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Sent: 08 February 2019 16:27
To: Hornsea Project Three
Cc: Brown, Emma; Felicity Browner; Gibson, Alan; Southwood, Lisa
Subject: Hornsea Project Three deadline 6 submissions

Dear Kay

Please find attached the MMO's submissions to the Planning Inspectorate for Deadline 6 of the Hornsea Project Three offshore wind farm examination. Please get in touch if you have any issues opening the attached documents.

Thanks

Richard

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Hornsea Project Three Case Team
Planning Inspectorate
(Email only)

MMO Reference: DCO/2016/00001
Planning Inspectorate Reference: EN010080
Identification Number: 20010662

08 February 2019

Dear Sir or Madam,

Planning Act 2008, Orsted Hornsea Project Three Limited, Proposed Hornsea Project Three Offshore Windfarm Order

On 14th June 2018, 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 Orsted Hornsea Project Three Limited (the “Applicant”) for determination of a development consent order (the “DCO Application”) (MMO ref: DCO/2016/00001; PINS ref: EN010080).

The Development Consent Order Application includes a draft development consent order (the “DCO”) and an Environmental Statement (the “ES”). The draft DCO includes, at Schedule 11 and 12 a draft Deemed Consent under Part 4 (Marine Licensing) of the Marine and Coastal Access Act 2009 (the “Deemed Marine Licence” (DML)).

The DCO Application seeks authorisation for the construction, operation and maintenance of Hornsea Project Three (“Hornsea Three”) offshore wind farm, comprising of up to 300 wind turbine generators together with associated onshore and offshore infrastructure and all associated development (“the “Project”).

This document comprises the MMO’s comments in respect of the DCO Application submitted in response to Deadline 6. 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



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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 faithfully

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The MMO's Post Hearing Submissions including Written Submission of Oral Cases

1 Summary of Comments on Offshore Ecology as discussed at the Issues Specific Hearing 5 (ISH)

1.1 Benthic Ecology

1.1.1 Cable Protection

At ISH 5 the MMO expressed their confusion regarding the total volumes of required cable protection that has been assessed in the ES and is reflected in the DCO/DMLs. Prior to the Hearings, it was the MMO's understanding that the Applicant had assessed in the ES that the export cable corridor would require a maximum of 10% of cable protection to be placed during construction as worst case scenario. Following the discussion throughout ISH 5, it became evident that the Applicant could require a maximum of an additional 25% of rock protection to be installed throughout the lifetime of the project as replenishment of existing protection.

The Applicant was asked to provide further clarification as to whether the 25% additional cable protection was based on the cable protection volumes to be placed during construction only or included any volume required during the operational phase of the OWF.

It was confirmed that the Applicant intended for the placement of the 10% cable protection to not be restricted to the construction phase, but also to be used throughout the operational phase of the OWF. At this point, the MMO expressed concerns that this may not be reflected in the DCO/DMLs appropriately. Additionally, the MMO highlighted at ISH 6 that we would not be content for the total volume of cable protection to be used throughout the lifetime of the project. In the event that the total volume of cable protection detailed in the DMLs was not required during the construction phase, the MMO would expect a separate marine licence application to be submitted during the operational lifetime of the project should any additional placement of cable protection be required. It is the MMO's opinion that, as the operational lifetime of a project can be 25 years or longer, it is not possible to assess the impacts of cable protection on designated sites and the marine environment this far in the future.

1.2 Marine Mammals

1.2.1 Site Integrity Plan

The MMO considers that a Site Integrity Plan (SIP) has the potential to provide a useful control measure to assess and mitigate impacts on the Southern North Sea

Site of Community Interest (SNS SCI). Specific details are currently under discussion as part of the Review of Consents consultation process, however it is proposed that prior to construction, developers would provide a SIP demonstrating how potential impacts of the proposed development could be mitigated to avoid an Adverse Effect on the Integrity of the SNS SCI alone or in-combination.

The MMO highlighted that this requirement would be secured in the DMLs as part of a pre-construction condition. It is the intention for the SIP to be an evolving document as the design plan becomes available closer to construction, with final submission to the MMO proposed at least 6 months prior to the commencement of any piling works.

The MMO further highlighted that the consultation on the SIP as part of the Review of Consents is currently ongoing, and emphasised that changes to relevant draft conditions may be required once this has been completed.

Additionally, the MMO emphasised that considering the current trend towards an increase in noisy activities within the SNS SCI, consideration of additional mitigation measures such as the timetabling of works along with the willingness of the industry to work together to reduce impacts on the SNS SCI is likely to be required.

2 Summary of Comments on the revised Development Consent Order (DCO) and the Deemed Marine License (DML)

2.1 Schedule 1, Part 3 – Requirements

2.1.1 Requirement 5 – limit on number of cable crossings

The MMO confirmed we are satisfied that the maximum number of cable crossings and the maximum volume of cable protection required for cable crossings has been reflected in the DMLs. The MMO is satisfied that the maximum volume of cable protection for each individual crossing will be reviewed and approved by the MMO as part of the discharge of the Cable Protection Plan condition.

2.2 Schedules 11 and 12 – Deemed Marine License

2.2.1 Paragraph 10 – whether it is for decisions of the MMO to be subject to arbitration – consideration of alternative appeal mechanisms

The MMO has re-emphasised its position that any decision made by the MMO should not be subject to arbitration as outlined in our Written Representation submitted at Deadline 3.

