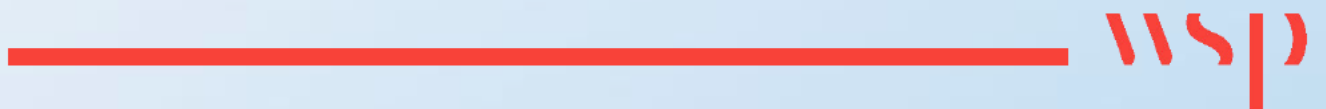


Appendix 5.11

MMO DAS Response





Marine Management Organisation

Mr Benjamin Dove-Seymour,
C.GEN Killingholme Ltd.
(by email only)

MMO Reference: ENQ/2020/00060

Dear Mr Benjamin Dove-Seymour,

North Killingholme Power Project Comments on Environmental/Survey Reports

Thank you for your application update, dated 02 June 2020, requesting a review from the Marine Management Organisation (MMO) in respect to three reports, prior to C.GENS formal Development Consent Order (DCO) variation request to the Secretary of State (SoS) and the subsequent Deemed Marine Licence (DML) variation request to the MMO.

The MMO have received and reviewed the following documents:

- North Killingholme Power Project - Non-material change to Development Consent Order. Environmental Report.
- North Killingholme Power Project - DCO Amendments. Breeding Bird and Waterbird Survey Report.
- North Killingholme Power Project - DCO Amendments. Winter Bird Survey Report.

The MMO's have undertaken an initial review of the draft documents and would like to make the following suggestions:

1. Environmental Report

- 1.1 The document submitted is not complete, therefore, the following comments only relate up to page 23 of the document.
- 1.2 In Section 2, the document should state that you will seek a subsequent variation to the DML, if the DCO extension is approved.
- 1.3 In Section 5.3. the document states that there have been no new designations since the original assessments were undertaken. However, Holderness Inshore Marine Conservation Zone (MCZ), was designated in 2016, which is roughly 25km downstream from the site. Consideration should be given whether there is a possibility for the Project to interact with this site or whether this can be precluded due to distance from site i.e. is the site outside the Zone of Influence.
- 1.4 Section 5.3. has also omitted reference to Killingholme Haven Pits Site of Special Scientific Interest (SSSI).



- 1.5 The MMO note that Section 5.3. provides an updated baseline for habitats, bats, birds, reptiles, amphibians, badgers, otters and water voles. However, the only reference to the current baseline with regard to fish species, lampreys and grey seals is that the designations remain unchanged. An updated baseline for these receptors should be provided.
- 1.6 Section 5.4. of the document references relevant policy and legislation. The East Marine Plan is adopted and is a material consideration for any decision maker, therefore, this section should be amended to refer to decisions needing to be made in accordance with or having regard to the East Marine Plan under Section 58 of the Marine and Coastal Access Act (MCAA) 2009.
- 1.7 Section 5.4. concludes that some updates and changes have been made to policy and legislation, however, it is unlikely to amend the original assessments. Consideration should be given to recent case law and whether this has amended the assessment process, in particular with regard to the Habitats Regulation Assessment.
- 1.8 Section 5.4. should also make reference to the updates made to the Environmental Impact Assessment Regulations.
- 1.9 Section 5.5. only refers to the mitigation in place in relation to bats, this section should be expanded further to discuss the other mitigation that is in place e.g. in relation to minimising the impact of the cooling water intake system within the Humber Estuary on the aquatic environment through DML Condition 19, and minimising noise impacts through DML Conditions 20-23.
- 1.10 The document states that the baseline environment remains similar to that assessed in the DCO Examination process. However, a review of the 'Plans and Projects' that could interact with the project's revised timescales should be made, this should include:
 - existing completed projects;
 - approved but uncompleted projects;
 - ongoing activities;
 - plans or projects for which an application has been made and which are under consideration by the consenting authorities; and
 - plans and projects which are reasonably foreseeable, i.e. projects for which an application has not yet been submitted, but which are likely to progress before completion of the development and for which sufficient information is available to assess the likelihood of cumulative and in-combination effects.

2 Breeding Bird and Waterbird Survey Report

- 2.1 There is a typographical error in the document title, the word 'report' is repeated twice.
- 2.2 In paragraph 1.2.2. include the abbreviation (SPA) following 'Humber Estuary Special Protection Area'.

