



# Marine Management Organisation

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Norfolk Vanguard Case Team  
Planning Inspectorate  
(Email only)

MMO Reference: DCO/2016/00002  
Planning Inspectorate Reference:  
EN010079  
Identification Number: 20012773

16 January 2019

Dear Sir or Madam,

## **Planning Act 2008, Vattenfall Wind Power Limited, Proposed Norfolk Vanguard Offshore Wind Farm Responses to the Examining Authority's (ExA) First Round of Written Questions**

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. Should consent be granted for the project, the MMO will be responsible for monitoring, compliance and enforcement of Deemed Marine Licence (DML) conditions.

The MMO received a Rule 8 letter containing the ExA's first round of written questions on 19 December 2018 for the proposed Norfolk Vanguard Offshore Wind Farm (Ref EN010079). Please find the MMO's response to the ExA's first round of questions below for your consideration.

In order to ensure clarity, who the question was directed to and the question to which the answer has been provided has been incorporated in this response.

Yours faithfully

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# Marine Management Organisation

EN010079 – Norfolk Vanguard – The Examining Authority’s first written questions and requests for information (ExQ1)  
Issued on 19 December 2018 for submission at Deadline 1.

Ref	Question to:	Question:	MMOs position
1	<b>General</b>		
1.2	Breckland Council, Broadland District Council, Norfolk County Council, North Norfolk District Council, Natural England (NE), Marine Management Organisation (MMO), Environment Agency, Historic England (HistE), Highways England (HE)	Please provide comments on any relevant information contained in the Change Report [AS-009] and Errata document [AS-010], and whether you agree with the conclusions reached by the Applicant. In the event that the amendments are accepted please indicate any consequential amendments which you require to the dDCO.	<p>The MMO agrees with the changes made in the Errata in relation to offshore aspects.</p> <p>The MMO agrees with the conclusions within the change report for benthic ecology, shellfisheries and marine water and sediment quality.</p> <p>For marine coastal processes the MMO advises that the findings in the ES and the Change Report are reasonable from a marine processes perspective, accepting that the impact assessment has been made by expert judgment rather than directly applying site-specific data.</p> <p>The change report states that “the number of foundations to be piled at any one time will not change. The increase in the number of offshore electrical platform piles therefore has no influence</p>



			<p>on the impact range of underwater noise”. This is dependent on whether the 24-hour exposure will increase, i.e. whether there is an increase in the number of piles to be installed per 24 hours. The MMO notes that offshore working hours during construction are anticipated to be 24/7 and the number of piles anticipated to be installed in a 24-hour period was not stated. The MMO recommends the developer should clarify this and whether there is any change to what was estimate in the original application before confirming that the conclusions are correct in relation to underwater noise and fisheries.</p> <p>The MMO identified the following consequential amendments required on the dDCO:</p> <p>1.Schedule 1 Part 1 requirement 8(1)</p> <p><i>8.—(1) In relation to an offshore electrical platform, each foundation using piles must not have— (a) more than <b><u>eighteen</u></b> driven piles; (b) in the case of two or more pile structures, have a pile diameter which is more than <b><u>four</u></b> metres.</i></p> <p>2.Schedule 11 Part 4 1(2)</p>
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			<p>1.—(2) In relation to an offshore electrical platform, each foundation using piles must not have— (a) more than <b><u>eighteen</u></b> driven piles; (b) a pile diameter which is more than <b><u>four</u></b> metres. (c) In relation to an offshore electrical platform, each foundation must not have a seabed footprint area (excluding scour protection) of greater than 7,500 m<sup>2</sup>.</p> <p>3.Schedule 12 Part 4 1(2)</p> <p>1.—(2) In relation to an offshore electrical platform, each foundation using piles must not have— (a) more than <b><u>eighteen</u></b> driven piles; (b) a pile diameter which is more than <b><u>four</u></b> metres. (c) In relation to an offshore electrical platform, each foundation must not have a seabed footprint area (excluding scour protection) of greater than 7,500 m<sup>2</sup>.</p> <p>Further information can be found in document: EN010079- 002201 Change Request and Errata Comments Deadline 1_MMO _final</p>
<b>6</b>	<b>Construction - offshore</b>		
<b>6.5</b>	Applicant and MMO	Please set out the methodology for calculating the amount of inert material of natural origin that is to be disposed within the offshore Order limits, the measures to monitor this disposal, and how this is to be secured in the dDCO.	<p>The maximum volumes of material to be disposed are based on the estimated volumes of material that are requested to be removed, as described by the applicant in the Environmental Statement.</p> <p>Condition 12(5) of Schedule 9 and 10 and Condition 7(5) of schedule 11 and</p>

