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Subject: Hornsea Project Three deadline 7 submissions
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[EN010080 - Hornsea Project Three - Deadline 7 Written representation_Final.pdf](#)

Good afternoon,

Identification Number: 20010662

Please find attached the MMOs Deadline 7 submission for Hornsea Project 3.

Please let me know if you have any questions.

Kind regards,
Laura

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Hornsea Project Three Case Team
Planning Inspectorate
(Email only)

MMO Reference: DCO/2016/00001
Planning Inspectorate Reference: EN010080
Identification Number: 20010662

14 March 2019

Dear Sir or Madam,

Planning Act 2008, Orsted Hornsea Project Three Limited, Proposed Hornsea Project Three Offshore Windfarm Order

On 14th 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 Orsted Hornsea Project Three Limited (the “Applicant”) for determination of a development consent order (the “DCO Application”) (MMO ref: DCO/2016/00001; PINS ref: EN010080).

The Development Consent Order Application includes a draft development consent order (the “DCO”) and an Environmental Statement (the “ES”). The draft DCO includes, at Schedule 11 and 12 a draft Deemed Consent under Part 4 (Marine Licensing) of the Marine and Coastal Access Act 2009 (the “Deemed Marine Licence” (DML)).

The DCO Application seeks authorisation for the construction, operation and maintenance of Hornsea Project Three (“Hornsea Three”) offshore wind farm, comprising of up to 300 wind turbine generators together with associated onshore and offshore infrastructure and all associated development (“the “Project”).

This document comprises the MMO’s comments in respect of the DCO Application submitted in response to Deadline 7. This written representation is submitted without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This representation is also submitted without



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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 faithfully

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1 Outstanding Issues on the Development Consent Order (DCO) and the Deemed Marine Licenses (DMLs)

1.1 Article 37 – Arbitration

The MMO remains its position as set out in our Deadline 3 response [REP3 – 092]. The MMO welcomes the recommendation made by the Examining Authority to exclude the MMO from arbitration.

The MMO would like to highlight that this recommendation is in line with the Tilbury 2 Application, which was determined by the Secretary of State (SoS) on the 20 February 2019. Within the decision of the SoS, the Examining Authority's recommendation regarding arbitration within the DCO/DMLs was accepted. For your information the recommendation is shown below:

In the MMO's submission at Deadline 7 [REP7-033], 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 MCAA).

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.

As such, the MMO feels that the recommendation made by the Examining Authority is consistent with the SoS decision.

1.2 Article 38 – Requirements, Appeals, etc.

The MMO retains its position as set out in our Deadline 6 response [REP6 – 072] regarding the newly introduced appeals process. The MMO welcomes the recommendation to remove the proposed appeals process as included in the Applicant's draft DCO submitted at Deadline 6. As highlighted in the MMOs deadline 6 response, it is still unclear to the MMO why there is the requirement for the inclusion of this appeals process.

The MMO would like to further highlight that the reasoning that was used and agreed to for Tilbury 2 is similar to the reasoning the MMO provided for this application, and as such the MMO does not agree that this appeals process should be included in the DCO.



Schedule 11 and 12 – Deemed Marine License

1.3 Condition 2 – Cable protection

The MMO retains its position regarding the deployment of cable protection as set out in the MMOs deadline 6 response [REP6 – 072]. Additionally, the MMO would like to highlight that in some instances, the MMO has licensed the deployment of cable protection for the operational phase of a project for cable crossings repairs only. In all licenses, the deployment of cable protection was restricted not only by volume, but also by location and the requirement for the methodology to be approved by the MMO prior to any works being undertaken.

There is significant difference between the two scenarios – the licensing of cable protection for cable crossing and the licensing of cable protection to mitigate against exposed cables over the lifetime of a project. As outlined previously, the operation phase of a project can be 25 years or longer and the MMO strongly questions, whether it is appropriate to license works for which currently the locations, timings, impacts and who it may affect is unknown. The MMO is of the opinion that it is unrealistic to assess the impacts of such unknowns ecologically, socially and economically of what is a wide ranging open consent.

In previous license decisions, the MMO has refused to give consent to such works as there are too many unknown factors involved. To allow for a fair and transparent consenting process, the MMO is required to allow all impacted parties the opportunity to review an application and provide representations ahead of any decision being made. As such, the MMO questions how any of the stakeholders can know at this moment in time, how they may be impacted by cable protection measures 30 years into the future, and how environmental evidence against such an activity may have improved by that time. As such the MMOs position remains that a new license application is required for the deployment of cable protection once the construction of the project or any phase has been completed.

1.4 Condition 14 - Timescales

The MMO has remaining concerns regarding the timescales for the submission of preconstruction documentation. The MMOs position is set out in our Deadline 3 response [REP3 – 092].

