



Gareth Leigh
Department for Business, Energy and Industrial Strategy
1 Victoria Street
London
SW1H 0ET

The Wildlife Trust reference: 20022896

BY EMAIL

20th August 2021

Dear Gareth

Response to Norfolk Boreas consultation: letter dated 9th July

1. Introduction

- 1.1. The Wildlife Trusts (TWT) welcome the opportunity to comment on the letter from The Department for Business, Energy and Industrial Strategy dated 9th July and further information provided by the applicant. The following appendices are also included to support our response:
 - Appendix A: TWT compensation principles
 - Appendix B: Removal of oil and gas infrastructure: TWT analysis and view on further information required
 - Appendix C: TWT comments on the further information provided by the applicant
 - Appendix D: TWT letter to applicant
- 1.2. This response focuses on compensation for Haisborough Hammond and Winterton SAC. However, the principles included in Appendix A should be included in all compensation plans. We also suggest that the criteria used in Appendix B could be a basis for assessing the appropriateness of all compensation measures.
- 1.3. It remains TWTs position that compensation for the impacts of cable protection on Haisborough, Hammond and Winterton SAC is required (Appendix C). This is to ensure that the requirements of the Habitats Regulations are met and the UK works towards the achievement of a recovered Marine Protected Areas (MPA) Network¹ and Good Environmental Status², meeting the overall objectives of the 25 Year Environment Plan³.

¹ [Requirement under the Marine and Coastal Access Act 2019](#) and as outlined in [Objective 8 of the East Marine Plan](#)

² [UK Marine Strategy](#)

³ [25 Year Environment Plan](#)

2. Summary of TWTs position on compensation for impacts on Haisborough, Hammond and Winterton SAC

2.1. Preferred solution

2.1.1. Fisheries management

TWTs preference as a compensation measure would be the implementation of fisheries management measures. The removal of fisheries pressure will have one of the biggest impacts in providing environmental head room for further development. Evidence is also available to support ecosystem recovery following the removal of fishing pressure e.g. Lyme Bay^{4 5}. We do not agree with the applicant that “no authority has the jurisdiction to deliver fisheries management areas as compensation⁶”. The Fisheries Act outlines many powers for the management of fisheries⁷. TWT is seeking legal advice on the use of provisions within to deliver marine compensation.

2.1.2. Alternatives: early opportunities as part of the Offshore Transmission Network Review (OTNR)

As part of the Norfolk Vanguard redetermination, the Secretary of State has requested

“the Applicant to consider whether, in the context of the ‘Early Opportunities’ workstream of the OTNR as mentioned in the joint BEIS-Ofgem letter of 18 December 2020, it has identified any opportunities for a more co-ordinated approach to the design and delivery of the transmission infrastructure for the Norfolk Vanguard and Norfolk Boreas projects, including with other projects in the same region⁸.”

Norfolk Vanguard has since responded to explain that they have been working with National Grid ESO on the Early Opportunities programme⁹ and TWT welcomes that solutions for offshore coordination have been identified and put forward. Further information should be provided in relation to Norfolk Boreas, particularly in relation to how cable routes could avoid Haisborough, Hammond and Winterton SAC, resulting in no need for compensation.

2.2. Applicants proposals:

Oil and gas infrastructure removal

2.2.1. TWT support the UK’s current targets to reduce greenhouse gas emissions and the government’s ambitions to tackle climate change and increase the proportion of overall energy generated from alternative, renewable sources. However, we do not believe that

⁴ Attrill MJ *et al.* 2012. Lyme Bay – a case-study: measuring recovery of benthic species; assessing potential “spillover” effects and socio-economic changes, three years after the closure. Report 1: Response of the benthos to the zoned exclusion of bottom towed fishing gear in Lyme Bay. Report to the Department of Environment, Food and Rural Affairs from the University of Plymouth-led consortium. Plymouth: University of Plymouth Enterprise Ltd.

⁵ Sheehan, E.V. *et al.* 2015. Lyme Bay – a case-study: Response of the benthos to the zoned exclusion of towed demersal fishing gear in Lyme Bay; 6 years after the closure. Report to Natural England from Plymouth University Marine Institute.

⁶ [Paragraph 98. In Principle Habitats Regulations Derogation, Provision of Evidence Appendix 3 Haisborough, Hammond and Winterton SAC In Principle Compensation](#)

⁷ [Fisheries Act 2020](#)

⁸ [Request for further information letter \(Norfolk Vanguard\) dated 5th July 2021](#)

⁹ [Norfolk Vanguard response to request for further information, 2nd August 2021](#)

this should be at the expense of the environment and firmly believe that it needs to be 'right technology, right place'.

