



**Report to Secretary of State on the 2010 consultation on the
selection of UK offshore Special Areas of Conservation:
Dogger Bank**

21st January 2011 v1.0



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* Cover photo shows whiting (*Merlangius merlangus*) and sand eels (*Ammodytes* spp.) on the Dogger Bank

Sign off procedure

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1. Introduction and background

This document sets out the process undertaken by the Joint Nature Conservation Committee (JNCC) for the formal consultation on the Dogger Bank possible Special Area of Conservation, outlines the responses received during the consultation, and summarises JNCC's recommendations following consideration of responses received.

The Habitats and Birds Directives together provide for the creation of a network of protected areas for important or threatened wildlife habitats across the European Union to be known collectively as 'Natura 2000'. This network consists of Special Areas of Conservation (SACs) for habitats and non-bird species and Special Protection Areas (SPAs) for birds.

JNCC is responsible for recommending sites and conducting public consultation on SACs and SPAs for UK offshore waters (12-200 nautical miles and the UK Continental Shelf), reporting to Defra (or Scottish Government for sites in offshore waters off Scotland).

The Dogger Bank is situated in the southern North Sea and has been recommended to Government as an SAC for its seabed habitat "sandbanks which are slightly covered by water all the time". Following approval by Government, the formal consultation commenced on 20th August 2010 and closed on 12th November 2010.

A total of 20 responses to the consultation were received. This report summarises the purpose of the consultation, how it was run, how the responses were analysed, the nature of the responses by sector and the key messages arising from it.

Following the consultation, JNCC have reviewed the scientific case for selection of the Dogger Bank and drawn up a final site recommendation, taking account of representations made during the consultation. A final impact assessment has also been drafted to comply with Government guidance and is being submitted along with the final recommendation to Defra. JNCC have made amendments to the SAC Selection Assessment document for Dogger Bank, and have updated the impact assessment with new fisheries data and in the light of comments made. The features for which the site is identified (sandbanks slightly covered by seawater all the time), and the site boundary, have not been changed as a result of responses received during the consultation.

2. Purpose of consultation and how it was carried out

2.1. The purpose of the consultation

The purpose of the consultation was to seek the view of all interested parties on:

- the scientific case for the designation of the Dogger Bank SAC;
- the assessment of the likely economic and social impact of the designation of the site.

It is important to note that the Habitats Directive does not permit socio-economic impacts to influence the choice of site or its boundary. The UK, as a Member State, must identify the sites and boundaries based only on scientific evidence. The socio-economic information will be used to inform the development of advice on management of activities for the Dogger Bank, to ensure the feature for which the site has been designated is conserved. Draft Conservation Objectives and Advice on Operations were also made available to assist stakeholders in assessing the likely effects of the site designation on their activities. The Conservation Objectives were not the subject of the consultation although any comments that were received on them will be considered and taken into account when they are finalised.

2.2. How the formal consultation was carried out

The formal consultation ran for three months. At the start of the consultation, 563 letters were emailed or posted to stakeholders by JNCC. The documents being consulted upon were available on JNCC's website and hard copies were available upon request.

The documents presented for consultation were:

- a SAC Selection Assessment document;
- an impact assessment document.

The following information was also made available on the website:

- list of consultees;
- the letter sent to consultees;
- a document entitled "2010 Consultation on the selection of UK offshore Special Areas of Conservation: Dogger Bank" which set out the purpose of the consultation, what was being consulted upon and how to respond;
- draft Conservation Objectives and Advice on Operations;
- a GIS shapefile of the site boundary;
- frequently asked questions.

Consultees were encouraged to respond through the use of a standard template which was also posted on the website. However, responses were accepted in any format. The consultation questions are set out in Annex I.

2.3. Raising awareness of the consultation

JNCC recommended the Dogger Bank to Defra as a draft SAC in late 2008, and pending Government approval to start a formal consultation, JNCC conducted a number of informal dialogue meetings in early 2009. Meetings were held with the major Government departments and stakeholder groups concerned with the Dogger Bank (see list below). These meetings introduced the format and timing of the planned formal consultation, described the impact assessment, and provided an opportunity for early informal feedback on what was at that time a draft SAC proposal by JNCC to Defra.

In response to concerns and questions raised at several of these meetings, JNCC conducted an independent peer review and re-examined the scientific justification for the draft SAC, and in March 2010

submitted an amended site recommendation to Government. From March to July 2010 the accompanying impact assessment was updated prior to Government approval to start the formal consultation, given in August 2010. As well as a press release, notices on the JNCC website, and individual letters to stakeholders and stakeholder groups inviting them to participate in the consultation, during the consultation period all the major stakeholder groups were asked if they would like additional meetings with JNCC to update them on the consultation, and meetings were held with those who requested them.

