
From: Brown, Emma [mailto:Emma.Brown@naturalengland.org.uk]
Sent: 08 February 2019 17:22
To: Hornsea Project Three
Subject: Hornsea Project Three Deadline 6 Submissions

Good Afternoon,

Please find Natural England's Written Submissions for Deadline 6 of the Hornsea Project Three Offshore Windfarm examination attached.

This includes our written summaries of the Offshore Ecology and DCO Issue Specific Hearings, along with several Annexes which are provided in response to requests made by the Examiner.

Please note Natural England are not providing a response to the Examiners' questions relating to Markham's Triangle MCZ within this submission.

Natural England has reviewed the relevant documents in consultation with JNCC and have prepared a response but we have subsequently received an email from the Applicant offering further clarification. Unfortunately it has not been possible for us to consider this new information in time for today's deadline, but we intend to give this further consideration and provide a response in due course.

Kind regards,

Emma

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Please note I currently work Monday - Thursday

<http://www.gov.uk/naturalengland>

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THE PLANNING ACT 2008
THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES
2010

HORNSEA PROJECT THREE OFFSHORE WIND FARM

Planning Inspectorate Reference: EN010080

NATURAL ENGLAND

WRITTEN SUBMISSION FOR DEADLINE 6

**ISH6 Annex A: Natural England's Comments on the Applicant's Proposed
DML appeal conditions.**

Dated 07th February 2019

Natural England's comments on the Applicant's proposed DML appeal Conditions

"2011 Regulations" means the Marine Licensing (Licence Application Appeals) Regulations 2011

Requirements, appeals, etc.

(4) [Where the MMO refuses an application for approval under condition **Error! Reference source not found.** of Part 2 of Schedule 11 or condition **Error! Reference source not found.** of Part 2 of Schedule 12 and notifies the undertaker accordingly, or the MMO fails to determine the application for approval within four months commencing on the date the application is received by the MMO, the undertaker may by notice appeal against such a refusal or non-determination and the 2011 Regulations shall apply subject to the modifications set out in sub-paragraph (5).

(5) The 2011 Regulations are modified so as to read for the purposes of this Order only as follows—

- (a) For regulation 4(1) (appeal against marine licensing decisions) substitute—

"A person who has applied for approval under condition **Error! Reference source not found.** of Part 2 of Schedule 11 or condition **Error! Reference source not found.** of Part 2 of Schedule 12 of the Hornsea Three Offshore Wind Farm Order 20[] may by notice appeal against a decision to refuse such an application or a failure to determine such an application."

Insert

- (b) For regulation 7(2)(a) (contents of the notice of appeal) substitute—

"a copy of the decision to which the appeal relates or, in the case of non-determination, the date by which the application should have been determined; and"

- (c) In regulation 8(1) (decision as to appeal procedure and start date) for the words "as soon as practicable after" there is substituted the words "within the period of [2] weeks beginning on the date of".

- (d) In regulation 10(3) (representations and further comments) after the words "the Secretary of State must" insert the words "within the period of [1] week"

- (e) In regulation 10(5) (representations and further comments) for the words "as soon as practicable after" there is substituted the words "within the period of [1] week of the end of".

- (f) In regulation 12(1) (establishing the hearing or inquiry) after the words "(the relevant date)" insert the words "which must be within [14] weeks of the start date".

Insert

Commented [A1]: Regulation 6 (1) of the 2011 Regulations provides that the Applicant would have 6 months in which to appeal. Given the Applicant's emphasis on speed in any dispute resolution mechanism, this should be amended to e.g. 4 weeks after refusal/failure to decide

Commented [A2]: Regulation 18 of the 2011 Regulations deals with costs (incorporating other legislation as modified). The costs rules in Regulation 18 do not correspond with what has so far been agreed (see draft DCO submitted for deadline 4) between the parties for costs in the Applicant's proposed arbitration mechanism under Schedule 13 para 6 (and there is no reason why there should be any difference between the proposed mechanisms in that respect), and certainly don't correspond with what NE and the MMO are still arguing for in relation to costs under the proposed arbitration mechanism (arguments which are also made in relation to costs under this proposed appeal mechanism)

(g) For regulation 22(1)(b) and (c) (determining the appeal—general) substitute—

“(b) allow the appeal and, if applicable, quash the decision in whole or in part;

(c) where the appointed person quashes a decision under subparagraph (b) or allows the appeal in the case of non-determination, direct the Authority to approve the application for approval made under condition **Error! Reference source not found.** of Part 2 of Schedule 11 or condition **Error! Reference source not found.** of Part 2 of Schedule 12 of the Hornsea Three Offshore Wind Farm Order 20[].”

(h) In regulation 22(2) (determining the appeal—general) after the words “in writing of the determination” insert the words “within the period of [12] weeks beginning on the start date where the appeal is to be determined by written representations or within the period of [12] weeks beginning on the day after the close of the hearing or inquiry where the appeal is to be determined by way of hearing or inquiry”.]