2.2.2. With this in mind and with limited compensation options currently available, TWT wishes to find a pragmatic solution for this project. Therefore, TWT is happy to explore oil and gas infrastructure removal further as a compensation measure for Norfolk Boreas and Norfolk Vanguard only. This is a unique and one-off example that should not be precedent setting for future projects.

2.2.3. Please note, TWTs normal position is that oil and gas infrastructure removal as a decommissioning measure should be undertaken by the oil and gas sector, conforming with the Polluter Pays Principle. Although the oil and gas industry is required by legislation to remove all infrastructure, OPRED guidance¹⁰ means in practice pipelines and rock armour remain in situ for perpetuity, contributing to the decline of the SAC; this should be challenged in the future to ensure recovery of the marine environment.

2.2.4. TWT emphasise that all future projects should avoid placing infrastructure in Marine Protected Areas to avoid the need for compensation and to ensure recovery can be achieved.

2.2.5. Our analysis (Appendix B) shows that information and evidence is lacking on this measure to allow the Secretary of State to determine that the compensation will ensure the coherence of the UK Sites Network and MPA network. TWT has made recommendations as to the further information the Secretary of State should request to inform his decision in section 4 of this letter.

2.2.6. The two further strands presented alongside oil and gas infrastructure removal (debris removal/education and awareness) do not provide compensation for the loss of habitats from cable protection. Further site decline would still be expected if these measures were implemented as compensation, which would mean the coherence of the UK Sites Network would not be met, contravening the requirements of the Habitats Regulations. Please note, TWT does not support marine debris removal conditioned as compensation for Hornsea Three.

Site extension

2.2.7. As a principle, TWT is not supportive of site extension as a compensation measure. This is for the following reasons:

- As acknowledged by the applicant, the process to extend or create new designated sites is lengthy and would require additional resource. There is no certainty at the end of the process that the site will be designated.

¹⁰ [OPRED guidance on decommissioning](#)

- By extending or designating new sites, it allows for the chipping away and deterioration of existing sites. This is not an acceptable nor sustainable mechanism, especially considering the scale of offshore wind farm development planned with potentially 75-140GW to be delivered by 2050 to meet net zero alongside the development of offshore grid infrastructure.
- As a principle, extending or creating new sites will create further problems in the future for offshore wind farm development, complicating the consenting process and further putting ecological integrity of the UK MPA network at risk.

2.2.8. Site extension does not support the ambitions of the Marine and Coastal Access Act to achieve a coherent network of MPAs, not does it support the objectives of the 25-year Environment Plan to restore the loss of marine biodiversity.

3. Further work before decision making

TWTs position is that sufficient information is not yet available for the Secretary of State to undertake an assessment and confirm that compensation for impacts to Haisborough, Hammond and Winterton SAC will ensure the coherence of the UK National Sites Network and the MPA Network. The following information is required:

3.1. Further exploration into the management of fishing activity

- 3.1.1. TWT agree that the management of fishing activity as a compensation measure does not sit with industry, and therefore this measure should be taken forward by Government.
- 3.1.2. TWT is aware that discussions are progressing within Government on the development of strategic compensation measures. Further information should be requested from organisations such as Defra on the progress of these discussions and how they could benefit the Norfolk Boreas project.
- 3.1.3. Further information could be requested from Defra on the legal mechanisms in place as part of the Fisheries Act to manage fishing as a compensation measure.

3.2. Early opportunities as part of the OTNR

- 3.2.1. The applicant should be requested to provide further information on the Early Opportunities proposal and if this would avoid the need for a cable route within Haisborough, Hammond and Winterton SAC.

3.3. Oil and gas infrastructure removal

3.3.1. Desk based study

A desk-based study must be undertaken before consent is granted to confirm:

- The amount and location of oil and gas infrastructure exposed on the seabed.
- The process to remove the infrastructure.

This information will provide the Secretary of State with more confidence on the viability of oil and gas removal as a compensation measure.

3.3.2. A draft compensation strategy

The development of a compensation strategy before a decision will give the Secretary of State greater confidence that the proposed compensation will ensure the coherence of the UK National Sites Network and MPA Network. It also allows for consensus to be built between stakeholders, which will reduce the chance of any legal challenge once consent is granted.