Stakeholder meetings in early 2009	Stakeholder meetings in 2010
British Marine Aggregates Producers Association	Crown Estate
Crown Estate	Danish Fishermen
Department of Energy and Climate Change	Department of Energy and Climate Change
Marine Management Organisation (Marine and Fisheries Agency at the time)	Forewind consortium
Ministry of Defence	North Sea Regional Advisory Council
National Federation of Fishermen's Organisations	Marine Conservation Society
North Sea Regional Advisory Council	Marine Protected Areas Fishing Coalition
North-West Waters Regional Advisory Council	UK Cable Protection Committee
Offshore Renewables Forum	UK Marine Biodiversity Policy Steering Group
Pelagic Regional Advisory Council	Whale and Dolphin Conservation Society
RenewableUK (British Wind Energy Association at the time)	Wildlife Trusts
Scottish Fishermen's Federation	WWF
Seafish	Wildlife Link
UK Marine Biodiversity Policy Steering Group	
UK Offshore Forum	

3. Analysis of the responses

In total, 20 responses to the consultation were received from the following stakeholder sectors:

- commercial fishing (6 responses);
- conservation (6 responses);
- energy (3 responses);
- landowner (1 response);
- public sector (3 responses);
- research (1 response).

Each response was logged and an acknowledgement issued to the consultee.

The table below provides a summary of the responses received to each consultation question.

	Yes	No	Not stated
Scientific			
1. Accept scientific basis	11	4	5
2. Provide additional scientific information	4	10	6
3. Provide additional information on the condition of the features of the site	3	9	8
4. Provide further comment on scientific selection	13	7	0
Economic and social impact of designation			
1. Provide additional information on assessing the value of goods and services for European habitats	2	8	10
2. Provide additional activities at Dogger Bank that were not listed	2	5	13
3. Provide information on what vessels would do in the event of a partial or full closure of Dogger Bank to certain types of fishing activity	3	7	10
4. Provide additional information to improve the assessment of the costs of selecting the site	7	6	7
5. Provide additional information to improve the assessment of the benefits of selecting the site	1	8	11
6. Provide information on the importance of the features in supporting the wider ecosystem	0	5	15
7. Provide information on how much time a business might take to familiarise themselves with the implications of SAC designation	6	1	13
8. Provide information on significant unintended consequences that have not been identified	4	1	15
9. Agree with the assessments of impacts on small businesses	1	3	16
10. Provide comment on any other aspects of the impact assessment	4	3	13

55% of the stakeholders who responded accepted the scientific basis put forward for the site, 20% didn't accept the scientific basis and 25% made no comment on the scientific basis for site selection. Stakeholders provided scientific reports and detailed comments on the SAC Selection Assessment document which have been analysed and incorporated where appropriate. New data and detailed comments were also provided for the impact assessment and have been included where necessary. A few stakeholders also provided comments on the conservation objectives which will be assessed before the conservation objectives are finalised. The comments highlighted are discussed in more detail below.

4. Summary of key messages and JNCC comments

4.1. Scientific case for designation of Dogger Bank SAC

a) Justification for sandbank habitat

- Majority of respondents broadly accepted the scientific justification for recommending the Dogger Bank to protect the Annex I habitat “sandbanks slightly covered by seawater all the time”.

b) Habitats and species

- Comment that the Dogger Bank is not a sandbank in a geological sense as it was formed by glacial rather than marine processes.
- The BGS quaternary geology charts that have been used to support the Dogger Bank SAC recommendation are now inaccurate and there is ongoing work by Forewind to reassess the original data.
- Would like further information supporting the assessment of the area of Annex I habitat present, including justification for why areas in greater than 20m water depth have been included.
- Would like further information in the document on the differences between the species assemblages of the Dogger Bank and the Wash and North Norfolk Coast sandbanks.
- Support for Dogger Bank being a spawning ground for flatfish but question the statement that it is a nursery ground for flatfish.
- Comment that there is insufficient detail on the present condition or the target condition of qualifying features.
- Call to delay the designation process so that the additional survey data being collected and analysed by Forewind can be taken into account.
- Comment that fishermens data is not considered scientific knowledge, and has therefore not been considered, but should be used.

JNCC response

JNCC recognise that there are differing technical/scientific/geological definitions for the term sandbanks, each fit for different purposes. JNCC agree that Dogger Bank is not a sandbank formed by tidal processes, and that it is a geological formation covered by varying depths of sandy sediments. However, Dogger Bank meets the definition in the interpretation manual to the Habitats Directive of “Sandbanks slightly covered by seawater all the time” and supports assemblages of species typical of sandbanks¹.

More recent information on the geology of the Dogger Bank area has become available since preparation of the SAC Selection Assessment document, and this will be included in the revised assessment. The new data do not affect the delineation of the site boundary, but they do affect the

¹ For detailed definition of habitat type see the “Interpretation Manual of European Union Habitats (EUR27)”. Available online at: http://ec.europa.eu/environment/nature/legislation/habitatsdirective/docs/2007_07_im.pdf; and the “Guidelines for the Establishment of the Natura 2000 Network in the Marine Environment. Application of the Habitats and Birds Directives”. Available online at: http://ec.europa.eu/environment/nature/natura2000/marine/docs/marine_guidelines.pdf

location of gravels (not part of the Annex I habitat) within the site boundary, and the area of sandbank habitat within the site. At Dogger Bank the extent of the Annex I sandbank habitat (which is not restricted to areas in less than 20m water depth – see Guidelines referenced in footnote 1 below) has been defined by examining aspects of the geology, biology and topography. The site boundary closely follows the extent of the Annex I sandbank habitat. References have now been included in the SAC Selection Assessment document to provide further information on the differences in species assemblages and sediment types between the Dogger Bank and Wash and North Norfolk Coast sandbanks. The reference to flatfish nursery grounds has been removed from the SAC Selection Assessment document.

