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Cc: [Gibson, Alan \(NE\)](#)
Subject: Norfolk Vanguard Deadline 4 MMO response
Date: 13 March 2019 08:53:31
Attachments: [EN010079 Covering Letter Deadline 4 MMO Final.pdf](#)
[EN010079-002583 Questions by ExA Deadline 4 MMO Final.pdf](#)

Dear Norfolk Vanguard Project Team,

Please find enclosed the Marine Management Organisation's (MMO) submission for Deadline 4, comprising:

1. Cover Letter
2. MMO's response to the Examining Authority's (ExA) questions

I would be grateful if you could respond to this e-mail confirming safe receipt.

Kind Regards
Rebecca

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Norfolk Vanguard Case Team
Planning Inspectorate
(Email only)

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

13 March 2019

Dear Sir or Madam,

Planning Act 2008, Vattenfall Wind Power Limited, Proposed Norfolk Vanguard Offshore Wind Farm: Deadline 4 Response

On 26 June 2018, the Marine Management Organisation (the “MMO”) received notice under section 56 of the Planning Act 2008 (the “PA 2008”) that the Planning Inspectorate (“PINS”) had accepted an application made by Norfolk Vanguard Limited (the “Applicant”) for determination of a development consent order for the construction, maintenance and operation of the proposed Norfolk Vanguard Offshore Wind Farm (the “DCO Application”) (MMO ref: DCO/2016/00002; PINS ref: EN010079).

The DCO Application seeks authorisation for the construction, operation and maintenance of Norfolk Vanguard offshore wind farm, comprising of up to 200 wind turbine generators together with associated onshore and offshore infrastructure and all associated development (“the “Project”).

The MMO submits the following for Deadline 4:

- 1. Response to the Action points from Issue Specific Hearing (ISH) 2 – Offshore Environmental Matters 6 February 2019**
- 2. Response to the Action points from Issue Specific Hearing (ISH) 2 – Draft Development Consent Order 7 February 2019**
- 3. Written Representation**
- 4. Responses to the Examining Authority’s second round of written questions**
- 5. Notification of wish to make oral representations at the Issue Specific Hearing on Environmental matters**
- 6. Notification of wish to make oral representations at the Issue Specific Hearing on the draft Development Consent Order (DCO)**

The MMO has entered into a Statement of Common Ground (SoCG) with the applicant that will be submitted by the applicant on the MMO’s behalf at written deadline 4.

Yours faithfully



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1. Response to the Action points from Issue Specific Hearing (ISH) 2 – Offshore Environmental Matters 6 February 2019

Produce note on discussions regarding the consideration of cumulative impacts on marine mammals from the potential construction of multiple projects

- 1.1 The MMO has recently received reports on offshore wind farm developments under construction which suggested observed noise levels were greater than predicted. The MMO is aware of multiple future potential offshore windfarm projects at different stages of consent, this could lead to an overlap in construction and in combination effects, if projects overlap this will need to be addressed at that point in time.
- 1.2 The MMO is in discussion with the Department for Business, Energy and Industrial Strategy (BEIS) relating to the review of consents and the regulation of the cumulative impacts. The outcome of this review has not been decided.
- 1.3 The MMO is currently part of a newly formed regulator group to discuss the effective management of proposed underwater noise threshold limits within the North Sea. The regulators involved are the Ministry of Defence (MOD), Offshore Petroleum Regulator for Environment and Decommissioning (OPRED), Natural Resources Wales and Marine Scotland and BEIS. As this is a newly formed group it is not expected that a final noise management mechanism will be in place before or during the Norfolk Vanguard examination process. However, by working with this group the MMO anticipates that there will be an agreed mechanism prior to the construction of Vanguard.
- 1.4 The MMO has enforcement powers primarily under 2 mechanisms:
 - 1.4.1 Notice to stop activity causing serious harm etc. ('Stop' notice)

A stop notice in accordance with section 102 of the Marine and Coastal Access Act 2009 (MCAA 2009) can be issued if the continuation of a licensable activity is causing, or is likely to cause serious harm to the environment, serious harm to human health, or serious interference with legitimate uses of the sea.
 - 1.4.2 Suspension of the licence