			<p>12 states that all non-inert material of natural origin must be screened out before disposal at this site.</p> <p>The MMO advises the maximum disposal volumes and footprints for should be clearly set out on the DMLs for each disposal activity. This should be further split out into estimated volumes for each substrate type (e.g. silt, sand, clay, etc.).</p>
6.12	MMO and NE	Do you agree with the contingency estimate of 10% of the total cabling for unburied cables that the Applicant has applied?	<p>The MMO agrees that the estimate of 10% of cables being unburied is a sufficiently precautionary estimate, noting that this does not appear to be supported by site specific data.</p> <p>The MMO does, however, note that this could have implications if all of the estimated 10% of exposures occurred within a designated site. MMO would defer to the SNCBs for further advice on whether this would be acceptable.</p>
<b>7</b>	<b>Offshore archaeology and cultural heritage</b>		
7.4	MMO and Historic England	Are you content that the requirement to submit a 'written scheme of archaeological investigation' four months prior to commencement of licensed activities would provide a sufficient amount of time to review and approve the proposed arrangements?	<p>The MMO considers that a requirement to submit a written scheme of investigation 6 months prior to commencement would be more appropriate. This is consistent with MMO's position set out in its Relevant Representation. It is the MMO's experience that four months to review, consult and respond to any subsequent iterations is not adequate.</p>

7.5	MMO and Historic England	Are you satisfied with the proposed 50m archaeological exclusion zone around A1 sites and magnetic only anomalies?	The MMO defers comments to Historic England.
8	<b>Fishing and navigation</b>		
8.7	Applicant, MMO, MCA and Trinity House	Condition 14(1)(a) of the DMLs contained in Schedules 9 and 10 and Condition 9(1)(a) of the DMLs contained in Schedules 11 and 12 inclusive of the dDCO [APP-005] refers to the MMO, in consultation with Trinity House and the MCA, agreeing a design plan. Are you content with the arbitration procedures in this regard as set out in Article 38 and Schedule 14 of the dDCO?	<p>As set out in its Relevant Representation, the MMO considers the arbitration procedures in this regard as set out in Article 38 and Schedule 14 of the dDCO to be inappropriate and unacceptable therefore recommend to be removed from the DCO and the DMLs.</p> <p>Schedule 14 of the DCO details the process for arbitration, which is supported by Article 38. This proposes that any difference shall be referred to and settled in arbitration in accordance with the rules at Schedule 14. In comparison to previously used articles for arbitration, the process sets out significantly different conditions, which the MMO considers to be inappropriate therefore recommends should be removed from the DCO and the DMLs.</p> <p>It is the MMO's opinion that the proposal goes beyond providing greater relevance. Arbitration provisions tend to follow model clauses and be confined to disputes between the applicant/beneficiary of the DCO and third parties e.g. in relation to rights of</p>

