

National Infrastructure Directorate
The Planning Inspectorate
Temple Quay House
Temple Quay
Bristol
BS1 6PN

Orsted Hornsea Project Four Limited
Development Consent Order (DCO) Application for Hornsea Project Four
Offshore Windfarm
Application Reference: EN010098

08 March 2023

Response to Request for Information

Our ref. EN010098

Dear Mr Johansson

On 09 February 2023 the Secretary of State (SoS) for Energy Security and Net Zero in their Request For Information (RFI) Letter made available via the Planning Inspectorate website, dated 09 February 2023. Please find below the information requested from the Applicant.

MOU with the States of Guernsey and the Alderney Wildlife Trust

Please find the requested MOU with the States of Guernsey provided in [Appendix A](#) and the MOU with Alderney Wildlife Trust provided in [Appendix B](#).

Repurposed Wenlock Artificial Nesting Platform

The Applicant provided a detailed note of the regulatory framework which will apply to the repurposing of an oil and gas platform to an artificial nesting structure for Hornsea Four in document [G7.3: Platform Repurposing: Transfer of Regulation \(REP 7-084\)](#) ("the Repurposing Note") submitted at Deadline 7 of the Examination. The Applicant can confirm that it is intended that the regulatory framework described in that note would apply to the repurposing of the Wenlock Platform. The Repurposing Note has been reviewed by the Applicant as the Hornsea Four construction programme evolves. For example, the Repurposing Note refers to a transfer of the jacket but the Applicant can confirm that the intention is to purchase the Wenlock Platform which is a three slot normally unmanned installation installed at the Wenlock gas field in 2006.

The Repurposing Note has been shared with the owner and operator of the Wenlock Platform and they have received legal advice that largely concurs and, in some important respects, further strengthens the arguments put forward by Pinsent Masons in the Repurposing Note. The position regarding s77(1) of the Marine and Coastal Access Act 2009 (which disapplies the marine licensing regime in certain circumstances to oil and gas activities) confirms that it does not necessarily preclude the application of the marine licensing regime as:

- (a) The works will not be done in the course of carrying out an activity which is licensed under the Petroleum Act 1998 and so s77(1)(a) does not apply;
- (b) It is possible to interpret s77(1)(c) of the Marine and Coastal Access Act 2009 and s44 of the Petroleum Act 1998 together so that the works are not regarded as “for the purpose of establishing or maintaining an offshore installation” within the meaning of Part 4 of the Petroleum Act 1998 and so s77(1)(c) would not apply; and
- (c) S77(1)(b) and (d) are not relevant as they relate to pipelines and gas/carbon storage.

The contents of that Repurposing Note are not repeated here, however in respect of approvals and main steps, in summary it is proposed that the current asset operator would apply to the Offshore Petroleum Regulator for Environment and Decommissioning (OPRED) to remove the Wenlock Platform from its Statutory Decommissioning Programme. The asset operator would then undertake the well plug and abandonment and make the platform hydrocarbon and contaminant free.

There would then be a sale of the Wenlock Platform to the Applicant, the Applicant would obtain a marine licence for any repurposing works required, and the decommissioning of the Wenlock Platform would then be regulated in the normal manner as a renewable energy installation for the purposes of the Energy Act 2004. Reference to the Wenlock Platform will also be removed from the notice issued pursuant to s29 of the Petroleum Act 1998. The Repurposing Note at paragraph 3.3 refers to the continuing liability of Orsted under s29 Petroleum Act 1998. However, the more developed view is that the Wenlock Platform should be released from the oil and gas regulatory regime entirely, on the basis that it would cease to fall within the definition of an “offshore installation” under the Petroleum Act 1998 because of the repurposing. It would instead become subject only to the renewable energy regulatory regime in a “clean break” delivering certainty for all stakeholder as to the applicable regime. Such a “clean break.” can be accommodated as the decommissioning of the Wenlock Platform following the transfer and repurposing will be undertaken pursuant to the Energy Act regime.

Work is well underway, and the Applicant understands the asset operator is engaged in discussions with OPRED and other stakeholders including the North Sea Transition Authority (NSTA) and Offshore Energies UK (OEUK) to seek to agree and thereafter to obtain the necessary approvals to remove the Wenlock Platform from the oil and gas licensing regime. The Applicant has also prepared an Asset Transfer Agreement for the sale of the Wenlock Platform to be shared with the asset owner and operator. This agreement will be negotiated commercially between the parties.

Subject to the concluding remarks below, a proposed timetable for delivering the repurposed artificial nesting structure is set out in Part 1 of Schedule 16 of the draft DCO (most recent version at [REP7-039](#)).

Specifically, paragraph 3(c) of Part 1 of Schedule 16 requires any implementation timetable to be approved as part of the Kittiwake Compensation Implementation Plan “to ensure that the structure is in place to allow for at least three full kittiwake

breeding seasons prior to operation of any turbine forming part of the authorised development'. That timescale applies to the offshore nesting structure, whether new or repurposed.

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The Secretary of State can therefore secure a time lag between implementation of the measure and operation of Hornsea Four, if deemed necessary and proportionate.

The Secretary of State is further referred to the Roadmap detailing implementation of the compensation measure during 2023/2024 (see [Table 1](#) in [B2.7.2 Compensation measures for Flamborough and Filey Coast \(FFC\) Special Protection Area \(SPA\) Kittiwake Offshore Artificial Nesting Roadmap \(REP7-021\)](#)).

