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EN010079
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Dear Gareth Leigh,

Planning Act 2008, Vattenfall Wind Power Limited, Proposed Norfolk Vanguard Offshore Wind Farm

MMO comments on responses from the request for information by the Secretary of State's letter date 6 December 2019

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 158 wind turbine generators together with associated onshore and offshore infrastructure and all associated development ("the "Project").

The Secretary of State (SoS) requested further information under Section 107 of the PA 2008 on 6 December 2019. Responses were received by the 28 February 2020. This document comprises the MMO's comments in respect of the DCO Application on these responses.

This written representation is submitted without prejudice to any future representation the MMO may make about the DCO Application. This representation is also submitted without prejudice to any decision the MMO may make on any associated application for consent, permission, approval or any other type of authorisation submitted to the MMO either for the works in the marine area or for any other authorisation relevant to the proposed development.

Yours sincerely



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1. General Comments

- 1.1 The MMO would like to thank the Applicant for the continuous consultation and including the MMO in all discussions relating to the request for further information by the Secretary of State (SoS) (dated 6 December 2019).
- 1.2 The MMO believes the positive, open and constructive nature of these discussions to address potential issues has enabled all parties to work efficiently and effectively in producing the final response documents.

2. Ornithology

- 2.1 The MMO support Natural England's (NE) role as the Statutory Nature Conservation Body (SNCB) within the planning process for National Significant Infrastructure Projects (NSIP). The MMO defers to NE in relation to Habitats Regulations Assessment and any relevant mitigation and compensation for features within both the Flamborough and Filey Coast Special Protection Area (SPA) and the Alde-Ore Estuary SPA,
- 2.2 The MMO understands that a commitment to increase base turbine heights has also been welcomed by NE as a measure with the potential to reduce impacts on sea bird populations.
- 2.3 The MMO has comprised comments on the updated draft Development Consent Order (dDCO) in section 7.

3. Haisborough, Hammond and Winterton (HHW) Special Areas of Conservation (SAC) SIP and HHW SAC Cable Specification, Installation and Monitoring Plan (CSIMP)

- 3.1 The MMO has reviewed both the HHW Site integrity Plan (SIP) and the new proposal by the applicant of an alternative condition and the document HHW SAC CSIMP. The MMO welcomes the Applicant's continued development to try and alleviate the MMO concerns.
- 3.2 The MMO support NE's role as the SNCB within the planning process for NSIPs. The MMO defers to NE in relation to Habitats Regulations Assessment and any relevant mitigation and compensation for features within the HHW SAC.
- 3.3 The MMO has previously raised concerns on the use of the HHW SAC SIP as a mechanism due to the nature of the Grampian condition. The MMO believes the CSIMP captures and secures all the required information and mitigation, however has concerns that the updated CSIMP could potentially still lead to a requirement to review the site features at post consenting stage. This could possibly cause significant resourcing issues and project delays at post consent stage.
- 3.4 The MMO notes the EC Guidance Document on Article 6(4) of the Habitats' Directive 92/43/EEC states that a proposal put forward under Article 6 (4) should be 'the least damaging for habitats, for species and for the integrity of the Natura 2000 site, regardless of economic considerations, and that no other feasible alternative, exists that would not affect the integrity of the site.'
- 3.5 In the circumstances of this case the MMO believes it is a matter for the SoS, to determine in light of NE's comments and the information provided by the Applicant, whether sufficient information is available to conclude for certainty that there is no Adverse Effect on Integrity at consenting stage.

4. Particle size Condition

- 4.1 The MMO understands that the Applicant, NE and the MMO are in agreement that the conditions proposed for particle size analysis are not suitable.
- 4.2 The MMO understands the Applicant does not believe that a condition is required due to the additional mitigation for disposal of material within the HHW SAC, set out within the HHW control document (SIP/SCIMP). The MMO notes that NE still require a condition or to have some commitment secured to ensure the disposal of material will be in an area with similar particle size to ensure disposal of sediment does not fundamentally change the habitat of the disposal location.
- 4.3 The MMO believes that if the SoS decides it would be appropriate to add a condition then the condition needs to meet the five tests and above all be clear and precise enough to be enforceable.

