

BY E-MAIL

Secretary of State for Energy Security and Net Zero
Energy and Infrastructure Planning
1 Victoria Street
London
SW1H 0ET

14 January 2025

Dear Secretary of State

**THE HORNSEA FOUR OFFSHORE WIND FARM ORDER 2023 (AS AMENDED)
PROPOSED NON-MATERIAL CHANGE APPLICATION TWO – REQUEST FOR
REDUCTION IN CONSULTEES UNDER REGULATION 7(3) OF THE INFRASTRUCTURE
PLANNING (CHANGES TO, AND REVOCATION OF, DEVELOPMENT CONSENT
ORDERS) REGULATIONS 2011**

1. INTRODUCTION

- 1.1 We act for Orsted Hornsea Project Four Limited (“**Orsted**”) in relation to Orsted’s application for a second non-material change to the Hornsea Four Offshore Wind Farm Order 2023 (as amended).
- 1.2 On 12 July 2023, the Secretary of State made the Hornsea Four Offshore Wind Farm Order 2023 (S.I. 2023 No. 800) (the “**Original Order**”) as corrected by the Hornsea Four Offshore Wind Farm (Correction) Order 2024 (S.I. 2024 No. 117) in respect of an offshore wind farm located approximately 69km from the East Riding of Yorkshire in the Southern North Sea.
- 1.3 The Original Order required Orsted to construct an artificial nesting structure (“**ANS**”) for kittiwake, as a compensation measure for the potential impacts of the Hornsea Project Four offshore wind farm (“**Hornsea Four**”). Paragraph 3(d) of Part 2 of Schedule 16 of the Order requires the ANS to be in place at least four full breeding seasons before Hornsea Four becomes operational.
- 1.4 On 2 May 2024, Orsted made an application for a non-material change (“**NMC1**”) to the Original Order, the focus of which was to shorten the length of time the ANS need to be in place before operation, to allow time for the construction of the ANS without impacting the programme for the operation of Hornsea Four and its provision of renewable energy to the National Grid.
- 1.5 On 17 July 2024, the Secretary of State for Energy Security and Net Zero made the Hornsea Four Offshore Wind Farm (Amendment) Order 2024 (S.I. 2024 No. 800) (the

Pinsent Masons LLP

30 Crown Place Earl Street London EC2A 4ES

T +44 (0) 20 7418 7000 F +44 (0) 20 7418 7050 DX 157620 Broadgate

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“**Amended Order**”), granting NMC1 and reducing the time period the ANS need to be in place before operation of Hornsea Four.

2. **NON-MATERIAL CHANGE TWO**

- 2.1 Orsted now proposes a second non-material change (“**NMC2**”) to the Amended Order, relating to the guillemot compensation measures in Part 3 of Schedule 16 to the Amended Order, which are currently secured in the form of predator eradication and bycatch reduction. Currently, the Guillemot Compensation Implementation and Monitoring Plan (“**GCIMP**”) must be submitted and based on the strategy for guillemot compensation set out in the guillemot and razorbill compensation plan and must include, for the bycatch reduction measure, details of the arrangements with fishers to use bycatch reduction technology and associated provisions. Thereafter, Orsted must enter into the contracts with fishers for the bycatch reduction technology as set out in the approved GCIMP. Certain numbered works authorised by the Amended Order cannot commence until at least one year has lapsed after the contracts with fishers have been entered into.
- 2.2 Orsted proposes, via NMC2, to remove the requirements in Part 3 of Schedule 16 to the Amended Order relating to carrying out bycatch reduction through contracts with fishers, as described above. Principally, this is because evidence (which Orsted will provide with the application for NMC2) shows that the required guillemot compensation can be delivered via predator eradication only.
- 2.3 Orsted therefore intends to fulfil the compensation requirements for guillemot solely via the predator eradication measures, which will deliver approximately 160% of the compensation requirement for guillemots, therefore comfortably meeting the requirements of Hornsea Four. Given the two measures of predator eradication and bycatch reduction were considered as a package of compensation in Orsted’s guillemot and razorbill compensation plan (an approach which was supported by the Secretary of State in the Habitats Regulation Assessment at pages 117, 121 and 123), to be scaled up or scaled down as appropriate, Orsted proposes to “scale down” the bycatch reduction measure to zero. Orsted will keep the bycatch reduction measure as one of a range of adaptive management measures for future consideration, rather than as primary compensation.
- 2.4 Preliminary discussions on NMC2 have taken place between Orsted and Natural England (“**NE**”), with NE expressing in principle support for NMC2 at the Offshore Ornithological Engagement Group (“**OOEG**”) Steering Group meeting held on 25 October 2024. The minutes from this meeting reflect that NE “*recognise that predator eradication will be doing the bulk of the work and that bycatch is only a very small contribution*”, whilst the Royal Society for the Protection of Birds (“**RSPB**”) “*agreed that it would be the right solution to remove bycatch mitigation*”. In addition, NE stated in a letter to Orsted dated 14 November 2024 that given “*the, at best small, contribution that bycatch reduction would likely make to compensation delivery, we would not object to bycatch reduction only continuing in a reduced function, e.g, further trialling/research, or being removed from the package as a measure altogether. We recommend the feasibility of this in the context of the DCO requirements be explored with DESNZ*”.
- 2.5 The proposed changes would not require additional compulsory acquisition of land, nor would they have new or different effects on local residents or businesses or any additional implications in respect of habitats regulation assessment, particularly given that Orsted’s view is that the two measures of predator eradication and bycatch reduction were always considered as a package of compensation, to be scaled up or scaled down as appropriate, as set out above.
- 2.6 The changes that will comprise the non-material change application are as follows:

