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By email only:

Yana Bosseva,
Offshore Consents Manager, Norfolk Projects,
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70 St Mary Axe, London, EC31 8BE

Your
ref:

30 October 2023

Dear Yana Bosseva,

PLANNING ACT 2008

NORFOLK PROJECTS OFFSHORE WIND FARMS BENTHIC IMPLEMENTATION AND MONITORING PLAN

Thank you for your application for the Secretary of State to approve the Benthic Implementation and Monitoring Plan (“BIMP”) to cover both Norfolk Boreas and Norfolk Vanguard (“the projects”) in accordance with the requirements of Part 3 of Schedule 19 of The Norfolk Boreas Offshore Wind Farm Order 2021 and Part 3 of Schedule 17 of The Norfolk Vanguard Offshore Wind Farm Order 2022 (“the Orders”). For the avoidance of doubt we are responding to the requests as made, without regard to any subsequent commercial decisions on either project.

The Development Consent Orders (“DCOs”) for the projects require a Benthic Implementation Plan (“BIMP”) to provide compensatory measures due to predicted adverse impacts of cable installation and protection works upon the Haisborough, Hammond and Winterton Special Area of Conservation (“HHW SAC”).

The application was received by the Department on 23 March 2023, and included a Benthic Implementation and Monitoring Plan, DCO Benthic Compensation Schedules wording (Annex 1), Benthic Compensation Consultation Report (Annex 2), Marine Debris Search Area Identification Desk Study (Annex 3), Further Information to Support Education, Awareness, and Facilities to Limit Further Marine Debris (Annex 4) and Funding Statement. The Funding Statement was provided to the Secretary of State as a confidential version, with a redacted version made available for public consultation. That public consultation ran from 4 May 2023 to 26 May 2023.

Responses to the Secretary of State’s consultation

Consultation responses were received from the Marine Management Organisation (“the MMO”) and Natural England (“NE”). These were published on the project web pages on 6 June 2023. The Secretary of State has given careful consideration to these responses.

The MMO had no comments to make and deferred to NE on questions of compensation.

NE reviewed the BIMP, Annex 2 and Annex 3. It did not comment on Annexes 1 or 4 or the Funding Statement.

NE considered that marine debris removal and marine awareness campaigns would be insufficient to compensate for the predicted lasting habitat change/loss from the placement of cable protection. NE highlighted that the results from similar work for the Hornsea Three Offshore Wind Farm (“Hornsea 3”) indicated that the area of search for one SAC was 150 times greater than the predicted area of impact, and for the other SAC 25 times greater than the predicted area of impact. This resulted in a high effort to effectiveness ratio, which demonstrated that there was a high probability that there would be insufficient marine debris to meet the DCO requirements. NE considered the requirement to remove marine debris in other sites will also be ineffective based on debris removal campaigns in other Southern North Sea marine protected areas and estimated that the effort involved was likely to outweigh the environmental benefit of debris removal due to the CO₂ footprint of the campaign.

NE acknowledged the challenges of delivering project-level compensation, whilst also acknowledging that strategic compensation options are not currently available. NE highlighted their most recent advice provided to the examination of the projects in relation to project-level compensation measures. The Secretary of State has considered this advice, but considers that it does not assist in deciding whether to approve the BIMP as the advice predates the compensation requirements that the Secretary of State established in the DCOs for each project, and does not assist in determining whether the requirements set out in the DCOs have been met.

The Secretary of State’s consideration of the BIMP and the consultation responses

The Secretary of State notes your assertion that it is unlikely that sufficient marine debris will be found or present at sufficient densities to allow removal without incurring a significant carbon footprint, but observes that the carbon footprint is not relevant to the legal requirement to provide compensation. You also stated that it would also take a very long time to remove and if not done with care could result in damage to the benthic communities and the integrity of the HHW SAC. The Secretary of State notes that these conclusions are based on desktop studies, backed up by a high resolution survey that was undertaken in September 2022 and that the BIMP contains no evidence that any recovery work has yet been attempted.

You have proposed that retrieval should be deemed to be ineffective if it results in the removal of less than 30% of 8.3 ha per project (i.e. 2.49 ha per project) and the removal of marine debris from other locations should not be undertaken as adaptive management; and instead that the requirement to provide compensation measures should be discharged by payment into the proposed Government’s Marine Recovery Fund (“MRF”) or another suitable strategic compensation measure.