Following the publication of the Examining Authorities schedule of changes to the draft DCO, we would like to reemphasize the importance of this recommendation. The MMO has significant concerns regarding the feasibility of approving pre-construction documentation in a 4 month timescale. In addition to the points previously outlined, the MMO is expecting an increasing amount of issues to be resolved during the pre-construction sign off phase due to the increasing amount of



in-combination impacts that can be expected over the next few years. Recently the government made an announcement that it is expected that a minimum of 30% of our energy supply will be derived from offshore wind power generation by the year 2030. This increasing trend has already started as we are aware of the announcement of an additional 8 windfarm extension proposals, combined with the round four leasing round in the not too distant future. This adds a significant amount of complexity from in-combination impacts to the sign off process. It is crucial for the MMO to have sufficient time to make a well informed decision, without additional pressure being added from other factors such as tight construction programmes and potential financial loss by the applicant due to booked vessels. The MMO and its advisors need the appropriate amount of time to fully analyse the information at hand to make informed judgements and decisions. This extremely important process should not be governed by an applicant's individual schedule requirements. Also the MMO is always open to discussion with developers regarding expediting certain requirements in a shorter timeframe, should individual requirements demand it and therefore feels it is unnecessary to formalise timescales as suggested.

1.5 *Condition 14 - Timescales for the submission of pre-construction survey plans*

Following the MMOs review of the updated DCO provided at deadline 6, the MMO recommends for the following condition to be included in both Schedule 11 and 12 to define the submission deadline for monitoring plans:

Pre-construction plans and documentation are to be submitted to the MMO in accordance with the following—

(a) at least six months prior to the first survey, detail of the pre-construction surveys and an outline of all proposed monitoring;

(b) at least six months prior to construction, detail on construction monitoring;

(c) at least six months prior to commissioning, detail of post-construction (and operational) monitoring;

unless otherwise agreed in writing with the MMO.

1.6 *Condition 18 – Construction monitoring*

The MMO remains its position regarding the proposed amendments to condition 18 (3) and welcomes the proposed changes to the DMLs made by the Examining Authority. Please refer to the MMOs deadline 5 response for the detailed reasoning behind this request [REP5 – 029]. The MMO advised that similar recommendations had been made for the Norfolk Vanguard and the Thanet Extension offshore wind farms draft DCO representations.



2 Outstanding Environmental Concerns

2.1 Benthic Ecology

Following on from the MMOs submission at Deadline 6 [REP6 – 072], further discussions with the Applicant have taken place in relation to the proposed scour pit monitoring using swath bathymetric surveys at the Silver Pit and Markham's Hole. The Applicant has agreed to undertake the proposed monitoring and as such, the In Principle Monitoring Plan (IPMP) and the relevant DML conditions will be updated. The MMO recommends for three turbines location within the Silver Pit and three turbine locations within Markhams Hole to be monitored. Each site should be monitored using high quality swath bathymetry systems out to a distance of 150m or further if features can be observed that could be attributed to the scour creation. This should be undertaken annually every summer for 3 years and within +/- 1 month of initial survey month.

2.2 Fish and Shellfish

Following on from the MMOs submission at Deadline 6 [REP6 – 072], further discussions with the Applicant have taken place in relation to the monitoring of preferred sandeel habitat. In our Deadline 6 response, the MMO requested further clarifications from the Applicant. In response, the Applicant proposed to undertake sandeel habitat monitoring through the use of geophysical surveys associated with the monitoring of sandwave clearance activities. Additionally, the Applicant has confirmed that such monitoring activities will be undertaken in the Electric cable corridor and the Array area where preferred sandeel habitat was identified in the Environmental Statement. As such, the IPMP will be updated.

2.3 In Principle Monitoring Plan

The MMOs position remains as outlined in our Deadline 5 response [REP5 – 029] that the minimum monitoring requirements of 3 years should be made explicit within the IPMP. The MMO is not aware that this has been addressed by the Applicant.

3 MMOs comments on Appendix 4 to Deadline 6 submission - Rock Protection Decommissioning Methods

- 3.1 The MMO notes the additional documentation [REP6 – 018] submitted at deadline 6. The MMO would like to highlight that the submitted document is part of the documentation submitted in support of an ongoing marine licence application for Race Bank and the MMO has not yet taken a decision on this documentation or licence. Without prejudice to the MMO's decision on the Race Bank application, we note that the additional documentation does not provide sufficient evidence to address our concerns regarding the ability to decommission cable protection in a manner that allows for full recovery of the habitat.

Following consultation with Natural England the MMO has provided an interim response on the documentation submitted as part of to the Race Bank application and has quoted these comments below for your reference.



- *In relation to Annex 2 JdN 'Technical note for decommissioning Race Bank Export Cable rock protection' we have the following advice: -*
- *Whilst the document demonstrates that dredging of rock is possible the example provided is very different to sensitively decommissioning rock armouring within designated sites.*
- *The example supplied provides no detail on the nature, the location or the overarching sediment type. Additionally the examples failed to explain the methodology and proposed final outcome of the works. Further detail should have been provided on what the seabed looked like before and after the works and a comparison to the surrounding habitat should have been provided. Here the question of whether the dredging in itself did have any wider impacts, should have been explored further.*
- *There is no assessment of how analogous these examples are to what is required for Race Bank.*
- *Section 2.6.5 - The drag Head vertical accuracy to 30cm means that it is unlikely that the seabed will be returned to it's previous state. For instance a remaining layer of 30cm of Norwegian granite in areas in less mobile sediment as proposed in the Wash means a permanent change in the habitat. Similarly the same is true if dredging is undertaken to 30cm below the seabed as habitat will be permanently removed and as with the existing trenches is unlikely to recover.'*