A licensing authority may by notice vary, suspend, or revoke a licence granted if it appears to the authority that there has been a breach of any of its provisions.
- 1.5 To ensure that the MMO would not need to use these enforcement powers at a late stage within the development phase. The MMO envisage that once the construction plans have been developed these would be assessed in combination with other projects to ensure there is no breach of the proposed thresholds before the submission of the construction plans to the MMO. This would be beneficial to the applicant to mitigate any risk to their planned construction schedule.
- 1.6 The MMO notes that the risk is to the applicant and that there is, therefore, a driver for them to work with the other consented projects to ensure in combination impacts do not constitute an adverse effect on integrity of the Southern North Sea Special Area of Conservation.

2. Response to the Action points from Issue Specific Hearing (ISH) 2 – Draft Development Consent Order 7 February 2019

Review of specifying the number of offshore cable crossings

- 2.1 The MMO requests all licensed activities should be limited to the maximum parameters assessed within the Environmental statement (ES), and these should be clearly defined on the Deemed Marine Licence's (DML). This is to ensure proper scrutiny and ensures accountable, transparent and public due process is applied. This approach is consistent with the process that is followed for standard marine licences granted by MMO.
- 2.2 The MMO understand the applicant has included the cable crossings in the total cable protection within the dDCOV2. The MMO do not feel that this is detailed enough to be able to adhere with comment 2.1. The specifics relating to the deployment of cable protection is an important factor and this needs to be acknowledged in the licence.
- 2.3 If the applicant does not propose to exceed any of the maximum parameters assessed in the ES, this will result in no additional burden for the applicant from the inclusion of these parameters on the face of the DMLs, whilst providing greater clarity on what is permitted in order for the MMO to ensure compliance.
- 2.4 If the applicant does wish to undertake activities that are out with the maximum parameters assessed and considered under the original licence, the appropriate process for dealing with this would be through a request to vary the DML, whereby the MMO can evaluate whether the proposed changes can be permitted.

3. Written Representation

3.1 Arbitration

3.1.1 In addition to the comments made in the MMO deadline 3 response (Document ref: REP3-046) The MMO note that the arguments raised within this response were accepted in the Tilbury 2 determination, with a decision being made such that the arbitration clause didn't apply to any approval required under the DMLs.

3.1.2 The ExA's Recommendation Report (page 233) to the Secretary of State (SoS) found in favour of the MMO for reasons stated in its submissions, noting:

"...The MMO stated that it strongly opposed the inclusion of such a provision, based on its statutory role in enforcing the DML. According to the MMO, the intention of the PA2008 was for DMLs granted as part of a DCO in effect to operate as a marine licence granted under the MCCA2009. There was nothing to suggest that after having obtained a licence it should be treated any differently from any other marine licence granted by the MMO (as the body delegated to do so by the SoS under the MACAA).

Having considered the arguments of the Applicant and the MMO, the Panel finds in favour of the MMO in this matter for the reasons stated in the paragraph above.

Accordingly, the Panel recommends that paragraph 27 is deleted from the DML at Schedule 9 of the draft DCO."

3.1.3 The MMO would also point the applicant to the recent Hornsea project 3 ExA schedules of changes to DCO. The ExA have amended Article 37 to exclude the MMO from the arbitration process, noting:

"...Any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration."

3.1.4 The MMO note that there has been reference to the Triton Knoll 2013 decision. The MMO have reviewed the Triton Knoll Issue Specific Hearing 8.11.12 and would like to

highlight the Hearing recording Part 2 from approx. 7 Minutes 50 seconds. In relation to the arbitration concerns raised by Natural England.

“As far as the MMO is concerned, we will probably come on to this later with their letter, but it seems to me that the way the way DCO is drafted is to make it clear that the deemed licence is drafted under the 2009 Act, the Marine and Coastal Access Act, and therefore by implications the provisions of that act apply in respect of the marine licence, and that would apply to resolution of disputes and to such things as splitting orders and splitting licences.”

The MMO believes that this shows that the applicant in Triton Knoll accepted that the DMLs were not believed to be included within the arbitration provision. This is noted as the MMO’s position within the Triton Knoll examiners recommendation report (comment 5.11.20).

