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Planning Inspectorate
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(Email only)

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Dear Ms Fernandes,

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

MMO Deadline 16 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 15, including responses to the Rule 17 Letter dated 10 September 2020 and the MMO’s response to the Rule 8 letter updating the Examination timetable.

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 15 & Additional Submissions

1.1 REP15-003: Applicant's Comments on Responses to the Examining Authority's Fifth Round of Written Questions

Applicants response to the MMO's response to Q5.16.0.5

1.1.1 At Deadline 14 (REP14-058) the MMO asked the Applicant if it would be possible to update the Deemed Marine Licences (DMLs) to include a 6-month submission date for the following documents:

- Haisborough Hammond and Winterton (HHW) Special Area of Conservation (SAC) Site integrity Plan (SIP)
- Southern North Sea (SNS) SAC SIP
- Marine Mammal Mitigation Plan (MMMP)/Noise monitoring
- Ornithology plan

1.1.2 The Applicant has agreed to update the DMLs to state a 6-month submission date prior to construction for the following documents:

- HHW SAC Site integrity Plan (SIP)
- Southern North Sea (SNS) SAC SIP
- MMMP/Noise monitoring

1.1.3 The MMO notes the Applicant advised that the timescale would not be updated for the Ornithology plan due to the nature of the Ornithology condition wording stage 1 of the Ornithological Monitoring Plan must be submitted at least four months prior to the first preconstruction survey. This plan is therefore on a different timeframe to the general approach of 4 (or 6) months prior to the intended commencement of licensed activities. The MMO is content with this approach but notes that it will recommend that the timescale for the submission of the ornithological monitoring plan at stage 2 of the condition should be 6 months.

1.1.4 The Applicant also states that *'it is mindful that the SoS may wish to reverse the changes listed above to ensure consistency with the Norfolk Vanguard project and the Applicant would also be content if that were the case'*. While understanding the Applicant's position on consistency with the Norfolk Vanguard project, as stated in previous submissions (RR-069 and REP3-017), the MMO has consistently maintained the position that 6 months is a more appropriate timescale for the discharge of complex documents of this nature. As the Applicant has agreed to the MMO's request to update the DMLs to state a 6-month submission date for the documents listed in paragraph 1.1.2 above the MMO would request that the SoS takes this fact into consideration when reaching a decision on this point.

1.2 REP15-009: Natural England (NE) Deadline 15 Submission

Decommissioning Development Consent Order (DCO) requirement

1.2.1 NE provided potential wording for a condition within the DML – the MMO notes NE have amended their position further and have now agreed a condition with both the MMO and the Applicant should the SoS include a DML condition. This has been discussed in Section 3 below and therefore the MMO has no further comments on the proposed condition proposed by NE.

1.3 AS-081: Applicant's comments on Deadline 15 Submissions

Applicants comments on the MMO’s response to 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.

1.3.1 The MMO acknowledges the Applicant’s comments and notes that discussions have continued which have included the points raised by the Applicant. The MMO, the Applicant and NE have now agreed a condition to be included in the DML if the SoS is minded to include a condition. Further comments can be found in Section 3 below.

2. Update on the agreed mechanism for managing underwater noise in the Southern North Sea

2.1 Southern North Sea Regulators Group

2.1.1 The MMO attended a meeting with the Offshore Wind Industry, facilitated by Renewables UK, and provided an update and some potential draft guidance on the tool highlighted in REP13-035. The MMO advised the tool is not intended to be a method for scheduling noise activities by means of making a booking, but rather a tool which will assist in assessing the cumulative impacts across all offshore industry, and therefore allowing the MMO to make an informed decision as to whether the noise activity can continue at the time proposed.

2.1.2 The MMO received initial comments from industry and is currently discussing these further with the Southern North Sea Regulators Group.

2.1.3 The MMO highlighted the urgency for preparing guidance on the mechanism for all relevant industry and the group is working hard to prepare this as soon as possible.

