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

MMO Reference: DCO/2017/00002

Planning Inspectorate Reference: EN010087

Identification Number: 20022925

29 July 2020

Dear Ms Fernandes,

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

MMO Deadline 13 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 issues raised at the Issue Specific Hearing 5 and responses to the Rule 17 Letter.

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 Draft Development Consent Order and other matters Issues Specific Hearing (ISH)

1.1 Agenda Item 3: DCO: Scenarios

- 1.1.1 The Applicant advised that both Scenario 1 and Scenario 2 will remain in the Norfolk Boreas Draft DCO (dDCO), even though Norfolk Vanguard had now been consented. As per the REP1-041 the scenarios are based on Norfolk Vanguard commencing, not just being consented.
- 1.1.2 The MMO is content on the position provided by the applicant.

1.2 Agenda Item 4b - Article 37 and how this relates to Article 44 and Schedule 18 of the dDCO

- 1.2.1 The Applicant advised that the changes to Article 37 were the inclusion of the Haisborough, Hammond and Winterton (HHW) Special Area of Conservation (SAC) Site integrity Plan (SIP) in addition to the HHW SAC Cable Specification, Installation and Monitoring Plan (CSIMP) and the removal of compensatory measures.
- 1.2.2 The MMO understands the Applicant is not altering the dDCO Article 44 and Schedule 18 as these amendments have developed from discussions after the Norfolk Vanguard Examination closed.
- 1.2.3 The MMO notes it is the Applicants preference to include the CSIMP rather than the SIP for the HHW SAC however the Applicant intends to leave the SIP and relevant condition within the Application to enable the Examining Authority (ExA) to consider both options.
- 1.2.4 The MMO advised that it's position has remained consistent throughout examination in that the SIP and Grampian condition is not appropriate as the condition refers to Adverse Effects on Integrity (AEoI). The MMO believes that this condition would require a detailed review of the site's integrity in relation to AEoI at post consent stage when discharging the plan. It is the MMO's view that any decision on AEoI should be made at the consenting stage and not pushed forward to a later date by the discharging of plans post consent.
- 1.2.5 The MMO's understanding is that the purpose of discharging of documents post consent is not to postpone a decision on AEoI but to agree the fine detail of the proposed works covered by the plans, the issue of no AEoI already having been considered and made during examination.
- 1.2.6 As the CSIMP and relevant condition does not include reference to AEoI our view is that this document is the preferred and most appropriate option to capture all details and information required for the HHW SAC. The MMO would therefore prefer to see the SIP option for the HHW SAC removed from the draft DCO. Further comments on the HHW SAC have been provided in section 2 as our response to the Rule 17 letter.

1.3 Agenda Item 4g - Schedules 9 to 12, Part 5: removal of appeals procedures and consequential change to conditions

1.3.1 The MMO welcomes the confirmation that all reference to appeals procedures will be removed from the DMLs and the DCO will be updated as per the Norfolk Vanguard DCO.

1.4 Agenda Item 4h - Schedules 9 to 12: new decommissioning of cable protection within marine areas condition

- 1.4.1 The MMO notes the applicant will include the condition for Deadline 13 for Schedules 11 and 12. The MMO agrees in principle with the inclusion of this condition.
- 1.4.2 The MMO, Natural England (NE) and the Applicant are continuing to discuss the wording of the condition and the potential for the removal of condition 3 (1)(g), as this was included to ensure decommissioning of cable protection was secured. The MMO will provide an update at Deadline 14.

1.5 Agenda Item 4

1.5.1 The MMO understands a new version of the dDCO will be submitted at Deadline 13, the MMO will review the updated version of the dDCO and provide comments at Deadline 14.

2. MMO response to Rule 17 Letter

- 2.1 R17.1.21: Regarding the potential impacts to Annex 1 reef and Archaeological interest features, MMO in [REP5-073] express concerns that micro-siting may not be possible and would like this to be dealt with at consenting stage rather than post consent. Is the MMO now content with the Applicant's provisions for micrositing to mitigate potential impacts on Annex 1 reef or sandbank features and archaeological interest features? If not, what additional measures would it consider necessary?
- 2.1.1 The MMO defers to NE on all aspects relating to Habitats Regulations and any potential AEoI or mitigation to rule out AEoI. The MMO supports NE in any matters relating to concerns on micrositing.
- 2.1.2 The MMO is content that the information within the proposed CSIMP does provide enough detail to assist with the discharging of the plan at the post consent stage.
- 2.1.3 The MMO's main concerns are in relation to the process of signing off any potential plan, as a mechanism. If there were any issues on AEoI at the post consent stage this could cause increased pressure and potential delays to all parties involved (MMO, NE and the Applicant). The MMO believes this would not be an appropriate solution.
- 2.1.4 The MMO has provided detail on the proposed plans for the Haisborough, Hammond and Winterton Special Area of Conservation in section 2.2.
- 2.2 R17.1.25: In the light of the Secretary of State (SoS) decision on Norfolk Vanguard, what is NE's and MMO's final conclusion regarding the appropriateness of both the SIP and CSIMP for undertaking appropriate assessment and addressing uncertainties related to cable laying?
- 2.2.1 The MMO notes that AEoI was ruled out by the ExA and the SoS for the HHW SAC with the SoS advising that the HHW SIP would provide additional safeguarding mechanism to deal with any concerns on impacts to the designated features at the post consent stage. The MMO defers to NE in relation to AEoI.
- 2.2.2 The MMO does not agree with the HHW SIP and the supporting Grampian condition as this states that the MMO has to rule out AEoI at post consenting stage. The MMO believes this should be dealt with at consenting stage therefore the MMO does not agree that the SIP is the most appropriate approach for Norfolk Boreas.

