

Date: Our Reference:  
7<sup>th</sup> March 2019 AU-TPD-PM575-00002-061



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**Via email:** [Lisa.Southwood@marinemanagement.org.uk](mailto:Lisa.Southwood@marinemanagement.org.uk)

7<sup>th</sup> March 2019

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Dear Lisa,

**The Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 (SI 2015 No.318) ("DCO")**

**Creyke Beck A Offshore Wind Farm (Project A) – Doggerbank Offshore Wind Farm Project 1 Projco Limited (Projco 1) and Creyke Beck B Offshore Wind Farm (Project B) – Doggerbank Offshore Wind Farm Project 2 Projco Limited (Projco 2) (together the Projects and the Project Companies)**

**Application pursuant to Section 72(3)(d) of the Marine and Coastal Access Act 2009**

**The Conservation of Offshore Marine Habitats and Species Regulations 2017 (the HRA Regulations)**

Further to my letter of 4 July 2018 enclosing an application (the **Application**) for variations to the deemed marine licences granted pursuant to the DCO (the **DMLs**), I write to request that the Application is amended as described below. This letter also provides comment on the position under the HRA Regulations in the context of the amendment.

*Amendment to the Application*

The amendment requested to the Application is that it no longer includes an increase to the maximum permitted monopole diameter from 10m to 12m or the energy for monopole foundations from 3,000 kilojoules to 4,000 kilojoules. Therefore, the Application is for the increase to the maximum permitted wind turbine generator rotor diameter from 215m to 280m, together with the variations applied for under the heading 'Additional Variations' in my letter of 18 July 2018.

We have made a similar request to BEIS in relation to the application for a non-material change to the DCO (the **NMC Application**) which BEIS is currently considering. Please see the enclosed letter.

The reason for the request for the change in rotor diameter remains as previously set out, to enable the Projects to take advantage of advancements in the size of wind turbine generators and so make the Projects more efficient and cost effective. As before, the Project Companies are not seeking to increase the maximum number of wind turbines or the total rotor-swept area of 4.35 square kilometres. Therefore, the total number of wind turbines which can be installed will continue

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to be constrained by these DCO and DML parameters. The reasons for the request for the additional variations is similarly unaffected.

The change to the rotor diameter is distinct from the changes to the monopole diameter and hammer energy, and is not affected by their removal from the Application and the NMC Application. The additional variations are similarly distinct. The conclusions of the Environmental Report and other assessments provided with the Application and the NMC Application are also entirely unaffected by this amendment to the Application and the NMC Application.

### Habitats Regulations Assessment

#### *HRA Requirements in Respect of Variation Applications*

The position under the HRA Regulations in respect of variation applications is that the assessments to support a variation application must focus on the impacts of the changes being proposed. In other words, the assessments should assess the impacts of the proposed changes themselves, rather than re-assessing the project as a whole. It is noted that Natural England agrees with this approach, as expressly recorded in paragraph 2.4 of the statement of common ground (enclosed for reference).

We consider Special Areas of Conservation and Special Protection Areas in turn below (we consider each separately given the potential for connectivity between rotor diameter and birds).

#### *Special Areas of Conservation (including the Southern North Sea cSAC)*

The Application, as amended to remove the changes to the monopole diameter and hammer energy, now relates only to the rotor diameter and additional variations and so will not have a likely significant effect alone or in-combination on any Special Area of Conservation (**SAC**).

In relation to the Southern North Sea cSAC specifically, the changes to the rotor and additional variations will not increase or change in any way the underwater noise impacts of the Projects. As such, the Application will not result in any impacts or connectivity whatsoever on the cSAC. It is noted that when the Application included changes to the monopole diameter and hammer energy, Natural England considered there was not sufficient information to rule out likely significant effects on the cSAC from the increases in noise resulting from these changes. Importantly, Natural England's position was that an HRA was required to assess the impact of the "proposed changes" on the cSAC, not the Projects as a whole (the impact of the Projects as a whole on the cSAC would be assessed as part of the review of consents process). Now that these proposed changes have been removed from the Application, it clearly follows that Natural England and the Applicant are in agreement that no HRA of the cSAC is required in respect of the Application. The cSAC is no longer relevant to the

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Application. It is also irrelevant to the Application that the impacts of the Projects as a whole on the cSAC have not been previously assessed. Although as set out below a review of consents is currently ongoing and is a separate process.

