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MMO Reference: DCO/2017/00002
Planning Inspectorate Reference: EN010087
Identification Number: 20022925

25 November 2019

Dear Ms Fernandes,

Planning Act 2008, Norfolk Boreas Limited, Proposed Norfolk Boreas Offshore Wind Farm

MMO Deadline 1 Response

On 11 June 2019, 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 Norfolk Boreas Limited (the “Applicant”) for determination of a development consent order for the construction, maintenance and operation of the proposed Norfolk Boreas Offshore Wind Farm (the “DCO Application”) (MMO ref: DCO/2017/00002; PINS ref: EN010087).

The Applicant seeks authorisation for the construction, operation and maintenance of the DCO Application, comprising of up to 180 wind turbine generators together with associated onshore and offshore infrastructure and all associated development (“the “Project”).

This document comprises the MMO comments in respect of the DCO Application submitted in response to Deadline1.

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 Sincerely



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1. Summary of Oral Cases made during the Development Consent Order (DCO) Issues Specific Hearing (ISH)

1.1 Agenda Item 2: Scenarios in the dDCO

1.1.1 The MMO is content with the way the scenarios in the dDCO are set out. The MMO believe it is ordered logistically and this route forward uses the MMO resource most appropriately.

1.2 Agenda Item 3: Article 6 Benefit of the Order

1.2.1 The MMO reviewed the comments from the applicant in relation to the transfer of benefit - Article 6(14) and have no further concerns in relation to this.

1.2.2 The MMO reviewed condition 18 and fundamentally agrees with what the applicant has proposed. The MMO has concerns on the wording and will discuss these with the Applicant outside of the hearings.

1.3 Agenda Item 3: Article 38: Arbitration [and Schedule 15]

1.3.1 The applicant summarised the current position on arbitration. In the current format the MMO are not subject to arbitration and the applicant has included the appeals procedure as it is not agreed the Judicial Review process is suitable. The MMO believe that Judicial Review is a suitable remedy and the addition of any other mechanism does not align with the public functions and duties of the MMO.

1.3.2 The MMO consider any mechanism to change MMO's legal function, powers and responsibilities, is contradictory to those intended by Parliament in enacting the Planning Act 2008 or the Marine and Coastal Access Act 2009 (MCAA 2009).

1.3.3 The MMO highlighted that this has been discussed in detail in the Norfolk Vanguard Joint Position Statement provided with the MMO's relevant representation (RR-069) and the MMO's position will not change with further discussions with the Applicant.

1.4 Agenda Item 4a: Requirement 23 - Whether the dDCO adequately covers requirements for WSI regarding the intertidal zone, including needs for consultation with MMO?

1.4.1 The MMO understand the requirement is correct, due to the use of horizontal directional drilling there will be no intertidal impacts.

1.5 Agenda Item 4b: Schedule 15 – Arbitration Rules

1.5.1 The MMO are not subject to arbitration therefore these rules do not apply.

1.6 Agenda Item 4b: Schedule 15 – Arbitration Rules - Timescales for discharge document submission and appeal process

1.6.1 The MMO advised there were no further comments than what has been set out within section 2 of the Relevant Representation and within the Norfolk Vanguard Joint Position Statement (RR-069).

1.1 Agenda Item 5: 5. Schedules 9-13 Deemed Marine Licences (DMLs)– Concurrent pilling and cooperation condition

1.1.1 The MMO generally looks for opportunities to condition the reduction in noise. The MMO is discussing this further with noise specialists on whether this risk can be acceptably considered through the Southern North Sea (SNS) Special Area of Conservation (SAC) Site Integrity Plan (SIP). The MMO will continue discussions with the applicant and provide an update at Deadline 2.

2. Summary of Oral Cases made during the Environmental Matters ISH

2.1 Agenda Item 7: Implication of Hornsea Project Three Offshore Wind Farm and Norfolk Vanguard

2.1.1 The MMO believes the implications for Norfolk Boreas are related to the Secretary of State's (SoS) decision on arbitration, appeals and timescales. This would impact the structure of the DCO/DMLs and influence the ongoing discussions between the Applicant and the MMO. In relation to Norfolk Vanguard, a SoS's decision could also provide guidance regarding whether the SoS believes the Haisborough, Hammond and Winterton (HHW) SIP is the appropriate mechanism.

2.1.2 The MMO highlighted that if the Norfolk Vanguard decision was delayed to March 2020 then there would only be 5 weeks to consider the implications for the Norfolk Boreas project which would add pressure to the MMO resources.