The Applicant would however take this opportunity to repeat its comments made in its Ornithology Position Paper ([REP7-085](#)) submitted at Deadline 7, namely:

“... the Applicant submits that the current approach, of delaying operation of the project to several years postimplementation of the compensatory measures, is not aligned with policy in the BESS, nor does it align with the conclusion, in the context of a derogation case, that urgently delivering offshore wind to provide energy security and mitigate climate change, is an imperative that overrides the normal protections accorded to European sites. Nor is it a legal requirement of the Habitats Regulations. It is disproportionate in that it means that the environment is deprived of several years of much needed clean power generation.

It is also for this reason that the Applicant has proposed an alternative mechanism for delivering compensatory measures via the MRF. This would likely enable Hornsea Four to be delivered more quickly and in a manner which is more likely to maximise environmental benefits due to the strategic nature of the measures that can be delivered through the fund.

The Applicant included a time-lag between implementation of compensatory measures and operation of the wind farm in its drafting to secure compensatory measures, in line with previous decisions. However, previous decisions are not binding precedent and, in the Applicant's submission, it is open to the Secretary of State, consistent with a change in policy as set out in the BESS, to remove those timescales. The Applicant urges the Secretary of State to do so.”

Natural England Further Requests

To assist the Secretary of State and in discussions with Natural England Hornsea Four has provided a signposting summary to the previous responses from Natural England on the matters requested. Based upon the submissions in Examination and subsequent engagement with Natural England that their position has not changed, we understand Natural England's position on adverse effect on integrity (AEoI) conclusions to be:

1. Natural England could not rule out AEol from the Project alone for guillemot and the seabird assemblage at FFC SPA (see [Natural England's End of Examination Position on Offshore Ornithology \(REP7-104\)](#)). Further, NE could not rule out AEol in-combination up to and including consented projects for kittiwake, guillemot, razorbill and the seabird assemblage at FFC SPA (see [Natural England's End of Examination Position on Offshore Ornithology \(REP7-104\)](#)).

The Applicant disagrees with Natural England's position on an AEol for guillemot and razorbill and the justification is set out in:

- [B2.2 Report to Inform Appropriate Assessment Part 1 \(REP5-012\)](#);
- [G1.47 Auk Displacement and Mortality Evidence Review \(REP1-069\)](#);
- [G3.7 Applicant's Response to Natural England's comments on Auk Displacement and Mortality \(REP3-036\)](#);
- [G5.34 Applicant's response to Natural England's additional guidance on apportioning of seabirds to FFC SPA for Hornsea Project Four \(REP5a-018\)](#);
- [G4.7 Ornithological Assessment Sensitivity Report \(REP5-065\)](#);
- [G7.4 Applicants Ornithology Position Paper \(REP7-085\)](#); and
- [G8.3 Applicant's Response to Deadline 6 Ornithology submissions \(REP8-012\)](#).

With respect to consideration of why an AEol can confidently be ruled out for the seabird assemblage, the Applicant discussed the matter during Issue Specific Hearing 12, the conclusions of which are presented within the written summary of the [Applicant's Oral Case \(REP6-039\)](#).

2. Natural England concluded no AEol for gannet FFC SPA alone or in-combination up to and including consented projects (see [Natural England's Comments on the Report on the Implications for European Sites \(RIES\) \[PD-015\] \(REP8-029\)](#) and [Natural England's End of Examination Position on Offshore Ornithology \(REP7-104\)](#)).

The Applicant agrees that there is no risk of AEol for gannet alone or in-combination.

3. Natural England concluded no AEol alone or in-combination up to and including consented projects for any features of the Greater Wash SPA, including red-throated diver and common scoter (see [Natural England's Risk and Issues Log \(REP8-031\)](#)).

The Applicant agrees that there is no risk of AEol for any features of the Greater Wash SPA alone or in-combination.

4. The updated models to assess the in-combination impacts on all species are adequate (see [Natural England's End of Examination Position on Offshore Ornithology \(REP7-104\)](#) and subsequent in-combination totals provided within [G9.2 Applicant's Response to RFI dated 16 December](#)).

With respect to project in-combination totals for inclusion within assessments, the Applicant consulted with Natural England during the Evidence Plan Process ([APP-130](#)) and agreed the appropriate impact values for all projects (excluding Hornsea Four) included within assessments. The latest in-combination totals for Hornsea Four with respect to the qualifying features of the FFC SPA when considering both the Applicant's and Natural England's preferred approach are presented within [G9.2 Applicants Response to RFI dated 16 December](#), which included updates to in-combination totals based on additional advice provided within [Natural England's End of Examination Position on Offshore Ornithology \(REP7-104\)](#). The Applicant is aware that since close of Examination of Hornsea Four Natural England has produced updated guidance on assessment of ornithological receptors (Parker et al., 2022¹), and also an updated interim guidance on avoidance rates (not currently in public domain). These subsequent additional guidance documents have the potential to effect the in-combination totals for gannet and kittiwake features of the FFC SPA, however due to the interim guidance advocating higher avoidance rates for these two features, the results would be an overall reduction in the in-combination impact totals.

5. Compensation and Natural England's position regarding the Marine Recovery Fund is provided within [Natural England's Risk and Issues Log \(REP8-031\)](#).