			<p>entry or rights to install/maintain apparatus. The MMO strongly questions the appropriateness of any regulatory decision or determination to be made subject to any form of binding arbitration as set out by Article 38 and Schedule 14. It is the MMO's opinion that Article 38 and Schedule 14 would shift the MMO's decision-making responsibility from the hands of the regulator with primary responsibility for administering the marine licensing regime to an independent arbitrator. This would be contrary to the intention of Parliament set out in the Marine and Coastal Access Act 2009 (MCAA 2009) and would potentially usurp the role of the MMO as a regulator.</p> <p>When the MMO was created by the Parliament to manage marine resources and regulate activities in the marine environment, the Secretary of State delegated functions to the MMO under the MCAA 2009. As both the role of the Secretary of State in determining DCO applications and the role of the MMO as a regulator for activities in the marine environment are recognised by the PA 2008, the responsibility for the DML passes from the Secretary of State to the MMO once granted. Here the MMO is responsible for any post consent enforcement actions, any post consent</p>
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			<p>monitoring, and any variations, suspensions or revocations associated with the DML. In doing so, MMO believes it was not the intention of Parliament to create separate marine licensing regimes following different controls applied to the marine environment. In fact, one of the aims of the PA 2008 is the provision of a 'one stop shop' for applicants seeking consent for a national significant infrastructure project. The new regime allows for the applicant to choose whether to include a DML issued under MCAA within the DCO provision, or apply to the MMO for a standalone licence covering all activities in the marine environment. In any case, it is crucial that consistency is maintained between DMLs granted through the provision of a DCO and licenses issued directly by the MMO independent of the process.</p> <p>As previously stated it is the MMO's opinion that the referral to arbitration in situations where 'difference' may arise, goes against what was intended by Parliament. Looking at the draft DMLs, the MMO feels that the 'difference' to which arbitration would be applied are those situations in which the MMO is required to give further consent or approval. These situations appear to</p>
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			<p>arise when small re-determinations of aspects of the marine license process have to take place. A specific example would be where the applicant proposes changes to the way in which the already authorised activities will be carried out and effects have not been considered as part of the ES. Generally, these are technical determinations and the MMO feels that the MMO is better placed to make technical determinations than an arbitrator appointed under the DCO. Furthermore, in the case of any disagreement which may arise between the applicant and the MMO throughout this process, the existing appeal routes i.e. via the MMOs appeals procedure, by complaint to the Ombudsman, or ultimately via Judicial review should be taken. It is inappropriate for the DCO to apply arbitration to these decisions.</p> <p>The MMO believes that the model clause does not extend the use of arbitration to differences which could arise between the applicant and the Secretary of State or the MMO as a regulator for the granted DML. It is the MMO's view that this was not intended on the proper construction of the PA 2008 and the MCAA 2009.</p> <p>Furthermore, the arbitration schedule as set out in Schedule 14 describes a</p>
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			private process requiring the agreement that all discussions and documentation will be confidential and not disclosed to third parties without written consent. The MMO would like to highlight that the regulatory decisions should be publically available and open to scrutiny. In many cases, members of the public and Non-Governmental Organisations may make representations in relation to post-consent matters. Ordinarily, their views would be considered by the MMO and would be able to follow and challenge the decision making. A private arbitration to resolve post consent disputes would reduce transparency and accountability.
<b>20</b>	<b>Content of the draft DCO (dDCO)</b>		
<b>20.4</b>	Natural England	Unexploded Ordnance (UXO) detonation is detailed within the ES (cf Appendix 5.2 - Norfolk Vanguard Detonation Effects of UXO and Appendix 5.4 - Underwater noise from UXO) but not referenced in the dDCO/DMLs. Explain in detail why you consider that a separate Marine Licence will need to be sought prior to construction, and why it is likely that a European Protected Species (EPS) licence will need to be applied for prior to any UXO detonation works.	The MMO recognises that this question was not directed the MMO, but wishes to note that the applicant has confirmed that it does not intend to seek permission for UXO clearance as part of the DCO application. However, part, 3, condition 2(5) of the transmission assets DMLs states: “In connection with such Works No. 2, 3, 4A and 4B and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised scheme and which fall

			<p>within the scope of the work assessed by the environmental statement and the provisions of this licence.”</p> <p>This implies that any activities associated with these works could be undertaken as long as they have been assessed in the ES, which could be interpreted as including UXO clearance. MMO considers that this wording should be reviewed to make it clear that UXO clearance is not permitted under the DCO application.</p>
<b>20.43</b>	Applicant & MMO	<p>Requirement 13 (2) Mitigation is offered in respect of wind turbine generators that may affect Ministry of Defence surveillance operations. If the Examining Authority concludes that there will be some adverse effects, and the mitigation offered or agreed with MoD is deemed acceptable, is the drafting adequate to allow for such appropriate mitigation that will not necessarily “prevent or remove” in their entirety those effects?</p>	<p>This requirement refers to a DCO requirement rather than DML, therefore presently, compliance with this requirement would not fall within the MMO’s remit.</p> <p>If the ExA seeks to secure any mitigation agreed with the MoD through a condition on the DMLs, the MMO would be happy to review any proposed wording that the applicant provides.</p> <p>This could be included in the following conditions:</p> <p>Condition 1: Design parameters Condition 14 :Pre-construction plans and documentation</p>

20.78	MMO	Supply wording in respect of your proposed amendment to Part 4, condition 9(7) of Schedules 9 to 12 to the dDCO	<p>MMO proposes the following wording:</p> <p><i>The Kingfisher Information Service of Seafish, must be informed of details of the vessel routes, timings and locations relating to the construction of the authorised project or any part thereof by email to kingfisher@seafish.co.uk :-</i></p> <p><i>a) at least 2 weeks prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data, and;</i></p> <p><i>b) as soon as reasonably practicable and no later than 24 hours of completion of all offshore activities.</i></p> <p><i>Confirmation of notification must be provided to the MMO within 5 days.</i></p> <p>This has been supplied to the applicant and the MMO expect this to be updated on the draft DCO for deadline 2.</p>
20.82	MMO	Clarify your reference to Condition 13(2) and “the survey” in connection with your suggestion that where the cable route crosses the Haisborough, Hammond and Winterton SAC, the survey should extend outside the Order Limits to ensure any reef known to be present has been unaffected by the works.	<p>The MMO has discussed this point with the applicant. The applicant provided a response to MMO's comment, presented within the appendix of the SoCG (comment OS247) which stated: 'The In Principle Monitoring Plan (document 8.12) refers to the survey including a buffer from the cable installation works. Therefore, the survey would stay within the order limits if the cable route is towards the middle of the</p>