- 2.3 Paragraph 3.1.3. and Table 9 lists black-tailed godwit as a feature of the Humber Estuary SPA, which is not a feature. Unlike the Non-breeding Bar-tailed godwit (*Limosa lapponica*), the black-tailed godwit is only a feature of the Humber Estuary Ramsar.
- 2.4 In paragraph 4.1.4. it would be beneficial to outline the mitigation secured under the DCO / DML Requirements in particular:
- Requirement 15 - Construction Environmental Management Plan;
 - Requirement 21 – Control of noise during operations – monitoring;
 - Requirement 23 – Control of noise during operations – noise limits;
 - Requirement 25 - Piling;
 - Requirement 26 - Construction of Work Nos. 6a and 6b;
 - Requirement 29 - Control of dust emissions during operation;
 - Requirement 30 - Construction and security lighting scheme;
 - Requirement 31 – Permanent Lighting Scheme;
 - Requirement 43 – Decommissioning;
 - Requirement 48 - Train speed at NKHP;
 - Requirement 49 - Acoustic hoarding;
 - Requirement 50 - Visual attenuation of train movements;
 - Requirement 51 - Control of construction noise at North Killingholme Haven Pits;
 - Deemed Marine Licence condition 19 – Cooling water intake; and
 - Deemed Marine Licence conditions 20 – 23 Piling conditions.
- 2.5 In Paragraph 4.2.1. the document refers to the requirement of the Competent Authority to undertake a Habitats Regulation Assessment (HRA). In paragraph 5.1.7. the document concludes the assessments in the ES remain the same, as there are no significant changes to the site and surrounding habitats. It is important to note however, that the HRA also undertook a cumulative and in-combination assessments. Therefore, a review of the other plans or projects that are likely to interact with the new timescales of this project will need to be undertaken and presented to allow a review of the HRA to be undertaken.

3 Winter Bird Survey Report

- 3.1 In paragraph 4.1.4 the document states that the baseline environment remains similar to that assessed in the DCO Examination process. As stated above, a review of the 'Plans and Projects' that could interact with the project now that the timescales have changed should be made, this should include:
- existing completed projects;
 - approved but uncompleted projects;
 - ongoing activities;
 - plans or projects for which an application has been made and which are under consideration by the consenting authorities; and
 - plans and projects which are reasonably foreseeable, i.e. projects for which an application has not yet been submitted, but which are likely to progress before completion of the development and for which sufficient information is available to assess the likelihood of cumulative and in-combination effects.

Conclusion

The MMO advise that a variation request to the Deemed Marine Licence (DML) is sought from the MMO under section 72 of the Marine and Coastal Access Act (MCAA) 2009, to amend Schedule 7, Requirement 4(3):

4 (3) This licence expires after 10 years beginning on the date of coming into force of this Order.

To apply for a DML variation you will need to submit a request to the MMO consisting of:

- a cover letter;
- detail of the proposed change(s) to the DML;
- a supporting summary statement detailing why the proposed variation is permissible with reference to the original application and in consideration of any implications for the existing DCO; and
- any additional supporting information required (such as ES addendums, HRAs etc.).


The above comments represent the MMO's initial review of the draft documents to be submitted in the upcoming variation request. The MMO will undertake a full review of all supporting information when the application for a DML variation is submitted. The MMO will also go out to consultation during this process with, *inter alia*, Natural England, the Environment Agency, the Planning Inspectorate and the Secretary of State.

Please note changes to DMLs are made in accordance with Section 72 of the MCAA 2009 and are therefore not subject to materiality. However, changes to the DML could impact on the overarching DCO, therefore, the MMO consider the implications to the overarching DCO and liaise closely with the relevant government department during the variation process.


It should also be noted that there will be a fee associated with the variation process, the estimate will require acceptance prior to the MMO undertaking any work on the case.

Further information regarding this process and examples of previous DML Variations can be viewed at the link below:

<https://www.gov.uk/government/collections/marine-licensing-nationally-significant-infrastructure-projects>



Nicola Wilkinson
Marine Licensing Case Officer



Reference	Issue	Response	MMO Response 06/08/2020
Environmental Report			
MMO1	In Section 2, the document should state that you will seek a subsequent variation to the DML, if the DCO extension is approved.	Noted and agreed.	Noted
MMO2	In Section 5.3. the document states that there have been no new designations since the original assessments were undertaken. However, Holderness Inshore Marine Conservation Zone (MCZ), was designated in 2016, which is roughly 25km downstream from the site. Consideration should be given whether there is a possibility for the Project to interact with this site or whether this can be precluded due to distance from site i.e. is the site outside the Zone of Influence.	This MCZ is designated for intertidal and subtidal habitats ¹ , running north from the northern end of the Humber Estuary. Given the distance between the Project and this site, no conceivable impact pathways have been identified and the MCZ is considered to be beyond the Zol of the Project. This is set out in Section 5.3 of the updated Environmental Report.	Noted
MMO3	Section 5.3. has also omitted reference to Killingholme Haven Pits Site of Special Scientific Interest (SSSI).	Noted, now addressed in Section 5.3 of the Environmental Report.	Noted
MMO4	The MMO note that Section 5.3. provides an updated baseline for habitats, bats, birds, reptiles, amphibians, badgers, otters and water voles. However, the only reference to the current baseline with regard to fish species, lampreys and grey seals is that the designations remain unchanged. An	No survey work for grey seals, fish or lamprey was undertaken for the original DCO application, as such there is no site-specific baseline to update. The potential for grey seal and lampreys to be present was assumed within the Examining	The MMO appreciate the justification provided in the updated Environmental Report with regard to the baseline for marine species not requiring updating. The MMO did not