The BIMP anticipated that the Energy Bill, which will contain enabling powers for the MRF, would receive its Royal consent in June 2023. However, the Bill has not yet been enacted, and subsequent secondary legislation will be required to set up the MRF. At present there is no certainty about the timing for establishing the MRF, or whether its scope will act as a mechanism for strategic compensation of the impacts of these projects. Consequently, reliance on the MRF does not offer the necessary certainty on the delivery of strategic compensation.

The DCOs for the projects also stipulate the steps that are required, and these do not include, and therefore do not permit, contributions into such a fund were it to exist. Should the MRF become a viable option for the provision of strategic compensation in the future then you would need to submit a change application with supporting information in order to amend to stipulated requirements.

In terms of the requirements in the DCOs, the Secretary of State concludes the following:

- (a) The BIMP contains details of further survey work required to confirm the presence and condition of marine debris.
- (b) The BIMP contains details of two proposed areas of search. The Secretary of State notes that the BIMP does not include details of the location, nature and size of the materials, and there is no evidence that this will equate to no less than 8.3 hectares for each project.
- (c) The Secretary of State notes that the BIMP contains a method statement for debris removal, but notes that it does not detail the vessel type and tools to be used, nor details of how impacts on surrounding non-Annex I reef habitat will be minimised.
- (d) The programme of works contained within the BIMP does not include a programme of works that will ensure that 8.3 hectares of marine debris will have been removed prior to the commencement of cable installation works.
- (e) The BIMP contains appropriate proposals for monitoring and reporting in accordance with the principles set out in the HHW SAC compensation plan.
- (f) The Secretary of State considers that the success criteria within the BIMP are insufficiently precise to be confident that they have been appropriately discharged. The Secretary of State considers that the adaptive management proposals within the BIMP do not meet the requirements contained within the DCOs. The current proposal to discontinue attempts for marine debris recovery if less than 30% of 8.3 hectares is retrieved does not comply with the requirements of the DCO to ensure that 8.3 hectares of marine debris has been removed for each project.
- (g) The Secretary of State considers that the education programme provided in Annex 4 is appropriate.
- (h) The Secretary of State notes that some details have been provided relating to how impacts to protected reef habits within designated sites will be avoided. However, it is noted that whilst debris “within the vicinity” of previously unidentified Annex I Sabellaria reef would not be removed, this term is not quantified, so it is unclear how far this extends.
- (i) The Secretary of State has not identified any details of the locations for the disposal of dredged material, nor evidence that the disposal mechanism will allow sediment to be retained within the sandbank system and avoid impacts to other features.

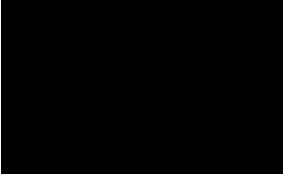
Consequently, due to the deficiencies identified in relation to (b), (d), (f), and (i) above, it is not possible to approve your BIMP application. We encourage you to address these issues and reapply. We encourage you to address the deficiencies in (c) as well.

We are unable to give you direct advice, but recommend that you consider the following points:

- The Secretary of State notes that you have not provided details of alternative strategic compensation measures.
- The DCOs require the recovery of 8.3 hectares of marine debris per project. There is wide scope to identify other locations for such recovery, and you may wish to seek suggestions from stakeholders to help identify alternative locations.
- The Department is unable to accept compensation measures that do not comply with the legal requirements of the DCOs. Consequently you may wish to consider change applications for the DCOs.
- The compensation requirement is predicated on the reasonable worst case scenario from your own documentation supporting the DCO applications for both projects of up to 8.3ha of impact per project. If you can provide clear evidence that the impact will be less than that, or will be avoided altogether, it would be possible to revisit the compensation requirements within the DCOs, with a view to amending them via a change application to reflect this new understanding.

- Once the MRF is established, and in the event that you wished to make use of this mechanism, the DCOs would require amendment to enable it to be used to deliver the necessary strategic compensation for these projects.

Yours sincerely,



David Wagstaff OBE

Head of Energy Infrastructure Planning