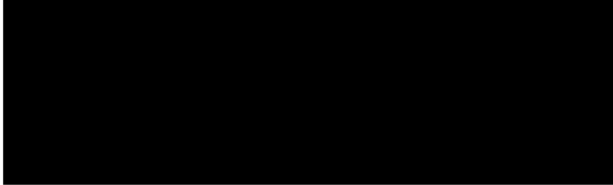
The Applicant has set out the robust evidence, implementation study reports, compensation plans and roadmaps (submitted with the DCO Application and through Examination) demonstrating the adequacy of the compensation measures that will be discussed with the Offshore Ornithology Engagement Group and implemented (see for example [REP7-085](#), [APP-185](#), [APP-187](#), [APP-189](#), [APP-194](#), [APP-196](#), [APP-198](#), [REP7-019](#), [REP7-021](#), [REP7-023](#), [REP7-027](#), [REP7-029](#), [REP7-031](#), [REP7-033](#), [REP7-037](#), [REP6-031](#), [REP5-082](#), [REP6-033](#) and [REP5-057](#)). The Applicant is confident with the significant progress being made on the establishment of the Marine Recovery Fund (and an equivalent fund) and the confirmation that the "*intention is for the Fund to be operational and able to receive payments from late 2023*" including for projects already in the planning system, this should provide even greater confidence in the adequacy of the proposed compensation package. The proposed suite of compensation measures are considered by the Applicant as adequate, not least because of the option for a contribution to the Marine Recovery Fund (see PART 2 and PART 5 of the draft Derogation DCO Wording [G3.12 Without Prejudice Derogation Draft Development Consent Order \(DCO\) Schedules \(REP7-079\)](#)).

¹ Parker, J., Fawcett, A., Banks, A., Rowson, T., Allen, S., Rowell, H., Harwood, A., Ludgate, C., Humphrey, O., Axelsson, M., Baker, A. & Copley, V. (2022c). Offshore Wind Marine Environmental Assessments: Best Practice Advice for Evidence and Data Standards. Phase III: Expectations for data analysis and presentation at examination for offshore wind applications. Natural England. Version 1.2. 140 pp.

We are grateful for your consideration of the above.

Our ref. EN010098

Yours sincerely
Orsted Hornsea Project Four Ltd.



Jamie Baldwin
[Redacted]@orsted.com

Appendix A Memorandum of Understanding between Orsted Hornsea Project Four Limited and States of Guernsey and Letter of Comfort previously submitted (both redacted).

Memorandum of Understanding for Potential for a Predator Eradication Programme

10 June 2022

Entered into between:

States of Guernsey acting by and through the Committee for Environment and Infrastructure, of Charles Frossard House, St Peter Port, Guernsey (referred to as "**Guernsey**"); and

Orsted Hornsea Project Four Limited with company registration number 08584182, whose registered office is at 5 Howick Place, London, England, SW1P 1WG (referred to as "**Orsted**")

(jointly referred to as the "**Parties**" and individually as a "**Party**")

1. BACKGROUND

- A) Guernsey is a self-governing democratic territory that is part of the Bailiwick of Guernsey, a British Crown Dependency
- B) The Ørsted group is a multinational group of renewable energy companies, a leader in offshore wind, with a vision of "creating a world that runs entirely on green energy". Ørsted proposes to develop Hornsea Project Four Offshore Wind Farm (hereafter Hornsea Four) located approximately 69km off the East Riding of Yorkshire in the Southern North Sea and will be the fourth project to be developed in the former Hornsea Zone. Hornsea Four will include both offshore and onshore infrastructure including an offshore generating station (wind farm), export cables to landfall and connection to the electricity transmission network.
- C) Orsted has submitted a "without prejudice derogation case" as part of the Development Consent Order application. The purpose of the derogation case is to demonstrate that the Article 6(4) of the Habitats Directive as transposed into the Conservation of Offshore Marine Habitats and Species Regulations 2017 and the Conservation of Habitats and Species Regulations 2017 (the 2017 Regulations) derogation tests can be satisfied if the Secretary of State concludes that Hornsea Four will cause an Adverse Effect on the razorbill and guillemot feature of the Flamborough and Filey Coast Special Protection Area (SPA).
- D) The Parties wish to explore the possibilities for carrying out a Predator Eradication programme, including ongoing monitoring and biosecurity for the lifetime of Hornsea Four. The site selection process to date highlighted a number of potential locations which support populations of guillemot and/or razorbill colonies, where a predator eradication scheme is potentially feasible. Herm, Jethou and The Humps Ramsar site ("**Herm Ramsar Site**") have been identified as potential candidate sites and Guernsey is in support of these sites being included in the derogation case.

2. LEGAL STATUS

This Memorandum of Understanding (the "**MOU**") is subject to contract. Except for sections 9 to 14, which are legally binding, the remaining sections of this MOU are not intended to be and do not represent a binding agreement, obligation, duty, commitment or liability of any of the Parties or (in the

case of Orsted) their affiliates. The non-binding sections, the Project and the Collaboration remain subject to further negotiation, an executed written contract, and credit, legal and management approval of the Parties. This MOU shall not be construed as creating a joint venture or other formal relationship between the Parties.

For the avoidance of doubt this agreement shall not commit either party to proceed with the designation of the area to be subject to an eradication plan (*for the purpose of the law*) which shall be subject to separate agreement.

3. THE PROJECT

The overall purpose of the project the Parties wish to undertake is to consider the feasibility of implementing a predator eradication programme at selected guillemot and/or razorbill colonies at the Herm Ramsar Site (the "**Project**"). These colonies have been chosen based on delivery potential and connectivity to the colonies within the biogeographic region of the Flamborough and Filey Coast SPA.

