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MMO Reference: DCO/2016/00003
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EN010084
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To Whom It May Concern,

Planning Act 2008, Vattenfall Wind Power Limited, Proposed Thanet Extension Offshore Wind Farm

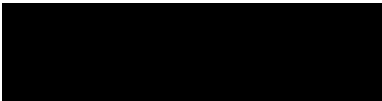
The MMO is an interested party for the examination of Development Consent Order (DCO) applications for Nationally Significant Infrastructure Projects (NSIPs) in the marine area. Should consent be granted for the project, the MMO will be responsible for monitoring, compliance and enforcement of the Deemed Marine Licences (DML).

On 30 July 2018, the Marine Management Organisation (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 Vattenfall Wind Power Limited (the "Applicant") for a development consent order (the "DCO Application") (MMO ref: DCO/2016/00003; PINS ref: EN010084), for the construction, operation and maintenance of the proposed Thanet Extension Offshore Wind Farm (TEOWF).

This document forms the MMO's deadline 6A submission in response to the Examining Authority's (ExA) 'Rule 17' letter detailing final written questions.

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 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. Response to the ExA's 'Rule 17' Letter Detailing Final Written Questions

1.1 R17Q4.1.1 – Potential Construction Noise Effects on Fish: submissions and evidence from the MMO

1.1.1 As directed by the ExA, the MMO will provide full response by deadline 7.

1.2 R17Q4.1.2 - Potential Construction Noise Effects on Fish: submissions and evidence from the Applicant

1.2.1 As directed by the ExA, the MMO will comment on the Applicant's deadline 7 response at deadline 8.

1.3 R17Q4.1.4 Other Fishing and Fisheries Interests

1.3.1 As directed by the ExA, the MMO will comment on responses to this question at deadline 8, if necessary.

1.4 R17Q4.4.1 Definitions of commencement and pre-commencement works

1.4.1 The MMO notes the valid query raised by the ExA and considers their proposed formulation in 'c)' would be appropriate. The MMO will review the Applicant's response accordingly.

1.5 R17Q4.4.2 The relationship between arbitration and appeals

1.5.1 The MMO notes the ExA has requested the Applicant to advise of any existing precedent for the 'either way' provision. The MMO will provide further comment if necessary at deadline 7, however please note initial observations provided below for consideration by the ExA.

1.5.2 The MMO suggests that the questions posed by the ExA are not for direct consideration by the MMO given that Schedule (Sch) 14 appears to be limited to the transferring of benefits and does not have any wider application beyond Article (Art) 5 matters.

1.5.3 Art 5 refers to transfers and grants of Benefit of the Order and such decisions are undertaken by the Secretary of State (SoS), albeit the MMO acknowledge its role as a consultee in the process.

1.5.4 Sch 14 appears to apply only when the SoS is minded to refuse to transfer the benefit or fails to make a determination to transfer the benefit, as outlined in Art 5(11). Henceforth, as drafted the applicant would have the 'option' to pursue arbitration or the appeals process outlined in Schedule 14 only in those specific circumstances.

1.5.5 Given that Schedule 14 only applies to Art 5 and not more widely, the applicant cannot choose the 'either way' provision for anything outside this and, as such, this is not a matter of direct concern to the MMO.

1.6 R17Q4.4.3 Sch 14: Appeals

1.6.1 As noted in the question above, Sch 14 does not directly apply to matters of concern to the MMO. Therefore the MMO does not consider it appropriate to comment on the suitability of the Law Society for the proposed role.

1.7 R17Q4.12.1 Pilotage simulation

1.7.1 With respect to the potential practical benefits and value of such a study to the SoS' decision, the MMO defers to the expertise of the relevant navigation bodies.

1.8 R17Q4.12.5 Ports, Shipping and Navigation Policy Context: UK Marine Policy Statement

1.8.1 As directed by the ExA, the MMO advises that where a marine plan has yet to be adopted, applications should be assessed against the Marine Policy Statement (MPS)¹.

1.8.2 With respect to Thanet Extension Offshore Windfarm (TEOWF), the MMO considers the following high level marine objectives to bear relevance to the SoS' decision.

1.8.3 TEOWF may provide direct positive effects on the following MPS objectives:

Achieving a sustainable marine economy:

- The marine environment and its resources are used to maximise sustainable activity, prosperity and opportunities for all, now and in the future.
- Marine businesses are taking long-term strategic decisions and managing risks effectively. They are competitive and operating efficiently.

Ensuring a strong, healthy and just society:

- The use of the marine environment is benefiting society as a whole, contributing to resilient and cohesive communities that can adapt to coastal erosion and flood risk, as well as contributing to physical and mental wellbeing.
- The marine environment plays an important role in mitigating climate change.
- Use of the marine environment will recognise and integrate with, defence priorities, including the strengthening of international peace and stability and the defence of the UK and its interests.

Using sound science responsibly:

¹ HM Government (2011) UK Marine Policy Statement. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69322/pb3654-marine-policy-statement-110316.pdf

- Our understanding of the marine environment continues to develop through new scientific and socio-economic research and data collection.
- Sound evidence and monitoring underpins effective marine management and policy development.

1.8.4 Conversely, TEOWF could result in direct negative effects on the following MPS objectives, unless sufficient mitigation is secured within DML:

Living within environmental limits:

- Biodiversity is protected, conserved and where appropriate recovered and loss has been halted.
- Healthy marine and coastal habitats occur across their natural range and are able to support strong, biodiverse biological communities and the functioning of healthy, resilient and adaptable marine ecosystems.
- Our oceans support viable populations of representative, rare, vulnerable, and valued species.

1.9 R17Q4.12.6 Ports, Shipping and Navigation Policy Context: South East Inshore Marine Plan

1.9.1 The MMO advises that a draft South East Inshore Marine Plan will not be published before the end of Examination.