

Hornsea Project Three
Offshore Wind Farm



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Updated Statement of Common Ground between Orsted
Hornsea Project Three (UK) Ltd. and Natural England

Date: March 2019

Hornsea 3
Offshore Wind Farm

Orsted

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Ørsted

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Front cover picture: Kite surfer near a UK offshore wind farm © Ørsted Hornsea Project Three (UK) Ltd., 2019.

Revision History

Version	Date	Author	Context
1	February 2019	Orsted	Update to the existing SoCG on All other Matters
2	March 2019	NE	Updates following Orsted issue of redrafted SOCG

Signatories

Signed	
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Position	Hornsea Project Three Consents Manager
For	Ørsted Hornsea Project Three (UK) Ltd


Signed	
Name	Emma Brown
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For	Natural England

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1. Introduction

Overview

- 1.1 This Statement of Common Ground (SoCG) has been prepared by Orsted Hornsea Project Three (UK) Ltd. ('the Applicant') and Natural England (together 'the parties') as an update to the All other Matters SoCG that was submitted into the examination at Deadline 1 (REP1-218).
- 1.2 Specifically this SoCG provides the examining authority (ExA) with an update to those matters that were identified as being “under discussion” within the original SoCG (REP1-218).

Overview of existing SoCG

- 1.3 The following topics were considered within the original SoCG (REP1-218):
- Fish and Shellfish Ecology;
 - Marine Mammals;
 - Seascape and Visual Resources;
 - Onshore Ecology and Nature Conservation; and
 - Landscape and Visual Resources.
- 1.4 There were no residual points of discussion in relation to Fish and Shellfish Ecology or Seascape and Visual Resources. The following sections provide an update on those matters from the remaining topics that were identified as being “under discussion”.

2. Marine Mammals

Cumulative Effects Assessment

The Applicant's Position

- 2.1 The Applicant has assessed all relevant sources of noisy activity (such as piling, UXO clearance, seismic surveys, for example) within what it considers to be a robust, qualified and comprehensive CEA. Where there is not publically available information relating to potential future activity (such as UXO clearance and or seismic activity) the Applicant has not sought to generate hypothetical scenarios for these, rather it has based the assessment on.
- 2.2 The applicant has made detailed submissions in relation to this matter at:
- Appendix A to the original SoCG (REP1-218); and
 - Annex 7 of the Applicants comments on Natural England's Relevant Representation (REP1-131);
 - Applicant's response to ExA Question 1.2.106 as contained within REP1-122; and
 - Applicant's response (at Deadline 2) to Section 6 of Natural England's Written Representation as contained within the REP2-004.

Natural Englands Position

- 2.3 Natural England are of the position that despite the clarifications provided by the Applicant, Natural England consider that aCEA should assess all noisy activity together.

Natural England would have liked this assessment to be provided within the application, but consider that this matter can be addressed through the Site Integrity Plan (SIP).

Summary

2.4 Both parties' positions are final on this matter.

CEA and In-Combination Conclusion

The Applicant's Position

- 2.5 Moderate cumulative effects are predicted in Section 4.13 of Volume 2, Chapter 4: Marine Mammals of the Environmental Statement, as a result of the uncertainty in which other projects may have temporal overlap of the Hornsea Three piling schedules and uncertainty surrounding the population consequences of disturbance over this timescale.
- 2.6 The Applicant's RIAA (APP-051) concluded no AEoI alone or in-combination, however, it is recognised that the precise level of in-combination activity is uncertain and therefore, has made a commitment (in the form of the SIP) to ensure that if (following CfD award and design optimisation) risk to site integrity is identified prior to commencement of construction, then appropriate mitigation measures will be applied to ensure residual site is at acceptable levels.
- 2.7 The Applicant also notes that the SIP commitment made in relation to the southern North Sea SCI will ensure that if sufficient noisy activities are taking place at the same time, then mitigation will be applied to ensure that the Project reduces its impact to acceptable levels. Whilst this commitment is focused on the harbour porpoise feature of the SCI, this control measure will ensure that even if the Applicant's conclusion were not sufficiently precautionary, that a scenario whereby significant levels of unmitigated noisy activity were all occurring at the same time could not occur. The Applicant also notes that all other licenced offshore wind activity will have similar SIP conditions on their licences and therefore, this is an industry wide control.
- 2.8 The Applicant has sought to provide further clarification to support these conclusions, as included at:
- Appendix A to the original SoCG (REP1-218);
 - Applicant's response to ExA Question 1.2.106 and 1.2.114 as contained within REP1-122;
 - Appendix 15 (In-Principle Site Integrity Plan) to the Applicant's response to Deadline 1 (REP1-181);
 - Applicant's response (at Deadline 2) to Section 6 of Natural England's Written Representation as contained within the REP2-004.
 - Appendix 48 (In-Principle Site Integrity Plan V2.0) to the Applicant's response to Deadline 4 (REP4-067); and
 - Comments made at Issue Specific Hearing 5, summary of submissions submitted at Deadline 6 (REP6-010).

