



# Marine Management Organisation

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

30 January 2020

Dear Ms Fernandes,

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

### **MMO Deadline 4 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 Deadline 4.

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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## Contents

|                                                                                                                                                                              |   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|
| 1. Summary of Oral Cases made during the Offshore Effects including the draft Development Consent Order (DCO) Issues Specific Hearing (ISH) .....                            | 3 |
| 1.1 Agenda Item 2(ii): Offshore Written Scheme of Investigation (WSI) .....                                                                                                  | 3 |
| 1.2 Agenda Item 4(ii): Fisheries Co-existence and Liaison Plan.....                                                                                                          | 3 |
| 1.3 Agenda Item 5(a)(ii): Article 38: Additional construction techniques .....                                                                                               | 3 |
| 1.4 Agenda Item 5(a)(iii) & 5(a)(iv): Noise & marine mammal monitoring.....                                                                                                  | 3 |
| 1.5 Agenda Item 5(a)(v): Construction techniques other than piling .....                                                                                                     | 3 |
| 1.6 Agenda Item 5(b)(i): Mitigation methods and JNCC 2010 guidelines .....                                                                                                   | 3 |
| 1.7 Agenda Item 5(c)(i): In combination effect and Adverse Effect on Integrity (AEol) .....                                                                                  | 4 |
| 1.8 Agenda Item 5(c)(ii): Appropriate of using a SNS SIP .....                                                                                                               | 4 |
| 1.9 Agenda Item 5(d)(i): Water quality on Harbour Porpoise .....                                                                                                             | 4 |
| 1.10 Agenda Item 6(a)(i): HHW SIP – Implications of Norfolk Vanguard Secretary of State (SoS) letter on Norfolk Boreas in relation to cable protection and micro siting..... | 4 |
| 1.11 Agenda Item 6(a)(ii): Sediment disposal in the HHW SAC .....                                                                                                            | 5 |
| 1.12 Agenda Item 6(a)(iv): Operation and Maintenance (O&M) activities within the HHW SAC .....                                                                               | 5 |
| 1.13 Agenda Item 6(b)(iii): As-built vs consented use in in-combination Collision Risk modelling .....                                                                       | 5 |
| 1.14 Agenda Item 7(i): Implications on Norfolk Boreas DML’s of the proposed amendments put forward in Norfolk Vanguard SoS letter.....                                       | 5 |
| 1.15 Arbitration and Appeals .....                                                                                                                                           | 5 |
| 2. Action Points from ISH 4 Offshore Issues.....                                                                                                                             | 6 |
| 2.1 Action Point 6: Provide update on Regulators’ Forum meetings about ongoing management and monitoring of SIP. ....                                                        | 6 |
| 2.2 Action Point 10: Natural England to agree with MMO revised wording of the Condition regarding disposal of sediments in the HHW SAC with respect to particle size. ....   | 6 |
| 3. Additional Comments.....                                                                                                                                                  | 6 |
| 3.1 SoCG.....                                                                                                                                                                | 6 |
| 3.2 HHW SAC SIP (REP1-034) .....                                                                                                                                             | 6 |
| 3.3 Cable Protection Position Statement .....                                                                                                                                | 7 |

## **1. Summary of Oral Cases made during the Offshore Effects including the draft Development Consent Order (DCO) Issues Specific Hearing (ISH)**

### **1.1 Agenda Item 2(ii): Offshore Written Scheme of Investigation (WSI)**

- 1.1.1 The MMO confirmed that the condition does allow for multiple submissions of the Offshore WSI at different stages of the project. The MMO understands that there may still be some uncertainty on how this works in practice and will work with the Applicant and Historic England to ensure this is clear in all related documents.
- 1.1.2 The MMO suggests a summary page in the Outline WSI could provide an overarching description of how archaeological risks and consents are dealt with through different stages of the works including pre-construction surveys.

### **1.2 Agenda Item 4(ii): Fisheries Co-existence and Liaison Plan**

- 1.2.1 The MMO advised there is no specific concerns in relation to this, however would advise that the right interested parties need to be consulted in relation to the detail within the plan.
- 1.2.2 The MMO believe that the MMO Coastal Office, Eastern Inshore Fisheries and Conservation Authorities, National Federation of Fishermen's Organisations and other relevant fishing communities need to be consulted.

### **1.3 Agenda Item 5(a)(ii): Article 38: Additional construction techniques**

- 1.3.1 The MMO agreed with the Applicant and Natural England that the current wording of conditions 14(1)(f) and 14(1)(m) is appropriate and no additional wording or amendments are needed.

### **1.4 Agenda Item 5(a)(iii) & 5(a)(iv): Noise & marine mammal monitoring**

- 1.4.1 The MMO agreed that there is the ability to request further noise monitoring within Condition 19(3). The MMO will continue discussions with Natural England and the Applicant on monitoring the piles with the most resistance to understand if any changes to the In Principle Monitoring Plan is required.
- 1.4.2 The MMO will continue discussions with the applicant and Natural England in relation to the inclusion of a marine mammal monitoring condition for specific marine mammal monitoring.