Therefore, there is no requirement for an appropriate assessment in respect of the Application for any SAC or cSAC under Regulation 28 of the HRA Regulations.

#### *Review of Consents*

The appropriate process to assess the impact of the Projects as a whole (as opposed to the changes requested in the Application) (alone and in-combination) on the cSAC is as part of the Southern North Sea Review of Consents (the **Review of Consents**). This is a position that the Secretary of State has endorsed in the draft HRA for the Sofia Offshore Wind Farm (page 8 states: “*The Secretary of State considers that this general and dedicated process for addressing the individual and cumulative effects of existing projects on a new SAC [the Review of Consents] is the appropriate mechanism for ensuring that there is no adverse effect from this Project and others on the integrity of the SNS cSAC.*”)

The Projects are currently subject to the Review of Consents which will assess any general amendments needed to existing consents as a result of the designation of the cSAC. This is a dedicated process for addressing the individual and cumulative effects from underwater noise of existing projects on a new SAC and it is the appropriate mechanism for ensuring that there is no adverse effect from the Projects and others on the integrity of the cSAC.

There is no requirement or suggestion in any legislation or guidance that non-material changes may not be approved while a review of consents is ongoing. To suspend decisions on non-material changes until the Review of Consents is complete would be entirely inappropriate, and detrimental to the continued development and refinement of the Projects.

#### *Special Protection Areas*

Turning to the requested rotor diameter increase and the potential for impacts on Special Protection Areas (**SPA**), we note that the MMO made no comments on the change to the rotor diameter in its consultation response to BEIS on the NMC Application. Natural England:

1. was the only consultee who commented substantively on ornithology and the proposed changes to the rotor diameter;
2. endorsed the approach to assessing the changes that the Project Companies have undertaken as part of the Application and the NMC Application; and
3. agreed with the conclusions in the Environmental Report that accompanied the Application and the NMC Application.

In the statement of common ground with Natural England it is agreed that the:

1. Application would not give rise to any new, or materially different, impacts in relation to ornithology compared to the consented scheme;
2. amendment to the rotor diameter results in no new or materially different impacts and that there will be no new or significant cumulative or in-combination effects on ornithology;
3. amendment to the rotor diameter pursuant to the Application is likely to be beneficial in terms of its ornithological impact when considered against the consented worst-case scenario;

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4. conclusions of the HRA that underpinned the grant of the DCO and the DMLs are not affected by the proposed changes to the rotor diameter; and
5. proposed changes to the DCO pursuant to the Application and the NMC Application do not have the potential to give rise to likely significant effects alone or in-combination on any of the European sites already assessed in the HRA.

Natural England's position supports the Project Companies' assessment and demonstrates that the change to the rotor diameter will not have a likely significant effect and so does not require appropriate assessment in relation to any SPA under Regulation 28 of the HRA Regulations.

*The Approach of the Secretary of State*

The Secretary of State's approach to applications for non-material changes to DCOs is consistent with our view on the application of Regulation 28 of the HRA Regulations. For example, in a decision dated 14 March 2018 in respect of a non-material change application for the Hornsea Two Offshore Wind Farm Order 2016, the Secretary of State said (our emphasis):

*"The Secretary of State considers that **the change requested** does not have the potential to impact on proposed designated sites. The Secretary of State is satisfied that there is sufficient evidence to conclude that **allowing the change** set out in the Application to the development authorised by the Hornsea Project Two Order will not have a likely significant effect upon any European sites; and a further Appropriate Assessment is therefore not required."*

The Secretary of State took a similar approach in the decisions of: 31 March 2016 and 23 March 2017 in respect of non-material changes to the Hornsea One Offshore Wind Farm Order 2014; and 4 May 2018 in respect of a non-material change to the Hornsea Two Offshore Wind Farm Order 2016.

Please can you acknowledge the amendment to the Application and I trust that the comments provided on the HRA position are helpful.

Yours sincerely,

A handwritten signature in black ink that reads 'Jonathan Wilson'.

Jonathan Wilson

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Encs.