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MMO Reference: DCO/2016/00004
Planning Inspectorate Reference: EN010077
Identification Number: 20024128

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Dear Rynd Smith,

Planning Act 2008, Scottish Power Renewables, Proposed East Anglia One North (EA1N) Offshore Windfarm Order

Marine Management Organisation's Deadline 6 Response

On 19 December 2019, the Marine Management Organisation (the "MMO") received notice under section 56 of the Planning Act 2008 (the "PA 2008") that the Planning Inspectorate ("PINS") had accepted an application made by Scottish Power Renewables (the "Applicant") for determination of a development consent order (DCO) for the construction, maintenance and operation of the proposed East Anglia One North Wind Farm (the "DCO Application") (MMO ref: DCO/2016/00004; PINS ref: EN010077).

The Applicant seeks authorisation for the construction, operation and maintenance (O&M) of the DCO Application, comprising of up to 67 wind turbine generators together with associated onshore and offshore infrastructure and all associated development ("the "Project"). This includes two Deemed Marine Licences (DMLs) under Schedules 13 and 14.

This document comprises the MMO comments in respect of the DCO Application submitted in response to Deadline 6.

The MMO submits the following:

- 1. Summary of Oral Cases made during the Biodiversity and Habitats Regulations Assessment (HRA) Issue Specific Hearing (ISH) 7**
- 2. Summary of Oral Cases made during the Draft development consent order Issue Specific Hearing (ISH) 9**
- 3. Action Points from ISH 7**
- 4. Action Points from ISH 9**
- 5. Comments on any additional information/submissions received at Deadline 5**
- 6. Comments on Applicants comments on MMO Deadline 4 Response**
- 7. MMO Responses to ExA Written Questions 2**
- 8. MMO Responses to ExA commentaries on the draft Development Consent Order**
- 9. Action Points from ISH 3**
- 10. MMO Response to Action Point 5 from ISH 5**
- 11. MMO's Outstanding Issues**
- 12. Notification of Hearings**



This written representation is submitted without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This representation is also submitted without prejudice to any decision the MMO may make on any associated application for consent, permission, approval or any other type of authorisation submitted to the MMO either for the works in the marine area or for any other authorisation relevant to the proposed development.

Yours Sincerely,



Jack Coe
Marine Licencing Case Officer

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Contents

1. Summary of Oral Cases made during the Biodiversity and Habitats Regulations Assessment (HRA) Issue Specific Hearing (ISH) 7	5
1.1 Agenda Item 3ai	5
1.2 Agenda Item 3aii	5
1.3 Agenda Item 3aiii	5
1.4 Agenda Item 3bi	6
1.5 Agenda Item 3bii	6
1.6 Agenda Item 3biii	6
1.7 Agenda Item 3ci	6
1.8 Agenda Item 3cii	7
1.9 Agenda Item 3ei	7
1.10 Agenda Item 3cii	7
1.11 Agenda Item 4ai	7
1.12 Agenda Item 4aii	7
1.13 Agenda Item 4bi	7
2. Summary of Oral Cases made during the Draft development consent order Issue Specific Hearing (ISH) 9.....	7
2.1 Agenda Item 2	7
3. Action Points from ISH 7.....	9
4. Action Points from ISH 9.....	12
5. Comments on any additional information/submissions received at Deadline 5.....	13
5.1 Guide to the application- Version 6 [REP5-002].....	13
5.2 Draft Development Consent Order (Tracked) – Version 04 [REP5-004].....	13
5.3 Schedule of Changes to the Draft Development Consent Order [REP5-005].....	13
5.4 Environmental Statement - Appendix 6.3 - Relationship of Offshore Plans Secured by the DCO [REP5-007]	13
5.5 Applicants' Comments on Historic England's Deadline 4 Submissions [REP5-012].....	13
5.6 Applicants' Comments on MMO's Deadline 4 Submissions [REP5-013].....	14
5.7 Applicants' Comments on Maritime and Coastguard Agency's Deadline 4 Submissions [REP5-014].....	14
5.8 Applicants' Comments on Natural England's Deadline 4 Submissions [REP5-015].....	14
5.9 Applicants' Comments on Royal Society of the Protection of Birds (RSPB) Deadline 4 Submissions [REP5-016].....	14
5.10 Applicants' Comments on Trinity House's Deadline 4 Submissions [REP5-018].....	14
5.11 Applicants' Comments on The Wildlife Trust's Deadline 4 Submissions [REP5-020].....	15
5.12 Displacement of Red-throated Divers in the Outer Thames Estuary SPA [REP5-025].....	15
5.13 Applicants' Responses to Hearing Action Points (ISH3, ISH4, ISH5, OFH6 and ISH6) [REP5-026]	15
5.14 Written Summary of Oral Case (ISH3) [REP5-027]	15
5.15 Written Summary of Oral Case (ISH4) [REP5-028]	16



5.16	Written Summary of Oral Case (ISH5) [REP5-029]	16
5.17	Written Summary of Oral Case (ISH6) [REP5-030]	16
5.18	Draft Statement of Common Ground with Historic England (Offshore) (Version 3) [REP5-032]	16
5.19	Draft Statement of Common Ground with Maritime and Coastguard Agency - Version 3 [REP5-034]	17
5.20	Draft Statement of Common Ground with Trinity House - Version 3 [REP5-035]	17
5.21	Historic England Deadline 5 Response - offshore [REP5-074]	17
5.22	Appendix A15 – NE Comments on HRA Derogation Case and HRA Compensatory Measures [REP5-082]	17
5.23	Appendix A16 – NE Comments on Cumulative and In-Combination Risk Update [REP5-083]	17
5.24	Appendix F5b – NE Comments on Outline Sabellaria Reef Management Plan [REP5-085]	17
5.25	Appendix F8 - NE Comments on Offshore IPMP [REP5-086]	18
5.26	Appendix G3 – NE Advice on Non-Material Changes and Headroom [REP5-087]	18
5.27	Appendix I1d – NE Risk and Issues Log [REP5-088]	18
5.28	Appendix K2 – NE Written Summary of Oral Representations made at Issue Specific Hearing 3: Biodiversity and Habitats Regulations Assessment [REP5-089]	18
5.29	The Wildlife Trusts Deadline 5 Submission [REP5-120]	18
6.	Comments on Applicants comments on MMO Deadline 4 Response	18
6.1	Comments on Applicants' Revised dDCO (REP3-011)	18
6.2	Comments on any additional information/submissions received at Deadline 3	18
7.	MMO Responses to ExA Written Questions 2	20
8.	MMO Responses to ExA commentaries on the draft Development Consent Order	23
9.	Action Points from ISH 3	34
10.	MMO Response to Action Point 5 from ISH 5	37
11.	MMO Outstanding Issues	37
11.1	UXO inclusion	37
11.2	New Scour and Cable protection	37
11.3	Cessation Condition 21 (Schedule 13) and 17 (Schedule 14)	39
11.4	Completion of Construction	39
11.5	SNS SAC SIP	40
11.6	Co-operation	40
11.7	Benthic Ecology	40
11.8	Fish Ecology including a Seasonal Restriction	40
11.9	Sediment contaminants	40
11.10	Disposal sites	40
12.	Notification of Hearings	41
	The MMO has provided comments on the Notification of Hearings in Appendix 1	41



1. Summary of Oral Cases made during the Biodiversity and Habitats Regulations Assessment (HRA) Issue Specific Hearing (ISH) 7

Agenda Item 3: Effects on marine mammals (including HRA considerations)

1.1 Agenda Item 3ai

The MMO welcomes the discussions with the Applicant and Natural England (NE) regarding the inclusion of a condition to alleviate concerns on project alone effects and will continue discussions for an update to be included at Deadline 7.

1.2 Agenda Item 3aii

The MMO is content that the Southern North Sea (SNS) Special Area of Conservation (SAC) Site Integrity Plan (SIP) is the correct process to manage in combination effects with other projects. The MMO believes this mechanism allows review of ongoing other noisy activities at the time of construction to ensure all activities are within the conservation objectives/guidance.

The MMO is confident that this mechanism will enable activities with minimal harm to the environment. The MMO is still part of the SNS Regulators Working Group, developing a mechanism to make underwater noise in the SNS SAC easier to manage.

The MMO attended the latest meeting of the SNS Regulators Working Group and highlights that current discussions are looking at developing options for a noise management mechanism taking into account the different industry and regulatory needs.

1.3 Agenda Item 3aiii

The MMO provided detailed reasoning at Deadline 4 (REP4-081) as to why unexploded ordnance (UXO) clearance activities are best placed on a separate marine licence. The MMO has reviewed the Applicant's response (REP5-013) and would firstly highlight that the MMO is still not content with controlling these activities through the DMLs.

The MMO believes these activities are best suited to a separate marine licence and previously stated in Issues Specific Hearing 3, and the initial concerns were around the administrative issues and lack of information at this stage for a high risk activity, however the reasoning has developed further, as outlined below.

The MMO welcomes the Applicant's acceptance that the risk that a new marine licence could be required if additional UXO beyond the 80 assessed becomes a reality.

The MMO also welcomes the update to the timescales provided by the Applicant and can confirm that this alleviates concerns on the timescales matter.

However, there are still outstanding concerns:

- 1) The inclusion of a close out report – the MMO is engaging with the Applicant on this point to understand how this can be included in the condition.

The remaining concerns are supporting NE these are:

- 2) Project alone impacts between noisy activities in 24 hours Adverse Effect on Integrity (AEoI) – the MMO is engaging with the Applicant and NE on where this would sit within the application.
- 3) Impacts on Sabellaria Reef and the submission of documents (as per REP5-085)

The MMO continues to work with NE and the Applicant to work towards an agreement on a final DML condition that alleviates all the concerns, however at this stage, the MMO would highlight there is still a number of issues outstanding to ensure full confidence in UXO activities being included within the DCOs. Please see section 5.24 for further updates.