The site has been identified on the basis of best available evidence and has already been delayed from when the recommendation was first made in 2005, to allow additional information to be gathered by survey. When the scientific justification for the site recently underwent peer review, comments were received from the reviewers that they had never before seen a site with such a high level of data underpinning it. Therefore JNCC see no reason to further delay site recommendation. However, JNCC would encourage Forewind to share the data they are gathering, to help inform advice on Conservation Objectives, the development of management measures and monitoring at the site.

JNCC do consider certain data available from fishermen as scientific knowledge, and have used such data in site recommendations where it can be provided, is location-specific, and relevant to the characterisation, location or condition of a habitat (for example, data on cold water coral records and trawl tracks from Scottish Fishermen's Federation provided for NW Rockall Bank cSAC in 2010).

c) Selection criteria

- Much of UK offshore waters are not covered by detailed habitat maps based on survey data – therefore two of the selection criteria cannot be effectively applied.
- Comment and questions regarding application of the 'area of habitat' selection criterion and how the contribution of the site has been calculated in relation to total area of habitat in UK waters
- The statement that trawling “may have reduced the number of long-lived organisms in a community dominated by robust short-lived organisms” requires scientific justification.
- Conflicting comments over the section on restoration with some respondents welcoming that goal whilst others questioned if it was possible.
- Question why restoration is necessary when the structure has been graded as “well conserved”.
- Question whether conservation value is the same across the area inside the boundary.

JNCC response

JNCC accept that more detailed UK level maps would be useful. However, the data and maps currently available are adequate to apply the selection criteria.

Calculation of area of habitat is complex as there is as yet no precise figure for total area of Annex I sandbank habitat in UK waters. A proxy figure therefore needs to be used (area of sandy sediment in less than 20m water depth), which is an underestimate of the total extent of Annex I sandbank habitat in UK waters. The figure used for this calculation as a proxy for the area of Annex I sandbank habitat within the site boundary, is the area of sandy sediment in less than 20m water depth within the site – this is also a considerable underestimate of the area of Annex I sandbank habitat within the site. Text in the

SAC Selection Assessment document has been modified to clarify how the assessment under this criterion has been made.

The text in the section on “degree of conservation structure and function” has been amended, several references have been provided for the likely change in community structure as a result of trawling. The grading of “well conserved” is the criterion for “degree of conservation of structure” that sits between the higher “excellent structure” and lower “average or partially degraded structure” and as such features with this grading are judged not to be in pristine condition and may require restoration to achieve “excellent structure”². As stated in the SAC Selection Assessment document, active restoration of habitat on the Dogger Bank would be difficult since the structure and functions of the habitat and methods to restore it are not known. However, removal of anthropogenic disturbance could allow natural recovery of the biological communities associated with Dogger Bank. The assessment of conservation value is required to be made at the site level and therefore there is no scope within the assessment for varying levels of conservation value to be proposed across the site. It is likely that during the future development of management measures, more detailed information on condition of the feature within the site will be obtained and used.

d) Boundary delineation

- Concerns regarding the process which has resulted in changes to the boundary and significant reduction in the overall size of the pSAC since earlier recommendations.
- Would like scientific justification to support the statement that the current boundary is the “minimum area necessary to ensure protection of the Annex I habitat”.
- Proposal to base the boundary on the Wieking and Kronke (2003) data rather than that currently used as this aligns better with the Dutch boundary.
- The area inside the SAC should be reduced as only 20-60% of sandbank habitat is required and so with all of the other sandbank sites already designated not such a large area is necessary.
- Question as to whether alternative, smaller sites are available within the North Sea.
- Seek clarification as to whether work has been done to ensure that the proposed boundary for the Dogger Bank takes into account potential movement of the feature over the next 50 years.
- Requests for clarification of the size of the buffer, if one were to be added around the Annex I habitat.
- Seek clarification on approach taken to ensure a consistent approach to boundary delineation has been undertaken by the UK, the Netherlands and Germany.
- Clarification sought on what options are being considered to resolve the lack of join up in the boundary at the UK/Netherlands median line and comments to support such a revision.

JNCC response

² For further information on SAC selection criteria see: JNCC (2009) Selection criteria and guiding principles for selection of Special Areas of Conservation (SACs) for marine Annex I habitats and Annex II species in the UK. Version 1.1. JNCC, Peterborough. Available online from: <http://www.jncc.gov.uk/page-4165>

Because the Dogger Bank is such a large area, and because the extent of the Annex I sandbank habitat is difficult to define precisely, JNCC's scientific assessment of existing data, collection of new data, preparation of a draft site recommendation, and peer review of that site recommendation has taken some time, but it has been an open and rigorous scientific process. During that time JNCC's recommendation on the site has changed, based on scientific assessment of the information available. This public consultation is the final step in that process prior to Government determining whether to propose the site to the European Commission as an SAC.

