



East Anglia Three Case Team
The Planning Inspectorate (by email only)
EastAngliaThree@pins.gsi.gov.uk

Your Reference: EN010056
Our reference: DCO/2013/00014

14 September 2016

Dear Sir or Madam,

Deadline 4 - MMO written summary of oral submissions presented at the East Anglia Three Issue Specific Hearings 7 & 8 September 2016

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 English marine area. Also the MMO is the enforcing body for the Deemed Marine Licence (DML(s)) issued as schedules of any DCO. In our role as interested party and enforcing body the MMO attended the East Anglia Three Offshore Wind Farm Project Issue Specific Hearings on 7 and 8 September 2016. Please see below a brief written summary of the oral representations made by the MMO representatives.

ISSUE SPECIFIC HEARING ON ENVIRONMENTAL MATTERS – 07 September 2016

1. Agenda Item 4 – Marine Mammals

1.1 Marine Mammal Mitigation Protocol (MMMP)

The MMO concurs with Natural England (NE) with regards to the purpose of the MMMP, in that it addresses injury and mortality to marine mammals rather than disturbance. Mitigation methods often employed cause disturbance in order to reduce impacts of injury and/or mortality. Disturbance would be more appropriately addressed in a separate document, such as the proposed In-Principle Southern North Sea pSAC Site Integrity Plan.

With regard to consultation on the MMMP, the MMO would not expect the Secretary of State (SoS) to instruct the MMO who to consult as this would be a decision for the MMO to make at the time of submission. Neither would the MMO seek to consult with the Wildlife Trust as a matter of course. The MMO suggests it would be more appropriate for the applicant to consult with the Wildlife Trust during drafting unless deemed necessary, in which case the Trust should be named on the DML.

With regard to the exceedance of maximum energy level during piling; the applicant is required to report any such occurrences to the MMO. Any report would be investigated by the MMO enforcement team who may then recommend further action, which may include the variation, suspension or revocation of the deemed

marine licence, and/or prosecution resulting in fines and/or imprisonment. It should be noted that exceedance of noise levels is not a common occurrence; however there are several examples of the MMO taking enforcement action over breach of marine licence conditions.

1.2 Need for EPS Licence

The MMO has issued the applicant with a letter dated 8 July 2016 advising that, based on available information and current evidence provided, the MMO would see no reason not to issue an EPS licence under regulation 53 of The Conservation of Habitats and Species Regulations 2010 on submission of an application.

2. **Agenda Item 5 – Habitats Regulations Assessment**

2.1 Impacts on harbour porpoise in the Southern North Sea pSAC

The MMO requests that should any mitigation be required as a result of the HRA to mitigate impacts on the pSAC, then the mitigation is clearly defined, it is effective and deliverable. To this end, it is suggested that the appropriate assessment, should it be required, is provided for comments, prior to finalising and determination of the application.

The MMO generally supports the applicant's approach in respect of the In-Principle Southern North Sea pSAC Site Integrity Plan to the extent that it provides a framework for delivery of mitigation. The MMO has considered the applicant's proposal to include a modified version of the related Hornsea 2 licence condition in the East Anglia THREE deemed marine licence (DML), and will provide further comment at the next deadline. However, the MMO does not agree with the specific wording of the Hornsea 2 licence condition, and is engaging with the applicant to ensure the mitigation included is effective, deliverable and that the condition is appropriately worded.

3. **Agenda Item 6 – Benthic Ecology and other offshore ecology matters**

3.1 Disposal and Orford Inshore rMCZ assessment

A Site Characterisation Report, including detail of the disposal area and associated assessment, was submitted to the MMO by the applicant in September 2015. This report has been approved and the MMO are in discussion with the Centre for Environment and Aquaculture Science (Cefas) with regard to providing a disposal site reference for inclusion in the DML. The MMO will advise the applicant and the Examining Authority (ExA) as soon as the reference number has been assigned.

4. **Agenda Item 8 – Impact of the proposals on commercial fishing concerns**

4.1 The Fisheries Liaison and Coexistence Plan should be used to help address any areas of mitigation that may be required to address any issues that arise. It is not within the MMO's remit to advise individuals on where and when it is safe to fish.

The MMO has recently discussed on-going monitoring of cables with the applicant, and a risk based approach to cable burial assessment which should consider factors such as burial depths, free spans and frequency of trawl, throughout the operational phase of the wind farm.

ISSUE SPECIFIC HEARING ON THE DEVELOPMENT CONSENT ORDER – 08 September 2016

5. **Agenda Item 4 – Revisions and drafting changes arising from participants**

5.1 The MMO has proposed and discussed the following amendments to the DMLs with the applicant:

- Schedules 10 to 15, Part 1, Licensed Marine Activities, 1(1) – Remove ‘CAA’ from definitions as the Civil Aviation Authority is no longer referenced in the DMLs.
- Schedule 1, Part 3, Requirements, 9 – The total amount of scour protection referenced does not match the values stated in Schedules 10, 11, 12 and 13, Part 2, Conditions, 6. The MMO has requested that the applicant confirms these totals and adds clarity into condition 6 regarding the scour protection for the accommodation platform which may be built under Schedule 10 or Schedule 11.
- Schedules 10, 11, 12, 13, 14 and 15, Part 2, Conditions, 13(e) – The ‘*scour protection management and cable protection plan providing details of the need, type, sources, quantity and installation for scour protection*’ should also provide details of cable protection; this is currently not clearly stated.
- Schedules 10, 11, 12, 13, 14 and 15, Part 2, Conditions, 13(g)(iii) – The MMO is in discussion with the applicant regarding the ongoing monitoring of cable burial and how this can best be addressed in the DML. Agreement is expected by submission of the next draft of the DCO.
- Schedules 10, 11, 12, 13, 14 and 15, Part 2, Conditions, 13(h) – The MMO is in discussion with the applicant and Historic England with regard to the wording of archaeological conditions to remove duplication and ensure any condition is enforceable. Agreement is expected by submission of the next draft of the DCO.
- The MMO will provide a disposal site reference for inclusion in Schedules 10, 11, 12, 13, 14 and 15, Part 1, Licensed Marine Activities, 2(d) by Deadline 6.

6. **Agenda Item 5 – Implications for the DCO arising from recently made DCOs**

6.1 The MMO welcomes the applicant’s approach with regards to the Harbour Porpoise pSAC condition in the Hornsea Project 2 DML and the submission of an In-Principle Southern North Sea pSAC Site Integrity Plan. The MMO is currently in discussion with the applicant regarding the specific wording of a condition to secure this in the DML. Agreement is expected by submission of the next draft of the DCO.

7. **Agenda Item 6 – Update on standard navigational conditions**

7.1 The MMO now has agreed standard navigational conditions, as submitted to the Examining Authority on 6 September 2016, with the exception of some minor drafting points. These minor points have been discussed with the applicant, Trinity House (TH) and the Maritime and Coastguard Agency (MCA) and agreement is expected to be reached by submission of the next draft of the DCO. The MMO is working with the applicant to secure the navigational conditions in the DMLs.

Following discussions with TH and MCA, the applicant has been advised that DMLs should refer to local, rather than national, Notice to Mariners (NtM). The definition of terms in Schedules 11 to 15 and related DML conditions should be updated accordingly.

As requested by the Examining Authority, the MMO will submit a letter by Deadline 5 detailing any outstanding points or confirming that drafting has been completed and agreed.

Yours sincerely



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