Natural England's Position

2.9 Whilst Natural England agree that the SIP is an appropriate control measure to manage concerns relating to cumulative disturbance effects on marine mammals, the regulators (BEIS, MMO) are yet to provide details of this process and the mechanism by which they will ensure that multiple noisy activities across multiple SIPs over varying timescales will be considered. However, the current RoC for SNS SCI may address this point.

Summary

2.10 Both parties position are final on this matter.

DCO

The Applicant's Position

2.11 The Applicant has provided initial wording for the commitment to a SIP within the latest version of the DCO, but recognise that the MMO have yet to comment in detail on this wording as it is likely to be influenced by the ongoing RoC process being undertaken by BEIS.

2.12 Information submitted into the examination by the Applicant of relevance to this matter includes:

- See Conditions 13(5) of Schedule 11 and 14(5) of Schedule 12 of the latest draft of the DCO as submitted at Deadline 4 (REP4-004)

Natural England's Position

2.13 As the Review of Consents consultation is ongoing, Natural England would defer to the MMO on this point.

Summary

2.14 Both parties will consider any updated wording put forward by the MMO and respond accordingly.

Monitoring

The Applicant's Position

2.15 The Applicant has made the following monitoring commitments (that relate to marine mammals) within the DCO (that are supported by further detail within the in-principle monitoring plan (IPMP)):

- A plan for marine mammal monitoring that will contribute to reducing key uncertainties within assessments relating to effects on marine mammals from construction activities;
- Construction phase; underwater noise monitoring of the first four piled foundations to validate the noise model; and
- Construction phase; provision of piling duration records to enhance the knowledge base on actual durations of piling.

2.16 Information submitted into the examination by the Applicant of relevance to this matter includes:

- Statement of Common Ground ‘All other Matters’ between the Applicant and Natural England as submitted at Deadline 1 (REP1-218);
- Latest version (V3.0) of the in-principle monitoring plan as submitted at Appendix 47 to Deadline 4 (REP4-067);
- Comments made at Issue Specific Hearing 3, (paragraph 7.13 of) summary of the Applicant’s oral case as submitted at Deadline 3 (REP3-005); and
- Comments made at Issue Specific Hearing 5, summary of submissions submitted at Deadline 6 (REP6-010).

Natural Englands Position

- 2.17 Natural England is in agreement in principle with the monitoring commitments outlined.
- 2.18 However, given concerns raised with the construction noise monitoring undertaken at another project, Natural England supports the MMOs recommendation of the inclusion of additional wording below in condition 18 2 a) to ensure the monitoring remains sufficiently robust and fit for purpose.
- 2.19 *“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.”*

Summary

- 2.20 Both parties are in agreement on the nature and timing of noise monitoring and how this is conditioned within the dMLs, with the exception of the tailpiece cited above, which Natural England consider necessary and the Applicant does not (as it considers such enforcement measures to be a function for the MMO as the regulator).

