David Wagstaff
Deputy Director, Energy Infrastructure Planning
Department for Energy Security and Net Zero, Department for Business and Trade
1 Victoria Street
London
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Date: 17 March 2023

Ref: EN010080

Dear Mr Wagstaff,

Development Consent Order for Hornsea Project Three Offshore Wind Farm (SI 2020/1656) ("the DCO") – Application for a change to the DCO

We write further to our letter of 10 February 2023 seeking clarification on a number of concerns regarding the process being undertaken for the Ørsted Hornsea Project Three (UK) Ltd (**"the Applicant**") application for a non-material change (**"the Change Application"**) to the DCO.

We wish to thank you for your clarification letter dated 3 March 2023 which we consider addresses clarification points 1, 2 and 4 of our letter dated 10 February 2023. However, we continue to believe additional information is required to enable a full and robust determination on whether the changes proposed in the Change Application will or will not:

1. give rise to any materially new or materially different environmental effects to those considered in the kittiwake compensation plan; and
2. whether the proposed changes are material or non-material.

Below we set out our thinking on these issues and raise a number of matters which we consider the Secretary of State will need to address in considering the Application for a change to the Hornsea Project Three Development Consent Order (the DCO).

Context

As you know the DCO was consented at the end of December 2020 following extended post-examination consultation on proposed compensation measures for the predicted and possible adverse impacts on kittiwakes from the Flamborough and Filey Coast SPA (**the SPA**). Following the "minded to" consultation in autumn 2020, this had concerned proposals to construct four artificial nesting structures (**ANS**) for kittiwakes at two broad locations (north-east England and Suffolk).

Following submissions by the Applicant of its compensation proposals and ecological evidence, the RSPB (and Natural England) made detailed representations. The RSPB raised various concerns in relation to the uncertainty associated with the success of the compensation proposals. These included, among other things:

- whether the structures would be colonised by kittiwakes and, given various uncertainties, the timescales over which they might do so and achieve the required population levels the measures were proposed to produce;
- whether the consents and permissions could be secured in order to enable the structures to be in place when required.

Relevant to this Change Application is the Applicant's claim at paragraph 8.12 of its supporting evidence (Annex 2 to Appendix 2: Kittiwake Artificial Nest Provisioning: Ecological Evidence, September 2020) that:

> "*It can also be seen that, once breeding has successfully commenced, the required additional population will be produced within approximately five years*."

As we noted at the time, this implies that by the first year of operation, the compensation measure would reach the 404-467 pairs required to produce the 73 breeding adults required each year to compensate for the predicted losses due to the development. The Applicant's ecological evidence formed part of the information on which the Secretary of State based his decision to consent the original DCO. We return to this below.

Schedule 14, Part 1, paragraph 3(c) of the consented DCO requires the Applicant to ensure the four artificial nesting structures were in place to allow four full kittiwake breeding seasons to elapse before Hornsea Project Three becomes operational.

The Change Application

The Change Application seeks to change the DCO to shorten the length of time the ANS need to be in place before Hornsea Project Three becomes operational i.e. a reduction from four breeding seasons to three for two of the structures and from four breeding seasons to two breeding seasons for the other two structures.

The Applicant has submitted various documents in support of its Change Application including:

- Non-material change application report (Appendix 1);
- Environmental and HRA report (Appendix 2);
- Growth Scenarios report (Appendix 3).

The RSPB has considered the new information provided by the Applicant: in particular the kittiwake population growth scenarios and their implications for delivery of the ecologically effective compensation required. These growth scenarios were not available to the Secretary of State or interested parties prior to consent of the DCO in 2020.

We note that the Applicant's arguments, among other things, state that the proposed change to the number of breeding seasons does not affect the overall ecological validity of the compensation measures and does not have the potential to alter the conclusions of the Habitats Regulations Assessment for the DCO application (paragraph 3.3.3 in Appendix 1) and will not conflict with the objective of compensation set out by the Secretary of State in his Decision Letter i.e. deliver 73 breeding adult kittiwakes into the SPA population each year (paragraph 3.3.4 in Appendix 1).

For the reasons set out below, we disagree with these arguments and consider the new information raises matters that potentially give rise to materially new or materially different environmental effects to those considered in the kittiwake compensation plan and at the point of decision on the DCO. And that these matters require careful consideration by the Secretary of State.

