



The Planning Inspectorate  
(email only)

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

12 November 2015

Dear Sir/Madam,

## **PROPOSED HORNSEA PROJECT 2 OFFSHORE WIND FARM ORDER RESPONSE TO EXAMINATION DEADLINE 5**

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.

The MMO has an interest in Hornsea Project 2 proposal to construct and operate up to 360 wind turbine generators, and associated development, within English waters. The DCO application includes four deemed marine licences (DMLs) under Section 65 of the Marine and Coastal Access Act 2009 (MCAA09). Should consent be granted for the project, the MMO would be responsible for ensuring compliance and enforcement with the DMLs.

Following the Issue Specific Hearings (ISH) at the Ashbourne Hotel, North Killingholme, Immingham on 27 and 28 October 2015, the MMO summary of its oral representations is below.

### **ISH - 27 October 2015**

#### **1. Agenda Item 4: Construction Offshore**

- a. The Examining Authority (ExA) asked for updates on the progress of the In Principle Monitoring Plan (IPMP).

The MMO stated that it is currently reviewing the latest version of the IPMP along with our scientific advisers at the Centre for Environment, Fisheries and Aquaculture Science (Cefas), and will submit comments to the applicant in due course. Please see the current position on this issue in Annex 1 of this document.



- b. The ExA asked for an update on the MMO's previous recommendation to include provisions in the DCO and DMLs to ensure co-operation with Hornsea Project One.

As stated in the MMO's response to Deadline Four, it remains concerned about co-operation between Projects One and Two. We have reviewed the Memorandum of Understanding (MoU) and agree with the principle here that the two projects should co-operate in the same way that undertakers under the DMLs should co-operate.

During a meeting on 26 October, the applicant proposed adopting a tripartite commercial agreement between the two projects and the MMO, which the MMO stated it would need to discuss internally before providing a view. Please see the current position in Annex 1 of this document.

- c. Following detailed representations from legal counsel on behalf of E.ON and E&P Ltd, the ExA asked the MMO if it had come across issues of co-existence between offshore wind and oil and gas.

The MMO stated it was not aware of any such issues with other projects but would look into it and provide any available information on lessons learned from other projects. Please see further information on this issue in Annex 1 of this document.

## **2. Agenda Item 7: Fishing, Navigation and Aviation**

- a. This issues related to discussions with the applicant regarding recommendations from the National Federation of Fishermen's Organisations (NFFO) suggesting the adoption of a fisheries liaison and co-existence plan and further monitoring of fish stocks.

The MMO stated that it is content with the current agreed monitoring. The MMO would be open to securing a co-existence plan in DMLs but recognises that the applicant states that there is a provision to appoint a fisheries liaison officer (FLO). There are advantages to securing these arrangements through a plan where the MMO has sign-off; however, the MMO has not specifically requested this. Please see the current position on this issue in Annex 1 of this document.

## **3. Agenda Item 10: Ecology Offshore – Marine Mammals**

- a. The ExA asked the MMO whether it was content with the proposed drafting of conditions 7(12) and 7(13) of the DMLs that require the undertakers to submit details of impact pile driving to the Defra Marine Noise Registry (MNR); and whether, in general, there were any further updates regarding marine mammals.

The MMO stated that it is content with the conditions added to the DMLs in version 5 of the draft DCO to ensure that data is submitted to the Marine Noise Registry (MNR).

In addition, the MMO informed the panel that it has recently received notification that the MNR has obtained final permission to 'go-live'. This is likely to occur before Christmas 2015, but the MMO is not aware of a specific date as yet.

## **1. Agenda Item 2: Articles – Definitions and Disapplications**

- a. The ExA asked the MMO whether it had any outstanding issues with Article 35 'Transfer of Benefit of Order'.

The MMO stated that it retains its position on this article as stated in its response to Deadline Three and referenced in its response to Deadline Four. This issue remains an area of disagreement between the applicant and the MMO, and it is for the Secretary of State (SoS) to make a decision on this issue as has occurred with other similar NSIPs.

In addition, the MMO raised an issue with part 4(b), a new addition to this article that would indemnify the initial undertaker from facing enforcement action while it had the benefit of the Order following a transfer to a third party under this article. The MMO disagrees with this amendment in principle as it is of the opinion it should retain the power to enforce against the most appropriate party and this power should not be dictated by the applicant.

The applicant stated that this wording is present on Walney Extension, Burbo Extension and Rampion consented DCOs.

The MMO clarified that the Rampion wording was altered through discussion with the MMO, and is preferable to the Hornsea Project Two proposed amendment but this position is given without prejudice.