The Parties intend to explore the potential to implement a predator eradication programme. The following are the initial aims of the proposed feasibility studies:

- Establish the presence of invasive mammalian predators (to species level) at a specific location and the potential overlap the species may have with known guillemot and/or razorbill nesting locations; and
- Determine site specific predation of guillemot and/or razorbill (eggs and chicks) at each location; and
- Calculation of available nesting habitat potentially available to guillemot and/or razorbill following removal of invasive predator pressures.
- Assessment to confirm the technical feasibility, sustainability and legal, political and social acceptance of a predator eradication programme.

To progress the Project, the Parties intend to carry out Workstreams 1 to 3 set out below (the "**Collaboration**").

4. WORKSTREAM 1 - STUDIES

To determine the potential of implementing the Project, the Parties first intend to conduct studies on the technical feasibility of the Project

(each a "**Study**" and together, "**Workstream 1**")

Each Study will produce recommendations for next steps with the non-binding aim of maturing the Project and finally executing it if consented and considered technically and financially feasible by Orsted.

Further details of the Studies that Orsted intends to carry out are set out below. After entering this MOU the Parties will work together to ensure the relevant requirements as detailed in the current Roadmap (attached at Appendix 1) can be carried out:

- Logistical Considerations for undertaking an eradication scheme. This will consider whether or not a predator eradication project could be technically feasible and sustainable at the location, including factors such as access and other logistical requirements, such as support from the local community for future biosecurity measures. This would also consider the financial costs and capacity consideration including resources. This would be undertaken in conjunction with States of Guernsey, landowners, site managers and island restoration experts to provide a site specific and informed opinion.
- Presence of target predator species. This will determine the species and degree of predator presence at island locations and the level of overlap between the predator occurrence and guillemot and razorbill nesting locations. This will be conducted by eradication specialists and/or ecologists to allow realistic abundance estimates to be made and a prediction of the effort required to achieve their eradication of the most effective methods.
- Site Specific Evidence of Predation Pressure – a survey on the island/islet will be undertaken to document further site-specific evidence of predation of guillemot and razorbill eggs, nestlings, or adults. The survey will collect data such as egg caches, gnawed seabird carcasses, photographic evidence from cameras, invasive predator tissue testing (such as stable isotope analysis of caught individuals), or other methods determined as appropriate.
- Potential Nesting Habitat Assessment – an assessment of colony habitat would be undertaken to determine the amount of potential nesting habitat available to guillemot and razorbill following the removal of the predator. This would be undertaken by ornithologists/ and/or ecologists and subsequently analysed to determine potential nesting space.
- Colony Census. A complete island seabird census would also be undertaken and would include collection of productivity data and species population estimates. This would form the baseline for future population and productivity assessment if the island is included in the project.
- Social Acceptability Considerations. An experienced social scientist shall design and review questionnaires/surveys with stakeholders and local residents. Survey techniques will include drop in sessions, field survey questionnaires, and online survey questionnaires. Face to face discussion with individual islanders and households will be held to discuss the possibility of eradicating rats. We will aim to get a good representation of residents as well as all the major stakeholders (Wildlife Trusts, RSPB, boat operators, accommodation providers, farmers, etc.) to assess their level of interest, support and/or opposition, and any social issues requiring resolution.
- Political, Legal and Environmental Considerations. The Study will review the political, legal, sustainability and environmental considerations including required approvals, permits, licences and consents, political support, potential environmental effects and requirements under the Ramsar designation.

ACLMS shall facilitate introductions to land owners, tenants and other necessary parties to support access for the relevant consultants undertaking the Studies. The consultants undertaking the Studies shall have responsibility to ensure all Necessary Consents to facilitate the Studies and ongoing implementation of the Project are in place, ACLMS will assist where possible.

The States shall use all reasonable endeavours to share all relevant information pertaining to the above Studies to avoid the duplication of work and to facilitate the implementation of the Project and shall advise Orsted in order to optimise the delivery of the Project.

For the purpose of this workstream Necessary Consents is defined as all consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any regulatory body exercising a public function for the implementation of any or all of the Studies.

5. WORKSTREAM 2 – Regulatory (“Workstream 2”).

Subject to the outcome of Workstream 1 or in parallel to, the Parties intend to work to agree a strategy and timeline for ensuring the Project can be implemented within the proposed timescales set out by Orsted in the Roadmap.

To the extent required, the Parties shall use all reasonable endeavours to execute a strategy to enhance the likelihood of securing: (i) engagement and approval for the Project from relevant stakeholders; (ii) any regulatory changes needed to enable the Project and (iii) any Necessary Consents for the implementation of the Project. Questions have been raised as to whether it is possible for a Generator to secure compensation measures outside of England and the UK Continental Shelf. The latest draft DEFRA Guidance dated July 2021 does not preclude the implementation of compensation measures outside of the affected area, but states that in the case of mobile species connectivity between populations should be considered.

This Workstream 2 may comprise elements such as:

- Determining whether the Project is politically acceptable. Guernsey’s and ACLMS continued support and acceptance of the Projects implementation for the lifetime of Hornsea Four acknowledging that the islands/islets are protected under the Convention on Wetlands of International Importance (“the Ramsar Convention”). These sites are located outside of the national site network. Nonetheless these sites are afforded the protection of Ramsar status. The National Planning Policy Framework in England affords Ramsar Sites and Proposed Ramsar Sites the same protection as European Sites. This is a policy position in England that cannot be reflected in Guernsey as they are a Crown Dependency and have never been subject to EU Law. The relevant applicable Ramsar policy is the 2020 Strategy for Nature. Orsted has confidence that despite formal designation as an SPA not being possible, the 2020 Strategy for Nature envisages a proportionate level of protection. Guernsey and ACLMS commits to ensure the continued successful implementation and monitoring for the operational lifetime of Hornsea Four subject to the key requirements set out in the letter dated 23rd September 2021 (attached at Appendix 2).
- Determining whether the Project is socially and environmentally acceptable. All Parties shall use all reasonable endeavours to agree a stakeholder engagement and communication plan to ensure a common message including in relation to the eradication methods and form of delivery and the implementation of any biosecurity measures. The stakeholder engagement plan should apply to the lifetime of Hornsea Four. The Project must not cause a deterioration in the wider environment.

