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Developer Address

25 September 2020

Dear Developer,

## **REVIEW OF CONSENTED OFFSHORE WIND FARMS IN THE SOUTHERN NORTH SEA HARBOUR PORPOISE SAC**

### **1. BACKGROUND**

- 1.1 In February 2019, under The Conservation of Habitats and Species Regulations 2017 and The Conservation of Offshore Marine Habitats and Species Regulations 2017 (“the Habitats Regulations”), the Government designated the Southern North Sea Special Area of Conservation (“SAC”) for the protection of harbour porpoise.
- 1.2 When a new SAC is designated, the Habitats Regulations require certain decisions to be reviewed by the relevant Competent Authority, to take account of new protections afforded to it<sup>1</sup>. The Department for Business, Energy and Industrial Strategy (“BEIS”) is the competent authority for the modification of Development Consent Orders (DCO’s), and the Marine Management Organisation (“MMO”) is the competent authority for varying the deemed

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<sup>1</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/525765/Final-Guidance\\_on\\_when\\_new\\_marine\\_Natura\\_2000\\_sites\\_should\\_be\\_taken\\_into\\_account\\_in\\_offshore\\_renewable\\_energy\\_consents\\_and\\_licences.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/525765/Final-Guidance_on_when_new_marine_Natura_2000_sites_should_be_taken_into_account_in_offshore_renewable_energy_consents_and_licences.pdf)

marine licences (DML's) within a DCO. Both organisations have been working in partnership to review all relevant consents for offshore wind farm Nationally Significant Infrastructure Projects (NSIPs), which may have an effect on the new Southern North Sea SAC.

- 1.3 As a requirement of the Habitats Regulations, the review must take place in the form of a Habitats Regulations Assessment (“HRA”). In view of the HRA conclusions, BEIS and the MMO must either affirm, modify or revoke the relevant consents.
- 1.4 The Secretary of State for Business, Energy and Industrial Strategy (“Secretary of State”) has, today, published the HRA<sup>2</sup> undertaken for the purpose of this review, alongside this letter. The HRA has concluded that all consents reviewed will not have an adverse effect of the Southern North Sea SAC, provided modifications are made to some deemed Marine Licences. Full details are provided below.

### 1.5 HABITATS REGULATIONS ASSESSMENT

- 1.6 The HRA follows a two-stage process whereby the first stage is to test whether an existing consent is likely to have a significant effect on the Southern North Sea SAC. If significant effects are considered likely, the second stage is to undertake an Appropriate Assessment, to determine if consents either alone or in combination with other plans or projects would have an adverse effect on the integrity of the Southern North Sea SAC.

#### Likely Significant Effects

- 1.7 The Secretary of State has found that several offshore windfarm NSIP projects, consented by BEIS (or its predecessor Departments), and with Marine Licences issued by the MMO, are likely to have a significant effect on the Southern North Sea SAC. This is due to certain activities associated with the construction of offshore wind farms that cause underwater noise disturbance to harbour porpoise (such as piling operations), and habitat loss from the placement of infrastructure on the seabed. The HRA also finds that a significant effect is likely when other plans and projects (e.g. seismic activities associated with the oil and gas industry) are considered in-combination with the offshore windfarm projects identified (Table 1).

<b>Consented Project</b>	<b>Impacts that are likely to have a significant effect on the Southern North Sea SAC</b>
Dogger Bank Teesside A and B Dogger Bank Creyke Beck A and B Hornsea Project 2	Underwater Noise (alone and in-combination),  Habitat Loss (alone and in-combination)
Dudgeon	Habitat Loss (alone and in-combination)

<sup>2</sup> <https://www.gov.uk/government/consultations/southern-north-sea-review-of-consents-draft-habitats-regulations-assessment-hra>

Greater Gabbard Galopper	
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### Appropriate Assessment