Amend the existing definition of “the offshore compensation measures” in paragraph 1 of Part 1 of Schedule 16 to the Amended Order as follows:

““the offshore compensation measures” means, ~~as the context requires, bycatch reduction and/or the offshore nesting structure;~~”

Amend the existing paragraph 10 of Part 3 of Schedule 16 to the Amended Order as follows:

“Following consultation with the H4 OoEG, the GCIMP must be submitted to the Secretary of State for approval in consultation with ~~the MMO and relevant SNGB for the offshore compensation measure, and with~~ Natural England, the local planning authority and Alderney Wildlife Trust for the onshore compensation measure. The GCIMP must be based on the strategy for guillemot compensation set out in the guillemot and razorbill compensation plan (as relevant to guillemot) and include:”

Delete the existing paragraph 10(b) of Part 3 of Schedule 16 to the Amended Order.

Amend the existing paragraph 11 of Part 3 of Schedule 16 to the Amended Order as follows:

“The undertaker must carry out the predator eradication method ~~and enter into contract(s) with fishers for the provision and use of bycatch reduction technology~~ as set out in the GCIMP approved by the Secretary of State in consultation with Natural England, the Alderney Wildlife Trust and the local planning authority for the onshore measures ~~and the relevant SNGB and MMO for the offshore measures~~. Work No. 1(a) and 1(b), Work No. 2(a), 2(b) and (c) and Work No. 3(a) must not commence until the GCIMP has been approved by the Secretary of State in accordance with paragraph 10, and at least 2 years have elapsed since the start of the predator eradication works ~~and at least one year after the contract(s) with fishers for the provision and use of bycatch reduction technology have been entered into.~~”

Amend the existing paragraph 12 of Part 3 of Schedule 16 to the Amended Order as follows:

“The undertaker must notify the Secretary of State of completion of the predator eradication method ~~and entering into contract(s) with fishers for the provision and use of bycatch reduction technology set out in the GCIMP.~~”

3. **CONSULTATION AND SUBMISSION OF THE NON-MATERIAL CHANGE APPLICATION**

- 3.1 Applications for non-material changes to development consent orders are governed by the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (“**the Regulations**”). Under Regulation 7(3), the applicant can seek written consent to reduce the number of parties that need to be consulted on a non-material change application.
- 3.2 We consider that, taking a proportionate approach, only the same consultees as were consulted on NMC1 should be consulted on the NMC2 application, in light of the Secretary of State’s agreement to those proposed consultees for NMC1 in its letter dated 19 February 2024, with the exception of the Wildlife Trusts given the nature of these proposed changes. The Applicant will also publicise the application in accordance with Regulation 6 of the Regulations.
- 3.3 Therefore, Orsted proposes that the Marine Management Organisation (“**MMO**”), NE, the RSPB, the Crown Estate and the Joint Nature Conservation Committee (“**JNCC**”)

should be consulted on this application. The MMO, NE and the RSPB are active members of the OOEG, with whom Orsted has already liaised with, the Crown Estate is the landlord of the relevant seabed and the JNCC is the authority for offshore nature conservation, working closely with NE.

3.4 We would be grateful for the Secretary of State's confirmation that this approach to consultation is acceptable. Orsted intends to submit the non-material change application to the Order shortly given its intention to progress the application promptly.

3.5 If you would like to discuss this letter, please contact Alex Tresadern at

[REDACTED]

Yours sincerely

Pinsent Masons LLP

(This letter has been sent electronically and so is unsigned)