As well as conforming with the principles highlighted in Appendix A, draft strategy should include:

- Details on the proposed compensation measure including location and amount of oil and gas infrastructure to be removed and methods for removal.
- An assessment of the impact of oil and gas infrastructure removal on the SAC to confirm no Likely Significant Effect from the activity.
- An ecological assessment the effectiveness of the compensation measure to ensure the coherence of the UK National Sites Network and MPA Network with supporting evidence.
- Clear compensation objectives which have an ecological underpinning and are linked to the achievement of an ecological coherent UK National Sites Network and MPA network
- Ratios which have an ecological underpinning
- Timescales for further development of the compensation measures with key milestones for stakeholder engagement.
- Timescales for the delivery of compensation
- Monitoring measures to indicate success of compensation measures against the original compensation objectives.
- Remedial actions if monitoring suggests that compensation is not effective
- Post-consent governance structure and arrangements including draft terms of reference for a steering group. This should outline who would sit on a steering group, the role of the steering group, the process for gaining consensus and mechanisms for approval.
- Confirmation of transparency arrangements in the provision of post-consent data, evidence and reports to conform with the Aarhus Convention on access to environmental information.

A summary of each of the above bullet points must be included as conditions within the Development Consent Order.

3.4. TWT do not support the following:

3.4.1. Timescales for the delivery of compensation

TWT do not support the applicant's proposal to deliver compensation after damage has taken place. As a principle, compensation should be delivered before damage has been undertaken. This approach provides confidence that compensation measures have been effective before damage takes place, ensuring the requirements of the Habitats Regulations are met. The delivery timescales must be amended and included in the draft compensation strategy.

3.4.2. Removal of a decommissioning condition

Decommissioning of cable protection must not be removed from the DCO for the following reasons:

- Habitats Regulations: The current proposal for removal of oil and gas infrastructure allows the removal of one pressure to allow another. The pressure from Norfolk Boreas cable

protection is still required, otherwise impacts would change from a long-term impact to a permanent, impeding the recovery of the site. This is not in line with the Habitats Regulations.

- Requirements to decommission under UNCLOS 1982
- OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations states that the leaving wholly or partly in place of disused offshore installations within the maritime area is prohibited.
- Requirements to decommission under the Energy Act 2004
- Requirements of the Biodiversity Duty under the NERC Act
- Objectives of the East Marine Plan Objective 8.
- Objectives of the Defra 25 year Environment Plan for a recovered marine environment.

3.4.3. Ratios

For oil and gas infrastructure removal, the applicant has proposed a ratio of 1:1. Ratios such as this are very rare for compensation projects due to underlying uncertainty. In line with the precautionary principle, a larger ratio must be provided. The ratio must have an ecological underpinning.

4. The need for further public engagement: the Aarhus Convention

4.1. Before the Secretary of State makes a decision

4.1.1. Adequate information is not yet available for the Secretary of State to make decision that the compensation will ensure the coherence of the UK National Sites Network and MPA Network.

4.1.2. The request for further information from the applicant as outlined in section 4 and subsequent consultation with interested parties will work towards consensus on the compensation measures, reducing risk to challenge. This will also ensure compliance with the Aarhus Convention on public participation.

4.1.3. As the final decision is not expected to be made until 10th December 2021, there is adequate time for the applicant to provide further information and for this to be consulted with stakeholders. To ensure that the decision deadline is met, TWT suggest that the applicant works collaboratively and collectively with TWT, Natural England, Defra and the MMO to develop the compensation strategy. This will give the Secretary of State increased confidence in a consensus on the approach to compensation. However, it will be necessary for the Secretary of State to stipulate that the applicant should work with TWT on the development of compensation measures before a decision is made.

4.2. Post-consent

4.2.1. The detail of monitoring, mitigation and compensation for designated sites is increasingly being deferred to the post-consent stage for offshore wind farms. TWT understands this is often a result of the Rochdale Envelope parameters, which are

refined post-consent. However, this approach is resulting in increasing uncertainty on the effectiveness of measures to ensure no adverse effect on MPAs and the coherence of the UK National Sites Network and the MPA network. TWT recommends that BEIS implements a review of the use of the Rochdale Envelope by offshore wind farm developers and the development of new guidance on the appropriate use of the Envelope.

- 4.2.2. TWT recognise that there will be further refinement of some elements of the compensation proposal post-consent. If deferment to the post-consent stage is to be approved by the Secretary of State, he must ensure that the procedures in place are compliant with provisions of the UNECE Aarhus Convention concerning public participation[1]. In particular, Article 6(10) of the Convention states:

“10. Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this article are applied mutatis mutandis, and where appropriate.”

- 4.2.3. Article 6(2) of the Convention identifies how the “public concerned” should be engaged. Article 2(5) of the Convention defines the “public concerned” as:

“the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organisations promoting environmental protection ... shall be deemed to have an interest”.

- 4.2.4. The definition of the “public concerned” clearly reinforces the importance of ensuring that TWT, as an NGO with an interest and expertise in such matters, should be routinely consulted when a public authority is reconsidering or updating the operating conditions for an activity referred to in Article 6(1) of the Convention and that the standard of consultation should fulfil the requirements of Article 6(2) – (9). This would include, in particular, the need to ensure that reasonable time-frames for participation are included (Article 6(3)) and that participation is effected early, when all options are open and effective participation can take place (Article 6(4)).

