Suffolk Wildlife Trust

ScottishPower Renewables
East Anglia Two
25 Priestgate
Peterborough
PE1 1JL

BY EMAIL

26 March 2019

Dear Sir/Madam

RE: East Anglia TWO Offshore Wind Farm Phase 4 (Section 42) Consultation

Thank you for consulting on the East Anglia TWO offshore wind farm Preliminary Environmental Information Report. This is a joint response from The Wildlife Trusts (TWT) and Suffolk Wildlife Trust.

Detailed comments on terrestrial ecology can be found in appendix A and on marine mammals in appendix B. We note that the Phase 4 public consultation for the East Anglia TWO Offshore Wind Farm is running in parallel with the consultation for East Anglia ONE North. We have provided a separate response to the East Anglia ONE NORTH consultation, however, where there is likely to be crossover of impacts between the two schemes this is highlighted in both responses.

If you require any further information or wish to discuss any of the points raised, please do not hesitate to contact us.

Yours faithfully

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Appendix A

1. Terrestrial Ecology

1.1 Designated Sites

1.1.1 Statutory Designated Sites – The proposed cable corridor crosses the Sandlings Special Protection Area (SPA) and Leiston-Aldeburgh Site of Special Scientific Interest (SSSI) south of the Sizewell Gap Road. Preliminary Environmental Information (PEI) Report Chapter 22, Impact 1, considers that the worst-case scenario for crossing the SPA/SSSI is the use of open cut trenching and that mitigation measures associated with this technique can reduce the construction impacts on the designated sites to "Minor Adverse". However, it is unclear whether the assessment has also considered the use of alternative techniques, such as horizontal directional drilling (HDD) as a means of crossing the site?

Chapter 6, section 6.7.3.1.2 of the PEI, makes reference to using HDD to cross the site, however this is not considered in Chapter 22. Whilst it is acknowledged that the HDD technique has its own limitations and impacts, we consider that the two methods must be assessed in order to ensure that the one that causes the least ecological impact is put forward as part of any Development Consent Order (DCO).

In addition to the comments made above, we recommend that advice is sought from the land owner and land manager (the RSPB) on this matter.

1.1.2 Non-Statutory Designated Sites – Chapter 22 of the PEI acknowledges that the proposed scheme is in close proximity to both Grove Wood County Wildlife Site (CWS), Knodishall Common CWS and Aldringham to Aldeburgh Disused Railway Line CWS. Whilst we note the conclusion that effects on these sites will be avoided, it must be ensured that all construction and operational lighting is carefully controlled to ensure that there is no light spill towards these sites. It must also be ensured that construction activities suitably buffer these sites to ensure that no impacts may arise from sources such as increase noise and dust.

1.2 UK Priority Habitats

1.2.1 Broadleaved woodland – Chapter 22 (Impact 4) of the PEI identifies that there will be the loss of up to 0.9Ha of broadleaved woodland where the cable corridor crosses Aldeburgh Road. The assessment concludes that unmitigated this would constitute a "Minor Adverse" impact. Whilst generic mitigation measures are identified in section 22.6.1.4.2, these will not mitigate the impact identified and therefore the level of impact is predicted to remain "Minor Adverse" after these measures have been implemented. Broadleaved woodland, under the classification Lowland Mixed Deciduous Woodland, is a UK Priority habitat (under Section 41 of the Natural Environment and Rural Communities (NERC) Act (2006)) and therefore this proposal would result in the loss of a UK Priority habitat.

We note that the mitigation proposed includes the planting of replacement woodland following the completion of the works, although planting cannot be undertaken on the cable route. We query whether this replacement planting is mitigation, or whether it actually forms compensation under the mitigation hierarchy?

Also, the positioning of the proposed substations will result in the loss of a small area of broadleaved woodland (approximately 0.3Ha) which is not assessed in the PEI, and therefore no potential mitigation or compensation measures are proposed. Felling of this area of woodland would further increase the amount of loss a UK Priority habitat as a result of this proposed development.

1.2.2 Hedgerow loss – The PEI (Chapter 22, Impact 5) identifies that a number of hedgerows will need to be crossed by the cable corridor, a suite of generic mitigation measures are proposed to mitigate impacts on hedgerows. The PEI concludes that the implementation of these measures will reduce the impact on hedgerows from "Major Adverse" to "Minor Adverse". Whilst the potential mitigation identified does include the reduction in width of the cable corridor where it crosses a hedgerow, we consider that other

mitigation measures such as horizontal directional drilling (HDD) or other trenchless techniques must be considered for such crossings. The use of such techniques could significantly reduce the impact of the cable route on hedgerows.

