



# Marine Management Organisation

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

29 April 2020

Dear Ms Fernandes,

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

### **MMO Deadline 9 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 158 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 7 and 8. The MMO has finalised the Statement of Common Ground (SoCG) with the applicant that will be submitted by the applicant on the MMO’s behalf at Deadline 9.

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. Responses to the ExA's Written Questions**

### **1.1 ExA third round of Written Questions**

1.1.1 Please find a table including the MMO's response to the ExA Written Questions in the following document EN010087-MMO-Comments-on-ExA-3WQs-Responses-Final, enclosed with this letter.

## **2. Norfolk Vanguard Final Position**

### **2.1 Norfolk Vanguard Consultation Response**

2.1.1 Please find the MMO's consultation comments in response to the submissions on 28 February 2020 to the Norfolk Vanguard Secretary of State (SoS) letter (dated 6 December 2019), in the following document EN010079-Norfolk-Vanguard-MMO-Consultation-Response-Final, enclosed with this letter.

2.1.2 This document highlights the MMO concerns in relation to additional mitigation, proposed compensation measures and the updated Schedule to secure the compensation measures. As the applicant has submitted the same documents (with only minor changes) for the Norfolk Boreas project – please view this as the MMO comments on these issues. Please note any mention of Schedule 17 in the attached Norfolk Vanguard response refers to Schedule 19 of Norfolk Boreas dDCO (REP7-003).

2.1.3 Anything that requires further discussion during the Norfolk Boreas Examination has been included below.

## **3. Comments in Deadline 7 and 8 documents**

### **3.1 Outline In Principle Monitoring Plan (IPMP) (REP7-011/012)**

3.1.1 The MMO welcomes the amendments to include Haisborough, Hammond and Winterton (HHW) Special Area of Conservation (SAC) monitoring within the IPMP.

### **3.2 Proposed Sediment Disposal Sites Site Characterisation Report (REP7-013)**

3.2.1 The MMO welcomes the required update to the Site Characteristic Report and confirms that no further updates to the document are required.

### **3.3 Applicant Submissions REP7-024 to REP7-031**

3.3.1 The MMO notes that these submissions are the same documents (with only minor changes) submitted for Norfolk Vanguard Project in response to the SoS letter for further information.

3.3.2 The MMO supports Natural England's (NE) role as the Statutory Nature Conservation Body (SNCB) within the planning process for National Significant Infrastructure Projects (NSIP).

3.3.3 The MMO defers to NE in relation to Habitats Regulations Assessment and any relevant mitigation and compensation for features within the Flamborough and Filey Coast Special Protection Area (SPA) and the Alde-Ore Estuary SPA, and Haisborough, Hammond and Winterton (HHW) Special Area of Conservation (SAC).

### **3.4 Note on requirements (REP5-005)**

3.4.1 The MMO wishes to highlight that the Note on Requirements does not include the SoS as a discharging authority in Section 2. If Schedule 19 (compensatory measures) is included, for completeness this will need to be updated. Any other updates related to the ongoing developments will need to be updated in any relevant documents as required.

## **4. Closed issues as of Deadline 9**

### **4.1 End of Construction**

4.1.1 The MMO has continued discussions through the SoCG with the Applicant in relation to the condition the MMO proposed in REP7-039. The MMO acknowledges the Applicant's concerns and after further internal discussions can confirm that the MMO does not require an additional condition or any updates to the DCO.

### **4.2 Updating documents at the End of Examination**

4.2.1 The MMO has reviewed Schedule 18 and Part 2 is well structured and clearly shows the final version of the document that should be used once consent is granted, therefore we are content with this section.

4.2.2 The MMO believes Part 1, Section '*Examination documents forming part of the environmental statement*' needs further clarity on what part of the application the updated examination documents link to. The MMO believes adding in the name of the Application Environmental Statement Chapters and documents as well as the Application Document No. in column 1 would provide this clarity and show what else would need to be reviewed in addition to the updated documents when reviewing at post consent stages.

4.2.3 The MMO understands the Applicant has agreed to this amendment and will be updating the dDCO for Deadline 10. The MMO welcomes this update and has no further comments provided the updates to Part 1 of the document are made.

### **4.3 Marine Mammal Monitoring**

4.3.1 The MMO has continued discussions with the Applicant and NE and all parties have now agreed on updating condition 18 and condition 20 of Schedules 9 and 10. Please refer to the MMO comments on the Applicant's response to Q3.2.0.1 in EN010087-MMO-Comments-on-ExA-3WQs-Responses-Final for details on the amendments.