ExA asked both parties to provide its position on these issues for Deadline Five.

These positions are clarified in Annex 1 below.

## **2. Agenda Item 6: Deemed Marine Licenses and Conditions**

- a. The ExA asked the MMO's views on Condition 8 'Chemicals, Drilling and Debris'.

The MMO stated that it had discussed with the applicant the provisions relating to reporting of dropped objects. The applicant has agreed to provide wording for insertion into the DMLs which provides for reporting to the MMO during construction as well as maintenance. The MMO agreed to review this and feedback at Deadline Five if possible.

- b. The ExA raised the issue that the IPMP is only defined within the DCO and not the DMLs and asked for the MMO's view on this.

The MMO stated it agreed that the IPMP should be defined in the DMLs as well.

- c. The MMO informed the ExA that the noise monitoring provision in the transmission assets DML does not include Work No. 3A (reactive compensation substations situated on the cable route). The applicant has agreed to provide information on discussions from the examination for Hornsea Project One to support this omission. The MMO agreed to review this and feed back to the ExA at Deadline Five if possible.

Yours sincerely,

Lindsey Booth-Huggins  
Marine Licensing Manager

D +44 (0)191 376 2630

E [lindsey.booth-huggins@marinemanagement.org.uk](mailto:lindsey.booth-huggins@marinemanagement.org.uk)

## Annex 1: Current Position on Issues Discussed at ISH and all Residual Issues

| Issue        | Current Position   |
|--------------|--|
| IPMP         | <p>Since the October ISHs the MMO has submitted additional comments to the applicant on this document, which have now been resolved. The MMO has sought the views of its scientific advisers at Cefas, however acknowledges that there may be insufficient time to address any comments arising from this consultation prior to the close of examination. As such the MMO has agreed with the applicant that any comments raised here can be addressed post-consent, should consent be granted.</p> <p>It is the MMO's understanding that the applicant will provide the updated IPMP to the ExA for Deadline Five. The MMO agrees in principle with this latest version of the plan.</p>  |
| Co-operation | <p>The MMO has been in continuous discussion with the applicant on this issue. The MMO concluded that the applicant's offer proposal of a commercial agreement was not appropriate in addressing its concerns. Following further discussions, the applicant has proposed the following wording (in red) for insertion into the transmission assets DMLs:</p> <p><i>(1) Each programme, statement, plan, protocol or scheme required to be approved under condition 10—</i></p> <p><i>(a) shall be submitted for approval at least four months prior to the intended start of construction, except where otherwise stated or where an alternative date is agreed in writing by the MMO; and</i></p> <p><i>(b) shall be accompanied by—</i></p> <p><i>(i) a statement confirming that the undertaker has complied with condition 10(3) in relation to such programme, statement, plan, protocol or scheme; and</i></p> <p><i>(ii) any comments received by the undertaker from the other undertakers, or a statement from the undertaker confirming that no such comments were received; and</i></p> |

|   |  |
|---|--|
|   | <p><u>(iii) details of the consultation that has been carried out with the undertakers with the benefit of all or part of the deemed marine licences under the Hornsea One Offshore Wind Farm Order 2014 and any comments received from those undertakers.</u></p> <p>This wording provides a solution to the MMO's concerns relating to co-operation with Hornsea Project One where spatial overlap is possible. The MMO feels that the above wording provides it with sufficient provisions to ensure that adequate consultation has occurred.</p>   |
| Oil and Gas Co-existence                  | <p>While aware of the potential for spatial sharing or tensions between the OWF and oil and gas sectors, the MMO is unaware of any specific examples or difficulties in co-existence between the two sectors. The respective trade bodies and/or The Crown Estate, as owners of the seabed, may be able to shed light on this topic.</p>   |
| Fisheries Liaison and Co-existence Plan   | <p>Further to the representation made at the ISH, the MMO would like to re-iterate that it agrees with the principle that co-existence with the fishing industry is an important issue for this project. The MMO feels that the current DML condition 10(2)(c) allows the MMO to approve the detail of the Project Environmental Management and Monitoring Plan (PEMMP) in which the appointment and responsibilities of the fisheries liaison officer are to be detailed under part (vii) of this condition.</p> <p>The level of detail that is expected in this plan reflects what would be included in a coexistence plan. It should be noted that the current best practice guidance for fisheries liaison and co-existence, 'FLOWW Best Practice Guidance for offshore Renewables Developments: Recommendations for Fisheries Liaison' (2014), should be considered in the drafting of the PEMMP.</p> |
| Transfer of Benefit of Order (Article 35) | <p>There has been no progress on the issue raised in the MMO's responses to previous deadlines relating to the partial transfer of DMLs. The MMO accepts that it is possible to partially transfer a DML, however, the MMO does not feel that the article as currently drafted provides sufficient</p>   |

regulatory power to ensure such a transfer will be undertaken without risks to the MMO, as a post-consent regulator, in ensuring compliance with the drafted DCO/DML requirements and conditions.