- 1.8 The Secretary of State's Appropriate Assessment ("AA") has concluded that the projects listed in Table 1 will not have adverse effects on the integrity of the Southern North Sea SAC either alone or in-combination with other plans or projects.
- 1.9 For projects that have already been constructed (Galopper, Greater Gabbard and Dudgeon), this conclusion has been reached without the requirement for any new mitigation.
- 1.10 For projects that are not yet constructed, or currently under construction on the date of this letter, (Dogger Bank Teesside A and B, Dogger Bank Creyke Beck A and B, Hornsea Project 2), a conclusion of no adverse effect is underpinned, in-part, by a requirement to undertake new, additional measures to mitigate the effects of harbour porpoise disturbance to acceptable levels. The AA concludes that this can be achieved through the insertion, by the MMO, of an additional condition into those projects' deemed marine licences ("the new dML condition").
- 1.11 The effect of the new dML condition is a requirement for those projects to produce and implement a Site Integrity Plan ("SIP") before the commencement of any offshore activities with the potential to adversely affect the Southern North Sea SAC. The SIP must contain suitable measures to stay within the thresholds for underwater noise as set out in the Statutory Nature Conservation Body (SNCB) guidance<sup>3</sup> and infrastructure footprint as consented. Further details of the SIP are provided in Annex A of this letter.

## **2. CALL FOR INFORMATION AND CONSULTATION**

- 2.1 At key stages of the HRA process, Interested Parties ("IPs") and members of the public had opportunities to provide representations to inform the review and be consulted on its draft outputs. On 6 October 2017 BEIS published a Call for Information (Cfi) that included a Scoping Document. This outlined the scope and approach to the assessment. Following receipt of the responses to the Cfi, a workshop for key IPs was held on 5 December 2017. The workshop provided an opportunity for IPs to discuss their responses to the Scoping document with BEIS and MMO officials.
- 2.2 A draft HRA, which took account of IP responses to the Cfi, was published by BEIS on 1st November 2018. A public consultation on this report ran from the

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<sup>3</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/889842/SACNoiseGuidanceJune2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/889842/SACNoiseGuidanceJune2020.pdf)

date of publication until 13 December 2018. During the consultation period BEIS officials held a second key IP workshop on 29 November 2018.

- 2.3 In light of the consultation responses received in 2018 and due to the need to consult specifically on the new dML condition, the MMO and BEIS ran a third consultation exercise between 30 January 2019 and 27 February 2019.
- 2.4 The final HRA, published today, takes account of all representations received at all stages of consultation. A description of how the Secretary of State has taken account of key IP representations has been provided below. Key IP feedback have been summarised and grouped under relevant topic headings.

### **Thresholds for Disturbance**

***Feedback: The thresholds used to measure disturbance in the draft HRA are not appropriate. Other options include the implementation of the noise limits used in some other European countries or an assessment based on population models i.e. Disturbance Effects on the Harbour Porpoise Population in the North Sea (DEPONS) or interim Population Consequences of Disturbance (IpCoD)***

BEIS Response: The disturbance thresholds used in the final HRA are those recommended by the relevant Statutory Nature Conservation Bodies - Natural England ("NE") and the Joint Nature Conservation Committee ("JNCC") - for use in the Southern North Sea.

### **Population**

- 2.5 ***Feedback: The HRAs conclusions on harbour porpoise disturbance should be based on the individuals protected by the Southern North Sea SAC.***
- 2.6 *BEIS Response:* The final HRAs conclusions take account of the assessment of the effects on the relevant marine mammal unit population in order to strengthen its findings, but its conclusions are underpinned by an assessment of the effects at site (SAC) level using the disturbance thresholds.

### **In-combination Scenarios**

- 2.7 ***Feedback: The draft HRA's in-combination assessment did not reflect all possible in-combination scenarios.***
- 2.8 *BEIS Response:* BEIS has responded by including additional in-combination scenarios within the final HRA. The HRA has demonstrated that under many realistic scenarios, the disturbance thresholds will not be breached. However, due to the currently unknown number of plan/project interactions that could occur at the time of construction, it is not considered practicable to assess all possible scenarios at this stage. A more complete understanding of the in-combination baseline can be established closer to the time of wind farm construction. It would be at that point in time for the licence holder, in consideration of the most up-to-date information on plans or projects likely to have a significant effect on the Southern North Sea SAC, to demonstrate to

the MMO that the area affected by noise will remain below the disturbance thresholds

### **Mitigation**

**2.9 Feedback: The draft HRA lacked detail on the measures required to mitigate the effects of underwater noise.**

2.10 *BEIS Response:* A range of suitable measures, which can be used to bring noise levels down to acceptable levels, are presented in the final HRA. For example, and by way of demonstration, BEIS has modelled the potential noise reductions that could be achieved with noise reducing technologies. It is left to the developer to agree with the MMO, in consultation with the relevant Statutory Nature Conservation Body, which method to implement in order to stay within the disturbance thresholds.