- 2.2.3 The MMO notes the Applicant is still going to include the SIP for the ExA to review as part of their recommendation. The MMO has stated previously within the Statement of Common Ground (SoCG) with the Applicant (REP9-023) that we would welcome consistency across both the Norfolk Vanguard and Norfolk Boreas decisions. In principle the MMO's position remains that the preference would be to be consistent across all decisions, however for this specific issue the MMO believes the SIP is not appropriate and therefore this document and condition should not be included in the DMLs for Norfolk Boreas.
- 2.2.4 In light of this, the MMO does support the inclusion of the CSIMP as an appropriate mechanism to manage any potential impacts to the HHW upon receipt of further design and method details. The MMO believes the CSIMP sets out the process for agreeing with the MMO and NE all works and mitigation measures associated with offshore cable installation and maintenance within the HHW SAC.
- 2.3 R17.1.28: If NE and MMO still consider that it is not appropriate to equate the use of the SIP process to its use in the SNS SAC, in relation to the disturbance of marine mammals, what do they consider to be an appropriate process?
- 2.3.1 The MMO has no outstanding concerns on the use of the Southern North Sea (SNS) Special Area of Conservation (SAC) SIP for managing in combination underwater noise impacts on marine mammals.
- 2.3.2 The MMO believes the SIP approach for in-combination impacts is appropriate as it allows the regulator a full view of the potential in-combination impacts for all industries at the post consenting stage when details of the final construction programmes are provided.
- 2.3.3 The MMO believes that the SNS Underwater Noise SIP is an appropriate mechanism as the uncertainties are not the Applicant's alone therefore the SIP allows the SoS to confirm no AEoI due to the in-combination impacts as it has been agreed the Norfolk Boreas project alone does not impact on the integrity of the SNS SAC. The MMO is therefore content with the Applicants In-Principle SNS SAC SIP (REP5-041).
- 2.3.4 For the HHW SAC the MMO still believes that it is up to the Applicant to provide enough evidence that there is no AEoI alone and equating the SNS SAC SIP to the HHW SAC SIP is not appropriate as the uncertainties relate to alone impacts.
- 2.3.5 The MMO understands the Applicant believes that a SIP can be used for all uncertainties but has confirmed that the CSIMP is the preferred approach for the HHW SAC. The MMO welcomes this confirmation for the reasons set out earlier in this letter.
- 2.4 R17.1.29: The MMO to provide an update on discussions with Regulators Group regarding management of underwater noise risk.
- 2.4.1 The MMO continues to attend the Regulators Group. The MMO advised in REP7-040 that a mechanism had been agreed in the form of a tool which had been created to manage the noise in the Southern North Sea across the different regulators. The MMO can now confirm that even though the mechanism is still within the development phase it is now available for public access through the OPRED website: <a href="https://www.gov.uk/guidance/oil-and-gas-offshore-environmental-legislation#offshore-petroleum-activities-conservation-of-habitats-regulations-2001-as-amended under the section entitled 'SNCB Underwater Noise'. The MMO notes the Examining Authority prefers submissions to be entered into examination, in light that the document is live and online please refer to Appendix 1 for an example of the document dated 21 July 2020.

- 2.4.2 The MMO notes that all industries have been encouraged to offer suggestions as to what other information they feel would be appropriate within the tracker and these submissions from developers can be made through the MMO or directly with OPRED.
- 2.4.3 The subject of piling prioritisation has been discussed and it was concluded that it would not be possible to enable this kind of approach. The foundations of the agreement between offshore industry regulators relies on close collaboration and an unbiased approach. It could be argued that a seismic survey for an Oil and Gas development should be viewed as being just as important as an Offshore Wind Farm (OWF) piling schedule, albeit with shorter notice periods. Ultimately, it would be the responsibility of OWF developers to ensure that their individual schedules align with their CFD commitments etc., whilst regulators will endeavour to be as pragmatic and flexible as possible. The focus remains entirely on the activities remaining within the JNCC suggested threshold limits.
- 2.4.4 It was also discussed that Natural England (NE) could not conclude no adverse effect on integrity for the Southern North Sea (SNS) Special Area of Conservation (SAC) until a formally recognised mechanism is put in place to document proposed underwater noise activity. NE have been invited to the next meeting in August to enable discussions and to understand what is required for the mechanism to be formally recognised by industry and Statutory Nature Conservation Bodies alike. The MMO will provide an update at Deadline 15.

Yours Sincerely

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CL/1095	Submitted	OPRED	Tolmount Conductor Piling Operation	Premier Oil	42/28d	W GS84 54, 2, 27.31 N, 0, 26, 28.57 E	01/05/2020	31/10/2020	18 (2)	Conduct or Piling																														
GS/1068	Approved	OPRED	Pegasus Pipeline Survey	Spirit Energy	43/13, 43/18, 43/19 & 43/24		01/04/2020			Pipeline Survey																														
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