- 4.2.5. Although offshore wind farm development is not explicitly listed as an activity in Annex I of the Convention, paragraph 20 of Annex I to the Convention ensures that Article 6(10) is engaged:

“20. Any activity not covered by paragraphs 1-19 above where public participation is provided for under an environmental impact assessment procedure in accordance with national legislation.”

4.2.6. In line with the above, TWT recommend that the Secretary of State places conditions on this project, and future projects, to ensure there is a clear, Aarhus-compliant process for stakeholder engagement in the development of mitigation, compensation and monitoring documents post-consent. This can be further supported via the inclusion of governance arrangements in the draft compensation strategy.

TWT is more than happy to participate further in the exploration of benthic compensation for Norfolk Boreas, whether that be through formal questions from BEIS or through the compensation in a stakeholder group to develop the proposal.

Yours sincerely



Dr Lissa Batey
Head of Marine Conservation
The Wildlife Trust

Appendix A: TWT compensation principles

1. Compensation must counteract the negative effects caused by a plan or a project and be linked to the conservation objectives. Our experience is that this link is not made, and therefore compensation proposals still result in site deterioration	2. The timescales of the project should be appropriate and sustainable, to ensure that the compensation measure has enduring impact that is equal to or greater than adverse impact on the site.
3. The consideration of site condition is essential when considering the need for compensation. Even a small impact may mean that a site in unfavourable condition cannot recover and therefore meet the conservation objectives for a site.	4. If the impact to the site/feature of concern will continue after the lifetime of the project, compensation should also continue.
5. The delivery of compensation should not cause the deterioration of the marine environment. For example, the delivery of SPA compensation should not take place in a benthic SAC if a negative impact is expected.	6. A detailed monitoring programme is essential to determine the success of compensation against the original objectives of the project. It is necessary in order to determine if compensation can be signed off after a pre-determined time period.
7. A strategic approach to compensation must be explored and delivered due to the complexities in delivering compensation at a project level. Strategic options must be explored within the same MPA/sea area for the same feature	8. The data and results of monitoring should be transparent and easily accessible, allowing others to learn from measures undertaken elsewhere and to make it easy to demonstrate 'success' or compliance. A central depository is required.
9. It is now standard practice that compensation is delivered at scales larger than 1:1. Larger scales will be required when less certainty is available on the effectiveness of measures.	10. Clear objectives and success criteria must be established as part of planning/marine licence conditions. Success criteria must be transparent and appropriate, with prescribed actions if successful outcomes are not achieved. It should be clear on when compensation measures are expected to be available and when they will fulfil their objectives.
11. Like-for-like' compensation must be prioritised over all alternatives in order to ensure that the compensation is 'equivalent' to the feature lost.	12. Individual compensation measures must feed into a wider strategic vision of recovery to allow for the coordination of compensation across the UK MPA network.
13. Robust evidence must be provided to determine the effectiveness of proposed compensation measures not only in terms of meeting the conservation objectives of a site/coherence of MPA network, but in terms of viability and technical feasibility.	14. If possible, similar or comparable success criteria should be used across compensation projects, in order to learn from previous projects.
15. Compensation measures should be in place and functioning before a feature is impacted.	16. The need for open forums to develop and discuss compensation is essential to ensure the most appropriate projects are developed and delivered and lessons are learned when developing future projects.

Appendix B: Removal of oil and gas infrastructure: TWT analysis and view on further information required ¹¹

Criteria	Met?	Reason	Further action required
1. The nature of the compensatory measures is fully explained	Further information required	The current information is in a proposal format. The applicant has outlined that a compensation strategy would be developed and approved post consent. For the Secretary of State to have confidence in the proposal, a strategy must be developed and consulted upon before a decision can be made. We appreciate some details of the strategy cannot be provided until the project has been refined and we accept that the strategy will be updated post consent. In line with the Aarhus Convention public participation, particularly Article 6(10), provision to participate and be consulted on the development of the Compensation Strategy must be provided post-consent. As such, TWT request to be named as a consultee with regards the development of compensation for Haisborough, Hammond and Winterton SAC.	<p>Applicant:</p> <ul style="list-style-type: none"> - To undertake a desk based study on oil and gas infrastructure removal - To produce a draft compensation strategy <p>BEIS:</p> <ul style="list-style-type: none"> - To ensure a post-consent engagement mechanism to align with the Aarhus Convention on public participation.
2. The compensatory measures have been fully assessed in terms of their ability to maintain the individual Site and coherence of UK National Sites Network.	Further information required	This assessment has not been undertaken. It is a requirement under the Habitats Regulations, Marine and Coastal Access Act 2009 and to meet Objective 8 of the East Marine Plan.	<p>Applicant</p> <ul style="list-style-type: none"> - To undertake a desk based study on oil and gas infrastructure removal - To produce a draft compensation strategy which should include an assessment of the compensation measures against the ability to recovery/maintain the UK National Sites Network and MPA Network.