### **1.5 Agenda Item 5(a)(v): Construction techniques other than piling**

- 1.5.1 The MMO agreed that piling is the worst case scenario for underwater noise and that the Environmental Statement has risk assessed a range of different activities in relation to underwater noise. The MMO have no concerns in relation to construction techniques that are known at this time that do not include piling as these techniques currently produce less underwater noise than piling.

### **1.6 Agenda Item 5(b)(i): Mitigation methods and JNCC 2010 guidelines**

- 1.6.1 The MMO highlighted that any noise generating activities are problematic with regard to the effects on protected marine mammals and certain fish species. This provides motivation for both regulators and industry to push forward with developing construction and mitigation techniques. The MMO understand there is ongoing research in relation to the effectiveness of bubble curtains and a new technique for low-order detonations for unexploded ordinance. The MMO advised there is as much confidence as is possible at this time in the developments to ensure the mitigation is appropriate.

## **1.7 Agenda Item 5(c)(i): In combination effect and Adverse Effect on Integrity (AEol)**

- 1.7.1 The MMO recognised that the effects of noise generating activities within the SNS cannot be detailed until closer to the time of construction due to other activities and projects which the applicant is not in control of. Assessment of noise effects on the SNS can be provided for the project alone and it is only the in-combination effects that can only be estimated without a high degree of certainty at the time of the consenting decision. The MMO understands the ongoing concerns in relation to the lack of a formal underwater noise management mechanism but there are currently discussions underway between regulatory bodies to conclude this issue. Currently the MMO will use the SNS SIP mechanism to review each case when received working with industry to understand the activities that are taking place within the SNS during the overlapping time periods. The MMO will ensure the SNS SIP uses current JNCC threshold guidelines to keep in-combination effects in the SNS to manageable levels.
- 1.7.2 The MMO is part of a regulators group to ensure consistency and discuss the future management of noise in the SNS. The MMO provided an update on this advising that DEFRA are currently seeking funding to manage the in-combination effects and can confirm that this is seen as an urgent matter. Please review comment 2.2.1 for an update.

## **1.8 Agenda Item 5(c)(ii): Appropriate of using a SNS SIP**

- 1.8.1 The MMO takes into account concerns raised by the applicant and stakeholders regarding management of noise in the SNS. The MMO is taking urgent steps to advance a formal management procedure through the Southern North Sea Regulators group and will manage the noise activities of projects on a daily basis until such time as that management measures are agreed. The MMO considers that the SNS SIP is the most appropriate way to approach the current situation and is content with Norfolk Boreas's in principle SIP.
- 1.8.2 The MMO have no outstanding concerns on the use of the SNS SIP in relation to managing underwater noise projections, however, the MMO does have ongoing concerns on the use of the Haisborough, Hammond and Winterton (HHW) SIP as an appropriate way to manage benthic impacts of the project both alone and in combination. It is the view of the MMO that site integrity plans are not appropriate for deferring decisions regarding the benthic impacts of the project alone, and the SIP format should be utilised for capturing underwater noise projections only. The MMO will continue these discussion with the applicant.

## **1.9 Agenda Item 5(d)(i): Water quality on Harbour Porpoise**

- 1.9.1 The MMO agreed with the applicant and Natural England that no further assessment is required and there are no outstanding concerns.

## **1.10 Agenda Item 6(a)(i): HHW SIP – Implications of Norfolk Vanguard Secretary of State (SoS) letter on Norfolk Boreas in relation to cable protection and micro siting**

1.10.1 The MMO recognised the changes and efforts made by the Applicant in improving the HHW SIP and the mitigation proposed. The MMO defer to Natural England on the effectiveness of any mitigation. The MMO still fundamentally disagrees with the use of the SIP for the HHW SAC to defer decisions on the impact of the project alone, the worst case scenario of which can be assessed in the original HRA and needs to be addressed at this point in time and not post consent. The MMO finds no justification for the applicant to suggest this SIP approach in other areas of their application, as the concept and principles of the SIP is purely and exclusively to deliver a more realistic model of what underwater noise will be produced, nearer to the time of the activity and hence aiding effective underwater noise threshold management.

1.10.2 The MMO will continue discussions with the Applicant and Natural England.

#### **1.11 Agenda Item 6(a)(ii): Sediment disposal in the HHW SAC**

1.11.1 The MMO agreed with the Applicant and Natural England on the details of where the material will be disposed of and how the Applicant will provide details of the disposal locations.

1.11.2 The MMO understands Natural England have ongoing concerns in relation to particle size and will continue discussions on the practicalities and potential wording of a condition.