The Party initiating any public communication shall align the communication with the other Parties beforehand and the terms of section 11 below will apply.

6. **WORKSTREAM 3 – Monitoring and Biosecurity.**

Alongside Workstream 1 and 2, the Parties may agree to implement the Project

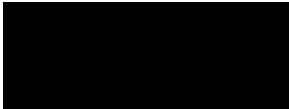
The outcome of Workstream 3 would be a non-binding heads of terms with the non-binding aim of formal implementation of the Project and ongoing monitoring requirements for the lifetime of Hornsea Four. The Project would be subject to financial investment decision and without commitment by Orsted to take such decision unless agreed otherwise in a legally binding contract. The likely model will be a contractual arrangement between the Parties [for discussion as to whether it is a provision of services or partnership arrangement]. This workstream will reference the key requirements document attached at Appendix 2 and require:

- Approval of operational plans and methodologies for deployment of the Project by Guernsey and/or ACLMS.
- The ability for ACLMS to make use of the operational plans and methodologies developed for the implementation of the Project should Orsted discontinue involvement.
- Consideration of ongoing monitoring requirements.
- Consideration of biosecurity measure].

7. **FORMAL AGREEMENT**

The Parties will use good faith to negotiate and agree a legally binding agreement for the implementation of the Project further to Workstream 3.

8. **TIMELINE**

The Parties aim to enter into the Formal Agreement 

The timeline for Workstreams 1 to 3 and the Project as a whole will be agreed between the Parties after entering into this MOU.

9. **COSTS**

This section is legally binding.

Each Party is responsible for its own costs in connection with: (i) preparing and negotiating this MOU; (ii) the Collaboration; and (iii) the Project, whether or not the Parties enter into the Formal Agreement.

Any shared cost or investment, including the hiring of third-party advisors, shall be regulated by a separate agreement. Sharing any cost or investment is subject to prior agreement of all Parties.

The Parties reserve the right to instruct their own expert advisors as they see fit to progress the Project. These costs will not be a shared costs between the Parties.

10. EXCLUSIVITY

This section is legally binding.

From the date of this MOU until [REDACTED] or until earlier termination by Orsted of this MOU in accordance with section 13 (the “**Exclusivity Period**”), The Owners will not enter any such third-party negotiations, collaboration or co-development during the Exclusivity Period relating to the Project.

Provided that this shall not prevent the States from pursuing research, studies and management requirements necessary to fulfil the obligations of the Ramsar designation, as detailed within the Ramsar Management Plan.

Guernsey and ACLMS acknowledges that Orsted will incur significant costs, fees and expenses by relying on this section 10 and that if ACLMS and/or Guernsey are in breach of any of its obligations under this section 10 it must (without prejudice to any other remedies the Orsted may have) indemnify and keep indemnified Orsted for an amount equal to all the reasonable costs, fees and expenses which have been incurred by Orsted in connection with the Collaboration and/or Project, including without limitation the costs of negotiating the Formal Agreement, internal costs of developing the Project, and reasonable costs incurred on consultancy and other services.

11. COMMUNICATION AND MARKETING

This section is legally binding.

The Parties will work together to develop mutually agreeable media or press material (including, but not limited to blog posts, press releases, media alerts) with respect to the initiatives set forth in this MOU and a joint line of communication for external use. The Parties will not release media or press material, make a public announcement, disclose information on the Collaboration, the Project or reference the other Party's name without obtaining the prior written consent of the other Parties. Orsted acknowledges that Guernsey and ACLMS may wish to publicise the outcomes of the Project and will engage as to the content of any publication in accordance with this section.

12. CONFIDENTIALITY

This section is legally binding.

The Parties acknowledge that the existence of this MoU will be made public as part of the examination of Hornsea Four in line with the requirements set out in the Roadmap.

The Parties may wish to keep certain information confidential. A Party shall notify the other Parties if information is confidential and the other Parties shall keep the information confidential and only share that information with the consent of the disclosing Party.

Guernsey may be required, under the Code of Practice on Access to Public Information to respond to requests for information relating to the subject matter of this agreement and shall not be in breach of this section in doing so provided it shall consult with Orsted prior to a disclosure and take into account all reasonable requests by Orsted in this regard.

13. TERM, TERMINATION AND OPTION TO CONTINUE PROJECT

This section is legally binding.

This MOU shall enter into force upon the last date of the Parties' execution of this MOU and shall remain in force [redacted] upon entry into force of the Formal Agreement, whichever is sooner. In the event the Formal Agreement has not completed [redacted] Parties may agree in writing to extend this MOU for a specified period, in which case the Exclusivity Period will extend by the same period.

In addition, Orsted may give one month's written notice to terminate the MOU for convenience. Such termination shall be without liability.

Where after [redacted] the States may give one month's written notice to terminate the MOU for convenience [redacted]

Any Formal Agreement already entered at the date of termination of this MOU will continue in full force and effect in accordance with its terms.