### **4.4 Particle Size Analysis**

4.4.1 The MMO understands that the Applicant, NE and the MMO are in agreement that the conditions proposed for particle size analysis for the Norfolk Vanguard project are not suitable.

4.4.2 The MMO understands the Applicant does not believe that a condition is required due to the additional mitigation for disposal of material within the HHW SAC, set out within the HHW SAC control document (Site Integrity Plan (SIP) or Cable Specification, Implementation and Monitoring Plan (CSIMP)). The MMO highlights that the SIP approach is not agreed between the MMO and the Applicant – see section 5.4.

4.4.3 The MMO notes that NE still require a condition or to have some commitment secured to guarantee the disposal of material will be in an area with similar particle size to ensure disposal of sediment does not fundamentally change the habitat of the disposal location.

4.4.4 The MMO is continuing to work with the Applicant and NE to come to a final position during examination.

4.4.5 However, if the final position is that there is no solution or no agreement can be reached and the SoS decides it would be appropriate to add a condition then the MMO considers that the condition would need to meet the five tests and above all be clear and precise enough to be enforceable.

### **4.5 CSIMP**

4.5.1 The MMO welcomes the CSIMP and related condition as an alternative route to capture all information required at post consent stage and is content with the principle and the mechanism behind the CSIMP.

4.5.2 Notwithstanding this, the MMO has concerns that approval of the CSIMP could result in the need for further consideration of Adverse Effect on Integrity by the MMO, leading to potential delay regarding the sign off of this document and note that this is a risk for the Applicant.

## **5. Outstanding issues**

### **5.1 Summary**

5.1.1 The MMO welcomes the continued discussions with the Applicant through the SoCG to come to agreement where possible if no agreement is made the final position has been highlighted within the SoCG. The MMO has the following outstanding issues that will not change before the end of examination.

### **5.2 Timeframes**

5.2.1 The MMO note further comments have been provided by the Applicant in Table 5.5 of REP8-015 and these include referring to Condition 15(5) (Schedule 9-10), Condition 9(5) (Schedule 11-12), and Condition 7(5) (Schedule 13) which allows the ability for the parties to agree to an extension in writing. The MMO understands this point, but still has concerns that the Applicant may not be willing to grant extensions due to construction timelines and potential costs.

5.2.2 The MMO has provided detailed comments on the concerns on timeframes within RR-069. To summarise the MMO believes that to ensure there are no delays to the signing off of documents that could impact the developer, 6 months is the appropriate timescale to deal with any issues that may occur at post consent stage.

### **5.3 Arbitration and Appeals**

5.3.1 The MMO continues to believe that any additional mechanism is not required to be included in the DCO/DMLs and that judicial review is the appropriate mechanism.

5.3.2 The MMO has provided detailed comments in the Norfolk Vanguard Ltd and MMO Joint Position Statement - Arbitration and Appeal Mechanisms detail submitted with documents RR-069 and Appendix 3 of AS-025.

### **5.4 HHW SAC SIP**

5.4.1 The MMO does not agree with the Applicant that the use of the SIP and the Grampian condition is a suitable mechanism to manage the uncertainty the Applicant has laid out on the cable route and location of Annex I habitat.

5.4.2 The MMO believes there is a fundamental difference in the need for a SIP between the impact alone within the HHW SAC and for the in-combination noise impact within the Southern North Sea (SNS) SAC. The MMO notes that where a project has been assessed regarding impacts of noise in the SNS SAC, project impacts alone can be clearly identified, assessed and the possible mitigation to be used described, which all parties can have confidence in. The only uncertainty within the SNS SAC is the in combination impacts with other projects. The SIP was specifically utilised for that type of uncertainty and where the confidence in the proposed mitigation has been agreed by all parties.

5.4.3 The MMO understands that it is not the Applicant's aim to delay an Appropriate Assessment to be conducted by the SoS with either of the proposed HHW control documents (SIP/CSIMP) however the MMO believes the SIP is not the appropriate route to take – further comments are provided within the SoCG.

5.4.4 The MMO believes it is a matter for the SoS, in light of NE's comments and the information provided by the Applicant, to determine whether sufficient information is available to conclude for certainty that there is no AEoI at consenting stage.

Yours Sincerely

A black rectangular box redacting the signature of Rebecca Reed.

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