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**Subject:** EN010080 - Hornsea Project 3 Deadline 9 submission  
**Date:** 26 March 2019 14:35:30  
**Attachments:** [EN010080 - Hornsea Project Three - Deadline 9 Written representation Final v2.pdf](#)

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Good afternoon,

Identification Number: 20010662

Please find attached the MMOs Deadline 9 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

26 March 2019

Dear Sir or Madam,

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

On 14<sup>th</sup> 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 9. 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 Summary of outstanding Issues on the Development Consent Order (DCO) and the Deemed Marine Licenses (DMLs)

### 1.1 Article 37 – Arbitration

The MMO retains its position as set out in our Deadline 3 response [REP3 – 092] and our Deadline 7 response [REP7 – 103 and REP7 – 104]. The MMO welcomes the recommendation made by the Examining Authority to exclude the MMO from arbitration.

The MMO highlighted 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.

As such, the MMO feels that the recommendation made by the Examining Authority is consistent with the SoS decision and therefore the MMO should not be subject to arbitration.

Additionally, on a without prejudice basis, the MMO retains its position on Schedule 13 as set out in our Deadline 6 response [REP6-072].

### 1.2 Article 38 – Requirements, Appeals, etc.

The MMO retains its position as set out in our Deadline 6 [REP6 – 072] and Deadline 7 responses [REP7 – 103 and REP7 – 104]. The MMO welcomes the recommendation to remove the proposed appeals process as included in the Applicant's draft DCO submitted at Deadline 6. The reasoning for this removal is similar to the reasoning provided for Tilbury 2.

### 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 [REP6 – 072] and deadline 7 responses [REP7 – 103 and REP7 – 104].

The Applicant's deadline 7 response to the MMO makes reference to the relevant DML sections that outline the authorised activities for construction, maintenance and operation of the relevant infrastructure. The Applicant explained that in a scenario whereby 5% of export cables had cable protection installed during construction and further cable protection (within the 10% maximum design scenario) would require cable protection in the operation and maintenance phase it would still be within the maximum design scenario that was assessed in the ES and should therefore be permitted under the DCO.



In response, the MMO would like to direct the Examining Authority to the definition of maintenance as set out in this DCO and included below for your information.

*“maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace, to the extent assessed in the environmental statement; and*

*“maintenance” must be construed accordingly;*

It is the MMO's understanding, that the Applicant has proposed the deployment of cable protection throughout the operation and maintenance phase of the project. Furthermore, it is the Applicant's understanding that this includes the deployment of cable protection in locations that didn't require cable protection during the construction phase. The MMO does not agree that the deployment of cable protection in locations that have not had cable protection installed during construction can be classed as a maintenance activity as it does not fit the definition for maintenance. Instead, the MMO considers this to be a construction activity. As such, the MMO does not agree that this activity is covered by the DCO, as once the notice of completion for a phase has been issued, no additional construction works are permitted for this phase.

Replacement of cable protection in areas where it has already been installed would fall under the definition of 'maintain'. A separate marine licence application would be expected for areas of remedial cable repairs where new cable protection measures would be required after construction activities have been completed.

Following our review of the DCO, the MMO feels that the current DCO/DMLs are not explicit enough in setting out the timescales for the deployment of cable protection. As a result the MMO recommends for condition 3 (Schedule 11 Part 2 and Schedule 12 Part 3) to be amended to include the following:

3.—(1) The total length of the cables in Work No.1(c) and the volume of their cable protection (excluding cable crossings) when combined with the cable authorised under Work No.2(c) of the deemed marine licence granted under Schedule 12 of the Order must not exceed the following —

Any cable protection authorised under these Works must be deployed within 15 years from the issue date of the original Order.

To be consistent with other Sectors within the MMO, we feel that it would be appropriate to grant a license that allows the deployment of cable protection for a period of 15 years from the issue date of the original Order. This is in line with licenses that have previously been licensed in the Aggregate industry. It is the MMO's opinion that for any cable protection that is required after the 15 year period



has expired, a separate marine license is required. In addition to the above recommended amendment of the condition, the MMO recommend for the following condition to be included in the DMLs.

A post construction phase cable protection plan must be submitted to the MMO for approval a minimum of **6 weeks** prior to the commencement of any cable protection works required during the operational phase unless otherwise agreed by the MMO.

The plan must include:

- i. a cable protection method statement;
- ii. a desk based environmental assessment including but not limited to: features of historical interest and features of nature conservation interest;
- iii. locations and timings; and
- iv. details of notifications to other sea users

The requirement to undertake any additional surveys to inform the environmental assessment must be agreed with the MMO.

Each instance of cable protection works must not commence until written approval for that instance of cable protection works is provided by the MMO.

#### 1.4 Condition 13 (h) (iv) – Pre-construction documentation

The MMO does not agree with the tracked changes made in this section in the DCO submitted at D7 (included for easy reference: *and provision for revision and update of the plan throughout the life of the authorised project*). As outlined previously under point 1.3, the MMO does not agree that the deployment of cable protection beyond 15 from the issue date of the original consent is appropriate. As such this section should be amended to reflect this, or the tracked changes removed. This also applies to the cable protection plan as set out in Schedule 12.

#### 1.5 Condition 14 - Timescales

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

#### 1.6 Condition 18 – Construction monitoring – Underwater noise monitoring

The MMO retains 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 MMO's 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 In Principle Monitoring Plan

The MMO's 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 date. As a result the MMO recommend for condition 19 (Post –construction monitoring) within Schedule 11 and condition 20 within Schedule 12 to be amended to include the following wording:

A minimum of 3 year post-construction monitoring must be undertaken unless otherwise agreed with the MMO.

## 3 Measures of Equivalent Environmental Benefits (MEEB)

The MMO was approached by the Applicant via email to provide comments to a 'without prejudice' potential DML condition wording to be used in the event that it is determined that MEEB is required for an MCZ. This condition wording was requested by the Examining Authority during the hearings.

The MMO recognises that it is for the Secretary of State to carry out their own MCZ assessment on the potential impacts of the development on Cromer Shoal and Markham's Triangle MCZs. The MMO consider that a full assessment of the potential impacts of the scheme should be carried out on the Rochdale Envelope plan presented to the Planning Inspectorate. The features of the MCZs are known and potential damage to chalk and stony reefs are of particular concern. Potential measures to mitigate impacts on MCZ features should be properly explored on a worst case scenario basis to ensure that sufficient measures of environmental benefit exist to mitigate potential damage to known MCZ features. Consultation with relevant stakeholders will be required to obtain such sign off.

The MMO recommends a similar approach to the MCZ assessment as for the Habitats Regulations Assessment, which also reviews the potential impacts from a worst case scenario perspective. The MMO accepts that a realistic scenario of the design envelope will also need to be provided by condition for consultation with stakeholders with an interest in marine protected areas. This should detail potential impacts and mitigation measures to prevent them if required, based on the latest available technology. It is recommended that a condition should be included on the DMLs for a final marine conservation zone assessment to be presented to and approved by the MMO 6 months prior to construction. The final design plan for the project is likely to have been agreed well before this deadline and the updated assessment should demonstrate the results of monitoring work completed leading up to construction.

