

From: [Russell Dunham](#)
To: [Norfolk Vanguard](#)
Cc: [Navigation](#)
Subject: Norfolk Vanguard Offshore Wind Farm Project EN010079 - Response on Draft Development Consent Order
Date: 15 January 2019 10:53:43
Attachments: [Letter DCO Norfolk Vanguard.pdf](#)

Dear Sir / Madam

EN: 0010079

Identification No. 20011687

Response on Draft Development Consent Order

Please attached Trinity House's response dated 15 January 2019 in respect of the Norfolk Vanguard Offshore Wind Farm Project

A hard copy of the attached will also be sent by post.

Kind Regards

Russell



Russell Dunham ACII
Legal Advisor
Trinity House, Tower Hill, London EC3N 4DH
e: Russell.dunham@thls.org
t: 0207 481 6915
www.trinityhouse.co.uk

This communication, together with any files or attachments transmitted with it contains information that is confidential and may be subject to legal privilege and is intended solely for the use by the named recipient. If you are not the intended recipient you must not copy, distribute, publish or take any action in reliance on it. If you have received this communication in error, please notify the sender and securely delete it from your computer systems. Trinity House reserves the right to monitor all communications for lawful purposes. The contents of this email are protected under international copyright law. This email originated from the Corporation of Trinity House of Deptford Strond which is incorporated by Royal Charter in England and Wales. The Royal Charter number is RC 000622. The Registered office is Trinity House, Tower Hill, London, EC3N 4DH.

The Corporation of Trinity House, collect and process Personal Data for the Lawful Purpose of fulfilling our responsibilities as the appointed General Lighthouse Authority for our area of responsibility under Section 193 of the Merchant Shipping Act 1995 (as amended).

We understand that our employees, customers and other third parties are entitled to know that their personal data is processed lawfully, within their rights, not used for any purpose unintended by them, and will not accidentally fall into the hands of a third party.

Our policy covering our approach to Data Protection complies with UK law accordingly implemented, including that required by the EU General Data Protection Regulation (GDPR 2016), and can be accessed via our Privacy Notice and Legal Notice listed on our website (www.trinityhouse.co.uk)

<https://www.trinityhouse.co.uk/legal-notices>

This email has been scanned by the Symantec Email Security.cloud service.
For more information please visit <http://www.symanteccloud.com>



TRINITY HOUSE

15 January 2019

The Planning Inspectorate
Temple Quay House
Temple Quay
Bristol
BS1 6PN

Your Ref: EN010079
Identification No. 20011687

The Norfolk Vanguard Offshore Wind Farm

Dear Sir / Madam

Further to the application relating to the Norfolk Vanguard Offshore Wind Farm, we wish to provide our further responses as follows in relation to Deadline 1-

Comments to the draft Development Consent Order (DCO) (APP-005) Ver. 3.01

Schedules 9, 10, 11 and 12

With regard to Schedules 9, 10, 11 and 12 under Article 10(3) "Aids to Navigation" of the draft DCO Trinity House requests that the wording be amended to reflect the following:

*"(3) The undertaker must provide reports to Trinity House on the availability of aids to navigation as set out in the aids to navigation management plan agreed pursuant to **condition 14(1)(k)** using the reporting system provided by Trinity House."*

Schedules 9 & 10

With regard to Article 19(4) and Article 20(2)(d), referring to Norfolk Vanguard Offshore Wind Farm Environmental Statement Chapter 15.1 Vol3 Appendices Sec28.2, Trinity House would suggest that these are redrafted to clarify time frame and report submission requirements. Trinity House would also like to be included in any marine traffic report submissions. In addition, we note that there do not currently appear to be equivalent provisions in Schedule 11 & 12 in this regard in terms of marine traffic reporting, post construction, and we consider that provision might potentially need to be made for this.

Article 38 and Schedule 14 (Arbitration Rules)

Trinity House notes that Statutory Orders conferring powers on undertakers for specific projects or developments, for example Orders under the Transport and Works Act 1992, the Harbours Act 1964 and the Planning Act 2008, typically also include a provision "saving" or protecting the statutory rights and duties of Trinity House in the context of the relevant Order. We note that Article 41 of the draft Norfolk Vanguard Offshore Wind Farm Order is an example of such a provision and provides that "*Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.*" We confirm that we agree with the inclusion of such a saving in the draft DCO.

We further note, however, that Article 38 of the draft DCO makes provision in respect of Arbitration. It provides that any difference under any provision of the DCO, unless otherwise provided for, must be referred to and settled in arbitration in accordance with the rules at Schedule 14 (Arbitration Rules) of the Order. Schedule 14 provides for a detailed procedure, including the adherence to stipulated time periods, whereby statements of claim describing the nature of the difference between the Claimant and the Respondent, including the legal and factual issues can be identified and determined in order for the appointed Arbitrator to make an award.

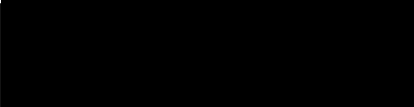
However, Trinity House is concerned that the exercise of its statutory functions to provide for safety of navigation, including the requiring of the marking and lighting of potential obstructions during the construction, operation, maintenance and possible decay of the works authorised by the proposed DCO, might be regarded as being subject to the Arbitration provisions in the DCO. The "saving" provision is clearly intended to preserve Trinity House's ability to exercise its statutory functions and nothing in the DCO should fetter the statutory powers of Trinity House in respect of DCOs and Deemed Marine Licences (DMLs), to give direction in terms of aids to navigation requirements and for the prevention of danger to navigation. In addition, any advisory and consultation function undertaken by Trinity House on safety of navigation matters with the MMO pursuant to the Marine and Coastal Access Act 2009, and which may form part of the DCOs and DMLs, should not be subject to the Arbitration provision of the DCO.

We consider therefore that it is imperative that there is clarity that the saving for Trinity House in Article 41 of the DCO, if adopted, **is not** subject to any other provision in the draft DCO. As the DML issued under the DCO will likely have a legal existence independent of the DCO, we contend that these should similarly remain subject to the "saving" provision under Article 41 of the draft DCO.

We would request that Article 38 and Schedule 14 of the draft DCO is therefore amended to make clear that Trinity House **is not subject to the Arbitration provision**, if this is to be otherwise included.

Please address all correspondence regarding this matter to myself at russell.dunham@thls.org and to Mr Steve Vanstone at navigation.directorate@thls.org

Yours faithfully,



Russell Dunham ACII
Legal & Risk Advisor

Email: Russell.dunham@thls.org