1.4 Agenda Item 3bi

The MMO does not agree that project alone effects should be included within the SNS SAC SIP as set out in previous submissions. The MMO welcomes the Applicant's commitment to remove this from the updated the SNS SAC SIP to be submitted at Deadline 7, and to include a condition to capture the project alone commitments. The MMO will review the updated document and provide comments at Deadline 8.

1.5 Agenda Item 3bii

The MMO is content with the information within the SIP from our remit but supports any concerns raised by NE.

1.6 Agenda Item 3biii

The MMO proposed a condition in Section 9.10 of REP5-075 and notes the Applicant has proposed some changes to the condition. The MMO understands that NE are content with these changes. The MMO is continuing discussions with the Applicant on the exact wording of the Applicant's update and is confident that this condition will be agreed for Deadline 7.

1.7 Agenda Item 3ci

The MMO notes the Marine Mammal Mitigation Plan (MMMP) will be updated in line with the project alone commitments and will need to include updates in light of the noisy activities' commitments condition updates. The MMO believes these updates will remove the concerns relating to '*without at source mitigation*'.

The MMO also welcomes the Applicant's commitment to revert back to the 1.5m/s swimming speed.

The MMO has had further discussion on low order techniques and the commitment for these within the dDCO/MMMP and understands the Applicant's comments in relation to the concerns on committing to this mitigation at this stage and can agree at this stage that inclusion of potential techniques is enough.

The MMO highlighted there is data being gathered in relation to the outstanding concerns on the commercial availability of the technologies and the success rate on the use of low order techniques.

The Department for Business, Energy & Industrial Strategy (BEIS) Offshore Strategic Environmental Research (SEA) programme, in collaboration with Hartley Anderson Environmental Consultancy, is currently undertaking an exercise to identify potential sea trial opportunities in a construction environment. The first opportunity looks to be targeted towards completion in October 2021. However, a number of enquiries are underway with consented developments to broaden this data collection in England and the devolved administrations.

The research will feed back to the Strategic Advice Group of which offshore wind farm developers and stakeholders alike will discuss and advise the underwater noise regulators forum on future implementation. The recently conceived Department for Environment, Food & Rural Affairs (DEFRA) Offshore Wind Enabling Actions Programme (OWEAP) now have a dedicated team to oversee advances in the management of noise impacts, and it has been recently highlighted to them the importance and urgency required in establishing regulatory pathways to embrace this type of new mitigation. It should also be recognised that new innovation such as the deflagration approach highlights the importance of being able to assess UXO disposal techniques closer to the activity being undertaken and through a separate marine licence application.

Once further data is received, we believe that this will become standard primary technique and required for all UXO detonations.



1.8 Agenda Item 3cii

The MMO understands the SNS SAC SIP condition is currently secured in the DMLs, noting this is likely to be replaced with the agreed condition wording.

1.9 Agenda Item 3ei

The MMO is still discussing this matter with our scientific advisors at Centre for Environment, Fisheries and Aquaculture Science (Cefas) and NE. Please see Section 11.3 for further information.

1.10 Agenda Item 3cii

The MMO is content that the MMMP is secured in the DML's.

Agenda Item 4: Effects on fish and shellfish ecology

1.11 Agenda Item 4ai

The MMO is awaiting the confirmation from the Applicant in relation to this point and will provide an update at Deadline 7.

1.12 Agenda Item 4aii

The MMO highlights Section 10 of our Deadline 5 response (REP5-075) sets out detailed comments that a seasonal restriction is required but this could be refined with further information.

The MMO attended a meeting with the Applicant on 22 February 2021 to discuss this matter. The MMO believes that further work needs to be done by the Applicant to confirm if/when any seasonal restriction will be required.

The MMO notes that if it is not feasible to carry out this work during Examination due to timescales, that a standard seasonal restriction is required at this stage and the Applicant will have to request a variation to reduce this when further information is provided. Please see Section 11.8 for an update on this matter.

1.13 Agenda Item 4bi

The MMO notes if a seasonal restriction is required, the MMO would work with the Applicant to include a condition. The MMO notes that Rampion DML has a Herring spawning seasonal restriction condition and therefore this is likely to be similar. Please find the potential condition in Section 3 Action Point number 16.

2. Summary of Oral Cases made during the Draft development consent order Issue Specific Hearing (ISH) 9

Agenda Item 2: Progress Position Statement by the Applicant: Changes to the Drafts in Progress since ISHs 6

2.1 Agenda Item 2

The MMO notes the Applicant provided an update on the following outstanding issues:

- SNS SAC SIP condition
- UXO including a close out report to be included in the UXO condition
- UXO piling/UXO commitment condition
- Cooperation condition

The MMO agrees this is the current position on these issues and has provided further comments in Section 11.



The MMO also raised two remaining concerns relating to the wording for the cessation condition and the wording for the Scour and Cable protection condition, related to the laying of protection in new locations during operation.

In relation to the cessation wording the MMO has set out the current position in Section 11.3.

Regarding new scour or cable protection not installed during construction the MMO considers that this should be contained within a separate marine licence. The MMO can confirm this stance is aligned with Natural England advice and therefore the relevant conditions should be removed from the dDCO and Outline Operations and Maintenance plan.

The MMO advised that while this is the position that will be maintained, the MMO is in discussions with Natural England to try to provide a without prejudice position on the condition the Applicant has provided if the Secretary of State is minded to include the activity.

The MMO highlighted this will only allow the activity for 5 years from the date construction ends. The MMO has provided further information in Section 11.2.



3. Action Points from ISH 7

#	Action	Party	Deadline	MMO Response
8.	<p>SNS SAC Regulator's Group</p> <p>Provide update on any relevant matters arising from meeting that is due to be held on 18 Feb or any other comfort that can be given about the certainty of a mechanism to manage multiple SIPs.</p>	MMO	Deadline 6	The MMO has underlined to DEFRA's newly conceived OWEAP (Underwater Noise team) the importance of investment into the management of underwater noise, and in particular, where the responsibility for the activity tracker should lie. DEFRA responded that although internal departmental responsibility and funding allocation is still taking shape, they will endeavour to ensure that resource is assigned on this subject
9	<p>In-Principle Site Integrity Plan (IP SIP)</p> <p>Please respond to the following questions:</p> <ul style="list-style-type: none"> • Do you agree that the In Principle (IP) SIP provides an appropriate framework to agree mitigation measures and that the scope of the measures within the IP SIP are appropriate? • Are you satisfied that through the IP SIP, the Applicant will use the most appropriate measures for the Project based on best knowledge, evidence and proven available technology at the time of construction? • Do you have confidence that the mitigation measures contained in the IP SIP are deliverable? 	NE and MMO	Deadline 6	<ul style="list-style-type: none"> • The MMO is content that the IP SIP along with the MMMP is the appropriate framework to agree mitigation relating to in combination impacts. The MMO believes that the scope of the measures provided is appropriate. • The MMO believes that in relation to AEoI the Applicant will use the more appropriate measures for the project based on the best available evidence at the time of construction. The MMO has provided further comments on low order techniques in Section 1.7 of this document. • The MMO believes that the IP SIP and MMMP will allow review of all mitigation measures available for delivery and any new mitigation at the time of review.
10	<p>SIP DML condition wording</p> <p>Applicants to implement the MMO's revised DML condition wording that secures the SIP in light of Section 9.10 of the MMO's [REP5-075].</p>	Applicants	Deadline 6	The MMO notes this question was for the Applicant but has worked closely with the Applicant on updating this wording further as per Section 11.5.
11	<p>DML Co-operation Conditions</p>	Applicants and MMO	Deadline 6	<ul style="list-style-type: none"> • The MMO notes the Applicant has provided an update to the condition to remedy this omission.

	<p>Applicants and MMO to revisit the wording of the 'co-operation conditions' that are set out in Condition 25 of Schedule 13 and Condition 21 of Schedule 14 of the dDMLs:</p> <ul style="list-style-type: none"> • The 'co-operation conditions' require cooperation on the MMMP and SIP for UXO clearance but MMMP and not the SIP for piling (condition 17(2) (Sch 13) and 13(2) (Sch 14)) – what are the reasons for this difference in approach? • What is the intended effect of the cooperation conditions? • Does current drafting achieve that effect? • Do the conditions require an implementation clause, to specify for example what the MMO must do with any comments received under sub-section (1)? 			<ul style="list-style-type: none"> • The condition was to ensure that if the project were to work in tangent that any documents submitted to the MMO had been reviewed by the other project and comments to be provided to the MMO. For example in the case of the construction programme to ensure the projects are working together and there is no overlap or mismatch information provided to the MMO. The condition was also to allow any issues or conflicts identified by the MMO when reviewing the documents to have all parties in one place to come to a more succinct solution. • The MMO notes the Applicant has proposed additional wording for the comments on lack of comments to be provided to the MMO alongside the documents. The MMO welcomes this amendment and is still reviewing the condition to see if this covers all concerns raised by the ExA. • The MMO does not believe there needs to an implementation clause as the updated condition wording proposed by the Applicant conditions that the comments will now be provided to the MMO alongside the documents and therefore this would be reviewed at the time of discharging the documents.
15	<p>Underwater noise assessment:</p> <p>Section 7.5 of [REP5-075] MMO to clarify whether the points raised under section 7.5 of [REP5-075] remain an area of outstanding disagreement, and if so, to confirm what further action it is seeking from the Applicants.</p>	MMO	Deadline 6	The MMO remains in discussion with our scientific advisors on this point and will endeavour to provide the ExA with an update at Deadline 7.
16	<p>Herring</p> <p>MMO to submit the example from the Rampion DCO regarding a seasonal restriction condition for herring.</p>	MMO	Deadline 6	The MMO has provided an example condition for a seasonal restriction below. The MMO notes that this would need to take into account UXO clearance activities as well. The MMO has discussed the