Also, whilst the PEI considers hedgerows to be affected by the cable route, it does not appear to assess impacts on those within the proposed substations area. Figure 22.4f shows that both the East Anglia ONE North substation and the National Grid substation would result in the loss of hedgerows. No assessment of this or application of the mitigation hierarchy to see if impacts can be avoided or mitigated has been included in the PEI and therefore, we do not consider that the conclusion that impacts on hedgerows can be reduced to "Minor Adverse" with mitigation is correct based on the evidence available.

1.2.3 Watercourses – We note that the PEI (Impact 7) states that the preferred option for the crossing of watercourses will be using open cut trenches due to the narrow nature of the watercourses to be crossed. Whilst we acknowledge that this technique can be used successfully and with relatively little long-term impact, we query whether the use of alternative techniques (such as HDD) has been assessed as part of the PEI and whether the use of such alternatives may reduce the predicted residual construction impact below "Minor Adverse"?

1.3 Protected Species and UK Priority Species

1.3.1 Bats – We note the conclusions in the PEI (Impact 9) in relation to bats, we are significantly concerned that even with the implementation of the identified mitigation measures the construction impacts on this group cannot be reduced below "Moderate Adverse". The proposed cable route appears likely to result in the loss of, or damage to, a number of commuting/foraging routes used by a range of bat species including rare species such as barbastelle (*Barbastella barbastellus*). PEI Chapter 22, paragraph 191, states that all hedgerows where barbastelle were recorded or which had a 'high' level of bat usage will be considered 'Important' for bats, however it is not clear which hedgerows this relates to or how the mitigation measures identified will be implemented in these locations? As with our comments relating to and hedgerow loss (section 1.2.2 above) we do not consider that all potential mitigation techniques for hedgerow crossings have been adequately considered, and therefore more could be done to mitigate the identified impacts on bats.

Figure 22.7c shows that the cable corridor will pass through an area of woodland considered to be of 'High' value for bats and PEI Chapters 6 and 22 indicate that there will be loss of woodland in this area. This may also include the loss of trees assessed as being of 'High' or 'Moderate' value for roosting bats. Neither the measures identified for woodland loss (22.6.1.4.2) or impacts on bats (22.6.1.9.2) adequately mitigate or compensate for this impact, in part resulting in the conclusion that even with mitigation the project will result in a "Moderate Adverse" impact on bats during the construction phase. Given the national importance of this ecological receptor we do not consider that such a residual construction impact is acceptable.

We also note from the bat survey report (PEI Appendix 22.4) that a single recording of a lesser horseshoe bat (*Rhinolophus hipposideros*) was made within the Transect 3 area. There is only one other known location for this species in Suffolk, located in the far west of the county, where a single lesser horseshoe bat was recorded in hibernation for a number of years. Prior to the West Suffolk record that had only been one other recording of this species in the county in the last 100 years[1]. Lesser horseshoe bats are restricted to Wales, the south-west of England and eastwards to Warwickshire, with the closest known colony to Suffolk being over 90 miles away. The recording of this species within Transect 3 is therefore of considerable importance and should be investigated in more detail in order to ensure that no adverse impacts occur on this species, should a hitherto unknown population be present in the area.

[1] Hooton, S. (Ed.). (2017). *Bats in Suffolk – Distribution Atlas 1983-2016*. Suffolk Bat Group/Suffolk Biodiversity Information Service

Finally, with regard to best practice for bats and lighting it should be noted that new guidance from the Bat Conservation Trust and Institute of Lighting Professionals[2] may supersede the 2009 guidance quoted in the PEI.

1.3.2 Great Crested Newts – Chapter 22 (Impact 10) identifies mitigation measures to reduce construction impacts on great crested newts. These include the potential for trapping and translocation of great crested newts, however no further details are provided on where this measure will be implemented or where translocated animals will be moved to. Whilst translocation can be an acceptable mitigation technique, it must be a last resort and only undertaken where it can be confirmed that the favourable conservation status of great crested newt populations can be maintained. This must be demonstrated as part of the Environmental Statement accompanying the Development Consent Order (DCO).

1.4 Cumulative Impacts

Chapter 22.7 of the PEI assesses the likely cumulative impacts of the East Anglia ONE North project, firstly against the proposed East Anglia ONE North project and then against other plans and projects. We note that it is considered that scenario 2 (construction of East Anglia TWO and East Anglia ONE North with a gap between the projects) is likely to result in the greatest cumulative impact. However, it is unclear how it is intended that this cumulative impact would be reduced if both projects go ahead. Would the commitment that the projects would be constructed simultaneously (scenario 1) be secured in the DCOs for both projects?

With regard to the assessment of cumulative impacts in-combination with other plans and projects, we query why only the proposed Sizewell C nuclear power station is included in the assessment? It is unclear what other plans or projects have been scoped for inclusion in this assessment and we recommend that this is revisited to ensure that the full range of plans and projects is considered.

