

BY EMAIL ONLY

Jo Dowling
Lead Member of the Examining Authority
Hornsea Project Four
National Infrastructure Planning
Temple Quay House
2 The Square Bristol
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31 May 2022

Dear Jo Dowling,

Application by Ørsted Hornsea Project Four Limited for an Order granting Development Consent for the Hornsea Project Four Offshore Wind Farm (EN010098)

Rule 8(3) letter from Examining Authority dated 30 May 2022: change to examination timetable

RSPB reference: 20029909

I am writing further to the recent exchange of correspondence between the Applicant and the Examining Authority in relation to changes to the examination timetable:

- REP4a-001: Letter dated 25 May 2022 from the Applicant requesting a new examination deadline in w/c 4 July 2022 or w/c 11 July 2022 in respect of comments on Deadline 5 submissions, noting the long period of time between Deadline 5 and Deadline 6 and suggesting a role in informing the need for/content of hearings reserved for w/c 18 July 2022;
- Letter dated 30 May 2022 from the Examining Authority agreeing to the Applicant's request and inserting a new deadline, 5a, for Monday 4 July 2022 requiring the submission of responses on all documents submitted at Deadline 5.

The RSPB is extremely concerned at this late and significant change to the examination timetable. Having received both the Rule 6 letter (issued on 24 January 2022) and the original Rule 8 letter (28 February 2022) as well as the subsequent Rule 8(3) letter (issued on 19 May 2022), we have planned this and other workloads accordingly. We have had no indication that the Applicant was going to request such a late and significant change and are disappointed that this was not raised with affected interested parties beforehand.

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Key documents for review at Deadline 5

For the reasons set out below, we consider the timetable change will undermine and disadvantage the RSPB's ability to review and respond to the significant and technical documents the Applicant proposes to submit at Deadline 5 in relation to offshore ornithology and compensatory measures, which as you are aware are of significant interest to us and our concerns and objections, namely:

- Offshore ornithology:
 - Ornithology Assessment Sensitivity Report Part 2
 - Displacement for auks (including both sitting and flying birds)
 - Indirect Effects: Forage Fish and Ornithology Report – this now to incorporate the promised “Data Review: Auk distribution”
- Compensatory measures:
 - Predator Eradication Implementation Studies Update i.e. report of Feasibility Study into predator eradication on Guernsey as a compensation measure for guillemots and razorbills.
 - Bycatch Reduction Implementation Study 2021/22 Summary i.e. report on the experimental trial of bycatch reduction as a compensation measure for guillemots and razorbills.

The RSPB position on the proposed timetable change

The Examining Authority will be aware that the RSPB has consistently expressed significant concerns regarding both impact assessments and compensatory measures and requested the provision of this vital further information from the Applicant in both our Relevant Representations (RR-033) and our Written Representations (REP2-089 - see section 4 (offshore ornithology) and sections 5 and 6 (compensation) and annexes B (bycatch reduction) and C (predator eradication)):

- Offshore ornithology: ongoing and unresolved methodological concerns which bear directly on the findings of both EIA and, in particular, HRA impact assessments and conclusions;
- Compensation measures: in respect of predator eradication and bycatch reduction, the need for substantive further information to inform the Examining Authority and Interested Parties on the viability of such measures as compensation for the potential effects. These were consistent with concerns raised with the Applicant during the pre-application consultation during in August 2021 where we set out our expectation of detailed proposals being submitted as part of the application (e.g. see APP-166, pages 24-25 (bycatch) and 25-32 (predator eradication)). We have consistently noted in our representations the need for Interested Parties to have sufficient time to review and respond to what should be substantive, technical reports and indeed had requested that these be provided prior to the examination commencing.

The documents proposed to be submitted at Deadline 5 are substantial and technical documents and require careful, detailed review by specialist experts within the RSPB, whose time we have had to carefully timetable to ensure they have sufficient availability to carry out this and other work. This has been based on the Rule 8 letter (28 February 2022), and the timetable set out by the Examining Authority it contained. In respect of offshore ornithology matters, we note again that the RSPB has not been party to the ongoing discussions between the Applicant and Natural England. As a consequence, we are less well sighted on the likely technical contents of the forthcoming submissions.

Therefore, we consider the 5-week period between Deadline 5 and Deadline 6 is just sufficient to be able to respond to these additional but key documents from the Applicant, especially considering much of this information should have been submitted with the original application or certainly earlier in the examination process than now. This late change, resulting in a reduction of the response time to less than a 2-week period, places the RSPB at a significant disadvantage in terms of setting out its full expert opinion to the Examining Authority.

Whilst we appreciate Examination time is short, this should not mean parties are put at further significant disadvantages, as set out above: the lack of this important information has already meant we were not able to conclusively set out our concerns within the Written Representations.

We wish to add, as clearly set out in PINS Advice Note 7:

“9.5 The Planning Inspectorate acknowledges that **the EIA process is iterative and includes public participation as an essential component**. Applicants are strongly encouraged to invest time and effort in both statutory and non-statutory EIA consultation exercises. This should include allowing time to consider and address comments from consultees including, if necessary, undertaking additional surveys and analysis.

9.6 Specific aspects and matters identified in the EIA Regulations 2017 and particularly Schedule 4 should be considered in relation to each Proposed Development (as relevant). More detailed advice in respect of these points is provided in Annex 1. In addition, **Regulation 14 of the EIA Regulations 2017 also identifies that the ES must include the information reasonably required for reaching a reasoned conclusion on the significant environmental effects**. The reasoned conclusion should take into account current knowledge and methods of assessment. The Planning Inspectorate is keen to emphasise this requirement since it relates clearly to the obligation placed on the decision maker (Secretary of State) under Regulation 21(b) of the EIA Regulations 2017.”

With the main purpose of PEI being to ensure full and adequate pre-application consultation so where possible, concerns can be resolved and the Examination process runs smoothly without additional environmental information being submitted. As paragraph 8.4 says:

“A good PEI document is one that enables consultees (both specialist and non-specialist) to understand the likely environmental effects of the Proposed Development and helps to inform their consultation responses on the Proposed Development during the pre-application stage.”

Therefore, the RSPB wishes to inform the Examining Authority that it will not be able to respond to the Deadline 5 submissions by the new Deadline 5a of 4 July 2022. We will continue to plan our review and response to Deadline 5 submissions for Deadline 6. However, we will respond to the Examining Authority’s Second Written Questions by Deadline 5.

Yours sincerely,

Andrew Dodd
Head of Casework
RSPB

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