			<p>restriction with the Applicant and has provided further information in Section 11.8.</p> <p>Herring spawning</p> <p><i>19.—(1) No pile driving works for monopile foundations shall be carried out by or on behalf of the undertaker as part of or in relation to the authorised scheme between 20 November and 15 January each year, unless the MMO provides written confirmation to the undertaker beforehand that such works can take place in all or in a specified part of the Order limits, or during this period or part of this period.</i></p> <p><i>(2) No pile driving works for jacket foundations (pin piles) shall be carried out by or on behalf of the undertaker as part of or in relation to the authorised scheme between 20 November and 15 January each year unless the MMO provides written confirmation to the undertaker beforehand that such works can take place in all or in a specified part of the Order limits, or during this period or part of this period.</i></p> <p><i>(3) In considering whether to provide the confirmation referred to in (1) or (2) above, the MMO shall have regard to any report or reports provided to the MMO by or on behalf of the undertaker relating to such matters as additional baseline information, reduced spatial restrictions, piling management measures, installation techniques or noise propagation modelling.</i></p>
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4. Action Points from ISH 9

#	Action	Party	Deadline	MMO Response
1	<p>Norfolk Vanguard High Court decision (18 February 2021)</p> <p>Applicants and IPs who wish to make initial observations regarding the recent decision to quash the SoS' decision on the above proposed development are invited to do so to assist the ExAs' consideration of the judgement.</p>	Applicants and all IPs	Deadline 6	The MMO is reviewing this decision internally and will provide comments at a future deadline.
2	<p>Changes to dDCOs currently under discussion/preparation</p> <p>The Applicants and Interested Parties intending to submit proposed revisions to the dDCOs are reminded to adopt the process and timings set out in the ExAs Commentaries on the dDCOs.</p>	Applicants All IPs	Deadline 6	As set out throughout this document.

5. Comments on any additional information/submissions received at Deadline 5

5.1 Guide to the application- Version 6 [REP5-002]

The MMO appreciates the usefulness of this document and welcomes the Applicant's updated versions at each deadline throughout the course of the Examination process.

5.2 Draft Development Consent Order (Tracked) – Version 04 [REP5-004]

Article 2 (1) Interpretations

The MMO welcomes the change made to the definition of 'Offshore Preparation Works' with the inclusion of words 'Seaward of MHWS' and notes that at ISH6, the Applicant stated that this was omitted due to an administrative error. The MMO are content with the change and do not consider any further changes will be needed to this interpretation.

Schedule 13, Part 2, Condition 10 (12) and Schedule 14, Part 2, Condition 6 (12)

The MMO welcomes the inclusion of the Maritime and Coastguard Agency (MCA), Trinity House and UKHO as recipients of the Notice to Mariners sent to Kingfisher Information Service within 3 days of the identification of a cable exposure. The MMO has no further comment to make on this condition.

Schedule 13, Part 2, Condition 16 (1) and Schedule 14, Part 2, Condition 12 (1)

The MMO is content with the inclusion of MCA as a consultee, in respect of the proposed methodology for UXO clearance. The MMO has no further comment to make on this condition.

Schedule 13, Part 2, Condition 16 (3 and 4) and Schedule 14, Part 2, Condition 12 (3 and 4)

The MMO is content with the timescales proposed by the Applicant and the update to this condition. The MMO, NE and the Applicant discussed this issue during a meeting on 16 February 2021 and have all agreed on the proposed timescales. The MMO would highlight that this condition will need to be altered in light of the amendments raised on the SNS SIP condition in Section 9.10 of the MMO's deadline 5 response.

Schedule 13, Part 2, Condition 17 (g)(iv) and Schedule 14, Part 2, Condition 13 (g)(vii)

The MMO is content with the changes made by the Applicant in that they have removed the wording of 'National Record of the Historic Environment' and replaced it with 'Archaeological Data Service'. The MMO understands that Historic England (HE) are content with this change, the MMO welcomes this and has no further comment to make on this condition.

Schedule 13, Part 2, Condition 22 (2)(b) and Schedule 14, Part 2, Condition 18 (2)(b)

The MMO is content with the changes made by to this condition.

5.3 Schedule of Changes to the Draft Development Consent Order [REP5-005]

The MMO appreciates this document's usefulness in terms of identifying changes made to the document by the Applicant at each deadline. The MMO welcomes the Applicant continuing to submit updated versions of this document at relevant future deadlines.

5.4 Environmental Statement - Appendix 6.3 - Relationship of Offshore Plans Secured by the DCO [REP5-007]

The MMO welcomes the update to this document and has no comments at this time.

5.5 Applicants' Comments on Historic England's Deadline 4 Submissions [REP5-012]

The MMO notes that most of the concerns raised by HE are terrestrial, the MMO has no position on these matters.



The MMO welcome the applicant's assertion that all offshore issues have been closed out subject to HE having reviewed the most recent iteration of the dDCO. The MMO also welcome the fact that this has been updated in the Statement of Common Ground. The MMO defers comments on all Heritage/Archaeological features to HE and will liaise with them to ensure that any offshore concerns have been adequately addressed.

5.6 Applicants' Comments on MMO's Deadline 4 Submissions [REP5-013]

The MMO has provided detailed comments on this document in Section 6.

5.7 Applicants' Comments on Maritime and Coastguard Agency's Deadline 4 Submissions [REP5-014]

The MMO welcomes the Applicant's agreement to make all of the suggested changes proposed by MCA and that they have been included in the most recent version of the dDCO. The MMO defers all navigational matters to MCA and Trinity House and hopes that all remaining unresolved issues can be closed out prior to the end of examination.

5.8 Applicants' Comments on Natural England's Deadline 4 Submissions [REP5-015]

The MMO has reviewed this document. The MMO recognises that there remain several areas of disagreement between the Applicant and NE, largely centred around ornithology. This includes the modelling provided by the Applicant, the conservation objectives of the Red-Throated diver and NE's most recent legal submission. The MMO defers to NE on matters of ornithology and will continue to review all necessary documents submitted into this examination.

The MMO notes there are still outstanding concerns on UXO activities and in relation to Marine Mammals. The MMO supports NE's position that clustering of UXO detonations would be welcomed and understands further information is required before this can be agreed.

The MMO supports NE's position on the use of 1.5m/s as the recognised marine mammal speed that should be used in the MMMP. The MMO notes the Applicant intends to rectify this in the next iteration of the document, the MMO welcomes this.

5.9 Applicants' Comments on Royal Society of the Protection of Birds (RSPB) Deadline 4 Submissions [REP5-016]

The MMO notes that there remains disagreement between the Applicant and RSPB, centring around the potential for project-alone and In-Combination impacts from these works to ornithological features and the implementation and appropriateness of compensatory measures proposed by the Applicant. The MMO defers to NE on both issues but will continue to review all relevant documentation submitted into this examination and work with the Applicant, NE and RSPB where possible to close out these issues prior to the conclusion of examination.

5.10 Applicants' Comments on Trinity House's Deadline 4 Submissions [REP5-018]

The MMO notes that the Applicant has agreed to make all the changes proposed by Trinity House and that they have been included in the most recent iteration of the DCO/DML. The MMO defers all navigational matters to Trinity House and the Maritime and Coastguard Agency but will liaise with them to ensure that all concerns have been addressed in the newest iteration of the dDCO.

Regarding Article 37, the MMO remain content with the updates the Applicant has made and is content to not be subject to Arbitration for both projects. The MMO also understands that the Applicant intends to update this article to include a confidentiality provision, the MMO welcomes this proposed update and will review any updates the Applicant makes to the dDCO and provide comment at the relevant deadline.



5.11 Applicants' Comments on The Wildlife Trust's Deadline 4 Submissions [REP5-020]

The MMO notes the Applicant's response to The Wildlife Trust and will continue discussions on the matters raised.

5.12 Displacement of Red-throated Divers in the Outer Thames Estuary SPA [REP5-025]

The MMO defers to NE on the details within this document.

5.13 Applicants' Responses to Hearing Action Points (ISH3, ISH4, ISH5, OFH6 and ISH6) [REP5-026]

Issue Specific Hearing 3

The MMO welcomes the Applicant's engagement regarding the concerns raised by Natural England and will continue to review all document changes made by the Applicant.

The MMO defers to Natural England on the appropriateness of the changes made by the Applicant regarding Ornithology and Compensation.

The MMO maintains its position that the best mechanism to control UXO activity is through a separate marine licence, the MMO is aware that the Applicant disagrees with this consideration, the MMO welcomes the Applicants' continued attempt to draft a DML condition that would limit the usage of Piling and UXO activities in these projects, the MMO is continuing discussions with the Applicant and Natural England on this issue.

Finally, the MMO welcomes the timescales changes made by the applicant regarding the discharge of conditions relating to SIP and MMMP for UXO clearance activities.

Please see updates on All matters in Section 11.

Issue Specific Hearing 4

The MMO has read the Applicant's responses and has no comments to make.

Issue Specific Hearing 5

Regarding North Sea oil and gas production coexistence the MMO welcomes the Applicant's confirmation that the Offshore Development Areas of the project does not overlap with any oil and gas licence blocks, as stated in Chapter 17 Infrastructure and Other Users (APP-065).

The MMO also notes the agreement for future commitments to a crossing agreement with the Bacton-Zeebrugge interconnector gas pipeline.

Issue Specific Hearing 6

The MMO has read the Applicant's responses and has no comments to make as matters have progressed since this ISH.

5.14 Written Summary of Oral Case (ISH3) [REP5-027]

Agenda Item 2: Effects on Offshore Ornithology (Including HRA considerations)

The MMO notes that for ornithology there remains disagreement between the Applicant and NE regarding the potential for In-combination and Project-alone impacts of these projects on Red Throated Divers. The MMO defers to NE on matters on ornithology and will continue to engage with both parties on the remaining issues.

Regarding the Offshore In-Principle Monitoring Plan (OIPMP), the MMO welcomes the inclusion of pre- and post-construction monitoring by the applicant, however, defers to NE on the appropriateness of the monitoring provided.