3. Response to Rule 17 letter dated 10 September 2020

3.1 R17.1.4 Decommissioning Development Consent Order (DCO) requirement

The Applicant, Natural England and the MMO are requested to:

- i) State by Deadline 16 if it agrees that with the inclusion of Condition 3 (1) (g) Condition 20 is not required;**
- ii) if Condition 20 is deemed to be required, confirm agreement with the Applicant’s draft wording;**
- iii) if wording of Condition 20 is not agreed provide suggestions as to how the Condition might be amended together with a reasoned explanation;**
- iv) if the provision was to be included, provide reasoned views as to whether it should be in the DMLs or the dDCO and if so, at what location.**

3.1.1 The MMO is content with the inclusion of condition 3(1)(g) to secure decommissioning of cable protection within the HHW SAC.

- 3.1.2 In the MMO's deadline 15 response (REP15-007) the MMO provided an amended version of condition 20 in the event the SoS was minded to include a condition. Since Deadline 15 the MMO, the Applicant and NE have continued discussions in relation to the requirement of condition 20 and the wording reviewing the condition set out in REP15-007. During these discussions NE's position has changed, NE now believes that both Condition 3(1)(g) and Condition 20 should be included in the DCO, however the MMO notes that NE has deferred to the MMO and the SoS to decide if it would be more appropriate to place Condition 20 in the main body of the DCO as a requirement or within the DMLs.
- 3.1.3 The MMO still believes that Condition 3(1)(g) should be included in Schedule 11 and 12 and that it is up to the SoS to decide if Condition 20 should be secured but reiterates that this should be as a requirement not as a condition in the DMLs. The MMO notes the information requested as part of the condition is already included within the HHW control document, which will be required to be approved by the MMO in consultation with NE prior to construction commencing and is secured by Condition 9(1)(m) of Schedule 11 and 12.
- 3.1.4 The addition of Condition 20 was included within Schedule 11 and 12 of the Norfolk Boreas Project as a result of the decision on the Norfolk Vanguard project, to allow the competent authority, in this case the SoS, to conclude no AEoI. The MMO believes it is for the competent authority to conclude no AEoI and it is for the SoS, having taken the advice of the SNCB, to reach a conclusion on this point. The MMO understands the SoS needs to consider the implications of the project as a whole in deciding if there is an AEoI and therefore the MMO considers that this condition should be in the requirements in the DCO as the DMLs do not take the whole project into account.
- 3.1.5 The MMO believes that if the SoS is minded to include a mechanism to secure a concern in relation to AEoI it should sit within the main body of the DCO and the SoS should approve any documentation. The MMO believes if the SoS is minded to include such a mechanism the appropriate place is as a requirement under Requirement 14 to submit a Decommissioning Programme under the Energy Act 2004 (EA2004). The MMO also considers the wording of this requirement should be updated from the proposed Condition 20 in REP13-007 to include the opportunity for the MMO and NE to be consulted on the information provided and to clarify that decommissioning works are not consented. These concerns were raised in REP14-058. The MMO supports NE's request, as the Statutory Nature Conservation Body, for the addition of further information to the requirement that may not be covered within the EA2004 but is required to rule out AEoI.
- 3.1.6 The MMO would like to clarify that the MMO understands that decommissioning of the wind farm is subject to dual regulation through both the Energy Act 2004 and the Marine and Coastal Access Act 2009 (MCAA09). The EA2004 enables the SoS to ensure decommissioning activities will be possible both financially and practically at the consenting stage through Requirement 14, whereas any decommissioning activities that may require consent under MCAA09 will need to be assessed and, if appropriate, consented at decommissioning stage. At this time no decommissioning activities are consented within the dDCO and the MMO has concerns the original Condition 20 (REP13-007) allowed for this.
- 3.1.7 The MMO and the Applicant have agreed wording for a requirement should the SoS wish to include this within the main body of the DCO:

Offshore decommissioning

(1) No offshore works may commence until a written decommissioning programme in compliance with any notice served upon the undertaker by the Secretary of State pursuant to section 105(2) of the 2004 Act has been submitted to the Secretary of State for approval.