¹¹ Adapted from [Assessment of plans and projects significantly affecting Natura 2000 sites](#)

<p>3. There is clear evidence (from past experience or detailed studies) that the compensatory measures will be successful</p>	<p>Further information required</p>	<p>The provision of evidence is not yet available.</p>	<p>Applicant:</p> <ul style="list-style-type: none"> - Evidence of recovery after decommissioning of oil and gas infrastructure.
<p>4. There is clear evidence that the compensatory measures have been the subject of wide-ranging consultation with relevant agencies and organisations</p>	<p>Underway</p>	<p>This process has begun. However, further information is required and feedback gained from stakeholders to confirm confidence in the compensatory measure.</p> <p>TWT recommends that approach used to develop SPA compensation for Hornsea Three Offshore Wind Farm in 2020 before a decision was made. In this case, we request that TWT is named to work alongside the applicant, SNCBs, MMO and Defra to develop the compensation measures for Haisborough, Hammond and Winterton SAC.</p>	<p>BEIS:</p> <ul style="list-style-type: none"> - To ensure further pre-decision consultation in line with the Aarhus convention on public participation. - To name TWT as an interested party in the development of benthic compensation measures.
<p>5. The features that make up the compensatory measures (e.g. area of land etc.) can be secured for their future nature conservation interest in the short, medium and long term</p>	<p>Underway</p>	<p>We understand that the applicant is in discussion with OPRED and operators on potential options.</p> <p>Further information on which oil and gas infrastructure could be removed within the SAC must be provided in the desk-based study and compensation strategy. This should entail the spatial footprint of the infrastructure and the viability of removal.</p>	<p>Applicant</p> <ul style="list-style-type: none"> - To produce a draft compensation strategy
<p>6. The compensatory measures are the subject of an</p>	<p>Further information required</p>	<p>Although we welcome the compensation, an implementation plan with clear objectives is not yet in place. Please note we do</p>	<p>Applicant</p> <ul style="list-style-type: none"> - To produce a draft compensation strategy

implementation plan that includes clear objectives and a monitoring and management regime		not support the proposed timescales for implementation of oil and gas infrastructure post-cable installation.	
7. There is a mechanism to ensure that should monitoring/evidence reveal failures in the compensatory measures ability to achieve their original objectives, steps will be taken to address and rectify those failures	Further information required	This has not been captured within the proposal or DCO conditions. TWT recognise that the applicant has proposed a further two strands alongside oil and gas infrastructure removal. However, it is our position that these measures do not provide compensation.	Applicant and BEIS: - Remedial mechanism to be outlined in the draft compensation strategy and as a DCO condition.
8. Transparency and public participation	Further information required	<p>The applicant has not identified any opportunity for public participation post consent in the further development of compensation measures. This is necessary in line with Article 6(10) of the Aarhus Convention.</p> <p>Also in line with the Aarhus Convention access to environmental information, conditions must be secured to ensure transparency in the development and delivery of compensation. Draft and final compensation documents must be made available and within the public domain.</p> <p>Compensation must not be used as a competitive asset in areas such as Contracts for Difference. It is essential that the Secretary</p>	<p>A condition or mechanism to ensure information and evidence on the development and delivery of compensation is available and within the public domain.</p> <p>A condition or mechanism to ensure public participation in the development of compensation post-consent.</p>

		<p>of State ensures information is in the public domain to ensure learning from existing projects in order to input into new projects for the following reasons:</p> <ul style="list-style-type: none">• Marine compensation is in its infancy and many lessons must be learned and shared as projects are delivered.• There is a great deal of uncertainty regarding the effectiveness of marine compensation. Information on success or failure must be shared in order to develop best practice.• Trust must be developed between those developing compensation and other stakeholders. This will ensure that concerns and issues can be discussed and resolved which will reduce conflict and objections further down the line. This will increase certainty for those delivering compensation measures and reduce risks of legal challenge.	
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Appendix C: TWT comments on the further information provided by the applicant

