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(Email only)

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

1 September 2020

Dear Ms Fernandes,

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

### **MMO Deadline 15 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 14.

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. Comments on Deadline 14 Submissions

### 1.1 REP14-0039: Applicant's comments on Deadline 13 Submissions

1.1.1 The MMO welcomes the Applicant's response to REP13-035. The MMO reiterates that the one point of disagreement remaining is in relation to the inclusion of the Haisborough, Hammond and Winterson (HHW) Special Area of Conservation (SAC) Site Integrity Plan (SIP) within the application.

1.1.2 As the preferred approach of all parties is the HHW SAC Cable Specification, Installation and Monitoring Plan (CSIMP), the MMO believes the HHW SAC SIP should therefore be removed from the DCO application.

### 1.2 REP14-064: EN010087\_Boreas\_D14\_NE\_ExA Fifth Round of WQs

**Question 5.2.0.1: Micrositing to mitigate impacts to archaeological and Annex 1 habitat features: In response to R17.1.21 MMO [REP13-035] stated that it 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. However, MMO defers to NE on all aspects relating to HRA. Therefore, is NE content with the Applicant's response to R17.1.21 [REP13- 013]? If not, what further mitigation does NE consider necessary?**

1.2.1 NE have provided the following response to this question:

*'Natural England respectfully agrees to disagree with the Applicant's response at REP13 – 013, question R17.1.21. Please be advised that our advice on ability to micro site presented at REP5 -081 remains unchanged. We believe that all known mitigation measures have been presented in the CSIMP. Should the project be consented then the feasibility of any mitigation measures will need to be considered pre construction and should Adverse Effect on Integrity remain, this will need to be fully addressed by the competent authority.'*

1.2.2 The MMO understands there are still disagreements in relation to Adverse Effect on Integrity (AEoI) on the HHW SAC between the applicant and NE and the MMO defers to NE in these matters. The MMO understands that it is a matter for the Secretary of State (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 on the site at consenting stage.

1.2.3 The MMO acknowledges that in discharging documents it is obliged to take the requirements of the Habitats Regulations into account. However, as stated in previous submissions (REP09-035 and REP09-036) the MMO believes that decisions on AEoI should be taken at consenting stage and that the purpose of documents like the CSIMP is to agree the fine detail of proposals rather than to allow a decision on AEoI to be postponed to a future date when the plan is discharged.

**Q5.5.4.4 Decommissioning of cables in HHW SAC Conditions 20 and 3(1)(g): Confirm satisfaction or otherwise with change to the dDCO [REP13- 007/008] that includes a new cable decommissioning condition 20 in Schedules 11 and 12 and removes condition 3(1)(g) prohibiting rock or gravel dumping.**

1.2.4 The Norfolk Vanguard SoS decision included Condition 19 in Schedules 11 and 12. This condition was included to enable the SoS to be certain that there was no AEoI from cable protection as it secured the inclusion of cable protection that could be decommissioned. However, since the final submission of documents to Norfolk Vanguard, discussions have developed further during the Norfolk Boreas Examination.

- 1.2.5 The Applicant included a slightly amended version of the Norfolk Vanguard condition in the Norfolk Boreas Schedules 11 and 12 as Condition 20 and removed condition 3(1)(g).
- 1.2.6 The MMO, NE and the Applicant have now agreed that Condition 3(1)(g), that was removed from Schedules 11 and 12 by the Applicant at Deadline 13, is the preferred condition to secure decommissioning of cable protection within the HHW SAC and believe that it should be included in the DCO:
- '(g) in the Haisborough, Hammond and Winterton Special Area of Conservation, cable protection must not take the form of rock or gravel dumping where it is deployed to protect export cables apart from at cable crossing locations with existing cables and pipelines.'*
- 1.2.7 The MMO also understands that the applicant agrees with this approach and will include this condition in the final dDCO at Deadline 16.
- 1.2.8 . The MMO raised concerns on the inclusion of condition 20 of Schedule 11 and 12 in REP14-058. As stated, above condition 3(1)(g) in Schedules 11 and 12 is preferred over condition 20 and the MMO and NE agree that condition 20 should be removed from the DCO.
- 1.2.9 The MMO believes that if the SoS is minded to include condition 20 in the Norfolk Boreas DCO then it should be included within the DCO and as a requirement under Requirement 14 to submit a Decommissioning Programme under the Energy Act 2004. The MMO also considers it should be updated to include the opportunity for the MMO and NE to be consulted on the information provided. The MMO supports NE as the Statutory Nature Conservation Body in the request for the addition of further information to the requirement that may not be covered within the Energy Act 2004 but is required to rule out AEol.
- 1.2.10 As stated above the preferred option for the MMO, NE and the Applicant is including condition 3(1)(g) in Schedule 11 and 12. The MMO considers the next best option is to include the proposed condition 20 as a requirement. However, if the SoS decides a DML condition should be included then, in addition to the concerns regarding the works that the MMO set out in REP14-058, the MMO suggests that the following wording should be included in Schedule 11 and 12, Part 4, Condition 20:

***'Decommissioning of cable protection within the Haisborough, Hammond and Winterton Special Area of Conservation***

20.—(1) *The obligations under paragraphs (2) and (3) shall only apply if and to the extent that—*

*(a) cable protection, apart from at cable crossing locations with existing cables and pipelines, is installed as part of the authorised project within the Haisborough, Hammond and Winterton Special Area of Conservation as at the date of the grant of the Order;*

*(b) These obligations do not permit the decommissioning of the authorised scheme, and no authorised decommissioning activity shall commence until a decommissioning programme in accordance with an approved programme under section 105(2) of the 2004 Act has been submitted to the Secretary of State for approval and all relevant consents have been granted under the Marine and Coastal Access Act 2009.*

~~(b) it is a requirement of the written decommissioning programme approved by the Secretary of State pursuant to section 105 (requirement to prepare decommissioning programmes) of the 2004 Act, including any modification to the programme under section 108 (reviews and revisions of decommissioning programmes), that such cable protection is removed as part of the decommissioning of the authorised project.~~

~~(2) No later than 6 months prior to each deployment of cable protection, except where otherwise stated or unless otherwise agreed in writing by the MMO, Within such timeframe as specified within the decommissioning programme approved by the Secretary of State, the undertaker shall submit the following documents for approval by the MMO:~~

~~(a) A decommissioning feasibility study on the proposed protection,~~

~~(b) A method statement for recovery of cable protection.~~

~~(c) A Monitoring Plan including shall carry out appropriate surveys of cables situated within the Haisborough, Hammond and Winterton Special Area of Conservation that are subject to cable protection and that are situated within the Haisborough, Hammond and Winterton Special Area of Conservation to assess the integrity and condition of that cable protection and determine the appropriate extent of the feasibility of the removal of such cable protection having regard to the condition of the cable protection and feasibility of any new removal techniques at that time, and submit that along with a method statement for recovery of cable protection to the MMO.~~

~~(d) A monitoring plan to include appropriate surveys of cables with HHW SAC that are subject to cable protection to assess their ongoing impact on the HHW SAC. This plan must include appropriate surveys to assess the cable protection in the 6 months immediately prior to decommissioning and propose appropriate surveys to monitor the recovery of the area of the HHW SAC impacted by the cable protection installation and decommissioning after works are completed.~~

~~(3) Within such timeframe as specified within the decommissioning programme approved by the Secretary of State, No cable protection can be deployed until the MMO, in consultation with the Statutory Nature Conservation Body, the MCA and Trinity House, must confirm whether or not it is satisfied with the approve in writing the documents method statement pursuant to (2) above.~~

1.2.11 The MMO believes this wording is in line with the rest off the DMLs and incorporates all NE's concerns. The MMO has made it clear within this draft condition that the decommissioning of cable protection within the HHW SAC is not consented at this stage.

### **1.3 REP14-065: EN010087\_Boreas\_D14 NE Comments on other IPs Responses to Rule 17 letter**

#### **Table 2: R17.1.29: Southern North Sea Regulators Group**

1.3.1 The MMO notes comment 2.4.1 of REP13-035 states: 'that a mechanism has been agreed in the form of a tool.', NE has commented advising 'NE do not consider the SNS activity tracker to be an agreed mechanism in itself'.

1.3.2 The MMO agrees that the full details of the mechanism still needs to be finalised and welcomes NE's comments in relation to the continuous work on the mechanism.

1.3.3 Please note the August meeting has been rearranged to take place on 3 September 2020 and NE has been invited.

## 1.4 Deadline 14 Other Applicant' Submissions:

1.4.1 The MMO has reviewed the following documents and is content with the updates:

- REP14-010: 6.7 EIA and DCO Reconciliation Document (Clean) (Version 5)
- REP14-027: 8.12 Offshore In Principle Monitoring Plan (Clean) (Version 5)
- REP14-029: 8.16 Outline Scour Protection and Cable Protection Plan (Clean) (Version 5)
- REP14-031: 8.20 Outline Norfolk Boreas Haisborough Hammond and Winterton Special Area of Conservation Cable Specification, Installation and Monitoring Plan (Clean) (Version 2)
- REP14-033: 8.20 Outline Norfolk Boreas Haisborough Hammond and Winterton Special Area of Conservation Site Integrity Plan (Clean) (Version 5)

Yours Sincerely

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