(2) The obligations under paragraphs (3) and (4) shall only apply in respect of cable protection, apart from at cable crossing locations with existing cables and pipelines, which 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.

(3) No later than 4 months prior to each deployment of cable protection in the Haisborough, Hammond and Winterton Special Area of Conservation, except where otherwise stated or unless otherwise agreed in writing by the Secretary of State, the undertaker must submit the following documents for approval by the Secretary of State:

a) A decommissioning feasibility study on the proposed cable protection to be updated at intervals of not more than every ten years throughout the operational phase of the project;

(b) A method statement for recovery of cable protection;

(c) A Monitoring Plan including appropriate surveys of cables situated within the Haisborough, Hammond and Winterton Special Area of Conservation that are subject to cable protection 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, along with a method statement for recovery of cable protection;

(d) A monitoring plan to include appropriate surveys following decommissioning to monitor the recovery of the area of the Haisborough, Hammond and Winterton Special Area of Conservation impacted by cable protection.

(4) No cable protection can be deployed in the Haisborough, Hammond and Winterton Special Area of Conservation until the Secretary of State, in consultation with the MMO and the Statutory Nature Conservation Body approves in writing the documents pursuant to (3) above.

3.1.8 If the SoS decides a DML condition should be included in Schedule 11 and 12, Part 4, Condition 20 within the Norfolk Boreas Project then the MMO does not agree with the wording the Applicant included in the DCO submitted at deadline 13 (REP13-007). The MMO, the Applicant and NE have now agreed on the following wording:

20.—(1) The obligations under paragraphs (2) and (3) shall only apply in respect of—

(a) cable protection, apart from at cable crossing locations with existing cables and pipelines, which 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.

(2) No later than 4 months prior to each deployment of cable protection, except where otherwise stated or unless otherwise agreed in writing by the MMO, the undertaker must submit the following documents for approval by the MMO:

(a) A decommissioning feasibility study on the proposed protection to be updated at intervals of no more than every ten years throughout the operation phase of the project;

(b) A method statement for recovery of cable protection;

(c) A Monitoring Plan including appropriate surveys of cables situated within the Haisborough, Hammond and Winterton Special Area of Conservation that are subject to cable protection 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, along with a method statement for recovery of cable protection;

(d) A monitoring plan to include appropriate surveys following decommissioning to monitor the recovery of the area of the HHW SAC impacted by cable protection.

(3) No cable protection can be deployed until the MMO, in consultation with the Statutory Nature Conservation Body approve in writing the documents pursuant to (2) above.

3.1.9 The MMO believes this wording is in line with the rest of 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.

3.2 R17.1.6 Compensatory Packages: Flamborough and Filey Coast SPA

b) The Applicant, Natural England, RSPB and the MMO to provide a joint statement on the feasibility of the nesting sites and probability of success. If a joint statement is not agreed, all parties to comment on each other's submissions at Deadline 17, 7 October.

3.2.1 The MMO defers to NE in relation to all Habitat Regulations matters including feasibility of the nesting sites and probability of success. Therefore, the MMO has no further comments at this time. The MMO will review Deadline 16 documents and provide comments where required.

4. Statement of Common Ground

4.1 Deadline 16 Submission

4.1.1 The MMO and the Applicant have reached agreement on all the major issues raised during examination, the outstanding matters of disagreement are:

- The inclusion of wording within the Fisheries Liaison and Coexistence Plan to clarify that the MMO will not act as arbitrator in regard to compensation and will not be involved in discussions on the need for or amount compensation being issued; and
- The inclusion of the HHW SAC SIP alternative for condition 9(1)(m).

4.1.2 The MMO and the Applicant have agreed that discussions cannot move further forward on these matters during the remainder of Examination.

4.1.3 Therefore, the Applicant will be submitting the final version of the Statement of Common Ground at Deadline 16. This has been approved by the MMO and reflects the MMO's final position.

Yours Sincerely



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