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Our ref: 190690
Your ref: EN010053



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VIA EMAIL ONLY

Dear Giles,

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

Request for comments from Natural England and the Joint Nature Conservation Committee on the application for the proposed Hornsea Two offshore wind farm – EN010053

Thank you for your letter dated 12 July 2016. The following constitutes the Joint Nature Conservation Committee (JNCC) and Natural England's formal statutory response.

The Secretary of State (SoS) for Energy and Climate Change invited Natural England and JNCC to provide comments on the suggested additional provisions to condition 8 (pre-construction plans and documentation) of each proposed deemed marine licence (DML).

Natural England and JNCC welcome the additional provisions, proposed by the SoS, to condition 8 of each proposed DML. As stated in our previous response Natural England and JNCC note that the conclusion of no adverse effect on integrity for the Southern North Sea (SNS) possible Special Area of Protection (pSAC) can only be reached if the SoS can be 'sure' or make 'certain' that there will be no adverse effects¹. The necessary certainty can potentially be gained if there are a range of viable measures secured in DMLs that could be brought forward either on their own or part of a suite of measures if required. We support the inclusion of all of the mitigation measures referred to in sub-paragraph (7) of the SoS's letter of 12th July 2016. In addition we welcome the acknowledgment that other technologies or methodologies may emerge in future that could be relevant.

Natural England and JNCC, however, advise that details regarding mitigation measures to avoid significant disturbance to the SNS pSAC should be captured in a standalone plan rather than forming part of the Marine Mammal Mitigation Plan (MMMP). In our response, dated 13th May 2016, we recommended the development of a Southern North Sea pSAC Mitigation Strategy, a detailed strategy based on an assessment of the full range of mitigation measures potentially available to avoid significant disturbance and that this should be secured in the DCO, following the conclusions in the appropriate assessment.

Natural England and JNCC agree that any condition involving mitigation to the SNS pSAC should be incorporated to the Plan referred to in condition 8 sub-paragraph (1) and the Code of Construction Practice in condition 8 sub-paragraph (2).

¹ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010053/EN010053-001307-Joint%20Nature%20Conservation%20Bodies%20and%20Natural%20England.pdf>

Natural England and JNCC reiterate our advice provided in our last response², if the SoS agrees that mitigation may be required in order to make certain a conclusion of no adverse effect on integrity and accordingly applies a condition to legally secure that mitigation, in doing so the SoS will need to have a high degree of confidence that mitigation can ultimately be delivered post-consent. Therefore it will be vital that the Applicant accepts stringent requirements to review the need for mitigation and agree with the regulators and advisors a programme of required measures as early as possible, to ensure that they can secure appropriate equipment and installation contracts and ultimately comply with the SoS's condition.

Natural England and JNCC therefore advise that the SoS set out in the Appropriate Assessment the following:

- For each of the mitigation options currently available, or likely to become available in the future, in what way may these result in the avoidance of significant disturbance of the harbour porpoise, and therefore allow the conclusion of 'no adverse effect beyond reasonable scientific doubt'.
- How the SoS envisages mitigation should be agreed and secured in the period between consent (should it be granted) and the commencement of piling.

Natural England and JNCC generally agree with the additional wording proposed by the SoS to sub-paragraph (2)(e) of condition 8 of each proposed DML but would suggest that the wording is replaced with '*injury and disturbance*'. It is important to note that the MMMP, required under sub-paragraph (2)(e) of condition 8, is applicable to all marine mammals. Therefore, any requirement to mitigate impacts to the SNS pSAC for harbour porpoise specifically should be captured in a Southern North Sea pSAC Mitigation Strategy as advised above.

For any queries relating to the content of this letter please contact Emma Veryan at emma.veryan@naturalengland.org.uk or on 0208-0266510.

Yours sincerely,

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² <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010053/EN010053-002002-Hornsea%20NE%20and%20JNCC%20Response.pdf>