The MMO notes that the Applicant has stated that the Applicant considers that the kittiwake collisions at Hornsea Project Three should now be removed from the In-Combination



assessment as these will be compensated for. The MMO defers to Natural England on the appropriateness of the consideration.

The MMO notes that the Applicant and NE disagree about the usage of prey availability and prey enhancement as compensatory measures for these projects, the MMO defers to NE on this matter but look forward to reviewing the Applicant's Deadline 6 commentary on this issue.

Agenda Item 4: Effects on Marine Mammals (Including HRA considerations)

The MMO remains of the opinion that the best mechanism for controlling UXO clearance activities is through a separate marine licence; however, the Applicant rightly asserts that the MMO is discussing potential alternatives internally. These discussions remain on-going. An update has been provided in Section 11.1.

The MMO further remains of the opinion that the Site Integrity Plan (SIP) should not be used to manage project alone effects, instead, it should only be used for In-Combination effects. The MMO notes that the Applicant still does not accept this view. However, the MMO notes the Applicant is drafting a DML condition that would ensure all relevant commitments, in relation to project alone effects, are secured on the face of the DCO/DML. The MMO welcomes this and is continuing to work with NE and the Applicant on this issue.

Finally, the MMO welcomes the Applicant's inclusion of a condition that ensures the cessation of piling, the MMO is still discussing this internally and has provided an update in Section 11.3 of this document.

5.15 Written Summary of Oral Case (ISH4) [REP5-028]

The MMO recognises the Applicant's concerns regarding their apparent unwillingness to be a 'Pathfinder' project. The MMO is of the opinion that more clarity will be gained after the publication of the Department for Business, Energy & Industrial Strategy (BEIS) review, as a result, the MMO defers comment at this stage.

The MMO is content with the usage of Horizontal Directional Drilling (HDD) in these projects as long as the Coralline Crag is avoided.

5.16 Written Summary of Oral Case (ISH5) [REP5-029]

The MMO has no further comments in relation to Offshore Social and Economic Effects and understands that the Applicant and relevant interested parties are largely in agreement at this stage.

5.17 Written Summary of Oral Case (ISH6) [REP5-030]

The MMO notes the Applicant's position at this stage and highlights the positions have moved as per Section 11 of this document.

5.18 Draft Statement of Common Ground with Historic England (Offshore) (Version 3) [REP5-032]

The MMO notes that two points remain not agreed between all parties. Furthermore, the MMO realises that both points may be agreed subject to HE's contentment with the changes made to the draft DCO/DML. The MMO welcomes this.

The MMO defers to HE on all matters related to archaeology/heritage matters and has liaised with them directly on offshore matters related to the DML. The MMO is aware that HE still have concerns regarding the content of the DML and hopes they can be resolved by the close of examination.



5.19 Draft Statement of Common Ground with Maritime and Coastguard Agency - Version 3 [REP5-034]

The MMO notes that two points remain not agreed by all parties. The MMO also notes that one of these points may be agreed after MCA have reviewed the most recent iteration of the DCO/DML. The MMO is aware that the Applicant has amended the most recent version of the DCO/DML in line with the requests made by MCA, the MMO hopes the issue of wording will be closed out upon review. The MMO defers to MCA on matters of Navigation/Shipping and hopes all outstanding issues can be resolved prior to the close of examination.

5.20 Draft Statement of Common Ground with Trinity House - Version 3 [REP5-035]

The MMO welcomes that all topics have been agreed between all parties, except for the wording of the DML. The MMO also notes that this topic may be agreed upon Trinity House reviewing the most recent iteration of the DCO/DML. The MMO are also aware that the Applicant has updated the DCO/DML in line with the concerns raised by Trinity House, the MMO hopes this will lead to all topics being closed out by Deadline 8.

5.21 Historic England Deadline 5 Response - offshore [REP5-074]

The MMO has liaised with HE directly and are aware that there remain unresolved issues related to both the offshore and onshore environment. The MMO defers to HE on matters related to archaeology and heritage features and hopes that these issues can be resolved prior to the close of examination.

5.22 Appendix A15 – NE Comments on HRA Derogation Case and HRA Compensatory Measures [REP5-082]

The MMO notes that the focus of this document centres upon the derogation processes for the project, and the ways in which the Applicant considers it could be improved, rather than whether the compensation measures have offset the impacts. The MMO defers to NE on matters of ornithology and derogation, however, remains in discussion with both parties as to how these will be secured within the dDCO. The MMO believes that the compensatory measures need to be secured prior to the consent being awarded for these projects.

5.23 Appendix A16 – NE Comments on Cumulative and In-Combination Risk Update [REP5-083]

The MMO notes that offshore ornithology remains a point of disagreement between the Applicant and NE. The MMO understands that NE have stated the 2km buffer proposed by the Applicant does not act as sufficient mitigation for these projects.

Furthermore, the MMO notes that NE do not consider the fact that Hornsea Project Three has been consented with compensation removes the potential In-Combination impacts likely to occur from these projects.

The MMO defers to NE on ornithological matters but will continue to review all relevant documentation submitted into this examination.

5.24 Appendix F5b – NE Comments on Outline Sabellaria Reef Management Plan [REP5-085]

The MMO supports the issues raised in this document and is in discussions with NE. The MMO would like to outline that the MMO, The Applicant and NE are trying to arrange a workshop to discuss all joint outstanding issues.

The MMO supports the concerns raised in point 2 of the document which highlights concerns in relation to the UXO clearance activities. The MMO understands this is a new issue of UXO clearance activities are consented within the dDCO.

The MMO will review the Applicant's response to NE at Deadline 6 and provide any further comments at Deadline 7.



5.25 Appendix F8 - NE Comments on Offshore IPMP [REP5-086]

The MMO acknowledges the comments made by NE on the OIPMP and the concerns raised with the project. The MMO understands the Applicant is submitting an updated OIPMP at Deadline 6 to take account of these comments and will provide further comments at Deadline 7.

5.26 Appendix G3 – NE Advice on Non-Material Changes and Headroom [REP5-087]

The MMO notes NE's comment and has no comments in relation to the legality aspect of this. The MMO is involved in the discussions on headroom with NE and industry. The MMO has provided an update in Section 11.4.

5.27 Appendix I1d – NE Risk and Issues Log [REP5-088]

The MMO appreciates the usefulness of this document insofar as visualising the amount of unresolved issues associated with these applications and welcomes the updates at each deadline.

5.28 Appendix K2 – NE Written Summary of Oral Representations made at Issue Specific Hearing 3: Biodiversity and Habitats Regulations Assessment [REP5-089]

The MMO considers that all of the topics contained within this document have been discussed earlier in this document, as such, the MMO has no further comments to make at this stage.

5.29 The Wildlife Trusts Deadline 5 Submission [REP5-120]

The MMO notes The Wildlife Trust's concerns and will review the proposed further comments to be submitted at Deadline 6.

6. Comments on Applicants comments on MMO Deadline 4 Response

6.1 Comments on Applicants' Revised dDCO (REP3-011)

The MMO welcomes the inclusion of the phrasing 'seaward of MHWS' in the definition of 'Offshore preparation works' and notes that this was an administrative mistake by the Applicant, the MMO appreciates the speed this was rectified.

The MMO notes that the Applicants consider that the impacts of a monopile foundation are currently captured within the Environmental Statement. The MMO discussed this with the Applicant at a meeting in January 2021. The MMO is clarifying if this is acceptable and will provide an update at Deadline 7.

The MMO welcomes the changes made by the Applicant to the timescales of the submission of the SIP, MMMP and the majority of other UXO clearance activity documents and is content that the Applicant has committed to supplying these documents to the MMO 6 months prior to an UXO clearance activities taking place.

The MMO is also content that the final detailed plan of the UXO locations and the exclusion zones/environmental micro-siting requirements should be submitted to the MMO at least 3 months prior to any UXO activities taking place, the MMO is also content that this has been captured adequately in the DCO/DML.

Please see Section 11 for the current position on all outstanding matters.

6.2 Comments on any additional information/submissions received at Deadline 3

The MMO notes the Applicant's intentions to resubmit the IPMP at Deadline 6 in line with the concerns raised by NE and the MMO. The MMO looks forward to reviewing the updated document and will provide comments at Deadline 7.



The MMO welcomes the Applicant's confirmation that when they will be undertaking rock dumping, this will largely take the form of Gravel as opposed to larger rocks. The MMO is minded to agree that this would cause less snagging of fishing gear than larger rocks would, however, the MMO will discuss this assertion internally and provide an update at Deadline 7.

The MMO also welcomes the Applicants outlining that the Commercial Fisheries Working Group have not objected to the use of concrete mattresses in these works. The MMO further welcomes the Applicant's commitment to ensuring that any cable protection will be compatible with the local fishing activities where possible. The MMO will discuss these considerations internally and update the Applicant and ExA at Deadline 7.

The MMO has discussed the 'Transfer of rock armour between vessels' point and believes the current dropped object procedure is the correct procedure to follow in the event that rock armour was to be dropped. This MMO is working internally to ensure any concern is mitigated. However, the MMO notes recent instances where the transfer of rock has resulted in tonnes of rock being dropped multiple times during transfer. The MMO wishes to highlight that accidents do happen however would believe that there are best practice protocols in place to avoid material being lost.

The MMO welcomes the Applicant's commitment to including a separate Schedule in the DCO outlining all of the documents to be certified. The MMO will review the updated document at Deadline 7 and provide any comments at Deadline 8.

The MMO appreciates the Applicants confirmation that the Clarification Note- Effects on Supporting Habitats of Outer Thames Estuary Special Protected Area (SPA) [REP3-059] has been fully agreed with NE.

The MMO notes that the Applicant has stated that the MMO are now content that UXO activities can be controlled through the DML. As set out in the ISH 7 oral submissions (Section 1) the MMO has outstanding concerns regarding the inclusion of UXO activities, the current position has been provided in Section 11.1.