¹ Department for Environment, Food and Rural Affairs (17 January 2016) Holderness Inshore Marine Conservation Zone

	<p>updated baseline for these receptors should be provided.</p>	<p>Authorities and SoS HRA for the DCO. In relation to grey seals, the main haul-out and breeding colony is understood to remain centred at Donna Nook, approximately 25km downstream from the Project. The Supplementary Conservation Objectives for grey seal (as a feature of the Humber Estuary SAC)² state that the population is in good condition and/or currently un-impacted by anthropogenic activities. The supplementary conservation objectives for sea and river lamprey² state that estuarine population size is not a relevant attribute for these species, due to the difficulty of monitoring them in the estuarine environment. NE refer instead to the advice on 'structure and function: biological connectivity', which highlights the importance of unimpeded access through the estuary into upstream rivers used by lamprey for breeding. The SoS HRA assumed that grey seal and lamprey could</p>	<p>consult on the original document, therefore, did not have the benefit of our technical advisors at Cefas or consultation with Natural England. The consideration of impacts on marine species and habitats seemed sparse, therefore, text explaining the reason why no surveys are required is welcomed.</p>
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² Natural England (September 2019). Humber Estuary SAC – Supplementary Advice on Conservation Objectives

		<p>potentially be present³, and that impacts upon them could arise from piling activities and in the case of lamprey fragmentation of habitats by increased water temperatures from cooling water discharges, and/or entrainment within cooling water infrastructure. These impacts were determined not to lead to LSE/adverse effects on integrity in the SoS HRA (see paragraphs 7.3 to 7.21). The potential impact pathways to grey seals and lamprey have not changed; it is considered these could still be present in the vicinity of the project; completing survey work would not change the need to take this approach, particularly given the difficulties associated with monitoring lampreys in estuarine environments. The mitigation identified to address the potential presence of these species therefore remains appropriate; the requirement to implement these measures would remain</p>	
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³ Department of Energy and Climate Change (2014). North Killingholme Power Project: Record of the Habitats Regulations Assessment undertaken under Regulation 61 of the Conservation of Habitats and Species Regulations 2010 (as amended) for an application under the Planning Act 2008 (as amended)

		unaltered in the extended DCO. This is set out in Section 5.3 of the Environmental Update Report.	
MMO5	Section 5.4. of the document references relevant policy and legislation. The East Marine Plan is adopted and is a material consideration for any decision maker, therefore, this section should be amended to refer to decisions needing to be made in accordance with or having regard to the East Marine Plan under Section 58 of the Marine and Coastal Access Act (MCAA) 2009.	Noted, and reference to the East Marine Plan has been included in Section 5.4. We note that paragraph 3.38 of the Examining Authority's recommendation report in relation to the original application states that "The plan for the East Inshore Marine Area was formally adopted in April 2014. The ExA considers that there are no specific implications within this plan, for the ExA's consideration of the application offshore works and DML." As the proposed non-material change application does not include any physical changes to the Project, we consider that the ExA's conclusion still applies.	Noted and thank you for providing additional context with regard to ExA consideration of the Marine Plan.
MMO6	Section 5.4. concludes that some updates and changes have been made to policy and legislation, however, it is unlikely to amend the original assessments. Consideration should be given to recent case law and whether this has amended the assessment process, in particular with regard to the Habitats Regulation Assessment.	We are aware that case law has continued to be made since the SoS HRA was determined, and have considered its implications including in respect of process. Overall, and subject to those changes, the general principles of the Habitats Regulations Assessment process	Noted and welcome the in-combination assessment being revisited.