TWT ref	Document	Applicant Ref	TWT Comment	Comment directed to
	Applicants response to the request for further information	Paragraph 3, 4, 8-21 Section 2: additional environmental information table.	<p>TWT position on the need for compensation.</p> <p>The Wildlife Trusts (TWT) welcomes the many measures Norfolk Boreas has taken to reduce and mitigate impacts from cable protection on Haisborough, Hammond and Winterton SAC. It is also positive to hear that suppliers are confident that full burial will be achieved. However, if the applicant wishes to receive a consent with up to 5% cable protection within Haisborough, Hammond and Winterton SAC, then compensation to meet the requirements of the Habitats Regulations is required.</p> <p>The applicant has discussed the impact of cable protection in Haisborough, Hammond and Winterton SAC as <i>de minimis</i> in the further information provided. TWT disagree. Up to 20,000m² of cable protection within the SAC will be consented. This is the equivalent of a residential road running for 4km. The SAC is already in unfavorable condition and therefore any future cable protection, no matter how small, both alone and in-combination will impede the recovery of this site to favourable condition until decommissioning is possible. Compensation is required to meet the requirements of the Habitats Regulations.</p> <p>This position reflects the principles of the Hornsea Three decision¹² with regards to the impacts of cable protection on The Wash and North Norfolk Coast SAC and North Norfolk Sandbanks and Saturn Reef SAC in that habitats subject to cable protection:</p> <ol style="list-style-type: none"> a. will experience the effects of habitat loss, habitat modification and changes in epifauna communities b. will be impacted in the long-term c. will impede the restoration of the Annex I habitats for the duration that cable protection is in place, and 	BEIS

¹² [Hornsea Three decision letter, December 2020](#)

			<p>d. will not meet the Conservation Objectives for the protected site. The principle of the Secretary of State's decision is supported by TWT, and is clearly outlined in a letter sent by our solicitors¹³ in August 2020. Again, although this letter is specific to Hornsea Three, the principles apply to any cable development within a Marine Protected Area. It is important that the Secretary of State considers all impacts on the conservation objectives for the site and not only extent.</p> <p>Further information on our position and evidence to support this can be found in our response at deadline 16.</p>	
		Section 2: additional environmental information table.	<p>TWT engagement with the applicant on compensation for Haisborough, Hammond and Winterton SAC.</p> <p>Page 15: Although TWT has not been consulted extensively, we have participated in 2 meetings with Norfolk Boreas to discuss benthic compensation. We first met on the 11th May to discuss our engagement. Subsequently, correspondence was sent to Norfolk Boreas to outline our position on benthic compensation (see Appendix D). The final meeting was held on 11th June in which some of the compensation proposals were discussed. TWT was not provided with any written compensation proposals, which reduced the opportunity to reach consensus on the most appropriate proposal.</p>	BEIS
	In Principle Habitats Regulations Derogation, Provision of Evidence	Paragraph 4	<p>Other policy and legislation to be taken into account</p> <p>In decision making, the Government's 25 Year Environment Plan¹⁴ must be taken into account. Under the goal of thriving wildlife and plants, a resilient sea richer in wildlife and plants will be achieved through reversing and restoring the loss of marine biodiversity, better managing existing protecting sites, and ensuring seafloor habitats are productive and sufficiently extensive to support healthy, sustainable ecosystems.</p>	BEIS

¹³ [Letter from Leigh Day on behalf of TWT, Hornsea Three, August 2020.](#)

¹⁴ [A Green Future: Our 25 Year Plan to Improve the Environment](#)

	Appendix 3 Haisborough, Hammond and Winterton SAC In Principle Compensation		<p>Haisborough, Hammond and Winterton SAC is already in unfavourable condition. The placement of cable protection within this site will impede recovery and the goals of the 25 Year Environment Plan will not be met.</p> <p>The UK Government also has national and international commitments to achieve an ecological coherent network of Marine Protected Areas (Marine and Coastal Access Act 2009, OPSAR). The impediment of recovery of Haisborough, Hammond and Winterton SAC threatens the achievement of an ecologically coherent network.</p> <p>A number of elements in the East Marine Plan must also be taken into account in decision making, such as:</p> <p>Objective 7 To protect, conserve and, where appropriate, recover biodiversity that is in or dependent upon the East marine plan areas.</p> <p>Objective 8 To support the objectives of Marine Protected Areas (and other designated sites around the coast that overlap, or are adjacent to the East marine plan areas), individually and as part of an ecologically coherent network.</p> <p>The Biodiversity Duty under section 40 of the NERC Act must also be taken into account in decision making.</p>	
		Table 1.1	<p>Page 10: TWT were not invited to review any compensation documents.</p> <p>We are disappointed that Norfolk Boreas have not identified TWT as consultee in relation to the compensation strategy. Public participation is a requirement of the Aarhus Convention.</p> <p>Page 11: TWT discussed the need for transparency and good governance in relation to the compensation package, not just in relation to monitoring.</p>	BEIS
		Section 4.2	Please note that TWT does not support the compensation secured for Hornsea Three impacts to benthic SACs.	Applicant, BEIS.