Also, in relation to Sizewell C we note that the assessment of cumulative impacts is based on the Scoping Opinion adopted by the Secretary of State in 2014. Since this time further information on the project has been made available as part of EDF Energy's Stage 3 public consultation and therefore the assessment of cumulative impacts must be updated to be based on the most up to date information available.

2. Conclusion

The proposed construction and operation of the East Anglia TWO offshore wind farm has the potential to result in impacts on a range of ecological receptors, including "Moderate Adverse" impacts on bats and "Minor Adverse" impacts on designated sites, woodland, hedgerows, rivers and great crested newts, even following the implementation of mitigation measures. From the information presented in the PEI report we are concerned that the full range of potential mitigation measures have not been adequately considered and therefore the proposals have the potential to result in greater impacts than may be necessary. In particular, we are significantly concerned about the predicted "Moderate Adverse" impact that will arises on bats during construction.

We urge ScottishPower Renewables to undertake further assessment of these impacts in order to determine whether the project can be adjusted to avoid them or whether enhanced mitigation measures can be delivered to address them.

[2] Bat Conservation Trust/Institute of Lighting Professionals. (2018). *Guidance Note 08/18 Bats and Artificial Lighting in the UK*.

Appendix B: Marine Mammals

Please note that the following comments focus on harbour porpoise

1. Assessment approach – cumulative and in-combination assessment

1.1. Offshore wind farms included in the cumulative and in-combination assessment

Althought we appreciate that developers are unlikely to construct more than one project at a time, it is possible that there may be some overlap between some project comencement and completion e.g. the construction and completion of Norfolk Vanguard and comencement of construction for Norfolk Boreas may overlap with East Anglia Two. This should be taken account within both the Environmental Statement and HRA assessment. When producing the final Environmental Statement and HRA, it will be important to consider any further information which may be available for Hornsea 4 and any potential offshore wind farm extensions.

1.2. Fishing

We are disappointed that fishing has been considered as part of the baseline. TWT consider that fishing should be included in both cumulative and in-combination assessments. 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 case law demonstrates that fishing is considered a plan or a project and therefore, not part of the baseline.

Current Defra policy[3] is to ensure that all existing and potential fishing operations are managed in line with Article 6 of the Habitats Directive. The current, risk-based, 'revised approach' to fisheries management in European Marine Sites is a compromise agreed by all to prevent the closure of fisheries during assessment. This approach further supports that fishing is considered a plan or a project and therefore, must be included in the in-combination assessment in line with Article 6(3) 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 Teesside A & B 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.

[3] 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_APPROACH_Policy_and_Delivery.pdf

Our comments regarding the inclusion of fishing in cumulative and in-combination assessments are not specific to just marine mammals SACs. This principle should be applied to cumulative impact assessments for all SACs.

2. Southern North Sea SAC assessment

We recognise that the approach to HRA assessment for the Southern North Sea SAC is advancing and we are impressed by the level of assessment undertaken e.g. a spatial and seasonal assessment of all activities rather than just piling and UXO.

2.1. Population impact assessment

TWT believe the assessment of the impact on abundance of harbour porpoise should be done against a site population. European guidance states "*The expression 'integrity of the site' shows that the focus is here on the specific site. Thus, it is not allowed to destroy a site or part of it on the basis that the conservation status of the habitat types and species it hosts will anyway remain favourable within the European territory of the Member State* ."[4] Based on this guidance, to understand the impact on the integrity of the site, a site-based population assessment on the impact of development on the Southern North Sea SCI is required rather than assessing the impact in relation to the Management Unit.

We suggest that a site-based population assessment should be considered against 17.5% of the SCANSIII population which would give an estimated population number of 29,384. Other offshore wind farm developers (Norfolk Vanguard) have undertaken an assessment against as estimated population number and included this as an appendix to the HRA assessment[5]. We would welcome this approach for East Anglia Two.

2.2. Piling: PTS impacts

Although we appreciate that underwater noise changes over distance, we are concerned that PTS impacts for pin piles using the SELcum ranges is up to 21km. We would welcome a conversation with the project team regarding this, including the need for further assessment and on the adequacy of mitigation.

2.3. UXO clearance

We are pleased that an indicative figure for UXO clearances has been included and an assessment undertaken of impacts on the Southern North Sea SAC. However, we expect all offshore wind farm developers to undertake more pre-consent surveys to gain a realistic figure of required UXO clearances. This will ensure that a robust assessment of environmental impacts will be undertaken. With this information in place, a realistic dML could also be included within an application.

TWT is concerned that current mitigation used during UXO clearance is not fit for purpose. It is essential that work is undertaken over the coming years to gain realistic figures on noise impacts from UXO clearance and harbour porpoise response in relation to this. An assessment on the effectiveness of current mitigation measures, such as bubble curtains is also required. If the evidence suggests that current mitigation methods are not effective, then investment in research and deployment of new mitigation methods is required.

