS on NVG we do not believe that there is currently sufficient evidence/certainty (beyond reasonable scientific doubt) to demonstrate:

- that Annex I *Sabellaria spinulosa* reef will fully recover post cable installation;
- that sandwave levelling will negate the need for cable protection over the lifetime of the project;
- that cable protection won't hinder the conservation objectives for the site over the life time of the project;
- that cable protection can be successfully decommissioned;
- the reversibility of impacts on Annex I reef and sandbanks after decommissioning; and
- that micro siting/ avoidance of impacts to Annex I reef is achievable (especially when taking into account archaeological interest features - something not considered in the NVG examination).

Therefore, our advice provided at Deadline 9 of the Boreas examination remains unchanged.

We note that the NVG ExA considered at 5.1.24 of their report that NE hadn't provide substantive evidence to justify our stance [REP6 -032] in relation to the uncertainties on the recoverability of *Sabellaria spinulosa* reef post decommissioning, but that the Applicant had provided a persuasive counter argument. However, as set out in our Boreas advice to date we would argue that it is for the Applicant to provide comparable evidence to remove all scientific doubt. We believe that doubt remains, as no known (i.e. regularly monitored) Annex I reef has been cabled through and therefore recovery of reef from this particular activity has not been documented. Whilst we agree that the evidence presented would support the view that *Sabellaria spinulosa* reef can develop in areas where it hadn't prior to cable installation and/or post storm impacts; there is also evidence of a decline in *S. spinulosa* reef across Europe, in areas of anthropogenic activities, notably in the Wadden Sea (Reise, K. 1982; Reise, K., & Schubert, A. 1987; and Riesen, W., & Reise, K. 1982). It should also be noted that areas within the UK such as Morecambe Bay, which have been intensively trawled, have also noted a loss of *S. spinulosa*, which has shown no signs of recovery (Holt et al, 1997).

Therefore the UK has a key role to play in conserving reef habitats and where there is uncertainty a more precaution approach should be adopted. In addition there has been no monitoring of recovery of habitats post removal of cable/scour protection, which have been in situ for 30 years and in areas suitable for Annex I habitats. Again we would agree with the ExA for NVG that there may be a 'degree' of recovery. But

whether that undefined level of recovery would be sufficient to support the form and function of the Annex I habitat such that the conservation objectives for the site are not hindered remains unknown and therefore scientific doubt remains.

4. 'Temporary lasting'

a) Consideration of temporary

We note that for both NVG and HP3 decisions the SoS has put a lot of emphasis on the impacts being 'temporary lasting'. NE have sought further legal opinion in relation to this and even if decommissioning of cable protection is considered to be feasible; impacts over 30 years is in Natural England's opinion significantly stretching the definition of temporary beyond current case law and what is considered acceptable in relation to the conservation objectives for the site.

Therefore evidence would need to be provided to demonstrate the feasibility of cable protection removal and that the impacts to the Annex I habitats are reversible after 30 years. If this cannot be provided a more precautionary approach to decision making should be taken. Therefore at this time our advice remains unchanged **i.e. cable protection would have a lasting/permanent change to habitat form and function, and would therefore hinder the conservation objectives of the site such that an AEoI couldn't be excluded beyond all reasonable scientific doubt.**

b) Permanent Impacts

In addition we are aware from industry discussions, including with the Applicant, that cable crossing agreements etc. prohibit the decommissioning of cable protection above cable crossings and therefore, there will be some Annex I habitat loss. However the NVG HRA doesn't reflect the requirement for cable protection at cable crossings to be left in situ, thus being a permanent impact. Natural England reflected in our advice during the NVG and Boreas examinations that where possible cable crossings should be avoided and where unavoidable cable protection should be minimised as much as possible; recognising cable protection at crossings was a necessity for public safety.

Therefore, it is Natural England advice that the SoS condition to remove all cable protection at the time of decommission, doesn't apply to cable crossings. This should be considered further in the Boreas examination and the SoS decision making and Condition 3(1)(g) is retained.

c) Decommissioning considerations

On speaking with industry we are also aware that it is highly probable that if the projects remain viable there will be applications to extend the lifespan of the OWF beyond the current proposed 30 years. Whilst it is recognised that this will need to be taken into consideration at the time of decommissioning based on best available

evidence; the SoS's decision to include a decommissioning condition to the NVG and HP3 DCO/dML infers that the feasibility of decommissioning to remove all AEoI needs to be considered further as part of this examination. Should the OWF be consented we propose as a minimum a revised decommissioning condition to include monitoring of site condition over the lifetime of the project to address uncertainties/residual concerns from the presence of cable protection over 30 years within HHW SAC.

d) Reference to 'Dogger Bank' decisions

Natural England notes the within the HP3 decision letter and HRA there is heavy reliance on the Dogger Bank Windfarm consents (2015) to support the assumption that rock protection can be fully decommissioned within a sandbank system, and that the habitat will subsequently return to favourable condition.