The RSPB's comments on the Change Application

The RSPB welcomes the work presented by the Applicant in its Growth Scenarios report (Appendix 3). These have sought to understand the large amount of uncertainty surrounding the provision of ANS and the

question of whether and when the compensation objective for kittiwakes will be met. However, we do not consider they have fully succeeded.

Uncertainty is inherent in seabird population modelling and increases the further into the future it is projecting i.e. there will be greater confidence in predicted population responses in the next 2-3 years compared to the medium and long-term. As part of compensation requirements, there must be an aim to reduce this uncertainty as far as practicable to ensure the coherence of the kittiwake SPA network is protected.

We consider there are two main areas of uncertainty:

- Whether and/or when the fourth ANS will be legally secured and implemented; and
- Whether and/or when the compensation objective will be reached.

The first of these hinges on whether consent can be secured for ANS in north-east England. We consider the Secretary of State will need to determine the level of risk associated with this and whether any failure to secure it undermines his original conclusions within his DCO Decision in 2020 i.e.

- can the compensation objective be achieved if only three ANS are installed and all are located in Suffolk?
- Does this build in sufficient resilience to the compensation measures to help address external pressures e.g. Highly Pathogenic Avian Influenza?

In terms of whether the compensation objective will be reached, we make the following points:

- The growth scenarios do not consider the potential impacts of external pressures on the ANS, for example:
    - Highly Pathogenic Avian Influenza;
    - Collision risk impacts arising from offshore wind farms operating during the lifetime of the ANS.
- The growth scenarios document does not present the full range of natural variability and therefore this information is not in front of the Secretary of State:
    - The predictions based on the logistic growth rate (Tables 8.1 and 8.2) consider a starting population of either 1 or 25 apparently occupied nests (AON), whereas the predictions based on Coquet Island growth rates presented in Table 8.3 only consider a starting population of 25 AON
    - The scenario based on Coquet Island growth rates and a starting population of 1 is more precautionary and should be presented in a table in full. Based on Figures 8.1-8.4 it appears to predict a significantly longer delay in achieving the compensation objectives.
    - The Coquet Island colony was established in 1991 from a single pair and it would therefore be more biologically realistic to use a scenario with this starting population when using growth rates based on that colony.
- In setting out its case that mortality debt will be addressed within the lifetime of Hornsea Project Three, reliance is placed on a restricted number of the colony growth predictions contained in Appendix 3. This is on the basis that those rejected are "…outside the recent range of natural variability" (paragraph 9.2.11, Growth Rate scenarios, Appendix 3). The growth rates rejected are those requested by Natural England i.e. 20%. A review of Tables 8.1 and 8.2 in Appendix 3 shows that these lower growth rates predict that achievement of the compensation objectives would be significantly delayed.
- Such delays increase uncertainty by exposing any colony to increased risk from external pressures and changes in the natural environment e.g. HPAI, more operational offshore wind farms in/adjacent to feeding areas.

We consider the issues raised by this new information pose new questions as to the potential ecological effectiveness of the compensation measures that require closer scrutiny.

For these reasons, we consider the Secretary of State should carefully consider the following questions in deciding whether the proposed change is material or not:

1. Does the new information presented give rise to any materially new or materially different environmental effects to those considered in the kittiwake compensation plan?
2. Do the Growth Scenarios address all the key uncertainty issues affecting colony growth and therefore the achievement of the compensation objective?
3. Is the Secretary of State provided with the necessary information on the full range of natural variability in order to understand whether the compensation measures will perform in the way he expected at the time of his original decision?

One potential approach that may assist the Secretary of State would be to request that Hornsea Project Three carry out a meta-population analysis as the RSPB originally requested in its response to the "minded to" consultation in November 2020. This would:

- unlike conventional population models, consider any population interchange between colonies, both established and newly created;
- examine the contribution any additional, artificially created, colonies made to the wider SPA National Site network;
- Determine whether the role of colonies within the metapopulation acts to increase or decrease the overall population ("source or sink" populations); and
- Examine the population level consequences of the loss of any artificially created colonies, for example in north-east England.

We hope this submission assists the Secretary of State in his consideration of the Change Application.

Yours sincerely,

[redacted]

Andrew Dodd
Head of Casework