3.2 Outline Fisheries Liaison and Coexistence Plan

3.2.1 The MMO would like it to be highlighted that ‘the MMO will not act as arbitrator and will not be involved in discussions on the need for, or amount of, compensation being issued’. This needs to be made clear within the Outline Fisheries Liaison and Coexistence Plan.

3.3 Schedule 9 and 10, Part 4, Condition 19(3)

3.3.1 To maintain consistency across offshore wind farm DCO’s the MMO proposed amendments to condition 19(3) in the relevant representation comment 2.22, this section is to provide additional information and wording on the amendments required.

3.3.2 As currently drafted, the condition requires the Undertaker to submit a noise monitoring report six weeks following the installation of the first four piled foundations. This could potentially allow for six weeks of piling to be undertaken that exceeds the predicted noise values before the report is submitted to the MMO. The MMO may then require review and consultation of the report before it can determine that observed noise was in fact greater than predicted. The MMO seeks to ensure that it is notified as soon as possible of any issues that indicate noise levels may be greater than predicted in order to agree any potential additional monitoring or mitigation measures in a timely manner. Similar recommendations have been made for the Thanet Extension and Hornsea 3 OWF draft DCO representations. Indeed, the ExA’s schedule of changes to the dDCO for Hornsea 3 issued on 26 February 2019 includes the amended condition wording as follows:

“(4) The results of the initial noise measurements monitored in accordance with condition 18(2)(a) must be provided to the MMO within six weeks of the installation of the first four piled foundations of each piled foundation type. The assessment of this report by the MMO will determine whether any further noise monitoring is required. If, in the opinion of the MMO in consultation with Natural England, the assessment shows significantly different impact to those assessed in the environmental statement or failures in mitigation, all piling activity must cease until an update to the MMMP and further monitoring requirements have been agreed.”

With the amendment being justified “In the interests of protecting the integrity of the Site of Community Interest.”

3.3.3 The MMO has recently received reports on offshore wind farm developments under construction which suggested observed noise levels were greater than predicted, calling into question whether the mitigation secured in the Marine Mammal Mitigation

Protocol (MMMP) was fit for purpose. Should underwater noise exceed the modelled levels in the ES, the impact ranges could be much greater than predicted, and could be an injury risk to marine mammals and other species, and therefore the assumptions on which the mitigation is secured within the MMMP may no longer be correct. The developer could potentially be committing an offence if piling continued without securing a European Protected Species (EPS) licence.

- 3.3.4 Without the clarification set out in the revised wording stated in comment 3.3.2 within this document the MMO's power is limited to instructing on the need for additional monitoring only, with no remit to instruct cessation of piling whilst this is explored. The MMO does have the power to stop works if it is determined there is a danger to human health or the environment. However, this broader instruction as currently defined would require the cessation of all licensable activities, not piling only, and therefore would not allow the developer to continue to undertake other construction activities that do not generate significant levels of impulsive noise whilst the mitigation is reviewed.
- 3.3.5 In the event that the monitoring reports indicate the failure of mitigation measures as set out in the MMMP, the proposed amendment would require the undertaker to cease piling until further appropriate mitigation actions have been agreed which would mitigate noise impacts sufficiently for piling to recommence. The MMO consider that this recommendation is justified, considering the location of the project in proximity to the Southern North Sea candidate Special Area of Conservation (cSAC) and the potential impacts of the project on harbour porpoise as a qualifying feature of the cSAC and an EPS.
- 3.3.6 The MMO also would also expect the developer to voluntarily cease piling should they become aware of any potential threat to the environment prior to a decision being reached by the MMO and its advisors.

4. Responses to the ExA's Written Questions

Please find the table including the MMOs response to the ExA Written Questions in the following document EN010079-002583 Questions by ExA Deadline 4_MMO_Final, enclosed with this letter.