#### **1.12 Agenda Item 6(a)(iv): Operation and Maintenance (O&M) activities within the HHW SAC**

1.12.1 The MMO advised that the current O&M activities are low risk activities. The MMO acknowledged that the Applicant has removed additional cable protection from the O&M plan and confirmed and agreed that they will need to apply for an additional marine licence for this. The MMO believes the additional cable protection is a high risk activity and the MMO is content that the O&M activities can be undertaken within the HHW SAC.

#### **1.13 Agenda Item 6(b)(iii): As-built vs consented use in in-combination Collision Risk modelling**

1.13.1 The MMO highlighted that this is a recent idea development, and the MMO is still reviewing the information provided by the Applicant. The MMO needs to be clear where they can help and even though it seems logical ongoing internal discussions will be needed to provide a full and detailed response or update at Deadline 5.

1.13.2 The MMO defers to Natural England on any modelling and remodelling required.

#### **1.14 Agenda Item 7(i): Implications on Norfolk Boreas DML's of the proposed amendments put forward in Norfolk Vanguard SoS letter**

1.14.1 The MMO welcomed the Applicants agreement on the notice to mariners condition being amended to '*three days*' rather than '*five days*' in condition 9(12) and will update the Statement of Common Ground (SoCG) to show this point is agreed.

1.14.2 The MMO advised they were of the understanding at the end of the Norfolk Vanguard examination, that the Maritime and Coast Guard Agency (MCA) and the Applicant had agreed the points in relation to the lighting plan and O&M programme. The Applicant advised that this was their understanding and would provide a detailed response in their Deadline 4 response. The MMO will review this submission and provide any comments at Deadline 5.

#### **1.15 Arbitration and Appeals**

- 1.15.1 The MMO confirmed the position between both the applicant and the MMO had not changed and we still agree to disagree. The MMO advised they are hopeful of a decision from the SoS on other consents being reviewed to inform Norfolk Boreas DCO/DML and will continue to work with the Applicant in moving forward if any progress is made.
- 1.15.2 Please note the MMO is aware the decision date for other Offshore Wind Farm DCOs is now the 1 June 2020. This will be after the end of the Norfolk Boreas examination. The MMO will review this decision and confirm our positions at Deadline 5.

## **2. Action Points from ISH 4 Offshore Issues**

### **2.1 Action Point 6: Provide update on Regulators' Forum meetings about ongoing management and monitoring of SIP.**

- 2.1.1 There is no further update than the information provided in the ISH4 (comment 1.7.2) The MMO is attending a meeting on 25 February 2020 and will provide an update at Deadline 6. The MMO is currently attending a monthly regulators forum to effectively manage the suggested SNCB noise thresholds for the SNS SAC. Whilst the MMO already has a mechanism which allows all-industry collaboration and therefore ongoing management and has successfully executed this mechanism recently, issues remain regarding licence condition enforcement which is currently under discussion and cannot be formally implemented until all industry partners have agreed to a new regulatory approach. High level ministerial meetings are currently underway to resolve this issue and progress regarding engaging all stakeholders is expected imminently.

### **2.2 Action Point 10: Natural England to agree with MMO revised wording of the Condition regarding disposal of sediments in the HHW SAC with respect to particle size.**

- 2.2.1 The MMO is currently working with Natural England and will provide an update at Deadline 5.

## **3. Additional Comments**

### **3.1 SoCG**

- 3.1.1 The MMO is working closely with the Applicant to come to an agreement on the outstanding issues raised in the relevant representative. The MMO and the Applicant are capturing any progress on the SoCG – this will be updated for Deadline 6.

### **3.2 HHW SAC SIP (REP1-034)**

- 3.2.1 The MMO has reviewed the updated version of the HHW SAC SIP and recognise the amendments to the document. The MMO would emphasise that although the document has more detail and increased mitigation, the need for a SIP is still a point for disagreement. The MMO does not believe there is a need to use the SIP as Natural England has advised there is AEol on the project alone not in combination, therefore the concerns raised by Natural England need to be reviewed at the consenting stage rather than post consent.

3.2.2 The MMO also questions how the introduction of SIP's for other aspects of the project would not result in similar extra regulatory governance so near to the activity commencing, and how many aspects of the overall project developers could identify as falling into this category. Also, if a SIP condition could not be met, post consent, then the MMO would be in the unfortunate position of issuing a stop notice on the activity, very near to when that activity is due to commence, and hence restricting the developers construction progress at short notice. The MMO consider there to be no advantage in the use of SIP's other than assisting in the required management of underwater noise thresholds.

### **3.3 Cable Protection Position Statement**

3.3.1 The MMO remains confident in its position regarding the removal of additional cable protection from O&M plans. This is well understood by the applicant and, in response, further cable protection has been removed from O&M plans. The detail of the position statement document itself requires further internal review and the MMO will provide the final document or an update at Deadline 5.

Yours Sincerely

A black rectangular box redacting the signature of Rebecca Reed.

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