



East Anglia Three Case Team
The Planning Inspectorate (by email only)
EastAngliaThree@pins.gsi.gov.uk

Your Reference: EN010056
Our reference: DCO/2013/00014

06 October 2016

Dear Sir or Madam,

Examining Authority's Second Written Questions - MMO Response

The Marine Management Organisation (MMO) is an interested party for the examination of Development Consent Order (DCO) applications for Nationally Significant Infrastructure Projects (NSIPs) in the English marine area. Also the MMO is the enforcing body for the Deemed Marine Licence (DML(s)) issued as schedules of the DCO. In our role as interested party and enforcing body, the MMO sets out its response to the Examining Authority's Second Written Questions below.

1. **ECMM17 – Ecology Offshore Marine Mammals**

In its post-hearing submission for Deadline 4 [REP4-032] the MMO states that it would not expect the Secretary of State to instruct the MMO who to consult. MMO suggests it more appropriate for the Applicant to consult with The Wildlife Trusts (TWT) during drafting, and the Trusts should be named in the draft Deemed marine Licence (dDML). Is the Applicant willing to name TWT and WDC in the dDML?

MMO Response

The MMO has discussed question ECMM17 with the applicant and concurs with the applicant's understanding of the MMO's position with regard to consultation on the Marine Mammal Mitigation Protocol. In addition, should the Secretary of State wish to retain the option to determine who needs to be consulted on the MMMP until post consent, this condition should be included within the DCO rather than the DML.

2. **HRA13 – Habitats Regulation Assessment**

The ExA invites responses related to the Applicant's assessment of effects on the Southern North Sea pSAC [REP4-016], the draft Site Integrity Plan (SIP) [REP4-013] and the drafting of Condition 13 of the dDMLs to secure the SIP [REP4-003 and 004].

MMO Response



The MMO has reviewed the draft Site Integrity Plan (SIP) submitted by the applicant at Deadline 4 and is, in general, content with the approach taken. However, further clarity is required in respect of in-combination assessment. It is the MMO's view that in-combination effects should be considered based upon what is known at the time of decision, and should not be scoped out as stated at paragraph 5 on page 3 of the plan.

Consideration should be given within the SIP as to how the Review of Consents may affect the mitigation and management measures outlined in the Plan. The review will consider previously consented projects and may require further mitigation measures to be applied to projects, through variation to DCO/DML conditions.

Paragraph 18, on page 6 refers to the development of a post consent consultation programme. This programme should be approved in writing by the MMO.

The MMO welcomes the inclusion of a timetable for refinement and agreement of the plan (Table 1) but queries whether submission of a draft plan, (at 12 months prior to commencement of pile driving), noise prognosis, (at 9 months prior to pile driving) and final design, (at 9 months prior to construction) can be dealt with in a more streamlined manner. Can a draft plan be adequately reviewed before noise propagation is known?

The Noise Prognosis referred to in Table 1 states that it will be submitted to the MMO but has no further action. It should be made clear in the Plan that the MMO will disseminate the Noise Prognosis to such parties as it deems necessary in order to facilitate consultation on the Final Design.

Final Plan sign-off referenced in Table 1 is to be submitted 4 months prior to commencement of pile driving; this must have MMO written approval prior to any piling works commencing.

Paragraph 33 on page 12 states that, upon completion, the Appropriate Assessment (AA) may be used to determine any additional mitigation and management measures; however this should also include reference to any new conservation objectives and any review of consent outcomes, as these may also result in additional mitigation requirements.

Paragraph 37 states that the final MMMP will be 'agreed' with the MMO; this should be amended to state that the MMMP will require 'written approval' from the MMO at least 4 months prior to construction.

The practicalities of scheduling pile driving, as described in paragraph 48 on page 14 of the plan requires further consideration, particularly in reference to the level of in-combination assessment conducted as part of the HRA process. Initiating and managing a prohibition or restriction on pile driving for this and/or other projects may be problematic and thought should be given as to the appropriate authority for undertaking the necessary assessment and determination. It is advisable that the AA should consider in-combination effects (based upon the details currently known), that the need for scheduling of piling between projects should be considered and identified, where possible, prior to the determination of the application.

On a broader point, it is advisable that the draft AA should be consulted on prior to determination of the application, in order to ensure that any mitigation required has been clearly identified and secured within the DCO / DML.

The MMO has considered the drafting proposed by the applicant in Version 3 of the DCO (submitted at Deadline 4). The MMO is content with the drafting of Condition 13(2) of the dDMLs to the extent that it secures the requirement to submit for approval by the MMO the SIP for assessment of effects on the Southern North Sea pSAC. However, the MMO considers that Condition 13(3) is not necessary as it restates existing requirements under the relevant habitats regulations, and as such does not meet the National Planning Policy Framework tests for planning condition.

3. HRA19 – Habitats Regulation Assessment

Could the MMO enlarge on its comments on harbour porpoise impacts provided in paragraph 2.1 of its post-hearing submission [REP4-032]? Is the MMO seeking to have all the proposed mitigation measures for the pSAC included in the draft SIP?

MMO Response

Firstly, the MMO is not seeking to comment on the merits of the assessment as such but on the possible mitigation required as a result of the HRA, to the extent it is adequately defined, secured within the DML and is deliverable post consent.

The MMO considers that it is important that any mitigation required in order to reduce the potential impacts to acceptable levels is clearly outlined, its effectiveness and ability for its delivery is clearly understood and it is appropriately secured as part of the DCO/DML. For example, if a seasonal restriction is required, the actual start and end dates should be determined prior to a decision being made (rather than stating a seasonal restriction is required).