The full extent of the Annex I sandbank habitat is the 'minimum area necessary' to include within the site boundary. In identifying the SAC boundary JNCC have included the whole feature to ensure that the site "operates as a functional whole"³, and it is JNCC's opinion that there is no justification for omitting any particular part of the bank from the site. JNCC have used all available scientific data in assessing the Dogger Bank area against the site selection criteria. The Wieking and Kronke (2003) data have been used in that assessment, along with a number of other more recent datasets. JNCC have taken account of the adjacent site recommendation by the Dutch, and the methods by which it was determined. A process has been initiated with the Dutch government to discuss how best to align the UK and Dutch SACs at the median line (coordinate 10, see Fig 1 in Dogger Bank SAC Selection Assessment document v8.0) between the two countries.

The guidance of 20-60% of habitat relates to the proportion of the entire UK resource of sandbank habitat which should be included within the whole SAC site series, it does not relate to the proportion of a particular sandbank required to be within a particular SAC boundary (refer to EC 2007 Guidelines referenced in Footnote 1). In assessing which sandbanks in UK offshore waters to recommend for SAC designation, JNCC has identified examples from throughout the natural range of the habitat and ensured that all sub-types of sandbanks are represented within the SAC series. This includes sandy mounds, of which Dogger Bank is an example, as well as the three types of sandbanks formed by currents or tidal processes⁴, and other types such as vegetated sandbanks. As well as representing each different sub-type of sandbank within the site series, JNCC has considered the overall proportion of sandbank habitat within the site series in the UK against the amount of sandbank habitat present within UK waters⁵. The available data with which we can make this assessment are complex and not very precise, as we have to use approximations for the location and extent of Annex I sandbank habitat at a UK level. However, including the existing series of SACs identified for sandbanks, plus the Dogger Bank pSAC, the proportion of the UK sandbank resource within the SAC site series is approximately 36%. This proportion is above the 20% likely to be deemed insufficient by the European Commission, but falls well short of the 60% of the national resource likely to be considered sufficient by the European Commission. The Dogger Bank pSAC makes up an important contribution to the proportion of the UK sandbank resource within the SAC network (approximately 10%). If alternative similar sites were to be included, a similar proportion of similar habitat would need to be included within the site network. We do not have information to indicate that sufficient quantity of similar sites exist.

As Dogger Bank is not a tidally generated sandbank, it does not move and therefore it is not necessary to take into account potential movement over the next 50 years in defining the site boundary. An additional margin (or buffer) in proportion to water depth to allow for mobile gear on the seabed being at some distance from the location of a vessel on the sea surface (see guidance in JNCC, 2008) has not been added to the habitat extent when defining the site boundary. Due to the shallowness of the site, the margin would be only 120-160m, which, due to the large size of the site (12,331km²) and the interpretive nature of determining the extent of the Annex I habitat, would make no material difference to conservation of the sandbank feature..

³ McLeod, CR, Yeo, M, Brown, AE, Burn, AJ, Hopkins, JJ, & Way, SF (eds.) (2005) *The Habitats Directive: selection of Special Areas of Conservation in the UK*. 2nd edn. Joint Nature Conservation Committee, Peterborough. www.jncc.gov.uk/SACselection

⁴ For further information on sandbank sub-types see JNCC's web page on identification of SACs for offshore Annex I sandbanks <http://www.jncc.gov.uk/page-1452>

⁵ <http://www.jncc.gov.uk/page-3053>

JNCC reviewed the Klein methodology⁶ used by both the Netherlands and Germany to assess slope of the bank in the delineation of their site boundaries and have used this methodology in the determination of the proposed UK boundary. However, in addition to solely using the Klein methodology JNCC have also taken account of the biological assemblages present across the Dogger Bank area and used this additional information to help inform boundary delineation. Discussions with the Netherlands over aligning the boundaries and future management measures will begin in due course.

4.2. Justification for harbour porpoise

- In general there was a mixed response to the consultation of support for and objection to the re-grading of harbour porpoise from C (qualifying feature) to D grade at Dogger Bank. Industry supported the D grading, non-governmental organisations objected and contest that harbour porpoise should be a qualifying feature for Dogger Bank pSAC (i.e. at C grade or above)

a) Application of selection criteria

- Concern that non-scientific factors may be influencing the grading of harbour porpoise at the site.
- Concern that the regrading of harbour porpoise at the site sets a precedent for the treatment of other highly mobile species and is inconsistent with the treatment given to highly mobile terrestrial species.
- Contest that UK should list the harbour porpoise as a qualifying feature of the site as it regularly supports 2-4% of the national population, regardless of whether the density of the population is greater than in neighbouring areas or not.
- The selection criteria for Annex II species are not individual hurdles that must each be passed before progressing to the next. They should be applied using expert judgment, as a whole and in the context of the precautionary principle in order to identify sites. If there is no data to support a decision in relation to a particular criterion, it does not “score” a negative point – it should be neutral until such data exist.
- The Netherlands and Germany have both listed harbour porpoise as a qualifying feature for site designation at the Dogger Bank, yet the population of the species using the pSAC in UK waters is much larger than the population figures given for the German SAC at Dogger Bank. There would currently appear to be no scientific justification for a different level of importance to be assigned to the Dutch and German sectors of the Dogger Bank for this species, compared to the UK sector.

