



Department for
Business, Energy
& Industrial Strategy

Department for Business,
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Our Ref: EN010051

Your Ref: ECO DOC No. 002753657-01

29 November 2018

Dear Sir or Madam

PLANNING ACT 2008

APPLICATION TO MAKE NON-MATERIAL CHANGES TO THE DOGGER BANK TEESSIDE A AND B OFFSHORE WIND FARM ORDER 2015

I refer to the Secretary of State's letter to Sofia Offshore Wind Farm Limited ("the Applicant") and Natural England of 2 November 2018 seeking further clarification concerning the proposed changes to the Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 ("the Order"), and the Statement of Common Ground ("SoCG") between the Applicant and Natural England dated 15 November 2018 and the SoCG between the Applicant and Marine Management Organisation ("MMO") dated 20 November 2018.

Impact on Marine Mammals and Fish: The need for the Secretary of State to carry out a Habitats Regulations Assessment ("HRA") before the Application may be determined

SoCG with Natural England

It is noted that paragraph 3.5.4 of the SoCG states: "*It was agreed between the parties that the Marine Mammal Mitigation Protocol ("MMMP"), required under the Order and deemed Marine Licence ("dmLs"), will address mitigation for noise propagation for the Project and note this may include noise reduction measures*". Paragraph 3.7.3 also states that parties agreed that: "*following further analysis of the information provided by SOWFL [the Applicant], that the conclusions of the Secretary of State's HRA and*

AA for the recommended Southern North Sea draft Special Area of Conservation (SAC) (now the Southern North Sea cSAC and Site of Community Importance (SCI) are not affected by the proposed changes to the DCO [the Order] and an updated HRA and AA is not required for marine mammals”.

SoCG with the MMO

It is noted that paragraph 3.6.1. of the SoCG states: “*MMO is confident that the impact of underwater noise on herring can be effectively mitigated, should there be the requirement, to ensure that no new or materially different impacts occur from what was originally assessed*”. Paragraph 3.6.5. also states that, although MMO are awaiting technical advice from CEFAS on the revised underwater noise modelling on TTS effects on the Flamborough Head herring spawning ground, the impact of underwater noise on herring can be effectively mitigated.

Secretary of State concerns

Given the proposed reliance on mitigation measures to remove the need for an Appropriate Assessment of impacts on both marine mammals and fish, the Secretary of State is not satisfied that full account has been taken of the judgment of the Court of Justice of the European Union in Case C-323/17 *People over Wind* that was referred to in my letter of 2 November 2018. The Secretary of State requests that the **Applicant, Natural England** and **MMO** update the Secretary of State on whether full account had been taken of that judgment and whether the statements above need to be revised.

The Secretary of State also considers it necessary to undertake an HRA to assess the materiality of the Application. The Secretary of State notes that the need for an Appropriate Assessment is not necessarily of itself determinative of whether a change should be considered material.

In the circumstances, the Secretary of State requests that **the Applicant** provides further information (for instance, in the form of an updated shadow HRA/report to inform the HRA) to inform the decision on materiality, including the possible effects of the consent, if amended, on the Southern North Sea cSAC/SCI.

The deadline for a response is 20 December 2018.

The response should be submitted by email to:

DBTeessideAB@infrastructure.gsi.gov.uk

Please also send any hard copy response to the Sofia Offshore Wind Farm Project Team, Secretary of State for Business, Energy and Industrial Strategy, c/o the Planning Inspectorate, Eagle Wing 3/18, Temple Quay House, Temple Quay, Bristol, BS1 6PN. If you will have difficulty in submitting a response by the consultation deadline, please inform the Project Team as soon as possible.

Responses will be published on the Dogger Bank Teesside A and B/Sofia Offshore Wind Farm project page of the Planning Inspectorate's National Infrastructure Planning Portal website as soon as possible after 20 December 2018.

This letter is without prejudice to the Secretary of State's decision whether or not to grant the changes sought to Dogger Bank Teesside A and B Offshore Wind Farm Order 2015, and nothing in this letter is to be taken to imply what that decision might be.

Yours sincerely

Gareth Leigh
Head of Energy Infrastructure Planning