5. Notification of wish to make oral representations at the Issue Specific Hearing on Environmental matters

The MMO wishes to make oral representation at the Issue Specific hearing on Environmental Matters on 27 March 2019 on the following topics:

Marine Processes
Benthic Ecology
Fish and Shellfish
Marine Mammals and Underwater Noise
In Principle Monitoring Plan

6. Notification of wish to make oral representations at the Issue Specific Hearing on the draft DCO

The MMO wish to make oral representation at the Issue Specific hearing on the draft DCO on 28 March 2019 on the following topics:

Article 36 – Arbitration
Timeframes for submission of documents
Cooperation between DMLs
Schedules 9, 10, 11 and Schedule 12



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Norfolk Vanguard Case Team
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MMO Reference: DCO/2016/00002
Planning Inspectorate Reference:
EN010079
Identification Number: 20012773

13 March 2019

Dear Sir or Madam,

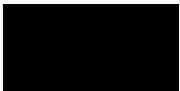
Planning Act 2008, Vattenfall Wind Power Limited, Proposed Norfolk Vanguard Offshore Wind Farm Responses to the Examining Authority's (ExA) Second Round of Written Questions

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 the ExA's second round of written questions on 27 February 2019 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 second written questions and requests for information (ExQ1)
 Issued on 27 February 2019 for submission at Deadline 4.

Ref	Question to:	Question:	MMOs position
1	General		
1.7	NE, RSPB, MMO, TWT, WDC	Are you satisfied that long-term ecological monitoring during the operational phase of the project is adequately secured in the dDCO?	The MMO is satisfied that the conditions within the dDCO adequately secure the long-term ecological monitoring subject to the review and agreement of the updated In Principle Monitoring Plan (IPMP).
4	Ecology offshore – marine mammals		
4.9	Applicant, NE, MMO, TWT, WDC	At the offshore environmental matters Issue Specific Hearing 2 (ISH2) [EV-009 and EV-010] the Applicant stated that other offshore construction techniques, such as vibration or downward impulses, were being considered. At present Condition 14(f) of Schedules 9 and 10 and Condition 9(f) of Schedules 11 and 12 of the dDCO only requires the submission of a Marine Mammal Mitigation Protocol (MMMP) in the event that driven or part-driven piles are proposed to be used. Furthermore, Conditions 14(m) of Schedules 9 and 10 and 9(l) of Schedules 11 and 12 contain similar wording in relation to the submission of a Site	The MMO acknowledge the observation of the ExA on the additional construction techniques and changes within the dDCO. The MMMP is a protocol for the mitigation of potential injury or mortality of marine mammals caused by underwater noise impacts arising from percussion pile driving during Norfolk Vanguard construction. The MMO believe that if alternative offshore construction techniques are used this would not fit with the purpose of the document as it is percussive piling is the only technique assessed which could



		Integrity Plan (SIP). In the event that the Applicant proposed to utilise any other construction techniques, instead of driven or part-driven piling, do you consider that a MMMP and SIP should still be submitted? Please justify your answer.	<p>cause injury or mortality through noise. Vibration piling and downward impulses do not give off significant noise impacts.</p> <p>The purpose of the SIP is to set out the approach for Norfolk Vanguard Limited to deliver any potential mitigation measures during construction, to ensure the avoidance of significant disturbance of harbour porpoise in relation to the SNS cSAC site Conservation Objectives. The SIP provides a mechanism for the development of technology to be included within the document. The MMO will defer to the advice of Natural England as to if this mitigation should be needed for any other techniques of foundation installation.</p>
4.11	Applicant, MMO, NE, WDC, TWT	A maximum hammer energy of 5,000kJ has now been specified in condition 14(1)(n) of Schedules 9 and 10 of the dDCO [REP2-017]. However, please comment on whether or not there would be any benefits in having a range of maximum hammer energies being specified in the dDCO, for example the 2,700kJ figure that relates to the worst-case scenario for a 9MW pin pile structure?	<p>The MMO would agree that there would be a benefit to have a range of hammer energies within the DCO, this would highlight between the maximum hammer energy for each design parameter.</p> <p>This would also highlight the need for a variation if any increase to the hammer energy for each worst case scenario was required.</p>
7	Offshore archaeology and cultural heritage		
7.6	MMO and Historic England	Please provide an update on your discussions in relation to the wording of Condition 15(2) of the DML (Schedule 9-	The MMO are in agreement with Historic England that the revised timescales