JNCC response

JNCC have only taken scientific evidence into account when considering whether harbour porpoise should be a qualifying feature for the Dogger Bank. Socio-economic factors have not been taken into account. Consideration of whether harbour porpoise should be a feature of the site did take into account previous precedent in selection of sites for other mobile species (marine and terrestrial).

⁶ Klein, A. (2006) Identification of submarine banks in the North Sea and the Baltic Sea with aid of TIN modelling. *In*: H. Nordheim, D. Boedeker and J.C. Krause. Eds. *Progress in Marine Conservation in Europe: Natura 2000 sites in German Offshore waters*. Springer: pp 97-110

In assessing whether harbour porpoise should be a qualifying feature for the Dogger Bank pSAC, JNCC considered the text from Article 4(1) of the Habitats Directive for aquatic species which range over wide areas. This Article states that “sites will be proposed only where there is a clearly identifiable area representing the physical and biological factors essential to their life and reproduction”. Following guidance issued by the European Commission, JNCC do not consider that presence of a species on its own is sufficient evidence for a clearly identifiable area which could be considered essential to the life and reproduction for the species. Harbour porpoise are widely distributed across the UK part of the North Sea, with no current evidence of ‘hotspots’ in their distribution. The proportion of the North Sea occupied by the Dogger Bank pSAC (identified for its sandbank habitat), is estimated to be greater than 2% of the UK North Sea area. Evidence from SCANS data, indicates that 2.1 to 3.9% of the North Sea population of harbour porpoise has been observed within the pSAC boundary, but this is not a precise estimate, and, as the species is widely distributed across the UK part of the North Sea, approximately this proportion of the national population would be expected to occur within the site purely due to the large area of the pSAC. JNCC have no evidence that the Dogger Bank pSAC is any more important for harbour porpoise than other areas in the North Sea.

When considering the area against the selection criteria, where data did not exist to support a decision (e.g. evidence of a highly developed social and sexual life) then that criterion could not be considered further – it did not ‘score a negative point’.

The level of importance of an area is judged by each Member State when considering the selection of sites within its territory, against the population within that territory. The importance of the UK part of the Dogger Bank has been judged based entirely on scientific evidence, applying the EC Guidance on site selection for harbour porpoise and the Habitats Directive Annex III selection criteria. The UK pSAC at Dogger Bank is considerably larger than either the Dutch or German SACs, so it is to be expected that the population within the UK site would be larger than that of either the Dutch or German sites.

Text in the amended SAC Selection Assessment document (v 8.0) has been modified to clarify the above points.

b) Protection of harbour porpoise

- Concern that if harbour porpoise are not listed as a qualifying feature of the site, then there is no requirement for conservation objectives for the species at the site, and it would not be protected through the site-specific mechanisms outlined in Article 6 of the Habitats Directive.
- Concern that there will be acoustic disturbance on harbour porpoise from marine activities and the development of an offshore windfarm at the Dogger Bank if the species is not a qualifying feature at the site.

JNCC response

Although a grading of D for harbour porpoise for the Dogger Bank does mean that there is no specific conservation objective for the species at the pSAC, it does not mean that the species itself would be unprotected, for example from the effects of noise and disturbance from marine activities, or from by-catch in certain fisheries.

All cetaceans in UK waters (including the *harbour porpoise*) are protected under Article 12 of the Habitats Directive. This requires Member States to establish strict protection for all European Protected

Species (i.e. those species listed in Annex IV of the Directive). The requirements of Article 12 have been fully implemented into UK law through the Habitats Regulations⁷. These regulations make it an offence to deliberately kill, injure or capture or deliberately disturb any wild animal of a European Protected Species.

If there is a risk of death, injury or significant disturbance of European Protected Species from an activity that cannot be removed or sufficiently reduced by using alternatives and/or mitigation measures, then the activity may still be able to go ahead under licence as a last resort, but only if the activity is not detrimental to the maintenance of the populations of the species concerned at favourable conservation status. This means that regulators, before issuing licenses for potentially disturbing activities, will need to ascertain that the licensing of the activity will not result in a negative impact on the species'/population's Favourable Conservation Status. The circumstances where disturbance can be allowed under licence have been clarified by UK legislation.