The MMO considers that all other aspects of this document have been adequately covered elsewhere in this submission and have no further comments to make.



7. MMO Responses to ExA Written Questions 2

ExQ1	Question to:	Question:	MMO Response:
Biodiversity, Ecology and Natural Environment			
Marine Mammals			
Q2.2.2	Marine Management Organisation RSPB Natural England	The Applicant's Habitats Regulations Derogation Case [REP3-053]: scope Please confirm that you are satisfied with the European sites and qualifying features that are considered in [REP3-053] (see Table 1.1 of each document). If you are not, indicate which other sites or features you consider should be included and why.	The MMO defers to Natural England on matters related to Habitats Regulations and the appropriateness of the designated sites and protected features listed by the Applicant in REP3-053.
Q2.2.15	Applicants/NE	Benthic ecology: Security for reef buffer In NE's D5 submission [REP5-085] it states that it is concerned that the Applicant's request to retain the ability to discuss reef buffer requirements on a case by case basis during the preconstruction period, is not condition-able and therefore the mitigation remains unsecure, even if explained within a listed DCO/DML.	The MMO will maintain a watching brief on this issue.

Q2.2.16	Applicants	<p>Benthic ecology: Reef survey timing and commencement</p> <p>Please comment on NE's contention that unless both the UXO clearance and commencement of the OWF installation occurs within 12-18 months of the survey being undertaken a second Annex I reef survey and report will be required prior to construction commencing. How would this be secured?</p>	<p>The MMO will maintain a watching brief on this issue and defers to Natural England on what is required for this to be secured.</p>
Q2.2.17	Applicants	<p>Benthic ecology: Cable installation in mixed sediments</p> <p>NE's D5 submission [REP5-085] states that as submitted into examination for Hornsea Project 3, Norfolk Vanguard and Norfolk Boreas areas of mixed sediment have proven to be more challenging for cable installation. Case example is cable installation within the Wash and North Norfolk Coast SAC where cables have been sub-optimally buried in areas of mixed sediment and post installation requests have been submitted for cable protection. In order to commit with any certainty that cable protection can be avoided in areas of potential reef Norfolk Boreas utilised available geotechnical investigations to undertake a cable burial assessment which was submitted into examination to provide the necessary evidence to support the proposals. Therefore, NE advises in [REP5-085] that something similar for these projects is submitted into the examination for EA1N and EA2 to demonstrate that cables can be buried to the optimum depth in areas of 'unavoidable' reef or assures that that sub-optimally buried cables would not require external protection i.e. <1m.</p>	<p>The MMO will maintain a watching brief on this issue.</p>

		<p>a) Have the applicants already undertaken such geotechnical investigations?</p> <p>b) If not, then are such investigations to be undertaken and submitted before the close of these examinations?</p> <p>c) If (b) is the case, then please explain the process by which the extent of cable protection that is required is to be assessed and how potential impacts on Sabellaria reef resulting from cable protection can be adequately mitigated.</p>	
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8. MMO Responses to ExA commentaries on the draft Development Consent Order

ExQ1	Question to:	Question:	MMO Response:
Articles			
Arts 2	The Applicants East Suffolk Council Suffolk County Council Marine Management Organisation	<i>Art 2(1) definitions: environmental statement</i> The “ <i>environmental statement</i> ” means the document certified as the environmental statement by the Secretary of State under article 36 (certification of plans etc.)’. There are many relevant documents with different dates and versions and further changes are likely before the end of the Examinations. a) The Applicants are requested to ensure that the list is accurately updated at all following deadlines. b) The ExAs note the proposal to implement a Schedule based on that used for the Boreas dDCO by Deadline 7 – and this would provide a significant improvement. See also Arts 36 (certification of plans etc.)	The MMO welcomes the proposed update to implement a Schedule for certified documents and will provide comments once this is submitted. See also Arts 36 (certification of plans)
Arts 2	All Interested Parties	<i>Art 2(1) definitions: maintain</i> This definition is wide, a matter raised at ISH6, but is expressly limited ‘to the extent assessed in the [ESs]’. Are parties now broadly content with this drafting?	The MMO is content with the drafting of this definition proposed by the Applicant. The MMO believes this is a standard condition that has appeared in multiple recently consented DCOs.
Arts 2	All Interested Parties	<i>Art 2(1) definitions: relevant to onshore substation design</i> References to the “outline national grid substation design principles statement” and the “outline onshore substation design principles statement” have been removed at	The MMO is of the opinion that the ‘substations design principles statement’ should be defined as a document related to the onshore environment, so as to provide clarity.

		<p>Deadline 5. Reference to the “substations design principles statement” which is also to be a certified document have been added.</p> <p>a) Are parties content that this change is appropriate and has been appropriately reflected elsewhere in the dDCOs?</p>	
Arts 2	The Applicants Natural England	Missing definition: SAC The term ‘SAC’ is used in drafting in the dDCOs in several provisions. It is not defined. Should the term be defined?	The MMO notes this comment is directed to the Applicant and Natural England, however the MMO believes that this definition would be beneficial.
Arts 3	The Applicants	Development consent etc. granted by the Order(s) In Arts 3(2) the term ‘scheduled works’ is not defined or described. a) Is it ‘works comprising the authorised development in Schedule 1 Part 1? b) Is a drafting change required?	The MMO notes this comment is directed to the Applicant, however the MMO believes that this definition would be beneficial.
Arts 5	The Applicants Affected Persons	Benefit of the Order(s) A transfer of the benefit of the Order(s) from one to another undertaker generally requires the consent of the Secretary of State. Under Arts 5(7) it does not – if the transfer is to another Electricity Act 1989 licensed generating undertaker – and – any relevant financial claims arising from the compulsory acquisition or temporary possession provisions have been concluded. a) Is this drafting clear and appropriate?	<p>The MMO notes that this is a change to older consented Offshore Wind Farm (OWF) Orders. However, both the Hornsea Project Three OWF and the Norfolk Vanguard OWF DCO were granted with a similar provision.</p> <p>The MMO notes that these provisions were more detailed and question if some of the detail should also be included in Article 5.</p>
Arts 36	The Applicants East Suffolk Council Suffolk County Council	Certification of plans etc. These articles contain an extensive list (to para (a) to para (gg) of documents and their versions.	a)The MMO welcomes the ExA’s point regarding the Applicant ensuring this list is kept up to date.

	Marine Management Organisation	<p>a) The Applicants are requested to ensure that this list remains up to date as the Examinations progress.</p> <p>b) Are any documents missing?</p> <p>c) A number of made DCOs have substituted this approach for a succinctly drafted Article stating that the documents listed in a Schedule must be submitted to the SoS for certification and it was recently used in the Boreas dDCO. This approach enables the documents to be tabulated and for them and their version numbers to be identified with greater ease. The Applicants have committed to taking this approach by Deadline 7 and this will make a significant improvement.</p> <p>See also Schedules – missing provision?</p>	<p>b)The MMO has reviewed the contents of this article and have not identified any missing documents where a specific condition refers to a document. The MMO does note that multiple documents have been submitted during Examination that relate to the Environmental Statement. However, the MMO notes this will be rectified with the updated Schedule within the dDCO.</p> <p>c)The MMO concurs with the ExA on this matter and welcome the Applicant's commitment to producing a drafted article and Schedule that makes clear the documents that must be submitted to the SoS for certification. The MMO looks forward to reviewing the update after its submission at Deadline 7.</p>
Arts 37	<p>The Applicants</p> <p>East Suffolk Council</p> <p>Suffolk County Council</p> <p>Marine Management Organisation</p> <p>The Maritime and Coastguard Agency</p> <p>Trinity House</p> <p>Natural England</p> <p>Historic England</p> <p>The Environment Agency</p>	<p>Arbitration</p> <p>Arts 37 of the dDCOs are expressed (Arts 37(1) as subject to Art 40 (saving provision for Trinity House) and to the provision that the arbitration provisions do not apply to <i>'any dispute or difference arising out of or in connection with any provision of this Order, unless otherwise provided for...'</i>. Arts 37(2) provide that <i>'any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration'</i>.</p> <p>a) Is it sufficiently clear that the discharge of Requirements in Schedule 1 and as provided for in Schs 16 and/ or of Conditions to the DMLs in Schedules 13 or 14 are outside the scope of the arbitration provision?</p>	<p>a) The MMO is content in principle that the discharge of the Requirements in Schedule 1, the Procedure for discharge of requirements in Schedule 16, and the conditions set within Schedules 13 and 14 are outside the scope of the arbitration provision. The MMO consider that in principle this is adequately captured in this article. The MMO will provide final comment on this at Deadline 7.</p> <p>c) The MMO is content that the exemption from arbitration provided in the dDCO is appropriate and addresses all previous concerns.</p>

	Interested Parties / Affected Persons with an interest in Arbitration	<p>b) Is the Applicants' intention as described in (a) and if not, what is the intended application of arbitration to the discharge of Requirements the operation of Schs 16 and/ or the discharge of Conditions to the DMLs?</p> <p>c) Is the MMO content that the exception from arbitration provided for it is appropriate and addresses its concerns?</p> <p>d) Is Trinity House content with the proposed saving provision in Arts 40 and that has the effect of excepting it from the arbitration provisions?</p> <p>e) Are local authorities acting as relevant planning authority or highway authority and in related capacities content that the arbitration provisions do not intrude on their powers and duties in any unexpected or unwarranted manner?</p> <p>f) Are the Environment Agency, Natural England and/ or Historic England content that their roles as advisory and regulatory authorities, as consultees and in the making of relevant expert determinations and authorisations where necessary appropriately responded to in this drafting?</p> <p>g) Is it sufficiently clear that the SoS' own determinations are not subject to arbitration?</p> <p>See also – Schs 15.</p>	
Schedule 1- Authorised Project			
Pt 1	The Applicants Marine Management Organisation, Suffolk County Council East Suffolk Council	<p>Para 1 – the generating stations NSIPs</p> <p>The maximum height of <i>Works Nos. 1</i> (the offshore generating stations) <i>2 and 3</i> (offshore platforms) are not secured here, although it these values have been assessed in the ESs for SLVIA purposes. It would not be normal for them to be secured here, but neither are they</p>	<p>The MMO notes these details are not usually defined within the DML and is managed in the design plans at post consent stage.</p> <p>However, as the maximum parameters are defined and there is ongoing Seascape Landscape and Visual Impact Assessment</p>

