



ENGLAND

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Giles Scott
DECC, 3 Whitehall Place
London SW1A 2AW

BY EMAIL

19th July 2016

Dear Giles,

Planning Act 2008 and the Infrastructure Planning (Examination Procedure) Rules 2010 - Application by SMart Wind Limited for an Order Granting Development Consent for the Hornsea Offshore Wind Farm (Zone 4) – Project 2

Our ref: 10031157

We welcome the opportunity to comment further on this application, specifically on the draft proposed conditions suggested for the Southern North Sea harbour porpoise pSAC.

We agree that further condition/s are needed, with specific detail of mitigation measures, to ensure that there will be no adverse effect on integrity (AEOI) of the Southern North Sea pSAC. As previously submitted, without further mitigation, we believe that the impact from underwater construction noise would contravene the 'no significant disturbance' conservation objective for the site. We believe that the proposed conditions go some way to delivering this, however we have remaining concerns regarding aspects of the conditions.

We note that there is still no guarantee that any further mitigation measures would be required, as the decision regarding the extent and type of mitigation has been deferred to the MMO. We accept that it is reasonable to determine the exact mitigation needed closer to the time of construction, when more about the project specification, cumulative impacts and viability of mitigation measures are known. However, in reaching a consent decision, the Secretary of State has to be certain that there will be no AEOI of the site. The present condition gives the MMO a very high degree of discretion as to the mitigation needed to be satisfied of no AEOI. We have seen no explanation of what level of impact the Secretary of State believes would constitute an AEOI and therefore no indication of the amount of mitigation required to ensure no AEOI. We have no understanding of the MMO's mechanism to determine what level of mitigation would be required or how they would decide which of the possible measures should be used.

We have further concerns that some of the measures listed may not be technically viable by the time of construction or be feasible in the site. Therefore the Secretary of State should not, at the point of making a consent decision, rely

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on measures (d) – (f). The Secretary of State must be satisfied that, if only measures (a) – (c) were available, these would be sufficient to ensure no AEIO. As we have not seen an opinion of the Secretary of State as to what constitutes an AEIO and what level of mitigation would be required to remove the risk of AEIO, we cannot conclude whether measures (a) – (c) are sufficient.

With specific regard to measure (c), although we agree with its inclusion, we believe that further refinement of the text is needed to ensure its correct interpretation. We understand this measure to mean that the layout could be designed so that fewer turbines are located within the pSAC and/or that turbines are placed at the greatest possible distance from the pSAC boundary. However, given the strict restrictions on turbine layout, due to navigation and safety requirements, we believe this measure should be better described.

In light of the above and the importance of the ‘plan’ and ‘Code’ to ensure no AEIO of the pSAC, we strongly believe that there needs to be an opportunity for public participation in that process. The provision of mitigation will be crucial to preventing adversely affecting the site and there should be full transparency of the process of determining that mitigation. This is especially important given our concerns described above regarding the mechanism for determining the level of mitigation necessary to ensure no AEIO, which would normally take place as part of the Examination of the application. We believe that in order for the plan/Code, and hence the whole Project, to be compliant with the Aarhus Convention, 1998 (Articles 6 and 7)¹, there needs to be an opportunity for public participation both in the determination of the mitigation required for the pSAC and the Marine Mammal Mitigation Protocol (MMMP, as detailed in further deemed marine licence conditions). As previously submitted in the Examination of this application, we set a precedent in the Dogger Teesside A&B wind farm application, whereby consultation with the Royal Society of Wildlife Trusts was included in the corresponding condition for the MMMP. We see no reasonable argument as to why that could not be followed in this application as well. Given the importance of the plan/Code and the MMMP, we believe that consultation with ourselves, or indirectly through a provision for public consultation, should be required.

Finally, we would like to see further clarification of the additional wording suggested for sub paragraph 2(e) of condition 8 of the deemed marine licences. We suggest that it should be ‘injury and/or disturbance’. We also suggest that this is defined as ‘within the meaning of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007, Regulation 39’.

Thank you for your consideration of our submission.

Regards,



Joan Edwards
Head of Living Seas, The Wildlife Trusts

¹ <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>