



Marine Management Organisation

Marine Licensing
Lancaster House
Hampshire Court
New castle upon Tyne
NE4 7YH

T +44 (0)300 123 1032
F +44 (0)191 376 2681
www.gov.uk/mmo

Norfolk Boreas Case Team
Planning Inspectorate
NorfolkBoreas@planninginspectorate.gov.uk
(Email only)

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

11 May 2020

Dear Sir or Madam,

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

Comments on Responses to the Examining Authority's (ExA) Fourth Round of Written Questions

The Marine Management Organisation (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 Deemed Marine Licence (DML) conditions.

The MMO received a Rule 17 letter containing the ExA's fourth round of written questions on 28 April 2020 for the proposed Norfolk Boreas Offshore Wind Farm (Ref EN010087). Please find the MMO's comments on the responses to the ExA's fourth round of questions below for your consideration.

In order to ensure clarity, who the question was directed to and the question to which the answer has been provided has been incorporated in this response.

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



Rebecca Reed
Marine Licensing Case Officer

D +44 (0)2080268854
E Rebecca.Reed@marinemanagement.org.uk



INVESTORS
IN PEOPLE | Bronze





Marine Management Organisation

EN010087 – Norfolk Boreas – The Examining Authority's fourth written questions and requests for information

ExQ 4	Question to:	Question:	MMO Response:	Applicant/Interested Party Response:	MMO's Comment on Response:
2. Biodiversity, Biological Environment and Ecology					
2.0 Offshore benthic and marine mammals					
Q4.2.0.2	Applicant Marine Management Organisation	<p>Sandeel:</p> <p>a) Applicant to state its position regarding MMO's request for a further update to the IPMP for sediment sampling for particle size analysis in respect of habitat suitability for sandeel.</p> <p>b) The Applicant and MMO to provide any additional information to assist the ExA in making its recommendation regarding sediment sampling to the SoS.</p>	<p>a) The MMO and the Applicant have now agreed this point as the Applicant has updated the In Principle Monitoring Plan (IPMP) at Deadline 6 (REP6-045). This is shown in the SoCG (REP8-021)</p>	<p>As presented in the Applicant's Responses to the Examining Authority's Third Round of Written Questions [REP7-017], the Applicant and the MMO are in full agreement regarding the collection of particle size data for sandeel habitat suitability assessment. The IPMP was updated at Deadline 5 [REP5-032] and at Deadline 7 [REP7-012] to reflect the initial request made by the MMO and a request for a further amendment to the text. Both parties have agreed that these</p>	<p>a) The MMO concurs that this point has been agreed as the Applicant has updated the In Principle Monitoring Plan (IPMP) at Deadline 6 (REP6-045). This is shown in the SoCG (REP8-021).b) The MMO notes that the applicant agrees that this issue may relate to the particle size analysis of dredged material to be disposed of within the Haisborough Hammond and Winterton (HHW) Special Area of conservation (SAC) The MMO also notes that the Applicant agrees it is not possible to advance this</p>



			<p>b) The MMO and the Applicant believes this point is not related to habitat suitability for sandeel but is related to the particle size analysis of dredged material to be disposed of within the Haisborough, Hammond and Winterton (HHW) Special Area of Conservation (SAC) as discussed in Issue Specific Hearing 4. 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. 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</p>	<p>amendments resolve all remaining issues relating to sandeel and this was reflected in the Statement of Common Ground provided at Deadline 8 (see the last line in Table 5 [REP8-021]). As highlighted by the MMO in their response to written questions this question may be in relation to the area of disagreement between the Applicant and Natural England regarding Natural England's advice that a condition should be included within the dDCO to ensure that sediment disposed of within the Haisborough Hammond and Winterton SAC is of the same particle size as the seedbed on which it is being deposited. In the Applicant's Comments on Responses to the Third Round of Written Questions [REP8-015] the Applicant</p>	<p>issue further during the Norfolk Boreas Examination and has nothing further to add other than to reiterate the comments made in its response to the Examining Authority's 4th round of written questions (REP10-061).</p>
--	--	--	--	---	---