		<p>secured in the DMLs (see Schs 13 generation assets).</p> <p>a) Is security already provided by another means (if so, please explain and if not please provide a view as to whether it is required);</p> <p>b) If additional drafting is required to address this point, please submit it.</p>	<p>(SLVIA) concerns the MMO would be content if these were updated on the dDCO.</p> <p>An alternative option would be to update the development principles to include the offshore substations and refer to these within the dDCO and DML .</p> <p>The MMO will continue discussions with the Applicant on this matter.</p>
Pt 1	The Applicants	<p>Para 1 – the landfall In Works Nos. 8, is it the case that all the intended works are ‘onshore’ (eg landward of MHWS)?</p>	<p>The MMO will maintain a watching brief on this issue.</p>
Pt 1	<p>The Applicants</p> <p>Marine Management Organisation</p>	<p>Para 3 – grid coordinates for development seaward of MHWS</p> <p>Please audit the defined points describing the sites of the proposed developments at sea and confirm that the Latitudes and Longitudes in the tables are correct.</p>	<p>The MMO believes these coordinates are correct but is currently reviewing these on the internal mapping system and is unable to provide an update at this stage.</p> <p>However, the MMO intends to submit a full response at Deadline 7 having engaged with the Applicant.</p> <p>The MMO will also work with the Applicant on any potential updates required for the Deadline 7 dDCO submission.</p>
Pt 3 R13	<p>The Applicants</p> <p>East Suffolk Council</p> <p>Natural England</p> <p>EDF</p> <p>Energy Nuclear Generation Ltd (Sizewell B)(SZB)</p>	<p>R13: Landfall construction method statement</p> <p>Please address the following matters:</p> <p>a) Para 2 requires the method statement to be ‘implemented as approved’, but no monitoring process is defined. Should there be a monitoring provision and if so, how could it be drafted? An indicative form of drafting is set out below.</p> <p>b) Which Works should be within scope? Are elements of Works Nos.5 relevant albeit that they are seaward of MHWS?</p> <p>c) Should Natural England be a consultee? d) EDF Energy Nuclear Generation Ltd (Sizewell</p>	<p>The MMO will maintain a watching brief on this issue.</p>

		<p>B) (SZB) has requested to become a consultee on the landfall construction method statement submissions relating to Works Nos. 6.</p> <p>e) Is the Applicant content with these proposals and if not, why not?</p> <p>(1) No part of Works No. 6 or 8 may commence until a method statement for the construction of Works 6 or 8 has been submitted to and approved in writing by the relevant planning authority [in consultation with Natural England and EDF Energy {SZB}].</p> <p>(2) The method statement referred to in paragraph (1) must include measures for long horizontal directional drilling below the beach and cliff base at the landfall as well as measures for ongoing inspection of Works No. 6 or 8 and reporting of results to the relevant planning authority during the operation of the authorised project.</p> <p>(3) In the event that inspections indicate that as a result of the rate and extent of landfall erosion Works No. 6 or 8 could become exposed during the operation of the authorised project the undertaker must, as soon as practicable, submit proposals in writing for remedial measures to protect Works No. 6 or 8, together with a timetable for their implementation, to the relevant planning authority for their approval, [in consultation with Natural England].</p> <p>(4) The method statement and any proposals for remedial measures must be implemented as approved.</p>	
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Pt 3 None – missing requirement	The Applicants Natural England	<p>Missing Requirement – Security for ‘Without Prejudice’ HRA Compensation Measures</p> <p>The ExAs acknowledge ongoing work between the Applicants and Natural England on this point, with possible amended drafting emerging at Deadline 6. They are requested to advise the ExAs on the drafting that might be required to secure these measures.</p>	The MMO will maintain a watching brief on this issue.
Schedule 13- Deemed Licence under the 2009 Act- Generation Assets			
	The Applicants Marine Management Organisation	<p>General</p> <p>Please consider the following matters:</p> <p>a) Drafting references in the DML to “this Order” and “this Schedule” should arguably for better certainty be to “this licence”.</p> <p>b) Drafting references in the DML to a schedule “of the Order” should arguably be amended to “to the Order”. Schedules are Schedules “to” not “of” a statutory instrument or Act (unlike articles, paragraphs, sections, Parts, which are “of” the statutory instrument or Act).</p>	<p>a). The MMO agrees with the ExA’s point as there is a precedent for using the phraseology of ‘this licence’. The MMO directs the ExA to Norfolk Boreas as an example of this.</p> <p>b). The MMO welcomes this observation by the ExA’s and believes it should be updated.</p>
	The Applicants Marine Management Organisation	<p>Pt 1: Licensed marine activities Paras 2 & 3: Details of licensed marine activities</p> <p>The ESs and dDCOs both reference the need for the Proposed Developments to include a helipad, tower, and mast on the offshore operation and maintenance platforms. Both the ESs and dDCOs specify the height of the offshore platform at 50m LAT.</p> <p>However, the DMLs do not appear to secure a maximum height for the helipad, tower, and mast in the range of parameters secured in Conditions 2 and 3 to ensure that the proposed developments are within the Rochdale Envelope.</p>	<p>a). The MMO notes these details are not usually defined within the DML and is managed in the design plans at post consent stage.</p> <p>However defined, a general provision could be added paragraphs 2 and 3 requiring all development to within the maximum extent assessed in the Environmental Statement’s would be sufficient in this instance</p> <p>The MMO will continue discussions with the Applicant on this matter.</p>

		<p>a) Should the assessed maximum heights be specifically secured, or would it be sufficient for a general provision to be added to paras 2 and 3 requiring all development to within the maximum extent assessed in the ESs?</p> <p>b) Can preferred amended provisions be submitted on this point.</p> <p>See also Schs 1 Pt 1.</p>	
	Marine Management Organisation	<p>Paras 2 & 3: Details of licensed marine activities</p> <p>The classes of licensed marine activities in a DML must be within the scope provided by the classes of works and relevant design parameters for works permitted in the dDCOs.</p> <p>a) Is the Marine Management Organisation content that no works are provided for in the DMLs that are not otherwise empowered in the dDCOs generally?</p> <p>b) Is any other drafting review required to ensure a clear and nested relationship between the DMLs details of licensed marine activities and Schs 1 Pt 1 of the dDCOs?</p>	<p>a). The MMO are content that no works are provided for in the DMLs that are not otherwise empowered in the dDCOs generally.</p> <p>b). The MMO does not consider such a review to be necessary.</p>
	<p>Applicants</p> <p>Marine Management Organisation</p> <p>The Wildlife Trusts</p> <p>Marine Environment Interested Parties</p>	<p>Condition 21(3) – construction monitoring - cessation of piling</p> <p>Can the MMO, the Applicants, the Wildlife Trusts confirm that the condition wording is now agreed and that any further discussions in respect of the term ‘significantly’ will be addressed through updates to the Offshore In Principle Monitoring Plan, as opposed to the DML condition itself?</p>	<p>The MMO has provided an update in Section 11.3 of this document.</p>
<p>Schedule 14- Deemed licence under the 2009 Act- Offshore Transmission Assets</p>			

	Marine Management Organisation	<p>Paras 2 & 3: Details of licensed marine activities</p> <p>Please address the same point about classes of licensed activities for this DML as is made for Schs 13.</p>	<p>a). The MMO are content that no works are provided for in the DMLs that are not otherwise empowered in the dDCOs generally.</p> <p>b). The MMO does not consider such a review to be necessary.</p>
	<p>Applicants</p> <p>Marine Management Organisation</p> <p>The Wildlife Trusts</p> <p>Marine Environment Interested Parties</p>	<p>Condition 17(3) – construction monitoring - cessation of piling</p> <p>Please see the comments in relation to the equivalent provision in Sch 13 (Condition 21(3)) and respond to the same matter for this condition.</p>	The MMO has provided an update in Section 11.3 of this document.
Agreements and obligations			
	<p>The Applicants</p> <p>Suffolk County Council</p> <p>East Suffolk Council</p> <p>Marine Management Organisation</p>	<p>Agreements and obligations</p> <p>DCOs may be supported by agreements (including commercial agreements/ contracts or deeds under seal) and/ or Planning Obligations or other forms of statutory obligation. Relationships between parties may also be regulated by processes such as Memoranda of Understandings (MoUs) which may or may not be intended to create legal relations. For any such documents, if the SoS is to place weight upon them for a planning decision:</p> <p>a) their purpose and relevance to planning must be justified;</p> <p>b) the reason why their subject matters are required to be dealt with in a separate document and not on the face of the dDCOs needs to be made clear; and</p> <p>c) where to enter into force or provide security for their subject matter, they require to be executed between parties, that process must</p>	<p>The MMO has recorded the points raised by the ExA and is grateful for the clarity provided regarding the remaining deadlines of this examination and what is expected of the MMO.</p> <p>The MMO will endeavour to ensure that as many issues are resolved for these applications by the close of examination. If any matters are not resolved the MMO will provide a final clear position.</p>