14. GOVERNING LAW AND JURISDICTION

This section is legally binding.

This MOU and any claims or disputes arising out of it shall be governed by the law of Guernsey, and the Parties irrevocably submit to the exclusive jurisdiction of the Royal Court of Guernsey.

Signed by the Parties or their duly authorised representatives.

The States of Guernsey

10 June 2022

Date Name

Signature

Agriculture, Countryside and Land Management Services

09 June 2022

[Redacted Name]

Date

Name

[Redacted Signature]

Signature

Orsted Hornsea Project Four Limited

09 June 2022

[Redacted Name]

Date

Name

[Redacted Signature]

Signature

09 June 2022

[Redacted Name]

[Redacted Signature]



Our Ref: Ramsar-Seabird
Your Ref: HOW04 States of
Guernsey

Dr S Randall
Environment Manager & Derogation Lead
UK Consents, Development
Ørsted
UK

23rd September 2021

Dear Dr Randall

Hornsea Four Letter of Support – States of Guernsey re: Predator Eradication in the Herm Ramsar site

Thank you for your letter dated August 31st 2021 requesting a letter of comfort in support of a collaborative approach to initial research and feasibility studies and, dependent on the outcomes of those, a predator eradication programme. Such a programme aims to support and enhance populations of target species, specifically Razorbill and Guillemot, as part of a compensation measure for the Hornsea Project Four windfarm development.

As you know ACLMS, under the States of Guernsey's Strategy for Nature, has as part of its commitment to implementing a Ramsar Management Plan for Herm, Jethou & The Humps, previously identified an opportunity to support threatened seabird populations through a rodent extermination programme. Preliminary work done to date has included research work which establishes the importance of the Ramsar site in terms of seabird populations, the benefits of rat eradication to those populations and the broad estimated costs of eradication and ongoing biosecurity & monitoring.

The value that any eradication programme could potentially bring is recognised, not just in supporting the potential recovery of seabird populations but also the potential opportunities afforded to both Herm and Guernsey in terms of ecotourism and helping to meet our obligations to the Convention on Wetlands (Ramsar) through the implementation of a Ramsar Management Plan.

ACLMS is pleased to note the importance Ørsted attaches to extensive stakeholder and community engagement as part of any programme of works.

ACLMS raises no objection in principle to a collaborative approach with Ørsted to research, do feasibility studies or to implement a Predator Eradication Programme (PEP) subject to the following conditions:

That consultation is done and continues to be done for the life of the PEP with all relevant stakeholders and that no work including planning, preparation and delivery of works in connection with, or having relevance to, Guernsey, Herm or Jethou in respect of any part of the PEP, is done without the prior consent of ACLMS.

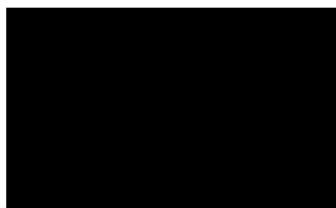
As the designated Ramsar Management Authority for the Islands of Guernsey, Herm & Jethou, ACLMS retains full control to review Ørsted's proposed operational plan and retains the authority to veto or amend works and specifications for works which do not meet relevant standards and best practice.

In the event of Ørsted terminating its work ACLMS reserves the right to make use of any operational plan and methodologies developed during Ørsted's involvement with the PEP.

ACLMS reserves the right to consult with and take advice from other third parties as part of any PEP. It is acknowledged that this letter will be placed on public record and part of the examination of Hornsea Project Four.

In stating the above conditions for collaboration with Ørsted, ACLMS is acting on behalf of the States of Guernsey in its role as manager and monitor of risks and opportunities to the natural environment to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations. Note that the scope of ACLMS's role extends only to the islands of Guernsey, Herm & Jethou and does not include the islands of Sark or Alderney.

Yours sincerely



Andy McCutcheon
Principal Environment Services Officer
Agriculture, Countryside and Land Management Services
(ACLMS)

**Appendix B Memorandum of Understanding between Orsted Hornsea Project
Four and Alderney Wildlife Trust (redacted)**

~~Draft dated 20.12.2022~~

Memorandum of Understanding for Potential for a Predator Eradication Programme

Entered into between:

Alderney Wildlife Trust Limited of 48 Victoria Street, St. Annes, Alderney, GY93TA ("**AWLT**"); and

Orsted Hornsea Project Four Limited with company registration number 08584182, whose registered office is at 5 Howick Place, London, England, SW1P 1WG (referred to as "**Orsted**")

(jointly referred to as the "**Parties**" and individually as a "**Party**")