In recognition that a number of offshore activities such as seismic surveys, pile driving activities and use of explosives can, under certain circumstances, generate noise levels capable of causing injury and, in the case of explosives, death, to marine mammals, JNCC developed and published a series of precautionary guidelines and protocols to minimise the risk of these effects occurring. Adherence to these guidelines and protocols is now included as a condition of governmental consents to industry, including consents for development of windfarms.

c) Data issues

- No additional data on harbour porpoise were identified or supplied in response to the consultation.
- Seek clarification as to how JNCC analysed the SCANS data.
- The fact that there is a significant sand eel population at the Dogger Bank is evidence that there is a “clearly identifiable area which is distinct in providing the physical and biological factors essential to that species for life and reproduction”.
- Seek clarification as to why the information on sand eels being a significant prey resource for harbour porpoise has been removed from the most recent version of the SAC Selection Assessment Document (v 6.0) when it was present in version 4.0.

JNCC response

SCANS I and II data were used to obtain a coarse estimate of the population for the Dogger Bank site. Using the relevant SCANS block data, the proportion of the site within the block was used to estimate the proportional abundance of animals likely to be present within the site from the SCANS block abundance.

JNCC agree that the Dogger Bank area is important for sandeels, and that sandeels can be a significant part of the diet of harbour porpoise. However, harbour porpoise also feed on other species of small fish,

⁷ Conservation of Habitats and Species Regulations 2010 for England and Wales; Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 for Scotland; Conservation (Natural Habitats, etc.) (Amendment) Regulations (Northern Ireland) 2007 for Northern Ireland; Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (as amended) for UK offshore waters.

and both sandeels and harbour porpoise are widely distributed in the UK part of the North Sea, rather than restricted in distribution to the Dogger Bank area. JNCC do not consider the presence of sandeels at the Dogger Bank as sufficient evidence to identify the pSAC as a “clearly identifiable area which is distinct in providing the physical and biological factors essential to harbour porpoise for life and reproduction”.

The SAC Selection Assessment document outlines the outcome of application of the selection criteria for a site, and the reasons for its recommendation as an SAC, and has been modified at each step of the site assessment process. The text aims to be succinct, yet comprehensive. More information is included in the SAC Selection Assessment document for qualifying features for the site than for those present but graded at D, so the latest 2010 version has less information than the earlier 2008 version (4.0).

4.3. Scientific justification (other)

- In the site map it would be helpful to have the nodes and boundary co-ordinates numbered to make it easy to refer to.
- Support for further work into the use of the Dogger Bank by grey and common seals as both species are a qualifying feature of the Dutch site and common seals are a qualifying feature of the German site.
- General concern over the significant number of personal communications being used as references to back up scientific statements.
- Lack of acceptance that factors relating to the interrelationship between human use of the marine environment and its conservation should be considered non-scientific.

JNCC response

The map in the SAC Selection Assessment document has been updated to number the nodes provided. JNCC will number nodes in future documentation.

When the outputs of the analysis of the use of areas of UK seas away from the coast by the two seal species has been completed JNCC will be reviewing the grading of both seal species at the site to determine whether it needs to be altered. This is due to be completed by 2012.

JNCC have reviewed the personal communications references in both the SAC Selection Assessment document and the impact assessment document and provided references to published information where possible. In most cases, personal communications were used as references for human activities that were known to be occurring within the site boundary as no published references were available.

European Case Law (Case C371/98⁸) clearly states that SACs must be selected on scientific grounds only. A variety of data, including data on human uses of the marine environment will be used to develop appropriate management measures for sites selected.

⁸ Case C371/98. Secretary of State for the Environment, Transport and the Regions vs First Corporate Shipping Ltd. Available from: <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&newform=newform&jurcdj=jurcdj&docj=docj&typeord=ALLTYP&numaff=&ddatefs=&mdatefs=&ydatefs=&ddatefe=&mdatefe=&ydatefe=&nomusuel=first+corporate+shipping&domaine=&mots=&resmax=100&Submit=Submit>

5. Conclusions and final recommendation on site boundary

The overall site recommendation and the site boundary remain unchanged following consultation. Updated seabed sediment data have been incorporated into the SAC Selection Assessment document, that alter the extent and location of non-sandbank habitat within the recommended site boundary. The SAC Selection Assessment document has been amended in light of comments made in consultation responses. The Impact Assessment document has been updated to include new fisheries data and to address comments made during the consultation.

Annex I: Consultation questions

The scientific justification for the site and its boundary

SAC1) Do you support the scientific basis for the Dogger Bank site being put forward in this round of consultation?

SAC2) Please indicate if you have any scientific information, not already referenced in the SAC Selection Assessment document for Dogger Bank site, to support your response to SAC1.

SAC3) Do you have any information additional to that included in the SAC Selection Assessment document about the condition of Annex I habitats within the Dogger Bank site boundary that you would like to share with the JNCC?

SAC4) Do you have any further comments on the scientific selection of the Dogger Bank as SAC?

Socio-economic Impact Assessment

IA1) Do you have any further information on assessing the value of goods and services for European habitats for the Impact Assessment for Option 1: Designate the site?

IA2) Are there any other significant activities at Dogger Bank that the IA has not identified?

IA3) Can you provide any information to inform estimates of what vessels would do in response to closing Dogger Bank or part of it to certain types of fishing methods?

IA4) Can you provide any information to improve the assessment of the costs (and wider impacts) of selecting Dogger Bank?

