



Marine
Management
Organisation

Marine Development
Lancaster House
Hampshire Court
Newcastle upon Tyne
NE4 7YH

T +44 (0)300 120 1032
www.gov.uk/mmo

The Planning Inspectorate
National Infrastructure Directorate
[By email only]

Your reference: EN010053
Our reference:
DCO/2013/00013

20 October 2015

Dear Sir/Madam,

**PROPOSED HORNSEA PROJECT TWO OFFSHORE WIND FARM
RESPONSE TO EXAMINING AUTHORITY'S SECOND ROUND OF WRITTEN QUESTIONS**

The Marine Management Organisation (MMO) is an interested party for the examination of Development Consent Order (DCO) applications for Nationally Significant Infrastructure Projects (NSIPs) in the marine area. Should consent be granted for the project, the MMO will be responsible for monitoring, compliance and enforcement of Deemed Marine Licence (DML) conditions.

The MMO received a Rule 13 letter containing the Examining Authority's (ExA's) second round of written questions on 29 September 2015 for the proposed Hornsea Project Two Offshore Wind Farm (Ref EN010033). Please find the MMO's response to the ExA's second round of questions below for your consideration.

In order to ensure clarity, the question to which the answer has been provided has been incorporated in this response.

Reference	Question to	Question	Response
G6	Applicant	<p>Please provide, in tabular form, an update on progress towards securing Statements of Common Ground (SoCG) with various parties, and if SoCG are not finalised please advise on when the ExA can expect them.</p>	<p>During the SoCG discussions the applicant agreed to provide a clarification note to the MMO detailing how co-operation both between the Project Two undertakers and the undertakers of Project One will work in practice.</p> <p>It is the MMO's understanding that the SOCG between Hornsea Project One and Project Two that was submitted to the ExA on 11 September 2015 would serve as this clarification note. This is for the applicant to confirm.</p>
G10	applicant, Hornsea Project 1; MMO; MCA; TH; ChofS and any other parties who wish to comment	<p>Please explain in the light of the advice on changing an application post acceptance (Guidance for the examination of applications for development consent, March 2015) why the changes to the Order made in respect of:</p> <ul style="list-style-type: none"> - the amendment to the Offshore Works Plans to reflect the reduction in order limits to remove one of the Project's export cable route options within the Hornsea Project 1 wind farm array are not being treated as material amendments? (REP3-027) 	<p>The worst-case scenario design elements for the project's export cable route options were presented in the Project description of the Environmental Statement (Chapter 3, PINS document reference 7.1.3. For both HVDC and HVAC options, it was considered that the worst case scenario design would be if both cable routes were used and therefore the assessments were carried out on this basis. The MMO considers that the reduction in order limits is within the limits originally assessed in the ES, and therefore would not constitute a material change.</p>
EOO20	EOO20 NE, MMO and RSPB	<p>Further to the submission of 'Notes of NE/RUK Post Consent Monitoring Seminar (March 2015)' to Deadline 3 (REP3-032), can NE, MMO and RSPB please advise on potential good practice for project specific, and strategic, ornithological impacts monitoring?</p>	<p>The MMO is generally supportive of a more strategic approach towards ornithological monitoring and defers further comment to Natural England.</p>

EOMM28	applicant	Please update the ExA on the addition of a condition in the DML to require submission of data to the Defra Marine Noise Registry, as recommended by NE and MMO.	The MMO has provided comments on the applicant's draft wording and expect to see drafting in the next version of the draft DCO/DMLs.
EL17	applicant	Similarly, please provide an update on the RSPB proposal that the tailpiece on Condition 20(3) of DML A2/B2, which allows winter working with the agreement from MMO and NE be removed. Have the potential effects of this tailpiece on the Condition been assessed in the HRA?	<p>If the applicant was to propose a change to carry out work outside the window of 1 October-31 March (inclusive), they would need to provide evidence to demonstrate that any changes to the restriction would not result in an adverse effect on the features of the Humber Estuary Special Area of Conservation (SPA).</p> <p>Whilst the MMO is content with the current wording of the condition, if the applicant considers that such a proposal is likely then it would be more beneficial if this could be resolved prior to determination.</p>
CS17	applicant, MMO and NE	Please provide an update on the progress between the applicant and the MMO/NE in resolving issues relating to the 'In Principle Monitoring Plan', including inclusion in the draft DCO.	<p>The MMO is pleased with the progress being made on the In-Principle Monitoring Plan (IPMP). To date, no draft wording has been proposed by the applicant for inclusion of the IPMP in the DCO/DMLs.</p> <p>The MMO understands that the applicant is to propose some draft wording to include in condition 15 of the DML.</p>
CS18	applicant, Hornsea Project 1	Given that both Hornsea Projects 1 and 2 are now under DONG Energy ownership, can both projects be included in the DCO Schedule A, Part 3, Requirement 21?	<p>The MMO first raised concerns about co-operation to the applicant during pre-application due to the number of potential undertakers within and the adjacent locations of the proposed Project Two and the consented Project One. The MMO's primary concerns relate to the following:</p> <ul style="list-style-type: none"> - co-ordination of plans/programmes and protocols; - spatial overlap of construction areas; - co-ordination of monitoring; and - clarity in compliance and enforcement.