The primary concern relates to part 5 of this article which permits transfer (including partial transfer of DMLs) to licence holders under section 6 of the Electricity Act 1989 without requiring consent from the SoS. The MMO views this as a particular concern because of the inclusion of part 6(d) of this article which appears to permit the undertaker to apportion licence conditions as they see fit without consent from the SoS.

As previously stated this remains an area of disagreement between the MMO and the applicant and is likely to fall with the ExA to make its recommendation to the SoS on this matter.

An additional issue was raised during the hearing relating to part 4(b) of this article which the MMO which effectively indemnifies the original undertaker following transfer. As stated in the hearing summary above, the MMO disagrees in principle with any provision that seeks to determine its enforcement powers for it. Following recent discussions, the applicant has proposed some additional drafting to ensure that if a breach is carried out prior to transfer enforcement can still be directed against the initial undertaker. The proposed drafting to replace part 4(b) is as follows (in red):

Article 35(4)

*(a) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) (“the transferred benefit”) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.*

*(b) The transferred benefit shall reside exclusively with the transferee or, as the case may be, the lessee and any breach of restrictions, liabilities or obligations with respect to the transferred benefit shall not be*

|                           |  |
|---------------------------|--|
|                           | <p><i>enforceable against the undertaker, <u>except in relation to any such breach occurring prior to the date of transfer.</u></i></p> <p>Without prejudice to the MMO’s position that its ability to enforce against the most appropriate undertaker should not be reduced or dictated to through DCO provisions, this drafting is preferable to the initial provision.</p>  |
| Dropped Objects Reporting | <p>Following the hearings, the applicant has proposed the following drafting to add to Condition 8 ‘Chemicals, Drilling and Debris’ of all DMLs in version 6 of the draft DCO:</p> <p><i>(8A) All debris arising from the during licensed activities carried out during operation and maintenance of the authorised scheme must be reported to the MMO using the Dropped Object Procedure Form within 24 hours where possible, and in any event within five days of the undertaker becoming aware of the incident. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and the MMO may require any new obstructions associated with the authorised scheme to be removed from the seabed at the undertaker’s expense if reasonable to do so.</i></p> <p>And the following drafting to replace the definition of “debris” in the ‘Interpretation’ section of each DML:</p> <p><i>“debris” means items or equipment of a significant size left on the seabed being lost from survey, construction or maintenance vessels or the structures comprised within the authorised scheme;</i></p> <p>The MMO is content that the above wording addresses its concerns in relation to the reporting of dropped objects throughout the lifetime of the project.</p> |
| Noise Monitoring          | <p>The MMO had discussed this further with the applicant and is now content with the noise monitoring as provided for in all DMLs.</p>   |

|                                |   |
|--------------------------------|---|
| Archaeological OASIS Reporting | <p>Following the October ISHs the MMO has been in discussion with Historic England regarding the absence of a timeframe for OASIS reporting to the National Record of Historic Environment under Condition 11 of the DMLs. It is considered that in order to ensure this condition is enforceable, a timeframe is added for both the reporting itself and notification of this to be provided to the MMO. The applicant has proposed the following wording for inclusion within DMLs:</p> <p>DMLs A1 and B1:<br/><i>11. The undertaker must ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment, by submitting a Historic England OASIS form with a digital copy of the report <u>within 6 months of completion of construction of the authorised scheme. The undertaker must notify the MMO that the OASIS report has been submitted to the National Record of the Historic Environment within two weeks of the submission.</u></i></p> <p>DMLs A2 and B2:<br/><i>11. The undertaker must ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment, by submitting a Historic England OASIS form with a digital copy of the report <u>within 6 months of completion of construction of the authorised scheme. The undertaker must notify the MMO and, where # the report relates to the intertidal area, <del>the undertaker must notify</del> Lincolnshire County Council, that the OASIS report has been submitted to the National Record of the Historic Environment <u>within two weeks of the submission.</u></u></i></p> <p>The MMO is content with the wording proposed and recommends its inclusion within version 6 of the draft DCO.</p> |
|--------------------------------|---|