		Section 4.3.4	<p>Removal of disused anthropogenic material</p> <p>Paragraph 109: Only the removal of oil and gas infrastructure as a measure in Haisborough, Hammond and Winterton SAC should be considered.</p> <p>Paragraph 113: A desk-based study should be completed before consent is granted to provide confidence in this as a measure. TWT raised this point with the applicant (see Appendix D)</p> <p>Paragraph 114: TWT agree that a HRA assessment would be required to determine that the methodology to remove disused oil and gas infrastructure would not have an adverse impact on Haisborough, Hammond and Winterton SAC. This should be undertaken before consent is granted to ensure compensation is fit for purpose.</p> <p>Paragraph 115/116: An ecological basis should be used to determine ratios for compensation and following the precautionary principle, should be greater than 1:1. The Secretary of State determination of ratio should be undertaken as part of the DCO consent, with pre-determination input from experts at Natural England and The Wildlife Trusts.</p> <p>Paragraph 123: TWT does not support the delivery of compensation following the installation of cables. This places the UK National Sites Network/MPA network at risk.</p> <p>Paragraph 151, 152: The bullet points in paragraph 151 and 152 should be included in the compensation strategy before approval can be granted.</p> <p>TWT would like to be clear that this compensation measure should be specific to oil and gas infrastructure. We do not believe the removal of telecoms cables will be sufficient to provide compensation.</p> <p>Paragraph 156: We appreciate the issues which have been raised by OPRED (as outlined in table 1.1). We do not think that the issues raised by OPRED should be a</p>	Applicant, BEIS
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			<p>barrier to the progression of oil and gas infrastructure as a compensation measures. As outlined in our letter to the applicant in May (Appendix D), a desk-based study should be undertaken to confirm the amount of oil and gas infrastructure which could be decommissioned and the viability of decommissioning. To ensure stakeholder support for this measure, we suggest the BEIS consults on this report for a decision is made.</p> <p>Paragraph 158: In line with the Aarhus agreement on access to environmental information and public participation, transparency should be ensured on the progress of oil and gas decommissioning as compensation which may influence the final decision.</p> <p>Paragraph 161: Please note that the references for Veiga et al 2016 and Richardson 2018 have not been provided, therefore we cannot comment on the available evidence.</p> <p>Paragraph 174-177: Monitoring of oil and gas infrastructure removal TWT welcome the proposed monitoring questions as outlined in paragraph and would welcome the further development of the proposals as outlined in paragraph 174-177 with the applicant alongside Natural England to develop an in-principle monitoring plan.</p>	
		Paragraph 141	<p>Contents of a compensation plan</p> <p>TWT agree with Natural England’s list of topics and these should apply to all compensation plans. However, this information must be provided by the applicant before consent is granted to give the Secretary of State confidence that compensation will be effective at a site level and ensure the coherence of the UK Sites Network and the MPA network.</p> <p>TWT have provided a summary of what should be included in a compensation strategy in our main letter.</p>	Applicant, BEIS

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Royal Society of Wildlife Trusts
Registered Charity No 207238



Kathy Wood
Vattenfall

BY EMAIL

18 May 2021

Dear Kathy

Benthic compensation for cable protection impacts to Haisborough, Hammond and Winterton SAC

I am writing to you to request an urgent meeting between Vattenfall, BEIS, Defra, Natural England and The Wildlife Trusts (TWT) to discuss benthic compensation for Norfolk Boreas. Although TWT have yet to see any detail, I am aware that a compensation proposal is in development by Norfolk Boreas on a project around marine litter/debris removal. TWT would like to be upfront and transparent by stating that we do not support this as a compensation measure and would object if this was entered to BEIS as the compensation proposal.

At a meeting between TWT and Vattenfall on 11th May 2021, it was requested for TWT to come to the table with solutions. As such, we have developed a proposal for benthic compensation and request a meeting with all parties to discuss. We appreciate BEIS may outline why this is not possible due to transparency issues associated with the Planning Act, but we feel it is important that BEIS is party to the conversation, even as an observer, to understand the issues likely to be raised.

We are pleased that BEIS announced an extension to the deadline to prepare benthic compensation until the 25th June and hope that we can engage with Norfolk Boreas, Natural England, Defra and BEIS to develop what could be a best practice example of benthic compensation. BEIS has made it clear that benthic compensation for Norfolk Boreas should be produced in consultation with interested parties. TWT informed Norfolk Boreas on the 28th April that we viewed ourselves as an interested party in relation to benthic compensation for Norfolk Boreas. Moving forward, I request that TWT is invited to all discussions and provided with information on the development of benthic compensation.

Our position on Norfolk Boreas and the compensation proposal is outlined in Appendix A. I'd also like to raise at this early stage that the same compensation proposal should be applied to Norfolk Vanguard.