			<p>Monitoring Plan (CSIMP)). The MMO notes that NE still require a condition or to have some commitment secured to ensure 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. The MMO has continued to work with the Applicant and NE to come to a final position, however the current position is that the parties have been unable to suggest a suitable solution or come to an agreement and therefore the MMO cannot provide further comments. The MMO highlights that it is now for the SoS to make a determination and this determination should have regard to both Hornsea Three Project and Norfolk Vanguard to be consistent across all DCOs. If the SoS</p>	<p>commented on the MMO's response to this question (3.2.0.2) outlining several reasons why the Applicant does not consider a condition relating to particle size to be, necessary, appropriate, enforceable or indeed the best method to achieve Natural England's stated purpose of ensuring that the seabed sediment remains of the same particle size. The Applicant has discussed this further with the MMO and Natural England and all parties agree that it is not possible to advance this issue further during the Norfolk Boreas Examination, and that the precise drafting of any condition, and indeed whether a condition should be included at all, will depend on the outcome of the SoS's determination of</p>	
--	--	--	--	--	--

ExQ 4	Question to:	Question:	MMO Response:	Applicant/Interested Party Response:	MMO's Comment on Response:
			<p>decides it would be appropriate to include a condition within the DMLs 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.</p>	<p>Hornsea Project Three and Norfolk Vanguard.. See also Natural England's response to DCO documents submitted at Deadline 9 [REP9-038].</p>	
8. Habitats Regulation Assessment					
8.3 Haisborough, Hammond and Winterton SAC					
Q4.8.3.1	The Applicant, Natural England, Marine Management Organisation,	<p>Alternative to the Site Integrity Plan:</p> <p>a) The Applicant to explain the process to be followed in the event that "a SIP was not taken forward then an equivalent document capturing all the commitments made in the SIP would still be required", as suggested in the response to ExQ2.8.3.2 [REP5-045]. Would an alternative condition resolve this?</p>	<p>a) The MMO notes this question is directed to the Applicant. The MMO is aware of the alternative condition and Plan proposed CSIMP.</p> <p>In relation to securing mitigation measures the MMO notes that the CSIMP would also have this requirement therefore agrees with Natural England's proposal that the CSIMP should in fact be the 'Cable Specification,</p>	<p>a) In response to the ongoing consultation with Natural England and the MMO, the Applicant submitted an alternative to the SIP at Deadline 6 in the form of the Norfolk Boreas Haisborough, Hammond and Winterton Special Area of Conservation Outline Cable Specification, Installation and Monitoring Plan [REP6-017]. As explained in the Haisborough Hammond and Winterton position</p>	<p>a) The MMO notes this question is directed to the Applicant. The MMO is aware of the alternative condition and Plan proposed (CSIMP) and has no further comments to make other than to reiterate that it agrees with Natural England that the CSIMP should be the 'Cable specification, Installation, Mitigation and Monitoring Plan.'</p> <p>b) The MMO emphasises that while it defers to NE on these</p>

ExQ 4	Question to:	Question:	MMO Response:	Applicant/Interested Party Response:	MMO's Comment on Response:
		<p>b) MMO and NE [REP7-040] both emphasise the need to decide on AEol at consenting stage. Can the parties confirm that this will be the case?</p>	<p>Installation, Mitigation and Monitoring Plan.'</p> <p>The MMO welcomes the CSIMP plan and related condition as an alternative route to capture all information required at post consent stage and the MMO is content with the principle and the mechanism behind the CSIMP.</p> <p>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 post consent, leading to potential delay regarding the sign off of this document. The MMO notes that this is a risk for the Applicant.</p> <p>b) The MMO does not agree that the use of the SIP and the Grampian condition is a suitable mechanism to manage</p>	<p>paper [REP5-057] this secures the same mitigation as provided in the Site Integrity Plan, however removes the requirement for the MMO to be satisfied that there would be no Adverse Effect on Integrity (AEol) of the Haisborough, Hammond and Winterton (HHW) SAC during the post consent stage, recognising that this is the key area of concern for Natural England and the MMO.</p> <p>At Deadline 7, a revised draft DCO was submitted [REP7-004] which includes an alternative to condition 9(1)(m) of the Transmission DMLs (Schedules 11 and 12), should the Secretary of State be minded to adopt the use of the Cable</p>	<p>matters, the MMO still strongly believes that a decision should be made on AEol at consenting stage.</p> <p>The MMO understands that if no agreement on AEol can be reached during examination it will be 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 AEol at consenting stage when conducting the project Habitats Regulation Assessment.</p> <p>This MMO notes the Applicant is not seeking to defer Appropriate Assessment at the consenting Stage and is in agreement that this is now a matter for the</p>