**2.11 Feedback: Better information sharing is required for in-combination effects to be properly considered at the time of SIP discharge.**

2.12 *BEIS Response:* Through the Southern North Sea Regulators Working Group, BEIS and the MMO have been working with DEFRA and several Regulators with responsibilities in the Southern North Sea SAC to facilitate better information sharing. This group has published a Southern North Sea Activity Tracker, which records the status of regulated activities within the Southern North Sea SAC. This is a [live document](#) that will be updated on a regular basis. IPs are encouraged to use this information for the development of each SIP.

### **Monitoring**

**2.13 Feedback: It is not clear what arrangements will be put in place to monitor the effectiveness of mitigation measures.**

2.14 *BEIS Response:* It is recognised that in order to determine that offshore wind farm activities do not have an adverse effect on the designated site and potential mitigation measures in place to eliminate or reduce adverse effects are effective, monitoring may be required. Monitoring may be undertaken by individual projects or by means of a strategic monitoring programme and can be made a condition to a Marine Licence. If necessary, monitoring arrangements and corrective measures should be agreed with the MMO in consultation with the relevant Statutory Nature Conservation Body at the time of SIP discharge.

## **3. GENERAL GUIDANCE**

3.1 The validity of the Secretary of State's decision may be challenged by making an application to the High Court for leave to seek a judicial review. Such an application must be made as soon as possible. Parties seeking further information as to how to proceed, including the relevant time limits for making an application, should seek independent legal advice from a solicitor or legal

adviser, or alternatively contact the Administrative Court at the Royal Courts of Justice, Strand, London WC2A 2LL.

3.2 This decision does not convey any approval or consent that may be required under any enactment, bye-law, order or regulation other than sections 36 and 36C of and Schedule 8 to the Electricity Act 1989 and section 90 of the Town and Country Planning Act 1990.

Yours sincerely



**Gareth Leigh**  
Head of Energy Infrastructure Planning  
BEIS

Yours sincerely



**Trudi Wakelin**  
Director of Marine Licensing, Planning &  
Blue Belt, MMO

## **Annex A: Site Integrity Plan Condition to be inserted in Deemed Marine Licences**

Prior to the commencement of any activities which produce underwater noise authorised under this licence on or after 28 September 2020 a Site Integrity

Plan (SIP) must be submitted to, and approved in writing, by the MMO in consultation with the relevant statutory nature conservation body.

The SIP submitted for approval must contain a description of the conservation objectives for the Southern North Sea Special Area of Conservation (SNS SAC) as well as any agreed Management Measures and it must set out the key Statutory Nature Conservation Body (SNCB) Advice on Activities within the SNS SAC which could reasonably be expected to impact upon site integrity as a result of the Project, as are set out in the SNCB guidance published in June 2020: Guidance for assessing the significance of noise disturbance against Conservation Objectives of harbour porpoise SACs Joint Nature Conservation Committee (JNCC) Report no.654, May 2020 (“the Guidance”).

The MMO will approve the SIP where it is satisfied that the Project, either alone or in-combination with other plans or projects, will not exceed the noise thresholds assessed within the Special Area of Conservation Review of Consents Habitats Regulations Assessment (“the HRA”), which are based on the Guidance.

Where the MMO cannot be satisfied that the Project, either alone or in-combination with other plans or projects, will not exceed the thresholds set out in the HRA then the MMO will not approve the SIP.

The SIP must be submitted to the MMO for approval no later than 6 months prior to the start of construction unless otherwise agreed with the MMO.

In spite of anything to the contrary in any licence or consent, the Project must be carried out in accordance with the approved SIP.

The approved SIP may be amended with the prior written approval of the MMO, in consultation with the relevant statutory nature conservation body, where the MMO remains satisfied that the Project, either alone or in-combination with other plans or projects, will not exceed the thresholds set out in the HRA.