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President Liz Borvis
Chief Executive Craig Bennett

Our position on Norfolk Boreas and the compensation proposal is outlined in Appendix A. I'd also like to raise at this early stage that the same compensation proposal should be applied to Norfolk Vanguard.

I look forward to hearing from you on our proposal and on the next steps of engagement. In the meantime, we will be discussing the compensation proposal with Defra, Natural England and BEIS.

Yours sincerely

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Dr Lissa Batey
Head of Marine Conservation
The Wildlife Trusts

Appendix A

1. The impact and need for compensation

The Wildlife Trusts (TWT) welcomes the many measures Norfolk Boreas has taken to reduce and mitigate impacts from cable protection on Haisborough, Hammond and Winterton SAC. However, our position remains that benthic compensation will be required. This is because the placement of cable protection will impede the recovery of the SAC, which is already in unfavourable condition, for the lifetime of the project. This would be contrary to the Habitats Regulations.

TWT would like to make it clear that our view on the application of the Hornsea Three decision is relevant to any planning decision where a cable is placed through a Marine Protected Area. The Hornsea Three decision¹ states that habitats subjected to cable protection:

- a. will experience the effects of habitat loss, habitat modification and changes in epifauna communities
- b. will be impacted in the long-term
- c. will impede the restoration of the Annex I habitats for the duration that cable protection is in place, and
- d. will not meet the Conservation Objectives for the protected site.

This new information must be taken into account as part of the Norfolk Boreas consenting decision. Haisborough, Hammond and Winterton SAC is already in unfavourable condition and any future cable protection, no matter how small, will impede the recovery of this site to favourable condition. The principle of the Secretary of State's decision is supported by TWT and is clearly outlined in a letter sent by our solicitors² in August 2020. Again, although this letter is specific to Hornsea Three, the principles apply to any cable development within a Marine Protected Area.

2. Norfolk Boreas current compensation proposal

TWT is not supportive of marine litter/debris removal as a compensation measure. This was made clear in our response to consultation on further information for both Norfolk Vanguard³ and Hornsea Three in April 2020⁴.

3. Compensation proposal

Removal of exposed oil and gas pipelines with rock armouring in Haisborough, Hammond and Winterton SAC.

¹ [Hornsea Three decision letter, December 2020](#)

² [Letter from Leigh Day on behalf of TWT, Hornsea Three, August 2020.](#)

³ [TWT response to further information for Norfolk Vanguard, April 2020.](#)

⁴ [Section 4.3 TWT response to further information for Hornsea Three, April 2020.](#)

4. Justification for the proposal

- Haisborough, Hammond and Winterton SAC is in unfavourable condition due to fishing and the presence of oil and gas pipelines with rock armouring. The removal of the exposed pipelines with armouring would take steps towards the recovery of the site and provide environmental headroom for Boreas cables – provided removal would be in a higher proportion to the impact from Boreas cabling (see ratios/additionality below). Please note that TWT is also supportive of the removal of fishing pressure as a compensation measure.
- Although oil and gas are required by legislation to remove all infrastructure, OPRED guidance means in practice pipelines and rock armour remain in situ for perpetuity, contributing to the decline of the SAC.

5. Our position in the past:

In the past TWT has not supported the removal of oil and gas infrastructure as compensation measures, based on the polluter pays principle. However, TWT is aiming to find a pragmatic solution to this issue, and we are supportive of measures which will result in an improvement in the conservation status of MPAs.

6. Caveats:

- *Ratios/additionality:* we would expect a substantial ratio of compensation to habitat loss to ensure additionality and to provide confidence on the success of the measure.
- *Baseline:* we would expect detailed baseline data of oil and gas infrastructure before anything was progressed. This would be [in order to](#) determine areas of exposed pipeline with rock armour/ensure and confirm that decommissioning would not cause further decline of the site. We would want to see a desk-based study to confirm this before any consent is provided.
- *Monitoring:* we would expect a long-term monitoring programme to be funded by Norfolk Boreas to determine the recovery of habitats following removal of oil and gas infrastructure.
- *Governance:* we would expect governance arrangements to be determined before consent could be granted for this application. This would include (but are not exclusive to) details of who would be on a steering group, how information on the compensation would be publicly available, compensation objectives, timescales for implementation, commitment to monitoring, a long term sign off procedure for compensation and a mechanism for further commitments if the original compensation objectives are not met.
- *Norfolk Vanguard:* we expect the redetermination of Norfolk Vanguard to consider the precedent set by Hornsea Three in terms of benthic compensation. Therefore, we suggest a joined-up approach on the development of compensation for Norfolk Boreas and Norfolk Vanguard.