			<p>The applicant was reluctant to amend the existing co-operation requirement in the draft DCO on the grounds that the granted Order for Project One does not refer to co-operation with Project Two; as such the obligation to co-operate would rest with just one of the projects. The applicant agreed to provide a clarification note to demonstrate how co-operation would be facilitated by commercial agreements and provide detail on how this would work in practice if not secured through the DCO.</p> <p>The MMO welcomes the applicant's acknowledgement that co-operation between the two projects is now essential.</p> <p>The MMO has reviewed the draft Memorandum of Understanding between Project One and Project Two. The MMO notes that the two projects seek to agree identical provisions to those already secured in the DCO and DMLs for co-operation between the two undertakers (Optimus and Breesea). Whilst the MMO agrees with the principles of this agreement, the MoU itself is not legally binding; and therefore not sufficient to ensure co-operation between the two projects. The result would be that the MMO would have no mechanism by which to ensure or enforce any such co-operation.</p> <p>The MMO strongly recommends that Requirement 21 and associated conditions 10(3), 10(4) and 10(5) of Schedules H, I, J and K are amended to include mandatory co-operation with the undertakers listed under the Project One Order.</p> <p>The MMO acknowledges the applicant's concerns that</p>
--	--	--	---

			<p>this will result in a one-sided obligation. We have previously highlighted to the applicant and in the first issue specific hearing that it is possible for the MMO to vary (deemed) marine licences under section 72 of the Marine and Coastal Access Act 2009.</p>
DC31	MMO	<p>Is the MMO now satisfied with the latest version of the DMLs? If not, what further amendments do they require?</p>	<p>The MMO has requested some changes to the wording of the current version 4 of the draft DCO. The MMO has been in discussion with the applicant and a number of changes have been agreed which will be included in version 5 of the DCO/DML. All outstanding comments have been provided in Annex 1 to this response.</p> <p>The MMO notes that version 4 of the draft DCO does not include the proposed wording for the requirement to submit data to the Marine Noise Registry. It is the MMO's understanding that the applicant is awaiting a "go live" date from JNCC.</p> <p>The MMO also notes that version 4 of the draft DCO does not include any proposed wording for inclusion of the IPMP, which is still under discussion.</p>
DC33	NE, MMO and local authorities	<p>a) Do NE, MMO and the local authorities consider that they have sufficient information on the principles and parameters to be used in drafting the Ecological Management Plan (EMP) to be confident that the submitted plan will be capable of approval?</p> <p>b) Do they consider that they have or will have sufficient information and assurances about monitoring to be confident that the submitted EMP will be monitored adequately?</p>	<p>It is the MMO's understanding that this question refers to requirement 7 of the DCO which only covers landward of MLWS.</p> <p>The MMO is content that the plan will only be submitted to the MMO to the extent that it relates to the intertidal area and has no further comment to make.</p>

		<p>c) Do they consider that they will have sufficient information to be confident about the enforcement of the EMP?</p>	
<p>DC34</p>	<p>NE, MMO and local authorities</p>	<p>a) Do NE, MMO and the local authorities consider that they have sufficient information on the principles and parameters to be used in drafting the CoCP to be confident that the submitted code will be capable of approval?</p> <p>b) Do they consider that they have or will have sufficient information and assurances about monitoring to be confident that the submitted CoCP will be monitored adequately?</p> <p>c) Do they consider that they will have sufficient information to be confident about the enforcement of the CoCP?</p>	<p>a) The MMO is content that the CoCP under condition 10 of the DMLs includes all of the parameters the MMO would expect.</p> <p>b) The sections relating to monitoring, as listed in the DMLs, provide the expected level of information required to ensure adequate monitoring will be carried out in line with the plans and documents that will be approved by the MMO. The MMO is pleased with the progress being made with NE and the applicant in the development of the IPMP.</p> <p>c) The MMO is comfortable that (i) the documents are listed within the DML; (ii) would require approval by the MMO; and (iii) would be enforceable. .</p>

Please note that the MMO reserves the right to make further comment on this application throughout the examination process based upon new information, responses from other interested parties and proposed monitoring or mitigation.

If you require further information on the above, please contact the undersigned.

Yours sincerely,



Lisa Southwood
Marine Licensing Case Officer
D +44 (0)191 376 2716
E lisa.southwood@marinemanagement.org.uk

Annex 1: Summary of outstanding comments from the MMO on version 4 of the draft DCO/DML.

Please note that comments relating to DML conditions should be applied across all the DMLs where applicable.

Article 35- 'Transfer of Benefit of Order'	The MMO's position regarding partial transfer of benefit was set out in its Response to Examination Deadline 2, submitted on 10 August 2015. The MMO's position on this issue has not changed.
Requirement 21- 'Offshore Co-operation'	<p>Wording in this section should be expanded to include cooperation with Hornsea Offshore Wind Farm Project One.</p> <p>The MMO's position is that the draft MoU between Project 1 and Project 2 does not provide legal certainty that co-operation will be undertaken.</p>
Chemicals, Drilling and Debris Condition 8 (7)&(8)	<p>Wording of the dropped objects condition is under discussion with the MMO.</p> <p>MMO has advised the applicant that as condition is currently worded there is no provision for reporting of dropped objects during the operational phase. The applicant will review the wording of the condition.</p> <p>Note timeframes for reporting of dropped objects is being discussed internally by the MMO.</p>
Pre-construction plans and documentation Condition 10 (3)	If the ExA agrees that offshore co-operation should be expanded to include co-operation with Project 1, this condition should also be expanded to include cooperation with Project 1. Co-operation is to be addressed through ongoing discussions.
Condition 10 (4)	<p>The wording in its current state is not enforceable. The DML undertaker is solely responsible for compliance under. Other parties cannot be held responsible for licence conditions under this DML. This condition should be deleted.</p> <p>The MMO notes that the requirement for co-operation from other undertakers is secured under the DCO.</p>
Pre-construction monitoring and surveys Condition 15	The MMO understands that wording for IPMP is to be included in Condition 15. It is understood that draft wording is to be provided by the applicant.