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(Email only)

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

06 April 2020

Dear Gareth Leigh,

Planning Act 2008, Hornsea Project Three (UK), Proposed Hornsea Project Three Offshore Wind Farm

MMO response to request for information from the Secretary of State's letter dated 27 September 2019

On the 14 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 a development consent order (the "DCO Application") (MMO ref: DCO/2016/00001; PINS ref: EN010080). The DCO Application seeks authorisation for the construction, operation and maintenance of Hornsea Project Three (UK) offshore wind farm, comprising of up to 231 wind turbine generators together with associated onshore and offshore infrastructure and all associated development ("the "Project").

The Secretary of State requested further information under Section 107 of the PA 2008 on 27 September 2019. This document comprises the MMO's comments in respect of Schedule 14 submitted in response to this letter.

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 faithfully

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INVESTORS
IN PEOPLE

Bronze



1. Draft DCO Schedule 14

- 1.1 The MMO has been involved in discussions with the Applicant and in some discussions with Natural England (NE) in relation to securing compensation measures and how such measures could be captured in the draft DCO/Deemed Marine Licences (DMLs). The MMO would like to thank the Applicant for the positive, open and constructive nature of these discussions to address potential issues raised by the Secretary of State in her further information request dated 27 September 2019.
- 1.2 The MMO welcomes the measures introduced by the Applicant to significantly reduce the potential impact of Hornsea Project Three within Markham's Triangle Marine Protected Area. We understand 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.
- 1.3 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 been neither agreed nor secured for the remaining, potentially impacted, marine protected areas identified by the Secretary of State.
- 1.4 The MMO notes that for the remaining compensation measures, Schedule 14 proposes that *'No later than 12 months prior to the commencement of [relevant works], within [the respective marine protected areas] a [relevant compensation plan] 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.
- 1.5 The MMO has concerns as to how any amendments or variations to the proposed compensation measures would be processed. Schedule 14 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.
- 1.6 The MMO notes that the current wording of Schedule 14 does not prevent the Project being commenced before the compensation plans are approved by the Secretary of State, it only requires that some of the activities associated with the Project are subject to further approval post-consent.. In our discussions with the Applicant, Orsted's legal team presented a different view as to when compensation measures should be secured based on precedent from previous DCO decisions. We recognise that it is for the Secretary of State in his Habitats Regulations Assessment to interpret the legislation and ensure that the derogation protocols have been correctly followed.

2. Appendix 6 - Outline cable specification and installation plan

- 2.1 The MMO notes that the spatial footprints and volumes relating to sandwave clearance and cable protection are provided (Tables 4.1 & 5.1 of Appendix 6), and it is stated that post construction monitoring of the designated benthic feature within each site will be

reported to the relevant SNCB (paragraphs 4.8 and 5.15 of Appendix 6), however details regarding methodologies and monitoring appear to be lacking from Appendix 6.

- 2.2 Some information regarding the locations of sandwave clearance disposal is provided in Annex A of Appendix 6. It is unclear whether the effects of this activity will be monitored; however, it is stated that disposal locations will avoid Annex I reef habitats. If this can be guaranteed, then monitoring the effects of disposal on benthic receptors may not be necessary.
- 2.3 In the MMO's opinion, the details given in Appendix 2A are sufficient for blue mussel beds, particularly given the Eastern Inshore Fisheries Conservation Agency (EIFCA) has been consulted throughout the Request for Further Information process. Using slipper limpet shells to prepare mussel beds is mentioned as one possible method in Appendix 2A section 3.8. The MMO understands that such methods are being used by fishers in the Kent and Essex IFCA district. The MMO would encourage liaison with this district for any further evidence around this method.