3. Onshore Ecology

Pink Footed Goose

The Applicant's Position

- 3.1 The Applicant considers that the measures outlined within the Pink-footed Goose Management Plan (Appendix F to the Outline CoCP) are sufficient to reduce the potential adverse effect to minor.
- 3.2 The applicant has made submissions in relation to this matter at:
- Statement of Common Ground with Natural England (REP1-218 submitted at Deadline 1);
 - Statement of Common Ground with the RSPB (REP3-007 submitted at Deadline 3);
 - The written summary of the Applicant's oral case put at Issue Specific Hearing 1 (REP3-003 submitted at Deadline 3); and
 - Updated version of the Code of Construction Practice to include Annex F: Pink-footed Goose Management Plan (REP4-023 submitted at Deadline 4).

Natural England's Position

- 3.3 Natural England agree with the assessment provided as part of the Application documents, but have outstanding concerns relating to the detail of the Pink-footed Goose Management Plan (PFGMP, Annex F of the Code of Construction Practice (CoCP)), in particular:
- 3.3.1 The CoCP sign off mechanism;
- 3.3.2 The overwintering period defined as November-January;
- 3.3.3 Whether the decision tree process in the PFGMP presents the necessary certainty to undertake HRA assessment, and whether the use of the wording 'as appropriate' in paragraph 6.5.1.40 gives the necessary clarity;
- 3.3.4 The Applicant's definition periods where geese are more sensitive to disturbance, including severe weather;
- 3.3.5 The mitigation trigger set at half the available area of postharvest sugar beet;
- 3.3.6 The level of detail for works restrictions in the PFGMP; and
- 3.3.7 The potential to restrict the planting of sugar beet in areas where there are known works and/or avoiding the end of the overwintering period;

Summary

- 3.4 3.4.1 Natural England believes that 3.3.1 can be resolved by altering reference in the CoCP to PFGMP sign off to: - When seeking to discharge the DCO CoCP requirement, the Applicant wishes to consult with the relevant SNCB prior to submission to the LPA to ensure the PFGMP is fit for purpose. However, please note that this is outside of Natural England's statutory remit so would need to be covered in any DAS contract, but our DAS response should provide the required comfort by the LPA to meet an 'in consultation with the relevant SNCB' clause, negating the need for further consultation. Therefore we would welcome the 'in consultation' suggested by Ørsted to the DCO text

3.3.2. Not agreed – and based on comments provided unlikely to be resolved

3.3.3. Not agreed. Natural England's point is during the installation there is going to be no consultation with NE. And whilst we recognise that the mitigation plan will be developed prior to construction there are currently multiple options for mitigation with no consideration on why, when and how; one, some or all of them will be implemented to ensure that there is no AEol. We need to know what the decision making process is i.e. if this happens then we will do X, if that is not effective then we will also do/alternatively do Y. Currently it all rests on realtime judgements, "as appropriate" but that needs some of framework/decision making pathway upfront to make sure those decisions are fit for purpose and can be considered in the AA

3.3.4 Not agreed. Natural England's concerns are not just about having a cold weather protocol. It is also about individual subjectivity in relation to 'sensitivities' with no clear parameters included for the identification of significant changes in geese behaviour (trigger behaviours) as a result of disturbance and then subsequent actions required as a consequence. There needs to be a clear action pathway i.e. when must works cease etc.

In relation to the cold weather restriction we would also advise that the JNCC Scheme to reduce disturbance to waterfowl during severe winter weather (originally for wildfowling) is adopted.

<http://jncc.defra.gov.uk/page-2894>

3.5 3.3.5 Natural England is agreeable to a more precautionary 25% area threshold as set out by the RSPB. If this is adopted this point is not longer an issue.

3.3.6 This is not agreed. The level of additional disturbance needs to be considered, as there will still be disturbance to overwintering Annex I birds and for a period of 18 weeks would still be an LSE. Therefore, impacts need to be minimised as much as possible as set out in our Deadline 4 response.

3.3.7 Not agreed – As per point 3.3.6 above.

Other CoCP issues (Natural England further comments)

3.6 NE has raised in its Deadline 6 submission on the CoCP further issues relating to sediment lagoons and the soil management plan. The Applicant understands NE previously agreed (SoCG submitted at Deadline 1) matters relating to the protection of watercourses and the control of sediment from Hornsea Three works, and therefore will provide clarification in its DL7 response to NE's written representation on the Outline CoCP and not update the position in the SoCG.