IA5) Can you provide any information to improve the assessment of benefits of selecting the Dogger Bank?

IA6) In assessing the benefits, we do not take account of the role of the feature (i.e. habitat type) in supporting the wider ecosystem. Can you provide information on the importance of any of the features in supporting the wider ecosystem?

IA7) How much time do you think a business might typically take to familiarise themselves with the implications of offshore SAC designation if implemented? (If you represent a particular sector, please make your answer specific to that sector)

IA8) Are there significant unintended consequences associated with the Options (Baseline: do nothing or Option 1: designate the site) that have not been identified in the IAs?

IA9) Do you agree with the assessments of impacts on small businesses and can you provide any further information?

IA10) Are there any other aspects of the IA on which you would like to comment or where you are able to provide further information?

Annex II: List of respondents

British Geological Survey

Crown Estate

Danish Fishermen's Association

Dutch Fish Product Board

East Coast Wildlife Trusts

English Heritage

Environment Agency

Forewind

GDF SUEZ E&P Ltd

Health and Safety Executive

Marine Conservation Society

Marine Protected Areas Fishing Coalition

North Sea Regional Advisory Council

North-East of Scotland Fishermen's Organisation

Norwegian Directorate of Fisheries

RenewableUK

Royal Society for the Protection of Birds

Whale and Dolphin Conservation Society

Wildlife and Countryside Link

WWF-UK

Annex III: Key messages on topics that did not form part of the formal consultation

The UK network of SACs

Several of the responses from conservation non-governmental organisations raised concerns that a significant area has been lost from the other sandbank SACs (inshore and offshore SACs submitted to the European Commission in August 2010: Inner Dowsing, Race Bank and North Ridge, North Norfolk Sandbanks and Saturn Reef, Haisborough, Hammond and Winterton and Shell Flat) between formal consultation and the submission of the sites to Europe, equating to a loss of sandbank protection of 107,461 hectares.

JNCC response

Site boundaries do not necessarily equate to the extent of the Annex I habitat concerned. The areas that have been excluded from within site boundaries for other sandbank SACs following consultation do not constitute a loss in Annex I sandbank habitat. At North Norfolk Sandbanks and Saturn Reef cSAC the consultation boundary was a simple shape and much larger than the extent of the Annex I habitat within the site, following JNCC guidance on boundary delineation produced in 2004. The boundary was re-drawn following the 2007-08 consultation where responses indicated that it was preferable to have more complex site boundaries which followed more closely the extent of the Annex I habitat. These site boundaries consequently had more, longer co-ordinates, and the amount of non-Annex I habitat enclosed within the site boundary was significantly reduced. JNCC's guidance on boundary determination was amended in 2008 as a result of the 2007-08 consultation. For the other three sites (Haisborough, Hammond and Winterton cSAC, Inner Dowsing Race Bank and North Ridge cSAC, and Shell Flat cSAC, as well as Margate and Longsands cSAC), the consultation site boundaries were drawn using this revised guidance. In addition, following the 2010 consultation on these sites, the boundaries have been redrawn using additional bathymetric data submitted during the consultation to better define the extent of the sandbank features. Therefore the amount of Annex I sandbank habitat protection has not decreased as it is only non-Annex I habitat that has been excluded from the site boundaries.

Identification of SACs for harbour porpoise in UK waters

- Question the lack of UK-wide collation and analysis of data on harbour porpoise to identify 'hotspots' to consider as potential SACs

JNCC response

UK wide data from a variety of sources within the Joint Cetacean Database were analysed to identify whether 'hotspots' of harbour porpoise distribution existed, for consideration as SACs. This work concluded that persistent areas of high porpoise density were lacking in UK waters, with the possible exception of an area in inshore waters of west Wales which merited further investigation (Bravington, M., Borchers, D. & Northridge, S. 2002. Analysis of harbour porpoise sightings data in relation to area-based conservation. Final Report to JNCC, Project XGLJ02.)

The case for the identification of an SPA at Dogger Bank

RSPB suggested that there is already a case for the identification of the Dogger Bank as an SPA under selection guideline 1.4 which would be supported by the range criterion for guillemot, in addition to the presence in qualifying numbers of other species. They also highlighted that with further survey work that a re-run of the JNCC analysis on the European Seabirds at Sea⁹ database would identify the SPA for a range of seabird species.

JNCC response

This response will be considered by JNCC in its work to identify SPAs in UK offshore waters.

Conservation objectives

A few specific comments on the Conservation Objectives and Advice on Operations document were received, which will be addressed when the document is updated following submission of the Dogger Bank SAC to the European Commission.

⁹ Kober et al. 2009. An analysis of the numbers and distributions of seabirds within the British Fishery Limit aimed at identifying areas that qualify as possible marine SPAs. JNCC Report No. 431. JNCC, Peterborough

Annex IV: Key messages on Impact Assessment

The Impact Assessment for Dogger Bank pSAC has been updated following the consultation, and will be provided to Defra separately to this report. The following comments received on the Consultation Impact Assessment have been assimilated into the revised version.