As part of the discussion, the Applicant reiterated comments they had made regarding the Secretary of State (SoS)'s opinion regarding the issue of which organisations it was appropriate to include within arbitration provisions. In their

decisions on Triton Knoll OWF (2013) and Burbo Bank Extension OWF project (2014), the SoS indicated that arbitration applied to everyone.

The MMO provided an oral representation on this point, noting that the decision documentation showed clearly that at the time of the Triton Knoll examination, the MMO stated that arbitration did not apply to the MMO's decisions in discharging deemed marine licence conditions. As a result the MMO did not ask for any changes to be made to the arbitration article for either Triton Knoll or Burbo Bank Extension (or any subsequent application). Furthermore, the MMO highlighted that the SoS did not make any decision or give a stated opinion to contradict the MMO view.

In the Triton Knoll decision, the SoS noted that arbitration provisions should apply to SNCBs without specific reference to the MMO, instead giving a broad statement that arbitration should apply to 'all bodies'. No reference to arbitration is made within the Burbo Bank Extension decision. The Triton Knoll decision is referenced within the Examining Authority's recommendation for Burbo Bank Extension and notes that the Triton Knoll decision on arbitration applies to NE (see quotes below for details). Therefore, the MMO considers that, within these decisions, the SoS was not asked and did not give a view on the appropriateness of applying arbitration to regulatory bodies such as the MMO or the SoS.

Quote 1: Within the Examining Authority's report to the SoS on Triton Knoll, paragraph 5.11.20 (our emphasis added):

*5.11.20 The SNCBs however believed [HE33] that the correct route by which to challenge its decisions would be by Judicial Review and that it should not be bound by Article 12. **The MMO pointed out that in relation to the DML separate provisions under the Marine and Coastal Access Act applied.** Since no Orders had yet been made for renewable energy NSIPs under the PA2008 at the time of the examination the ExA had no precedents on this matter by which to be guided. The applicant stated at the ISH on the DCO [HE21] that it had no objection to removing NE and the JNCC from the provisions for arbitration in Article 12. The ExA consulted therefore, through the DCO consultation [PD18], on the removal of these bodies from the provisions of Article 12 as agreed between the SNCBs and the applicant. No Interested Parties objected to this and no representations were received from any quarter on this matter. The Order as recommended therefore removes these bodies from the provisions for arbitration, however the SoS will wish to consider this matter now that other Orders have been made.*

Quote 2: Within the SoS's decision letter on Triton Knoll, paragraph 7.3 (our emphasis added)

7.3. The Panel also asked the Secretary of State to consider whether SNCBs should be removed from the provisions for arbitration covered by



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*Article 12 of the draft Order at Appendix E (headed “Arbitration”) [ER 5.11.20] To maintain consistency with other offshore wind farms approved under the Planning Act 2008 since the close of the Panel’s Examination, the Secretary of State has decided that the arbitration provisions **should apply to SNCBs and has therefore modified the article in the Order accordingly.***

Quote 3: Examining Authority Report to SoS on Burbo Bank Extension project paragraph 7.45 (our emphasis added)

*7.45 This draft article provides for the appointment of an arbitrator if a dispute arises in respect of any provision of the DCO. Early draft DCOs excluded NE from the operation of the provision, pursuant to an opinion provided by NE to the Triton Knoll Offshore Wind Farm Examining Authority that the exercise of its statutory powers should not be subject to arbitration and should only be adjudicated upon by the court. However, **the Secretary of State in the Triton Knoll decision decided not to exclude NE from the arbitration provision in that DCO, on the basis that all issues and parties should be equally subject to arbitration on the same basis.***

It is noted that the SoS made no reference to arbitration within their decision letter on Burbo Bank Extension project.

The Applicant highlighted their intention to include an amended version of the MMO’s existing appeals process for marine licenses for inclusion in the draft DCO. The MMO stated they would welcome early sight of the proposed process, but highlighted concerns regarding the applicability of this process to DML conditions, as DML condition decisions are not currently included within the MMO’s appeal provisions.

2.2.2 Condition 2 - new limits on number of cable crossings and on works within Markham’s Triangle

As highlighted under point 1.1.1 the volume of cable protection and how it is secured in the DMLs was discussed during ISH 5. In addition to the points raised above, the MMO also questioned how the deployment of cable protection would be agreed in the event that multiple construction phases would be required.

2.2.3 Condition 10 - New wording regarding aviation safety lighting

The MMO had no comments to make in relation to the new proposed wording for aviation safety lighting, other than the recommendation that a notification to the MMO should be provided within 10 working days.

2.2.4 Condition 14 - Timescale for MMO decisions



No progress has been made on this topic. The MMO position on the submission of pre-construction documentation and the MMO determination timescales remains the same as set out in our Written Representation submitted at Deadline 3.

2.2.5 Construction 18 - (Construction monitoring) whether provision should be made for piling to stop if noise exceeds predictions

The MMO affirmed its position regarding the proposed amendments to condition 18 (3) to include the requirement for all piling to stop should the noise monitoring show significantly different impact ranges to those assessed in the ES or failure in mitigation, as stated at Deadline 5. The MMO advised that the proposed amendment of this condition is required because the current condition wording is not considered to be fit for purpose. Should underwater noise impacts exceed those predicted in the ES, the developer would potentially be committing an offence if piling continued without securing a European Protected Species (EPS) licence. The MMO advised that similar recommendations had been made for the Norfolk Vanguard and the Thanet Extension offshore wind farms draft DCO representations.