For disturbance impacts, the HRA outlines that the spatial daily limits are likely to be exceeded if piling and UXO clearance took place concurrently. We welcome that that East Anglia Two will ensure that piling and UXO clearance will not occur concurrently or overlap to ensure no adverse effect on the site.

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[4] Commission notice "Managing Natura 2000 sites the provisions of Article 6 of the 'Habitats' Directive 92/43/EEC http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/Provisions_Art_._nov_2018_endocx.pdf

[5] Norfolk Vanguard additional Southern North Sea SAC assessment https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-001484-5.03%20Appendix%208.1%20Additional%20SNS%20cSAC%20assessment.pdf

2.4. SNCB advice on underwater noise disturbance impacts

Please note that TWT does not agree with the SNCB advice[6] on underwater noise management for disturbance impacts. The proposed thresholds are not based on strong science and are therefore, not precautionary enough. TWT advocate the management approach used in Germany. However, we do support the use of the standard 26km deterrence radius.

We have some concerns regarding the use of seasonal areas for underwater noise disturbance assessments. This approach will result in only half of the site being protected during half of the year. The current seasonal distribution of harbour porpoise may change over time due to natural factors or due to displacement from offshore wind farm development and therefore, it is essential that mitigation is deployed to ensure the protection of the whole site to safeguard site integrity. With the acknowledged gaps in understanding of harbour porpoise use of the Southern North Sea SCI, it would be consistent with the Precautionary Approach to deliver whole site mitigation.

2.5. Site Integrity Plans

TWT agree that mitigation will be required to ensure no adverse effect upon site integrity from the in-combination impacts of underater noise disturbance. The industry standard evolving appears to be the development and delivery of Site Integriy Plans (SIP) as the mechanism to ensure this.

In principle, TWT support the use of SIP to manage the in-combination effect of underwater noise impacts from construction activity within the Southern North Sea SAC. However, with a lack of a mechanism to manage the multiple SIPs that will be in place to regulate in-combination impacts, no adverse effect on site integrity cannot currently be concluded. TWT believe that regulators need to develop a mechanism, such as a construction database, to ensure a robust assessment of in-combination impacts. This approach would create a mechanism to manage multiple construction schedules and would give more certainty that there will be no adverse effect upon the Southern North Sea SCI from in-combination impacts. A commitment by developers to contribute construction data must be conditioned.

2.6. Monitoring

We look forward to engaging with East Anglia Two on the development of marine mammal monitoring. This is especially important for the Southern North Sea SAC. Although SCANS surveys may not suggest any change in harbour porpoise density since the mid-1990s[7], analysis suggests that there is low power to detect changes in populations from SCANS data and populations of marine mammals may reach critical levels before a decline is detected[8]. TWT also suggests that a strategic approach to monitoring should be implemented within the SAC which would yield better results and be a better use of individual developer resources. We are aware that a mechanism to allow strategic monitoring does not exist and we would welcome a conversation with SPR on how this can be achieved.

3. Guidance

TWT would like to highlight that a range of guidance is out of date as it was not developed with the scale of round 3 offshore wind farms in mind. This includes guidance for both piling[9] and UXO activities[10]. We believe JNCC were considering updating their advice in these areas.

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[6] A potential approach to assessing the significance of disturbance against conservation objectives of the harbour porpoise cSACs. Discussion document. Version 3.0. Distributed by JNCC for the noise management in harbour porpoise cSACs workshop 27th February 2017.

[7] Hammond, P.S., Lacey, C., Gilles, A., Viquerat, S., Boerjesson, P., Herr, H., Macleod, K., Ridoux, V., Santos, M., Scheidat, M. and Teilmann, J. (2017). Estimates of cetacean abundance in European Atlantic waters in summer 2016 from the SCANS-III aerial and shipboard surveys. Wageningen Marine Research.

[8] Wilson, L.J., Booth, C.G., Burt, L., Verfuss, U.K. & Thomas, L. (2019) Design of a monitoring plan for the Southern North Sea candidate Special Area of Conservation and wider area. *JNCC Report No. 629,* JNCC, Peterborough, ISSN 0963-8091.

[9] Statutory nature conservation agency protocol for minimising the risk of injury to marine mammals from piling noise (2010). JNCC.

[10] JNCC guidelines for minimising the risk of injury to marine mammals from using explosives (2010). JNCC

4. Post consent engagement

We welcome the approach by SPR in engaging with TWT on East Anglia Two offshore wind farm during the evidence plan process and we hope that this can continue into the post-consent stage. TWT requests to be named on the piling and UXO MMMP, Site Integrity Plan for the Southern North Sea and any marine mammal monitoring documents. TWT is developing Memorandums of Understanding with a number of offshore wind farm developers to provide clarity on the post consent relationship and we would welcome a similar conversation with SPR regarding such an approach.