Noting the uncertainty regarding the pSAC conservation objectives, management measures etc., the SIP helps identify and define appropriate mitigation for harbour porpoise, outlining what clearly is or is not possible and the reasoning behind the proposals, in order to help ensure that any potential mitigation is both effective and deliverable.

The MMO does not necessarily expect that all mitigation measures will be detailed within the draft SIP noting potential for future changes due to advances in knowledge and/or technology, changes in conservation objectives, management measures, updated in-combination assessments due to changes in construction timings etc. The SIP should provide a framework for discharging requirements post consent including timings and detail of information which will be provided by the applicant.

In order to fully understand how the mitigation has been considered as part of the HRA, it is advised that the draft AA, should it be required, is consulted upon prior to the determination of the application.

4. FN11 – Fishing and Navigation

The SoCG with VisNed and NFFO [REP2-058] states that in the event of a cable becoming exposed, notification will be issued via the SeaFish Kingfisher Information Service and Notice to Mariners.

a) *How will it be known if a cable becomes exposed?*

b) *How is notification secured in the dDMLs?*

c) *What provision would be made (and how would this be secured in the DMLs) for the appropriate protection of cable assets pending the completion of any necessary remedial works?*

MMO Response

The MMO is of the opinion that sufficient surveys and reporting mechanisms can be secured within the dDMLs to identify cable exposure and ensure appropriate action is taken. Draft Conditions 13(1)(g)(iii) and 19(2)(b) ensure ongoing assessment of cable burial or protection, although we would advise that the requirement for a cable burial risk assessment should be carried through to a post consent requirement. Draft Conditions including 7(11) and 8(5) ensure appropriate reporting and notification of any navigational hazard as a result of damage or decay to any part of the scheme, as well as specific requirements for a Fishery Liaison Officer and a Fisheries Coexistence Plan.

5. FN14 – Fishing and Navigation

Harwich Fishermen’s Association reiterated at the Environmental ISH on 7 September 2016 its expressed concern relating to the ability of its members to fish, and their assessment of risk, in areas of the export cable route where cable crossings would occur. Similar concerns are also stated in the SoCG with the UK Commercial Fisheries Working Group [REP4-009].

a) *What assurances can the Applicant provide as to safety and the ability to fish within the cable corridor?*

b) *Who would be the arbiter of whether the area of the cable corridor was fishable or not?*

c) *If it falls to individual fishermen to make the assessment of risk, what up-to-date information would be available to inform them?*

MMO Response

The MMO believes there are sufficient surveys and reporting mechanisms secured within the dDMLs to provide the information required by third parties to make an informed decision on whether it is safe to fish a particular area of the site (as discussed in our response to FN11 (above)).

It is important to note that it is not the responsibility of the MMO to inform individuals of where and when it is safe to fish.

6. DCO1 – Draft Development Consent Order – Article 2(1) “Commence” and DCO2 – Development Consent Order – Article 2(1) “Maintain”

MMO Response

The MMO notes the Examining Authority’s questions regarding the definitions of “commence” and “maintain”. As the definition of these terms is relevant to activities

seawards of MHWS the MMO would appreciate opportunity to comment on any proposed changes. The MMO is content with the current definition of these terms

7. DCO3 – Draft Development Consent Order

Article 5 and the draft Deemed Marine Licences – Transfer of benefit

Article 5 of the dDCO has the effect of permitting the transfer of each Deemed Marine Licence (DML) to another person. Whilst the ExA notes the intention of the Applicant, as made clear at the first DCO ISH, was that the primary reason for the DML structure was to support the intended phasing of delivery by the same undertaker, it remains theoretically possible that all six DMLs might be held by different undertakers. Were this to be the case, the ExA would retain concerns about the need for greater security for works coordination than is currently provided in the dDCO. In order to respond to this:

a) The Applicant is asked to review the drafting of Article 5 and/or the DMLs and to recommend a means of drafting to ensure that the intention that the DMLs will benefit a single undertaker is appropriately secured.

b) MMO comments are sought.

MMO Response

The MMO has previously discussed Article 5 with the applicant and is in agreement that any division of works would be secured during commercial negotiations between prospective undertakers. The MMO further believes that current drafting of the dDMLs, such as Schedule 10, Part 2 Conditions, 2(1), 2(3) and 2(7) ensures that the design parameters of the scheme cannot be exceeded, should multiple undertakes be appointed.

8. DCO4 – Draft Development Consent Order

Article 5(4) and (8) – Transfer of benefit

As presently drafted [REP4-003 -004], Article 5(4) provides for the transfer of benefit of any of the Order, including offshore works, without the consent of the Secretary of State, in circumstances where any/all onshore compulsory acquisition/injurious affection claims (the CA claims) have been resolved (5(8)(b)).

The ExA does not fully understand the need or reasoning for this provision, beyond the fact that equivalent provisions have been included in made DCOs. Particularly, what is the relevance of the resolution of the CA claims to the question of whether or not a transfer of benefit needs the consent of the Secretary of State?

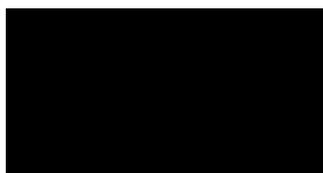
a) The Applicant is requested to provide a clear explanation of the underlying reason for this drafting.

b) Views of the MMO and LPAs are also sought.

MMO Response

The MMO is content with the current wording of this provision and has previously engaged with the applicant regarding drafting.

Yours sincerely



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