Summary

This is not agreed. The Applicant is continuing to engage with Natural England on matters outstanding in the CoCP.

4. LVIA

AoNB

The Applicant's Position

- 4.1 The Applicant considers that the approach to landscape mitigation within the AONB is appropriate for the special qualities of this area and will lead to an overall enhancement of biodiversity. The Applicant stands by its assessment set out in Volume 3, Chapter 4: Landscape and Visual Resources of the Environmental Assessment, which concluded that significant effects are not anticipated in relation to landscape and visual effects on the AoNB (and other designated landscapes).
- 4.2 The Applicant has provided further clarification on effects on the Qualities of Natural Beauty which supports the original assessment.
- 4.3 Key mitigation measures include:
- 4.3.1 Minimising impacts on trees and hedgerows through site selection and HDD, as shown in the figures accompanying REP1-167;
 - 4.3.2 Minimising the construction time in the AoNB;
 - 4.3.3 Minimising the length of hedgerow removed for each phase as detailed in REP4-011;
 - 4.3.4 Replanting the seven sections of hedgerow to be removed within the AoNB (all of which are currently species poor or defunct) with a species-rich mix, which would lead to a minor beneficial impact.
- 4.4 An additional enhancement commitment has been made, where there is landowner agreement, to carry out hedgerow enhancement works and tree planting outside the cable corridor in a 100 m wide enhancement corridor (so an additional 20 m to the maximum cable corridor width).
- 4.5 The Applicant has made submissions in relation to this matter at:
- Appendix 23 to Deadline 1 submission – Impacts on the Qualities of Natural Beauty of the Norfolk Coast [REP1-167]; and
 - Applicant’s comments on Written Representations and Responses submitted by Interested Parties at Deadline 3 [REP4-011].

Natural Englands Position

- 4.6 Natural England has reviewed the applicant’s response to our REP3 – 079 advice on the significant effect on the landscape fabric and visual amenity of the Norfolk Coast AONB [pages 78 – 84 of REP4 – 011] and the Outline Landscape Plan submitted at deadline 7 [REP7 – 018] and we advise that we do not believe that our concerns have been addressed.
- 4.7 There remains no acknowledgement of the Statutory purpose of the AONB and the impacts that will occur during the installation of the cables through 6km of the AONB and to the AONB’s settings beyond that. The AONB is effectively being treated the same as all other areas. And whilst we acknowledge the landscaping over time should restore the features, there are still the impacts in relation to an extended two phase build, which remain unresolved.
- 4.8 In relation to identifying how these concerns could be addressed, there would need to be engagement by the AONB partnership, who would need to take ownership of any to be agreed mechanisms. Therefore, Natural England has provided as much advice as we can to both the applicant and the Examiner without having the engagement of the AONB.

Summary

The Applicant is not in agreement with Natural England on this issue. The Applicant is awaiting any input from the Norfolk Coast Partnership (the AONB partnership) further to their representation [RR-101].

5. Summary

- 5.1 This SoCG has been developed with Natural England during the Hornsea Three examination period to provide the examining authority (ExA) with an update to those matters that were identified as being “under discussion” within the original All Other Matters SoCG (REP1-218).
- 5.2 There were no residual points of discussion in relation to **Fish and Shellfish Ecology** or **Seascape and Visual Resources**.
- 5.3 For **Marine Mammals**, Natural England have residual concerns relating to the assessment but agree that these can be dealt with via the Site Integrity Plan (SIP). Natural England do however have concerns relating to how the MMO will coordinate multiple SIPs.
- 5.4 Regarding **Onshore Ecology**, Natural England still has concerns relating to Pink Footed Geese and the Soil Management Strategy. The Applicant will continue to engage with with Natural England on these matters.
- 5.5 Regarding **Landscape and Visual Resources**, Natural England has residual concerns relating to the AONB and is informing the Norfolk Coast Partnership as the management body for the AONB. The Applicant will continue to engage with the NCP.