		10) and Condition 10(2) of the Transmission DMLs (Schedules 11-12).	<p>should increase from 4 months to 6 months.</p> <p>The MMO believe this is for all documentation including condition 14 (1) (schedule 9-10) and condition 9 (1) (Schedules 11-12) and not just the Written Scheme of Investigation.</p> <p>The MMO is still in discussion with the applicant through the SoCG as the applicant's position has not changed.</p>
20	Content of the draft DCO (dDCO)		
20.122	MMO	<p>Considering the Applicant's response at [REP3-005] to the question whether total disposal volumes could be broken down into different disposal activities, and the number of cable crossings to be stated in the Deemed Marine Licence (DML), do you maintain that further changes are required to the dDCO? If so please explain why briefly, with particular reference, in the case of SAC specific volumes, to the stated need to ensure the amount of disposal and works within the SAC remains within those assessed and approved.</p>	<p>The MMO does maintain that further changes are required within the dDCO.</p> <p>Disposal activities – the MMO understand that the applicant does not have any further details to break down the figures further at this stage.</p> <p>The MMO agrees that the relocation of boulders should not be treated as a disposal activity where the boulders were not brought to the surface prior to relocation. However, if this is to be the case then the applicant is limited to techniques which do not classify as disposal. If this changes following consent then a new marine licence for disposal will be required.</p> <p>Cable crossings - The MMO requests all licensed activities should be limited to the maximum parameters assessed</p>

			<p>within the ES, and these should be clearly defined on the DMLs. This is to ensure proper scrutiny and ensures accountable, transparent and public due process is applied. This approach is consistent with the process that is followed for standard marine licences granted by MMO.</p> <p>The MMO understand the applicant has included the cable crossings in the total cable protection within the dDCOV2. The MMO do not feel that this is detailed enough to be able to adhere with comment 2.1. The specifics relating to the deployment of cable protection is an important factor and this needs to be acknowledged in the licence.</p> <p>If the applicant does not propose to exceed any of the maximum parameters assessed in the ES, this will result in no additional burden for the applicant from the inclusion of these parameters on the face of the DMLs, whilst providing greater clarity on what is permitted in order for the MMO to ensure compliance.</p> <p>If the applicant does wish to undertake activities that are out with the maximum parameters assessed and considered under the original licence, the appropriate process for dealing with this would be through a request to vary the DML, whereby the MMO can evaluate</p>
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			whether the proposed changes can be permitted.
20.137	MMO	In relation to the transfer of benefit of the DMLs please comment on the Applicant's response in ISH3 to the issue of whether co-operation should be the subject of a condition in the DMLs, on the assumption that the approach to co-operation will deal with confidential or sensitive commercial arrangements between the parties.	<p>The MMO understands that cooperation during transfer of benefit would be in both operators' interests to ensure that there is a clear set of principles outlined between the parties.</p> <p>However, as described these are commercial agreements and not subject to any regulatory oversight. As these transfers would move licenced activities from one undertaker to another, there could be further consequences not considered within the commercial aspects. For example impacts to ongoing monitoring or ongoing agreed mitigation plans.</p>
23	Habitats Regulations Assessment		
23.101	MMO	Please comment on any implications of the Southern North Sea SCI: Review of Consents for harbour porpoise, including any additional or amended conditions you would wish to see included in the dDCO.	<p>The MMO defer to Natural England to discuss any implications of the review of consents relating to HRA.</p> <p>The MMO believe the current conditions are appropriate however the MMO notes the ongoing Review of Consents, conducted by BEIS, has produced some standard wording for this condition which the MMO would recommend including for consistency.</p> <p>The MMO considers that the SIP provides a mechanism of control to</p>

			ensure unacceptable in-combination impacts do not occur.
23.102	Applicant, NE, MMO, TWT and WDC	A conclusion of no AEOI on the SNS cSAC relies on appropriate mitigation measures being secured in the final Site Integrity Plan and Marine Mammal Mitigation Protocol. However, these mitigation measures are not yet specified and there remains some doubt over how effective certain measures, such as soft start piling, actually are. Please comment further on this matter.	<p>The MMO would defer to Natural England on the effectiveness of the mitigation.</p> <p>The MMO would note that the Site Integrity Plan and Marine Mammal Mitigation Protocol provide the mechanism to incorporate further technological advances and amend the appropriate mitigation at the stage of construction.</p>