1. BACKGROUND

- A) AWLT is a conservation charity in Alderney dedicated solely to protecting the island's wildlife and environment for the future. AWLT is one of the 46 Wildlife Trusts working across the British Isles. AWLT work with the local community to engage them with their natural environment in order to protect Alderney's wildlife for the future. The Trust provides a range of services normally within the purview of government; including responding to environmental aspects of planning issues in the absence of an Environment Department. Acting in conjunction with the government's General Services Committee, AWLT established a rodent monitoring and control programme, undertaken as part of the Island's International Important Marine Wetland (Ramsar). This site was designated by the States of Alderney in 2005 and has been administered by AWLT since 2009. In 2021 AWLT undertook to develop the programme of works with permission of the General Services Committee to better established the presence, and viability, of existing seabird populations and the potential impact of rodents on their productivity over the island's southern and western cliffs.
- B) The Ørsted group is a multinational group of renewable energy companies, a leader in offshore wind, with a vision of "creating a world that runs entirely on green energy". Ørsted proposes to develop Hornsea Project Four Offshore Wind Farm (hereafter Hornsea Four) located approximately 69km off the East Riding of Yorkshire in the Southern North Sea and will be the fourth project to be developed in the former Hornsea Zone. Hornsea Four will include both offshore and onshore infrastructure including an offshore generating station (wind farm), export cables to landfall and connection to the electricity transmission network.
- C) Orsted has submitted a "without prejudice derogation case" as part of the Development Consent Order application. The purpose of the derogation case is to demonstrate that the Article 6(4) derogation tests can be satisfied if the Secretary of State concludes that Hornsea Four will cause an Adverse Effect on the razorbill and guillemot feature of the Flamborough and Filey Coast Special Protection Area (SPA).
- D) Following discussions between the Parties, it is understood that there is the opportunity for an invasive predator eradication scheme, including ongoing monitoring and biosecurity for the lifetime

of Hornsea Four, to be carried out on island(s) around the Alderney West Coast and Burhou Islands Ramsar site ("**Alderney Ramsar Site**") and other islands/stacks off the coast of Alderney. AWLT is in support of these site being included in the without prejudice derogation case.

2. LEGAL STATUS

This Memorandum of Understanding (the "**MOU**") is subject to contract. Except for sections 12 to 17, which are legally binding, the remaining sections of this MOU are not intended to be and do not represent a binding agreement, obligation, duty, commitment or liability of any of the Parties or (in the case of Orsted) their affiliates. The non-binding sections, the Project and the Collaboration remain subject to further negotiation, an executed written contract, and credit, legal and management approval of the Parties. This MOU shall not be construed as creating a joint venture or other formal relationship between the Parties.

Within fourteen (14) days of completion of this MoU Orsted shall pay the sum of £500 (five hundred pounds) to AWLT in consideration of the sections in this MoU that are legally binding upon AWLT. The sum shall be paid into account [REDACTED]

3. THE PROJECT

The overall purpose of the project the Parties wish to undertake is to consider the implementation of a predator eradication programme at selected guillemot and/or razorbill colonies at the Alderney Ramsar Site. These colonies have been chosen based on delivery potential and connectivity to the colonies within the biogeographic region of the Flamborough and Filey Coast SPA (the "**Project**").

The Parties intend to explore the potential to implement a predator eradication programme. The following are the initial aims of the proposed studies:

- Establish the presence of invasive mammalian predators (to species level) at a specific location and the potential overlap the species may have with known guillemot and/or razorbill nesting locations; and
- Determine site specific predation of guillemot and/or razorbill (eggs and chicks) at each location; and
- Calculation of available nesting habitat potentially available to guillemot and/or razorbill following removal of invasive predator pressures.
- Assessment to confirm the technical feasibility, sustainability and legal, political and social acceptance of a predator eradication programme.

To progress the Project, the Parties intend to carry out Workstreams 1 to 5 set out below (the "**Collaboration**").

4. WORKSTREAM 1 - Establishment/confirmation of invasive mammalian predators (to species level)

The aim of this workstream is to determine the presence of invasive mammalian predators at each colony and will also include an assessment of how accessible each nesting location is to invasive

mammalian predators. Whilst noting that rat presence has been confirmed on the Twin Sister, Quoire and Hanaine Bay stacks in 2019 and are currently subject to a baiting programme, this will continue until there are no longer signs of their presence. Thereafter these sites will be monitored as the others using non-toxic bait.

To meet the objectives of this workstream, the following methods will be implemented:

- Deployment of camera traps at strategic positions across each location;
- Placement of non-toxic wax chew blocks (UV fluorescent) will be deployed at strategic positions across each location;
- Placement of ink tunnel traps at approaches to known seabird nesting locations; and
- Visual surveys to records signs of invasive mammalian predators.

5. WORKSTREAM 2 – Calculations of available nesting habitat

The aim of this workstream is to ascertain the potential habitat available to breeding guillemot and razorbill following the removal of invasive mammalian predators.

To meet the objectives of this workstream, an ornithological/habitat assessment of suitable breeding locations during the breeding and non-breeding season will be undertaken. This survey will be undertaken of discrete nesting locations whilst ensuring no disturbance to breeding birds occurs. The survey will include the provision of geo-referenced images of the colony during the breeding bird and non-breeding season to show the current extent of the colony usage.

6. WORKSTREAM 3 – Determination of invasive mammalian predators on guillemot and/or razorbill

The aim of this workstream is to determine site-specific predation of guillemot or razorbill eggs/or chicks and will comprise an intensive survey of each islet/island following the breeding season to record evidence such as:

- Presence of cached eggshells or bird carcasses.
- Stable isotope analysis of invasive mammalian predator tissue.
- Invasive mammalian predator faeces within seabird nesting locations (nesting crevices etc) using site inspections and UV light.

Cameras may also be deployed to monitor particularly inaccessible nesting locations and where invasive mammalian predators are known to be present.

7. WORKSTREAM 4 – Land based census of guillemots and razorbills

This workstream will comprise pre-landfall counts of birds rafting on the sea adjacent to the islets. Counts will be collected and subsequently compared with previous years to identify trends in colony sizes.

8. WORKSTREAM 5 – Boat based seabird census

This workstream will comprise multi-species surveys to assess numbers of breeding seabirds on the mainland, its islets and outer islands to monitor the local seabird numbers and identify any new sites or changes in number of distributions to confirm the likely breeding status.