Impact Assessment

a) General comments

- Agreed with inclusion of the value of archaeology as a component of cultural services.
- The baseline option of non-designation should include the costs of infraction proceedings for non-compliance with the Habitats Directive.
- The impact assessment uses a narrow vision of 'provisioning services' rather than a more broadly-based one used elsewhere in Europe e.g. Sweden.
- Absence of proper consideration of the impact of noise on elasmobranchs and marine mammals.
- No consideration of the impacts on small businesses.
- The annual enforcement cost is not large enough given the tough working conditions at Dogger Bank and the requirement for larger vessels than those used at inshore sites.
- Disagreement with the 10 year timeframe – some respondents wanted the timeframe extended further into the future (e.g. 2050) and others wanted it extended further back into the past.

JNCC response

JNCC have amended the impact assessment to take into account comments that were raised during the consultation. The explanation of the assessment of impacts on small businesses is now more explicitly included within the impact assessment. JNCC can confirm that the same system for 'provisioning services' has been used for this impact assessment as those used elsewhere in Europe but for the Dogger Bank there are not as many services as there are in the Baltic or Skagerrak and so it may appear to have a narrower scope.

Infraction costs (either for not meeting Habitats Directive requirements, or for Government not meeting renewable energy targets) have not been included as Better Regulation Executive guidance specifies that such costs should not be included unless Government is seriously planning to pursue being fined. JNCC are looking further into the impact of noise on marine fish and further consideration of these impacts will be taken when management measures are discussed in the future. Effects of noise on European Protected Species, including marine mammals, are considered through the protection mechanisms under Article 12 of the Habitats Directive (see section 4.2 b) above).

b) Sensitivity, exposure and vulnerability

- Question the grouping of long-term, persistent, zone-wide activities with short-term localised events. Preference to keep each activity separate.

- Call to see the methodology that outlines how the sensitivities were arrived at.

JNCC response

Assessment of sensitivity, exposure and vulnerability is a coarse assessment at a whole site scale, and is based on pressures rather than activities. The activities mentioned within Table 2.1 in the impact assessment document are just examples of activities that would lead to a specific pressure, not an exhaustive list and not intended to be grouped in any way in terms of scale of the impact they cause. Further more detailed assessment of activities taking place which may result in pressures which affect the features of the site, will be required before any particular management measures are introduced. Such assessment will need to include stakeholders involved in those activities.

The method for assessing sensitivity is detailed in the draft 'Conservation Objectives and Advice on Operations' document for the site (http://www.jncc.gov.uk/pdf/DoggerBank_DraftCOsAndAdviceOnOperations_5.0.pdf)

c) Energy specific comments

- Would like costs of infraction proceedings for failing to meet EU renewable energy targets included.
- Question whether it is possible to find alternative wind farm capacity of the scale of the proposed Dogger Bank development in the UK at present.
- Should have been greater consideration of the impacts on the supply chain if developments are prohibited.
- Would like reference to the large reduction in carbon dioxide that Dogger Bank wind farm could deliver.

JNCC response

See previous response above concerning inclusion of costs of infraction. The designation of the Dogger Bank as a SAC does not rule out the development of renewable energy in the same location, if such development would not significantly affect the integrity of the site. The Impact Assessment document has been amended to address these points.

d) Fisheries specific comments

- Various additional data were provided by respondents.
- VMS data from 2008 and 2009 should be used in addition to 2006 and 2007 data, and VMS data should be broken down by gear group in the analysis.
- Comment that the estimate of the economic significance of Dogger Bank to fisheries is too low.
- The effects of displacement should be acknowledged in more detail in the main body of the impact assessment.

- There is no evidence to suggest that overall pressure on fish stocks would be reduced or that the non-use value to biodiversity would be achieved at the wider scale beyond the site.
- Would be helpful to include a map showing the 2008 boundary and the current boundary.
- The degree of dependency of gear types on the Dogger Bank and the fact that comparable fishing opportunities may not be available elsewhere is not considered.
- The introduction of the Dogger Bank SAC may speed up the development of low impact gears which will drive a reduction in carbon dioxide emissions by fishing vessels. This beneficial impact should be factored into the assessment.

JNCC response

JNCC have now included four years worth of catch data (2006-09) broken down by gear type (these data were not available for the Consultation Impact Assessment). Splitting the analysis by different gear type has allowed greater analysis of the dependency of specific gear types on the Dogger Bank area.

The additional fisheries data provided by respondents has been included in the impact assessment, but it has not been possible to use these data in the cost calculations as it was not possible to standardise the basis on which the figures have been provided. Some of the reason for the disparity in costings could be due to the difference between the costs for fisheries from the wider Dogger Bank region versus the costs for fisheries specifically operating within the boundary of the SAC (as ascertained through analysis of VMS data). The latter is what has been included in the impact assessment.

The effects of displacement and alternative management scenarios, including the use of low impact gear and effects on fish stocks, will be considered when management measures are discussed.

A map has now been added to show the differences between the 2008 dSAC and the 2010 pSAC boundaries and their relation to ICES rectangles.