3. Appendix 4 - Post-exam mitigation & project envelope modifications

- 3.1 The MMO notes that shellfisheries do not appear to have been considered for post-examination mitigation. The MMO would encourage such consideration to be made to assess whether the natural environment would be disrupted and if so, to what extent. Eastern IFCA would be able to advise whether subsequent mitigation would be necessary
- 3.2 Regarding eelgrass restoration, the MMO supports the proposal that any such measure would be developed in conjunction with the Environment Agency or Natural England (paragraph 5.54 of Appendix 2) and, indeed, any other expert(s) in the field. The MMO notes that eelgrass has high minimum light requirements (Bertelli & Unsworth 2018), which could make turbidity prohibitive for restoration. We therefore recommend that potential restoration efforts should focus on any areas where eelgrass already exists within the Wash and North Norfolk Coast SAC (paragraph 5.50 of Appendix 2).

4. Minor comments

- 4.1 Regarding mussel bed restoration, the MMO notes the statement in paragraph 5.18 of Appendix 2 that *"a potential means to help manage this INNS threat [Crepidula fornicata] could be to use the slipper limpet beds as a location for the mussel restoration work (the establishment of a mussel bed would have a smothering effect on the slipper limpets) and would serve as a form of biosecurity"*. The MMO agrees that this may turn out to be true, but we note that *C. fornicata* often attaches itself to mussels and can reduce mussel growth and survival (Thieltges 2005; Thieltges & Buschbaum 2007). The possibility that seeding with blue mussels could facilitate further spread of the slipper limpet, or that the slipper limpet could hinder the development of mussel beds, should therefore be carefully considered before implementing this compensatory measure. We note that the proposed monitoring of mussel beds (paragraphs 5.23 & 5.24 of Appendix 2) would allow this to be assessed and possibly remediated, if necessary.

5. Southern North Sea In Principle Site Integrity Plan

- 5.1 Section 5.2 and Table 2 of Appendix 7 consider the potential effects from the project alone in relation to the Southern North Sea SAC summer and winter areas. For the following impacts *'increased vessel traffic during construction and operation and*

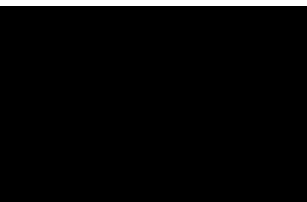
maintenance may result in an increase in disturbance to marine mammals’, the table highlights that there is “no indication that effects would lead to a reduction in the viability of the harbour porpoise feature or adversely impact the supporting habitats and processes relevant to this species. Furthermore, due to the temporary nature of the activity there is no indication that effects would result in a permanent shift in the distribution of the feature within this SAC in the long term and subsequently no adverse effect on the population or distribution of this qualifying feature is anticipated”. The MMO requests further clarity on this issue. Rather than stating there is ‘no indication that effects would lead to a reduction in the viability of the harbour porpoise feature...’, we recommend that supporting evidence should be used to show why the potential effects (of increased vessel traffic) would not lead to a reduction in the viability of the harbour porpoise feature or adversely impact the supporting habitats and processes relevant to this species.

6. Major Comments

- 6.1 The MMO refers to measure 3: Noise mitigation systems (paragraphs 6.3.8 – 6.3.9 of Appendix 6): The MMO agree that by reducing the noise at source, the total area of potential disturbance to harbour porpoise would be decreased. Reducing the amount of noise pollution emitted at source (e.g. using noise abatement systems such as bubble curtains for pile driving and UXO detonations) is the most direct and comprehensive way to mitigate the risk of acoustic impacts on marine species. The MMO recommend that such source mitigation should be considered as a primary means of reducing the potential acoustic impact of pile driving operations.
- 6.2 Further, given that Marine Mammal Mitigation Protocols are generally designed to reduce the risk of auditory injury (e.g. Permanent Threshold Shift), additional measures may be necessary to reduce potential disturbance impacts.

Para 6.3.10 of Appendix 6: The MMO welcomes that prior to start of construction, a revised noise assessment for the final design of the wind farm would be prepared and submitted to the MMO. This would clearly set out the predicted noise levels to be generated by the preferred foundation type, installation technique and construction programme. This would then be used to update the commitments within this SIP

Yours faithfully



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