		<p>remain unaltered though – where the potential for Likely Significant Effects cannot be excluded, an Appropriate Assessment is required to assess the potential for adverse effects on integrity. As identified in the Environmental Report, the parameters of the Project remain unchanged. In particular, we note the potential for the operational air quality impacts of the Project to be lessened due to more stringent Best Available Techniques (BAT) requirements. An update of relevant developments for in-combination assessment has also been completed.</p>	
MMO7	<p>Section 5.4. should also make reference to the updates made to the Environmental Impact Assessment Regulations.</p>	<p>This is addressed in Section 1.2 of the Environmental Report, as changes to the EIA Regulations are relevant to the wider assessment, not just Ecology and Biodiversity.</p>	<p>Thank you for the clarification.</p>
MMO8	<p>Section 5.5. only refers to the mitigation in place in relation to bats, this section should be expanded further to discuss the other mitigation that is in place e.g. in relation to minimising the impact of the cooling water intake system within the</p>	<p>Section 5.5 focusses only on possible changes to mitigation since the DCO was made in 2014. We have amended this section of the report to make clear that all other mitigation secured through the</p>	<p>Thank you for the clarification.</p>

	Humber Estuary on the aquatic environment through DML Condition 19, and minimising noise impacts through DML Conditions 20-23.	existing DCO and Deemed Marine Licence will remain as consented.	
MMO9	<p>The document states that the baseline environment remains similar to that assessed in the DCO Examination process. However, a review of the 'Plans and Projects' that could interact with the project's revised timescales should be made, this should include:</p> <ul style="list-style-type: none"> · existing completed projects; · approved but uncompleted projects; · ongoing activities; · plans or projects for which an application has been made and which are under consideration by the consenting authorities; and · plans and projects which are reasonably foreseeable, i.e. projects for which an application has not yet been submitted, but which are likely to progress before completion of the development and for which sufficient information is available to assess the likelihood of cumulative and in-combination effects. 	This is addressed in Section 10 of the updated Environmental Report.	Noted.
Breeding Bird and Waterbird Survey Report			

MMO10	There is a typographical error in the document title, the word 'report' is repeated twice.	Thank you for highlighting this, we will correct in the submission version of the report.	Noted
MMO11	In paragraph 1.2.2. include the abbreviation (SPA) following 'Humber Estuary Special Protection Area'.	Thank you for highlighting this, this has been updated for the submission version of the report.	Noted.
MMO12	Paragraph 3.1.3. and Table 9 lists black-tailed godwit as a feature of the Humber Estuary SPA, which is not a feature. Unlike the Non-breeding Bar-tailed godwit (<i>Limosa lapponica</i>), the black-tailed godwit is only a feature of the Humber Estuary Ramsar.	It is our understanding that black-tailed godwit is a feature of the SPA, e.g. see the Natural England Humber Estuary EMS information ⁴⁵ .	Apologies, this is an error.
MMO13	In paragraph 4.1.4. it would be beneficial to outline the mitigation secured under the <ul style="list-style-type: none"> · DCO / DML Requirements in particular: Requirement 15 - Construction Environmental Management Plan; · Requirement 21 – Control of noise during operations – monitoring; · Requirement 23 – Control of noise during operations – noise limits; · Requirement 25 - Piling; 	Noted, a summary table has been added to the report setting out the relevant DCO/DML Requirements.	Noted

	<ul style="list-style-type: none"> · Requirement 26 - Construction of Work Nos. 6a and 6b; · Requirement 29 - Control of dust emissions during operation; · Requirement 30 - Construction and security lighting scheme; · Requirement 31 – Permanent Lighting Scheme; · Requirement 43 – Decommissioning; · Requirement 48 - Train speed at NKHP; · Requirement 49 - Acoustic hoarding; · Requirement 50 - Visual attenuation of train movements; · Requirement 51 - Control of construction noise at North Killingholme Haven Pits; · Deemed Marine Licence condition 19 – Cooling water intake; and · Deemed Marine Licence conditions 20 – 23 Piling conditions. 		
MMO14	<p>In Paragraph 4.2.1. the document refers to the requirement of the Competent Authority to undertake a Habitats Regulation Assessment (HRA). In paragraph 5.1.7. the document concludes the assessments in the ES remain the same, as there are no significant changes to the site</p>	<p>This is addressed in Section 10 of the updated Environmental Report.</p>	<p>Noted</p>

	<p>and surrounding habitats. It is important to note however, that the HRA also undertook a cumulative and in-combination assessments. Therefore, a review of the other plans or projects that are likely to interact with the new timescales of this project will need to be undertaken and presented to allow a review of the HRA to be undertaken.</p>		
<p>Winter Bird Survey Report</p>			
MMO15	<p>In paragraph 4.1.4 the document states that the baseline environment remains similar to that assessed in the DCO Examination process. As stated above, a review of the 'Plans and Projects' that could interact with the project now that the timescales have changed should be made, this should include:</p> <ul style="list-style-type: none"> · existing completed projects; · approved but uncompleted projects; · ongoing activities; · plans or projects for which an application has been made and which are under consideration by the consenting authorities; and · plans and projects which are reasonably foreseeable, i.e. projects for which an application has not yet been submitted, but which are likely to progress before completion of the 	<p>This is addressed in Section 10 of the updated Environmental Report.</p>	<p>Noted</p>

	development and for which sufficient information is available to assess the likelihood of cumulative and in-combination effects.		
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