2.2 Agenda Item 3a: Marine Plans

2.2.1 The MMO welcomed the changes made to the policy and legislation chapter in relation to the East marine plans, developed from Norfolk Vanguard discussions. The MMO would recommend and prefer a checklist included in the application detailing how each policy within the plans has been screened in and screened out and how Norfolk Boreas are adhering to the policies.

2.3 Agenda Item 3c: Conceptual Model for Physical and coastal Processes

2.3.1 The MMO welcomed the acceptance by the applicant that they understand the risks of using the conceptual modelling. The MMO is currently discussing this issue further with the MMO's scientific advisors and with the Applicant and will provide an update at Deadline 2.

2.4 Agenda Item 3d: Cable Protection Joint Position Statement with Natural England

2.4.1 The Joint Statement will provide guidance on how cable and scour protection will be dealt with during the operations and maintenance phase, both within and outside Marine Protected Areas (MPAs). The MMO will provide a supplementary document specifically related to marine licensing. This will be submitted at Deadline 2.

2.4.2 The MMO acknowledges that replenishment of cable protection utilised during construction can be dealt with through the Operation and Maintenance Plan and are satisfied with the Applicant's statement that new protection will be consented through separate marine licences.

2.5 Agenda Item 3e: Sandbank Features within the HHWSAC

2.5.1 The MMO has reviewed the comments provided by the applicant and are currently in discussions with the MMO's scientific advisors and will continue discussions with the Applicant. An update will be submitted at Deadline 2.

2.6 Agenda Item 3f: Hydrodynamic Modelling for Sediment Disposal

2.6.1 The MMO has reviewed the comments provided by the applicant and is currently in discussions with the MMO's scientific advisors and will continue discussions with the Applicant. An update will be submitted at Deadline 2.

2.7 Agenda Item 3g: The Approach to S.spinulosa Reef Mapping and Assessment

2.7.1 The MMO has reviewed the comments provided by the applicant and is currently in discussions with the MMO's scientific advisors and will continue discussions with the Applicant. An update will be submitted at Deadline 2.

2.8 Agenda Item 3h: Licence condition for releasing sediments 50m, rather than 500m, from S.spinulosa reef

2.8.1 The MMO has discussed this point with the applicant and welcomes the introduction of the use of a fall pipe when disposing sediment within the HHW SAC. The MMO is currently in discussions with the MMO's scientific advisors and will continue discussions with the Applicant. An update will be submitted at Deadline 2.

2.9 Agenda Item 3i: Cumulative Effects on Sandeel

2.9.1 The MMO welcomed the comments from the applicant. The MMO is currently in discussions with the MMO's scientific advisors and will continue discussions with the Applicant. An update will be submitted at Deadline 2.

2.10 Agenda Item 3j: Concerns regarding the use of Site Integrity Plans for SNS and HHW Mitigation and Management

2.10.1 The MMO maintains the position that the concept of a SIP was designed to deal with in combination impacts for noise in the Southern North Sea. Realistic in-combination information will only be available nearer the time of the proposed activities, therefore the SIP is the appropriate control mechanism for the in-combination effects for this specific scenario. The MMO continues to disagree that a SIP is an appropriate mechanism to deal with impacts of projects alone. The SIP does not involve deferring decisions regarding the specific alone impacts of specific projects and this is true for noise impacts as well as any other type of impact. At the time of consent, assessment is possible for noise impacts of the individual projects and it is only in-combination effects and developments in mitigation that is effectively deferred via a SIP.

2.10.2 The MMO has concerns in the widening of the use of the SIP principle to deal with project only impacts, this is not something the MMO supports.

2.10.3 The MMO are aware of the disagreement that there is no Adverse Effect on Integrity (AEOI) in relation to the HHW SAC, between the Applicant and Natural England (NE). The MMO would highlight that if NE advise that there is AEOI then the MMO would require this to be fully considered at the consenting stage. The MMO will provide further comments at Deadline 2.

2.10.4 Notwithstanding the MMO's position described in 2.10.1 – 2.10.3 regarding the concept of a SIP for project alone benthic impacts, the MMO acknowledges the efforts made to improve the document in describing the approach and potential actions arising. The MMO will review the proposed amendments to the SIP and provide comments accordingly

2.11 Agenda Item 3k: Modelling of continuous noise impacts on marine mammals

2.11.1 The MMO acknowledges that discussions are ongoing with the applicant in relation to noise modelling requirements. An update will be submitted at Deadline 2.

3. Additional Comments

3.1 WSI for Pre-commencement Surveys

3.1.1 The MMO is currently in discussion with Historic England in relation to the Schedule 9 and 10 Condition 14(2), Schedule 11 and 12 Condition 9(2) and Schedule 13 Condition 7(2). The MMO and Historic England are reviewing the condition. An update will be provided at Deadline 2.

Yours Sincerely



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