			<p>corridor or may extend out of the order limits if the route is towards the edge of the corridor. The In Principle Monitoring Plan provides a framework to agree a buffer with MMO prior to construction, based on the final cable positioning.'</p> <p>The MMO is satisfied that the buffer area can be agreed as part of the pre-construction monitoring plans.</p> <p>The MMO has no further comment at this stage.</p>
<b>20.98</b>	MMO	Justify your proposed amendment to Part 4, Condition 19(5): "In the event that driven or part-driven pile foundations are proposed to be used, a marine mammal mitigation protocol (MMMP), including details of soft start procedures with specified duration periods following current best practice as advised by the relevant statutory nature conservation bodies."	The MMO advised in its Relevant Representation that, as a key mitigation, soft start should be included in condition 19(5). Following further discussion with the applicant, the MMO is satisfied with the wording originally proposed by the applicant, on the basis that soft start procedures with specified duration periods will be included in the In Principle Monitoring plan for consideration as part of the Marine Mammal Mitigation Protocol. This is presented within the appendix of the SoCG (comment OS250).
<b>23</b>	<b>Habitats Regulations Assessment</b>		
<b>23.11</b>	MMO	Can you provide examples as to how a strategic approach to the scheduling of pile driving can best be delivered?	The MMO recognises that the review of consents has not been concluded for the Southern North Sea cSAC, and that the outcome of this review of consents may influence how any mitigation is defined

			<p>and secured on projects coming forward.</p> <p>The MMO recognises that at present, there is no mechanism for a regulator to control the timings of activities that generate underwater noise on a strategic level.</p> <p>The MMO considers the inclusion of a Site Integrity plan could be used to submit to the MMO to demonstrate how the in-combination underwater noise impacts of a project will be mitigation to ensure that it will not cause an adverse effect. The MMO believes that that this will require accurate timetables based on up to date construction information from all projects that generate underwater noise. The MMO considers that it may be possible for developers to cooperate in order to present sufficient information in the SIP to demonstrate how the construction schedules, in combination with each other, will not result in adverse effect. Please also see response ExA question 23.22,</p>
<b>23.22</b>	NE, MMO, TWT and WDC	The Applicant has proposed a number of mitigation measures within the draft Marine Mammal Mitigation Protocol [APP-037], and the Draft SNS cSAC Site Integrity Plan [APP-041], and it has also proposed that a Marine Pollution Contingency Plan be produced post-	The MMO defers to Natural England for conservation advice, however MMO can comment in respect of the proposed conditions and whether it considers that mitigation is adequately defined and secured on the DML.

		consent. The successful delivery of these plans is relied upon for concluding no AEOI, and yet there remains some doubt about the nature and efficacy of some of the proposed measures. Therefore can you please confirm to what extent you are satisfied that the measures referred to in these plans are sufficiently well-defined and deliverable?	As currently presented, the MMO is not satisfied that the In principle Site Integrity Plan adequately addresses in-combination effects, and that the proposed mitigation of scheduling of piling operations as currently presented in the IPSIP, cannot currently be delivered as there is no mechanism in place for a regulator to control the scheduling of piling operations. The MMO is continuing to discuss with the applicant through the SoCG.
<b>23.24</b>	NE, MMO and WDC	In regard to the Applicant's proposed MMMP for UXO clearance, please indicate the degree of confidence you have in the efficacy of mitigation measures that are yet to be defined.	UXO clearance is no longer part of the DCO application, and therefore the MMO has no comment to make.
<b>23.47</b>	MMO, NE, WDC, TWT	In light of the information contained in the Change Report [AS-009], and in particular the amended proposal for up to 36 piles in total for the two offshore electrical platforms and an increase in the diameter of the pin piles from 3m to 5m, please confirm whether you concur with the findings contained in the ES and the Change Report.	<p>The MMO agrees with the conclusions within the change report for benthic ecology, shellfisheries and marine water and sediment quality.</p> <p>For marine coastal processes the MMO can advise the findings in the ES and the Change Report are reasonable from a marine process perspective, accepting that the impact assessment has been made by expert judgment rather than directly applying site-specific data.</p> <p>The change report states that "the number of foundations to be piled at any</p>

			<p>one time will not change. The increase in the number of offshore electrical platform piles therefore has no influence on the impact range of underwater noise". This is dependent on whether the 24-hour exposure will increase, i.e. whether there is an increase in the number of piles to be installed per 24 hours. The MMO notes from the ES that offshore working hours during construction are anticipated to be 24/7 and the number of piles anticipated to be installed in a 24-hour period was not stated. The MMO recommend the developer should clarify this and whether there is any change from what was estimated in the original application in relation to underwater noise and fisheries.</p> <p>The MMO defers to the advice of the SNCBs in regards to the implications for HRA.</p> <p>Further information can be found in document: EN010079- 002201 Change Request and Errata Comments Deadline 1_MMO _final.</p>
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