

From: [Helen Croxson](#)
To: ["Norfolk Vanguard"](#)
Cc: [Peter Lowson](#); [Nick Salter](#); [Richard Bell](#)
Subject: Re: Norfolk Vanguard Project - EN010079 Deadline 7 Submission
Date: 02 May 2019 16:05:01
Attachments: [image003.png](#)
[Norfolk Vanguard Letter to ExA 2nd May.pdf](#)

Dear Norfolk Vanguard ExA,

Please find attached written submission from MCA for the ExA's consideration at deadline 7.

Kind regards

Helen



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Please note I currently work Tuesdays, Wednesdays and Thursdays.

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Your ref: 20012803
Our ref: Norfolk Vanguard
Offshore Windfarm Project
(EN010079)

2nd May 2019

Dear Sir/Madam

Norfolk Vanguard Offshore Windfarm Project (EN010079)
Deadline 7 – MCA Written Submission on the draft DCO

The draft Development Consent Order (DCO) for the proposed Norfolk Vanguard Offshore Windfarm has now been considered by both MCA and the Department for Transport's legal department, and we would like to take this opportunity to provide our comments on the current draft DCO and Deemed Marine Licence (DML), if this is acceptable to the Examining Authority. This is the only outstanding aspect (under discussion) in the Statement of Common Ground between the applicant and MCA.

The MCA's remit for offshore renewable energy development is to ensure that safety of navigation is preserved, and our search and rescue capability is maintained, whilst progress is made towards government targets for renewable energy. This includes our obligations under The United Nations Convention on the Law of the Sea.

Development Consent Order

1. Norfolk Vanguard: Arbitration (Article 38)

Article 38 currently reads:

Arbitration

38.—(1) Subject to Article 41 (saving provisions for Trinity House), any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled in arbitration in accordance with the rules at Schedule 14 of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

~~(2) Where the referral to arbitration under paragraph (1) relates to a difference with the Secretary of State, in the event that the parties cannot agree upon a single arbitrator within the specified time period stipulated in paragraph (1), either party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator. 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) Should the Secretary of State fail to make an appointment under paragraph (1) within 14 days of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

The MCA endorses the MMO's approach in regards Arbitration as the MMO is the relevant regulator, and licensing and consent body. The significant point to note is that arbitration is typically limited to disputes between the scheme promoter and 3rd parties (e.g. regarding rights of entry or to install apparatus). If the MMO consider that clause 38 and Schedule 14 as drafted by the applicant creates an avenue to oust the MMO's decision making responsibilities in regards DMLs (as set out in the MMOs representations dated 14th September 2018) then the clause should be amended to prevent this. Our suggested amendment to the wording in Article 38 (2) would be as follows:

38(2) "For the avoidance of doubt, any matter which the consent or approval of the Secretary of State is required, including any consent or approval delegated to or taken by the MMO is not to be subject to arbitration."

2. Norfolk Vanguard Pre-construction plans and documentation – Article 15 (5)

Article 15 (5) currently reads:

(5) Save in respect of any plan which secures mitigation to avoid adversely affecting the integrity of a relevant site, where the MMO fails to determine the application for approval under condition 14 within the period referred to in sub-paragraph (4), the programme, statement, plan, protocol or scheme is deemed to be approved by the MMO

The MCA would have significant concerns should this condition remain in its current format with regards to deemed approval. The MCA has discussed this with the MMO and currently supports the MMOs position with regards to this condition.

3. Pre-construction plans and documentation - Article 16

The MCA requests that the following paragraph:

(7) ~~(4)~~ No part of the authorised scheme may commence until the MMO, in consultation with the MCA, has given written approval of an Emergency Response Co-operation Plan (ERCoP) which includes full details of the plan for emergency, response and co-operation for the construction, operation and decommissioning phases of that part of the authorised scheme in accordance with the MCA recommendations contained within MGN543 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues" and has confirmed in writing that the undertaker has taken

into account and, so far as is applicable to that part of the authorised scheme, adequately addressed MCA recommendations contained within MGN543 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues" and its annexes. The ERCoP and associated guidance and requirements must be implemented as approved, unless otherwise agreed in writing by the MMO in consultation with the MCA. The document must be reviewed at least annually or whenever changes are identified, whichever is sooner, and any proposed changes must be submitted to the MMO in writing for approval, in consultation with MCA

Is replaced with:

No part of the authorised project may commence until the MMO, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that stage of the project, adequately addressed all MCA recommendations as appropriate to the authorised project contained within MGN543 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues" and its annexes.

Although the ERCoP is an important document which MCA must approve, it is a working document throughout the lifetime of the development. The purpose of this revision is to ensure the applicant discusses the requirements of MGN 543, which includes a SAR checklist to demonstrate all aspects have been addressed including the ERCoP.

The MCA would expect to see the following pre-construction plans submitted as part of the DML, which at present we believe are missing from the current draft:

Lighting and Marking plan
Operation and Maintenance Programme

4. Notifications and inspections Article 9

Clause (12) currently includes the following:

(11) In case of exposure of cables on or above the seabed, the undertaker must within five days following the receipt by the undertaker of the final survey report from the periodic burial survey, notify mariners by issuing a notice to mariners and by informing Kingfisher Information Service of the location and extent of exposure.

The MCA would like to ensure that it receives notification of any cable exposure. In addition, the MCA would like to add that the undertaker must, within three days following identification of a cable exposure, notify mariners by issuing a notice to mariners and by informing Kingfisher Information Service of the location and extent of exposure.

The MCA has provided the applicant with further minor tweaks to refer to MCA where appropriate and to update contact telephone numbers.

Yours faithfully,

Helen Croxson
OREI Advisor
Maritime and Coastguard Agency