AWLT shall facilitate the safe access by the relevant consultants undertaking the studies and all Parties shall determine who is best placed to ensure all Necessary Consents to facilitate the studies and ongoing implementation of the Project are in place.

AWLT shall share all relevant information pertaining to the above studies to avoid the duplication of work and to facilitate the implementation of the Project and shall advise Orsted in order to optimise the delivery of the Project.

For the purpose of this workstream Necessary Consents is defined as all consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any regulatory body exercising a public function for the implementation of any or all of the studies.

9. WORKSTREAM 6 – Monitoring and Biosecurity.

The outcome of Workstream 6 would be a non-binding heads of terms with the aim of formal implementation of the Project and ongoing monitoring requirements for the lifetime of Hornsea Four. The Project would be subject to financial investment decision and without commitment by Orsted to take such decision unless agreed otherwise in a legally binding contract. The likely model will be a contractual arrangement between the Parties (it will be for discussion as to whether it is a provision of services or partnership arrangement). This workstream will reference the key requirements document attached at Appendix 1 (Appendix 1 is confidential and will be redacted should the Examiners wish to see evidence of the MoU) and require:

- Approval of operational plans and methodologies for deployment of the Project by AWLT.
- The ability for AWLT to make use of the operational plans and methodologies developed for the implementation of the Project should Orsted discontinue involvement.
- Consideration of ongoing monitoring requirements. The roles and obligations of the Parties to be discussed.
- Consideration of biosecurity measures. Roles and obligations of the Parties to be discussed.

10. FORMAL AGREEMENT

The Parties will use good faith to negotiate and agree a legally binding agreement for the implementation of the Project further to Workstream 6.

11. TIMELINE

The Parties aim to enter into the Formal Agreement by [REDACTED]

The timeline for Workstreams 1 to 6 and the Project as a whole will be agreed between the Parties after entering into this MOU.

12. COSTS

This section is legally binding.

Each Party is responsible for its own costs in connection with preparing and negotiating this MOU; whether or not the Parties enter into the Formal Agreement.

Any shared cost or investment, including the hiring of third-party advisors, shall be regulated by a separate agreement. Sharing any cost or investment is subject to prior agreement of all Parties.

The Parties reserve the right to instruct their own expert advisors as they see fit to progress the Project. These costs will not be a shared costs between the Parties.

13. EXCLUSIVITY

This section is legally binding.

From the date of this MOU until [REDACTED] or until earlier termination by Orsted of this MOU in accordance with section 13 (the "**Exclusivity Period**"), AWLT will not enter any such third-party negotiations, collaboration or co-development during the Exclusivity Period relating to the Project.

Providing this shall not prevent AWLT from pursuing research, studies and management requirements necessary to fulfil the obligations of the Ramsar designation as detailed within the Ramsar Management Plan.

AWLT acknowledges that Orsted will incur significant costs, fees and expenses by relying on this section 13 and section 15 and that if AWLT is in breach of any of its obligations under this section 13 or section 15 then damages may not be an adequate remedy and Orsted shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this MoU.

14. COMMUNICATION AND MARKETING

This section is legally binding.

The Parties will work together to develop mutually agreeable media or press material (including, but not limited to blog posts, press releases, media alerts) with respect to the initiatives set forth in this MOU and a joint line of communication for external use. The Parties will not release media or press material, make a public announcement, disclose information on the Collaboration, the Project or reference the

other Party's name without obtaining the prior written consent of the other Parties. Orsted acknowledges that AWLT may wish to publicise the outcomes of the Project and will engage as to the content of any publication in accordance with this section.

15. CONFIDENTIALITY

This section is legally binding.

The Parties acknowledge that the existence of this MoU has been made public as part of the examination of Hornsea Four in line with the requirements set out in the Roadmap (B2.8.4: Compensation measures for Flamborough and Filey Coast (FFC) Special Protection Area (SPA): Predator Eradication: Roadmap (REP7-031)) (as amended from time to time).

The Parties may wish to keep certain information confidential. A Party shall notify the other Parties if information is confidential and the other Parties shall keep the information confidential and only share that information with the consent of the disclosing Party.

16. TERM, TERMINATION AND OPTION TO CONTINUE PROJECT

This section is legally binding.

This MOU shall enter into force upon the last date of the Parties' execution of this MOU and shall remain in force until [REDACTED] or upon entry into force of the Formal Agreement, whichever is sooner. In the event the Formal Agreement has not completed by [REDACTED] the Parties may agree in writing to extend this MOU for a specified period, in which case the Exclusivity Period will extend by the same period.

In addition, Orsted may give one month's written notice to terminate the MOU for convenience. Such termination shall be without liability.

Any Formal Agreement already entered at the date of termination of this MOU will continue in full force and effect in accordance with its terms.

17. GOVERNING LAW AND JURISDICTION

This section is legally binding.

This MOU and any claims or disputes arising out of it shall be governed by English law, and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Signed by the Parties or their duly authorised representatives.

**Alderney Wildlife Trust
Limited**

20/12/2022
Date

[Redacted]
Name

[Redacted]
Signature

21/12/22
Date

[Redacted]
Name

[Redacted]
Signature

Orsted Hornsea Project Four Limited

10/11/23
Date

[Redacted]
Name

[Redacted]
Signature

10/11/23
Date

[Redacted]
Name

[Redacted]
Signature

Witness Signature [Redacted]

Witness Print Name: [Redacted]

Witness Occupation SOLICITOR