		<p>be completed, and evidence of execution must be provided - before the end of the Examinations.</p> <p>The ExAs note that some such processes may relate to subject matters that are viewed as confidential between parties to them. Where for example they relate to (for example) the withdrawal of a statutory undertaker's RR, it can be sufficient for the process to be evidenced by documents from the Applicant(s) and the statutory undertaker concerned, making clear that the agreement has been concluded and that consequently a RR has been withdrawn. However, if any reliance is placed on a process providing security for specific actions, outcomes or standards to be met that are important and relevant, then the terms of the relevant document need to be provided to the ExAs.</p> <p>A working list of all such processes and progress towards their finalisation is to be provided at Deadline 6.</p> <p>Drafts for consultation and comment between parties must be provided by Deadline 7 alongside the final dDCO. If elements of these documents are considered to be confidential that must (for reasons) be made clear, but the process of consultation and comment between the engaged parties must continue.</p> <p>Final positions and (where these are not confidential), final texts must be submitted for Deadline 8, synchronised with final Statements of Common Ground. Where agreements are required to be executed, this is the point at which execution must occur and be evidenced.</p>	
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9. Action Points from ISH 3

#	Action	Party	Deadline	MMO Response at DL5	MMO Response at DL6
3	<p>Made Hornsea Project Three DCO</p> <p>Applicants, MMO, NE and RSPB to comment on whether the approach to securing HRA compensation measures in the made Hornsea Project Three DCO might have wider applicability, for example to these cases, should they be required? If such an approach were to be taken, would it be appropriate for the DMLs to replicate or refer to any of the provisions that secure the compensation measures?</p>	Applicants, MMO, Natural England and RSPB	D5	<p>The MMO highlights that the Hornsea Project Three decision is novel in terms of offshore wind and compensation and the MMO is still discussing the details internally and is unable to provide a detailed response at this time. The MMO has provided initial comments below and will update the ExA at Deadline 6.</p> <p>The MMO’s general position is that any compensation should be secured within the DCO as it is for the Secretary of State as the competent authority to ensure the compensation is secured and adhered to and any licensable activities would require a separate marine licence.</p> <p>The MMO notes that within Schedule 14 of the HOW03 DCO Condition 17 states the MMO has to approve decommissioning and monitoring plans. The MMO is reviewing how this works in principle and how this would be managed alongside the DMLs.</p> <p>The MMO notes if there are licensable activities as part of the compensation then Applicant may request this to be included within the DMLs. Again, the MMO is reviewing how this would work in principle and how this would look as a DML.</p>	<p>The MMO is reviewing the Hornsea Project Three Offshore Windfarm (HOW03) consent decision internally and is aiming to provide detailed comment on the implications of this decision on East Anglia One North (EA1N) and East Anglia Two (EA2) applications at Deadline 8. The MMO will provide specific comments on the Applicants proposed updates to the dDCO on the compensation when this is provided.</p>

				In relation to EA1N/EA2 the MMO reserves comment until the DCO is updated with the required information.	
4	<p>Effects on Subtidal and Intertidal Benthic Ecology: Sabellaria Management Plan</p> <p>NE and the MMO to provide submissions on the content of the most up to date Sabellaria management Plan which was submitted at D4.</p>	Natural England and MMO	D5	The MMO is content that all matters raised by our scientific advisors have been agreed. However, the MMO notes NE still has multiple outstanding concerns and is providing an update at Deadline 5, the MMO supports these concerns. The MMO believes some of these concerns relate to the inclusion of UXO clearance activities. The MMO notes that the Applicant is organising a meeting in relation to UXO clearance activities and will work with the Applicant and NE to endeavour to agree these matters by Deadline 6.	The MMO notes NE's concerns in relation to the Sabellaria Reef management Plan. The MMO supports these comments.
6	<p>UXO Clearance Activities within DMLs</p> <p>Applicants and MMO to provide update about progress toward agreement on the acceptability of including Unexploded Ordnance (UXO) clearance activities within the DMLs as distinct from within separate Marine Licences.</p>	Applicants and MMO	D5	The MMO has had further discussions with the Applicant and understands the Applicant is reviewing the MMO's Deadline 4 response [REP4-081] and all NE concerns and will be arranging a meeting with all parties in due course to discuss any updates.	Please see Section 11.1.
7	<p>Cessation of Piling DML Condition</p> <p>MMO to provide comments on the drafting of the cessation of piling condition included as</p>	MMO	D5	<p>The MMO is still discussing the concerns raised in REP4-081 on this condition and how to measure what '<i>significantly</i>' means.</p> <p>The MMO will provide an update at Deadline 6 but believes this update will</p>	Please see Section 11.3.

	amended Condition 21(3) of the generation assets DMLs and Condition 17(3) of the transmission assets DMLs [REP3-011].			only be part of the Offshore In Principle Monitoring Plan and there is no requirement to update the DML condition wording. The MMO notes the ExA requests outstanding issues are dealt with as soon as possible. The MMO acknowledges this and will work with the Applicant and Natural England to provide an agreed response as early as possible.	
8	<p>Monopile Foundation Option for Offshore Platforms</p> <p>The Applicants to elaborate on the rationale underpinning their conclusion that including monopile foundations for offshore platforms lies within the parameters for the maximum adverse effect that has been assessed in terms of underwater noise effects, by reference to the Environmental Statement and Information to Support Appropriate Assessment Report. By D5. NE, MMO, TWT to respond by D6 or at a subsequent biodiversity ISH.</p>	Applicants NE, MMO, TWT	D5 and D6	The MMO notes this action point for Deadline 6.	The MMO continues to review this and will provide an update at Deadline 7.

10. MMO Response to Action Point 5 from ISH 5

The MMO was expecting to respond to Aldeburgh Town Council in this submission by answering questions put to us regarding the needs of coastal communities in strategic planning and seabed release, however, no questions were submitted to the MMO relating to this at Deadline 5. The MMO remains willing to engage with Aldeburgh Town Council on this matter and will gladly answer any questions put to us at later deadlines in this examination.

11. MMO Outstanding Issues

The MMO notes the ExA's request to provide an update on the Statement of Common Ground (SoCG) and clarify outstanding concerns between the MMO and the Applicant. The MMO has discussed the current status of the SoCG with the Applicant and it was agreed that an updated/final SoCG will not be submitted until Deadline 8, due to resourcing issues. In light of this the MMO has set out the current position on all the outstanding concerns below.

11.1 UXO inclusion

The MMO maintains that UXO clearance activities should be within a separate marine licence. Largely these concerns are in relation to the practicability of managing the high-risk activity along with concerns raised by NE.

The MMO welcomes the Applicant's commitments and amendments to the dDCO in light of concerns raised by the MMO and NE. The MMO notes there remains a concern in relation to the Sabellaria Reef Management Plan and the UXO activities.

11.2 New Scour and Cable protection

The MMO does not agree that any new scour or cable protection installed after construction, that is not defined as maintenance, should be included in the DCO.

Therefore the MMO believes that Condition 24 (Schedule 13) and Condition 21 (Schedule 14) should be removed from the DCO and the Outline Operations and Maintenance Plan should be updated to reflect this position. The MMO and NE are aligned on this matter and understand recent consented offshore wind farms have highlighted that this activity will require a separate licence.

The MMO notes the Applicant is yet to respond to both parties' comments on this matter. However the MMO believes there is no compromise on this issue and a separate licence should be sought for installation of any scour or cable protection in locations where scour protection was not installed during construction.

As the Applicant has provided condition wording, the MMO will provide without prejudice comments. In doing so the MMO has reviewed recent marine licences for new cable protection and included requirements for further information and updated the condition below.

In addition to this the MMO has set out the condition to allow installation of new protection for a five year period from the date of construction completion. The MMO believes this is the maximum time that should be included in the DCO if the Secretary of State is minded to include this activity.

This five year time scale does link to another condition within the DML. Below the section in bold is highlighting the issues raised within Section 11.3 of this document and as such the condition would be updated, if an end of construction condition was included in the DML.

The MMO does question why new scour protection would be required in the operational phase. The MMO notes that scour protection is for protection of stationary structures, noting that scour protection can move with the marine process and would need to be replenished. The MMO believes this would be classed as maintenance and would like clarification on what other situations would require additional protection.



Scour protection and cable protection during operation

24.—(1) During the first five years of the operational period (as specified from the submission of the O&M plan in condition 17(h) or **another completion of construction condition above**) the undertaker must not install scour protection in locations where scour protection was not installed during construction until the following information has been submitted to and approved by the MMO, in consultation with the relevant statutory nature conservation body - ~~details of the need, type, sources, quantity and installation methods for the scour protection have been submitted to and approved by the MMO in consultation with the relevant statutory nature conservation body.~~

a) the need and location of the scour protection

b) the type and sources of scour protection that proposed to be used (including documentation from the purchase of any rock armour, which specifies the size and grade)

c) the quantity of scour protection (volume and area of protection that is proposed – including a table to with rolling figures of the cable protection used in relation to the total quantities consented);

e) installation methods for the scour protection; and

f) a report to confirm the Environmental Statement predictions and data used is appropriate (data must be less than 5 years old);

(2) All Information under paragraph (1) must be submitted to the MMO for approval at least six months prior to the date on which scour protection is intended for installation, unless otherwise agreed with the MMO.

~~(23)~~ The installation of such scour protection must be undertaken in accordance with the details approved under paragraph (1).

(4) A close out report following each instance of installation of scour protection approved under paragraph (1) must be submitted to the MMO three months after completion.

(5) The undertaker must not install scour protection in locations where scour protection was not installed during construction or approved under paragraph (1) after 5 years of the operational period (as specified from the submission of the O&M plan in condition 17(h) or another end of construction condition above).

~~(36)~~ During the first five years of the operational period operational period (as specified from the submission of the O&M plan in condition 17(h) or **another completion of construction condition above**) the undertaker must not install cable protection in locations where cable protection was not installed during construction until the following information has been submitted to and approved by the MMO in consultation with the relevant statutory nature conservation body - ~~details of the need, type, sources, quantity and installation methods for the cable protection have been submitted to and approved by the MMO in consultation with the relevant statutory nature conservation body.~~

a) the need and location of the cable protection

b) the type and sources of cable protection that proposed to be used (including documentation from the purchase of any rock armour, which specifies the size and grade)

c) the quantity of cable protection (volume and area of protection that is proposed – including a table to with rolling figures of the cable protection used in relation to the total quantities consented);

e) installation methods for the cable protection; and



f) a report to confirm the Environmental Statement predictions and data used is appropriate (data must be less than 5 years old);

(7) All Information under paragraph (1) must be submitted to the MMO for approval at least six months prior to the date on which cable protection is intended for installation, unless otherwise agreed with the MMO.