However, much has changed since the Dogger Bank decisions - we now understand that the decommissioning of rock protection is problematic and that the impacts on the Annex I Dogger Bank Sandbanks are likely to be more significant than originally thought. In addition to this the legislative picture has also changed – e.g. Sweetman rulings etc. Therefore it is NE's view that there is not the consistency in SNCB advice and the environmental assessments between the Dogger Bank projects and that of current OWF NSIPs as stated by the Boreas Applicant REP13-025.

In addition in relation of habitat similarities it should also be noted that Dogger Bank sandbank is in fact a fixed glacial gill that shows different characteristics to the dynamic sandbank systems of Haisborough Hammond and Winterton SAC and that of the North Norfolk Sandbanks SAC. However, in this instance we consider this difference to be a positive as more dynamics systems have a higher probability of recovery. Though it should be noted that there is no similarity in relation to mixed sediment features and Annex I reef with that of the Dogger Bank projects.

We therefore advise that the SoS should be taking account of the latest evidence available, and that it undermines the robustness of an AA to place undue reliance on previous consenting decisions where there are indications that these decisions may have shortcomings due to the evidence on which they were based.

5. Small Scale Losses

Both NVG and HP3 decision documents compare the impacts from the proposal against the total area of the designated site and interest features, which are considered to be small scale. However there are three points' NE wishes to highlight the decisions don't take account of:

- a) changes to form and function listed under the Conservation Objectives: We advise that all regulators when undertaking an HRA should be considering the conservation objectives for the site and should have regard for our conservation advice, which consider more than just extent. This is key because the MMO follow the above approach in their assessments so post consent/pre construction the AAs are unlikely to align with the original SoS HRA.
- b) the favourable condition of the site: The decision making process needs to understand decisions that have already been made in the site and the implications for favourable condition status which whilst noted in the HRA haven't been fully considered. We advise that the favourable condition status of HHW SAC as published in 2019 should be taken into consideration in any decision making
- c) the actual scale of the impacts: Whilst we recognise that the impacts are small scale in comparison to the whole site it should be noted that 5% of cable protection within the HHW SAC is equivalent to WCS two residential roads running in parallel for 2km through the site or 4 roads if you take into account Boreas.

6. Disposal Location

4.20.18 of the NVG ExA report agrees with NE that there needs to be a disposal condition that ensures that dredged material will be disposed of in similar habitat locations. And whilst the SIP was identified in the NVG HRA as having a requirement to agree disposal location/s with MMO in consultation with NE prior to construction; we would welcome some outline agreement on the criteria that should be met for any disposal site beyond those currently included in the CSIP including, but not exclusively, similar grain size.

7. Cable Repair Works

In 6.7.149 of the NVG ExA report we note that any cable protection required as a result of cable repair works over the life time of the project will require a separate marine licence, but we advise that the likelihood of requiring further cable protection in these circumstances should be considered at the consenting phase and assessed accordingly in any HRA. Therefore we would welcome further consideration of how best this can be achieved.

8. References

Holt, T., Hartnoll, R. & Hawkins, S. 1997. Sensitivity and vulnerability to man-induced change of selected communities: intertidal brown algal shrubs, *Zostera* beds and *Sabellaria spinulosa* reefs. English Nature Research report, No.234

Reise, k. 1982. Long term changes in the macrobenthic invertebrate fauna of the Wadden Sea: are polychaetes about to take over? Netherlands Journal of Sea Research, 16, 29-36.

Reise, K., & Schubert, A. 1987. Macrobenthic turnover in the subtidal Wadden Sea: the Norderaue revisited after 60 years. Helgoländer Meeresunters, 41, 69-82.

Riesen, W., & Reise, K. 1982. Macrobenthos of the subtidal Wadden Sea: revisited after 55 years. Helgoländer Meeresunters, 35, 409-423.