5. Marine Mammals

- 5.1 The MMO has no further comments on the potential to update **Condition 14(1)(f) of Schedules 9 and 10 and condition 9(1)(f) of Schedules 11 and 12** or **Condition 14(1)(m) of Schedules 9 and 10 and Condition 9(1)(l) of Schedules 11 and 12** to the proposed conditions in comments 9 of the SoS Section 107 letter.

6. Part 4 Condition 9(12) of Schedules 9 and 10, and Condition 4(12) of Schedules 11 and 12 – notice of cable exposure

- 6.1 The MMO has spoken to the Maritime and Coastguard Agency in relation to their response and understands that the following wording has now been agreed by all parties:

*(12) In case of exposure of cables on or above the seabed, the undertaker must within ~~five~~ **three** days following identification of a potential cable exposure, ~~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. Copies of all notices must be provided to the MMO and MCA within five days.*

7. DCO Schedule 17

- 7.1 The MMO has been involved in discussions with the Applicant and NE in relation to securing additional mitigation and any compensation measures and how such measures could be captured in the dDCO and Deemed Marine Licences (DMLs).
- 7.2 The MMO welcomes the measures introduced by the Applicant to significantly reduce the potential impact of Norfolk Vanguard on the Marine Protected Areas; HHW SAC, Alde-Ore Estuary SPA and Flamborough and Filey Coast Special Protection Area.
- 7.3 The MMO believes that all of the additional mitigation proposed by the Applicant at the post examination stage has been secured throughout the DCO and DMLs through multiple conditions and plans.
- 7.4 The MMO considers that, in accordance with the 2017 UK Conservation of Habitats and Species Regulations (“the Habitats Regulations”), any appropriate compensation measures should be secured prior to consent. Following consultation with NE, the MMO understands that, where sufficient amendments to the Project could not be identified, appropriate compensation measures have not been agreed for all the remaining, potentially impacted, marine protected areas identified by the Secretary of State.

- 7.5 The MMO notes that for the remaining compensation measures, Schedule 17 proposes that: No later than 12 months prior to the commencement of any offshore works the details of the compensation must be submitted to the Secretary of State for approval. The MMO understands that compensation measures do not necessarily have to be delivered and in place, but that under the Habitats Regulations, all necessary legal, technical, financial and monitoring arrangements should be secured to ensure the compensatory measures are able to proceed as agreed and remain in place over the required timescales before consent is granted.
- 7.6 The MMO has concerns as to how any amendments or variations to the proposed compensation measures would be processed. Schedule 17 does not make it clear as to whether amendments or variations to the compensation measures would be for the Secretary of State to approve in consultation with the MMO and the relevant Statutory Nature Conservation Agency. We request that this matter is considered and clarified in the draft DCO.
- 7.7 The MMO also has concern as to how the compensation is going to be monitored and if the monitoring will be secured. Schedule 17 does not make it clear as to whether any monitoring of the compensation measures will be undertaken and if the monitoring would be for the Secretary of State to review and discharge in consultation with the MMO and the relevant Statutory Nature Conservation Agency or if amendments to the DMLs are needed to capture this. We request that this matter is considered and clarified in the draft DCO.
- 7.8 The MMO notes that the current wording of Schedule 17 does not prevent the whole project being commenced before the compensation plans are approved by the Secretary of State, it only requires that the offshore activities associated with the Project are subject to further approval post-consent. The MMO considers that the DCO should clarify the specific works that cannot commence until compensation is secured. The MMO recognises that it is for the Secretary of State in their Habitats Regulations Assessment to interpret the legislation and ensure that the derogation protocols have been correctly followed.

Yours sincerely



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