(48) The installation of such cable protection must be undertaken in accordance with the details approved under paragraph (3).

(9) A close out report following each instance of installation of cable protection approved under paragraph (1) must be submitted to the MMO three months after completion.

(10) The undertaker must not install cable protection in locations where cable protection was not installed during construction or approved under paragraph (1) after 5 years of the operational period (as specified from the submission of the O&M plan in condition 17(h) or another end of construction condition above).

The MMO understands that NE are content with the current position.

11.3 Cessation Condition 21 (Schedule 13) and 17 (Schedule 14)

The MMO has discussed the issue on the word 'significantly' with our scientific advisors and NE.

In light of the advice provided, the MMO does not believe that 'significantly' should be assigned a threshold quantity. This is because there are too many variables to consider in developing a standardised threshold for what is significant. They would vary greatly due to water depths, substrates, receptor, location etc. If the noise monitoring assessment shows/suggests greater impacts to those predicted under the worst-case scenario, then the MMO would request that all piling activity must cease until further monitoring or mitigation has been agreed.

The MMO has opened dialogue with the Applicant on changing the condition time scale from six weeks to four weeks. The MMO understands this is a shorter time period and would require a faster review of the data. However, the MMO has concerns that as the Applicant is continuing piling works during the 6 weeks review of the data, including stakeholder review of the reports once submitted, this continuation of work could cause a greater impact if it is identified that there are any concerns or issues. This has been highlighted on recent projects.

11.4 Completion of Construction

In section 2.3 of the REP2-048 the MMO raised that it would be helpful to include a condition for a 'close-out' or 'as-built' report to be submitted at the end of construction.

The MMO highlights that this is now a priority. The MMO believes that the inclusion of the condition below would provide clarity and a specific timeline of when the construction period has been completed.

In addition to this it would also assist with future projects as it would mean that there was no possibility the project could reconstruct to the full parameters and therefore create headroom for future projects. Currently projects must submit a non-material change to reduce the parameters.

The MMO is also part of an Ornithological Headroom Discussion Group which includes Defra, NE, BEIS, RSPB and industry representatives. This group is currently discussing a standard condition to be included in all projects. The MMO has highlighted the inclusion of a condition would keep the Applicant ahead of the project outcomes and therefore potentially reduce any future amendments required. The MMO will continue discussions with the Applicant to Deadline 7.



Construction Completion

The undertaker must submit a close-out report to the MMO within three months of the date of completion. The Close out report should provide information and figures of the final parameters of the constructed offshore works.

From this date, only activities defined as operations and maintenance can be conducted under this consent and no further construction activity can be undertaken

11.5 SNS SAC SIP

The MMO is in discussions with the Applicant on the final wording on the condition set out in Section 9.10 of REP5-075 and is confident this will be agreed to be included in the Applicants updated dDCO at Deadline 7.

11.6 Co-operation

The MMO is in discussions with the Applicant on the final wording of Condition 24 (Schedule 13) and Condition 21 (Schedule 14) as discussed in the ISH9 and is confident this will be agreed to be included in the Applicants updated dDCO at Deadline 7.

11.7 Benthic Ecology

The MMO is content all matters under benthic ecology have been agreed. The MMO is awaiting the OIPMP to confirm that the information within this document satisfies the agreement that Non-native species and wider benthic monitoring will be completed. The MMO notes this is due to be submitted at Deadline 6 will provide confirmation at Deadline 7. This will then be updated if agreed in the SoCG at Deadline 8.

11.8 Fish Ecology including a Seasonal Restriction

The MMO is content most matters under fish ecology have been agreed. The MMO is awaiting the OIPMP to confirm that the information within this document satisfies the agreement that Particle size analysis will be completed in relation to sandeel will be completed as part of the wider benthic monitoring. The MMO notes this is due to be submitted at Deadline 6 will provide confirmation at Deadline 7. This will then be updated as agreed in the SoCG at Deadline 8.

The remaining outstanding concern is in relation to Herring Spawning and the inclusion of a seasonal restriction. The MMO and the Applicant have discussed the restriction and it has been agreed that as further data collection is required to define the restriction, it would be prudent to do this post consent when further data can be provided closer to construction beginning.

In light of this the Applicant is going to provide condition wording, to secure this restriction in the DMLs, to the MMO with the aim of both parties to agree the wording so that it can be included in the next version of the dDCO at Deadline 7 where possible.

11.9 Sediment contaminants

The MMO is in discussions with the Applicant on trying to close out this matter. The MMO is still not content that the sampling of contaminants is appropriate for the project and is aiming to find out a pragmatic approach to resolve this issue.

11.10 Disposal sites

The MMO has provided further comments on the disposal sites to the Applicant in Annex 1. Further discussions are taking place on this matter between the MMO, our Scientific advisors and the Applicant.



12. Notification of Hearings

The MMO has provided comments on the Notification of Hearings in Appendix 1

Yours Sincerely,



Jack Coe
Marine Licencing Case Officer



marinemanagement.org.uk



Annex 1: Comments to the Applicant

The Marine Management Organisation (MMO) received some Centre for Environment, Fisheries and Aquaculture Science (Cefas) comments regarding disposal sites relating to East Anglia One North (EA1N) and East Anglia Two (EA2). I have summarised them below for your attention:

The advice referenced to in 'Cefas comments regarding benthic sampling strategy for EA1N/EA2'

After considering Cefas advice, the MMO are not content that the current sampling regime conducted is appropriate for these applications and are of the opinion that the issue of contaminant sampling cannot be closed out meaning that the proposed disposal sites cannot yet be designated. Part of this concern arises from the fact that the email exchange between Richard West and Tom Anderson does not contain the input of a SEAL Dredge and Disposal Advisor, instead, it contains Benthic advice. The issue of contaminant sampling should be dealt with by the dredge and disposal team, for this reason, Cefas do not consider the current sampling regime to be appropriate.

Disposal Site opening

In relation to HU212, because there was disposal activity at this site from the EA1 project, as detailed in the EA1N Site Characterisation Report, this disposal site is considered 'Open' as opposed to 'Closed'. Because of this, the proposal now relates to an open disposal site which has recently received disposed sediment. The premise of the proposal to open a new disposal site from HU212 and the EA1N area made was predicated on the status of the site not having received any disposed material. Furthermore, the EA1N Site Characterisation Report refers to the disposal of material from EA3, which indicates that there is an active licence consenting future disposal of material at the site, For these reasons, a new site cannot be designated that would overlap HU212 and the EA1N site.

In their comments Cefas state that HU212 can be used for the disposal of EA1N pending the question of the site's capacity to receive material. The remaining area of EA1N overlaps with TH075 (Warren Springs Experimental Area 1) and TH026 (AEA Experimental Area). TH075 is currently closed and the designation of a new disposal site over this area to align with the EA1N windfarm area is acceptable, however, it is unclear whether the same can be said for TH026. This site is currently closed, and further evidence would be required that this area was acceptable for use. The MMO do not believe work of this nature has been conducted. In this regard, the MMO recommend that a new disposal site is designated only over the overlapping area of EA1N and TH075, but not over the overlapping area of EA1N and TH026. This conclusion can be amended should any evidence concerning the use of TH026 be provided which indicates that disposal of sediment in this area is acceptable.

Sediment Volumes

The documents presented for review adequately detail the likely volumes of sediment that the proposed re-designated site HU212 would receive. Table 5 of the EA1N Site Characterisation Report shows that only 246.8 m³ of material was disposed at site HU212 for the generation assets of East Anglia ONE (EA1), out of the total licensed volume for generation assets of 2.8M m³. This means that there is an outstanding disposal volume (remaining disposal capacity) of approximately 2.79 Mm³, which is just above the worst-case anticipated disposal volume for EA1N (2.9 Mm³). Herein, the applicant proposes that approximately half of the anticipated EA1N disposal volume (~1.4 Mm³) be disposed within site HU212.

Section 5.1 of the EA1N Site Characterisation Report also considers the volumes proposed for disposal for the East Anglia THREE (EA3) wind farm, which has a total anticipated



disposal volume of approximately 2.5 Mm³. The applicant stated that: "However, it is important to note that 65% [1.6 Mm³] of [the total disposal capacity for EA3] is for generation assets for which it is reasonable to assume sediment will be disposed within the East Anglia THREE windfarm site and therefore outside of the area of HU212 which overlaps with East Anglia ONE North." Notwithstanding the generation assets, the anticipated disposal volumes for site HU212 from EA3 would comprise 878,896.5 m³ (transmission and interconnector assets only).

Considering the likely volumes that would be disposed from EA1N total volumes, and EA3 transmission asset volumes, SPR have concluded that the remaining disposal capacity for site HU212 (2.79 Mm³) is greater than the disposal volumes anticipated for EA1N and EA3 (2.3 Mm³). Whilst this is a reasonable conclusion to make, it should be noted that the EA1N overlapping area of HU212 is much smaller than the HU212 site as a whole (Figure 1). It is unclear from the materials presented for review whether the disposal volumes from EA1 were placed throughout HU212 as a whole or whether they were placed in an area of a similar spatial scale as the EA1N/HU212 overlap. There is a risk that, should the former scenario be true, any impacts from disposal could be of a greater magnitude than those assessed for EA1, i.e. the remaining disposal capacity the applicant refers to would have been assessed for site HU212 as a whole, rather than the much smaller overlapping section with EA1N.

I hope this advice is clear, please get in touch should you have any immediate concerns regarding the content of what I have sent.