ExQ 4	Question to:	Question:	MMO Response:	Applicant/Interested Party Response:	MMO's Comment on Response:
			<p>the uncertainty the Applicant has explained regarding the cable route and location of Annex I habitat.</p> <p>The MMO understands there is still disagreement regarding adverse effect on Integrity (AEol) between the Applicant and Natural England (NE).</p> <p>The MMO emphasises that while the MMO defers to NE on these matters, the MMO still strongly believes that a decision should be made on AEol at consenting stage and supports NE's position.</p> <p>The MMO understands that if no agreement on AEol is agreed during examination it will be a matter for the SoS, in light of NE's comments and the information provided by the Applicant, to determine</p>	<p>Specification, Installation and Monitoring Plan instead of the Site Integrity Plan. The alternative wording of this condition states: <i>A cable specification, installation and monitoring plan for the installation and protection of cables within the Haisborough, Hammond and Winterton Special Area of Conservation which accords with the principles set out in the outline Norfolk Boreas Haisborough, Hammond and Winterton Special Area of Conservation Cable Specification, Installation and Monitoring Plan such plan to be submitted to the MMO (in consultation with the relevant statutory nature conservation</i></p>	<p>SoS to decide as part of the consent decision.</p>

ExQ 4	Question to:	Question:	MMO Response:	Applicant/Interested Party Response:	MMO's Comment on Response:
			<p>whether sufficient information is available to conclude for certainty that there is no AEoI at consenting stage when conducting the project Habitats Regulation Assessment.</p> <p>This MMO notes the Applicant is in agreement that it is now for the SoS to decide as part of the decision.</p>	<p><i>body) at least six months prior to commencement of licensed activities.</i></p> <p>This revised wording removes the following component of the condition associated with the SIP: <i>“and the MMO (in consultation with the relevant statutory nature conservation body) is satisfied that the plan provides such mitigation as is necessary to avoid adversely affecting the integrity (within the meaning of the 2017 Regulations) of a relevant site, to the extent that sandbanks and sabellaria spinulosa reefs are a protected feature of that site”.</i></p> <p>The Applicant considers that the CSIMP control document and corresponding condition are suitable to secure the relevant mitigation for the HHW SAC if the</p>	

ExQ 4	Question to:	Question:	MMO Response:	Applicant/Interested Party Response:	MMO's Comment on Response:
				<p>HHW SAC SIP and Grampian condition are not considered appropriate for use by the Secretary of State. The Applicant understands that the MMO and Natural England agree with this position, as set out in their respective Statements of Common Ground [REP9-023] and [ExA.SoCG-17.D10.V4].</p> <p>b) As stated in various submissions, such as the HHW SAC Position Paper [REP5-057], the Applicant is confident that an AEoI can be ruled out at this stage. This position is discussed further in response to Q4.8.3.2 below.</p> <p>The CSIMP and the HHW SIP are both outline documents fully describing the current mitigation proposed and both</p>	

ExQ 4	Question to:	Question:	MMO Response:	Applicant/Interested Party Response:	MMO's Comment on Response:
				<p>of these document are certified documents (8.20) under Article 37 and Schedule 18 of the dDCO. Neither approach seeks to defer Appropriate Assessment at the consenting stage. A full Information to support Habitats Regulations Assessment (HRA) Report has been provided with the application [APP-201] which concludes that there is no adverse effect on integrity (AEol). Whilst it is correct that the final number and precise route of the cable has yet to be determined, the HRA has been undertaken on the basis of a worst case scenario. The Applicant has sought to demonstrate that assessment</p>	

ExQ 4	Question to:	Question:	MMO Response:	Applicant/Interested Party Response:	MMO's Comment on Response:
				<p>of the worst case scenario, considered on the basis of the best information currently available, and the likelihood that this information will not change prior to construction, enables an AEol to be ruled out at the stage of consent determination. In the event that new information becomes available between consent determination and construction (i.e. during the discharge of relevant DML conditions) which would alter the assessment undertaken at the consent determination stage, the MMO will be required to take this into account before discharging any dML conditions in the usual way. This is no different to the</p>	

ExQ 4	Question to:	Question:	MMO Response:	Applicant/Interested Party Response:	MMO's Comment on Response:
				<p>MMO's role in undertaking any other Appropriate Assessment which is required before arriving at any determination (i.e. the grant of a Marine Licence) which may have an adverse effect on the integrity of a European site. This is an integral and usual part of the MMO's role as regulator of marine activities.</p>	