



THE PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES
2010

East Anglia TWO Offshore Wind Farm

Appendix G1b to the Natural England Deadline 1 Submission

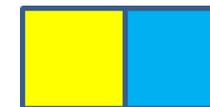
Comments to the Applicant Comments on Natural England's Relevant and Written Representations [AS-036] Development Consent Order/ Deemed Marine Licence

For:

The construction and operation of East Anglia Two Offshore Windfarm, a 900MW windfarm which could consist of up to 75 turbines, generators and associated infrastructure, located 37km from Lowestoft and 32km from Southwold.

Planning Inspectorate Reference: EN010078

2nd November 2020



Appendix G1b Natural England’s comments on the Applicant’s Review of Natural England’s Relevant and Written Representations [AS-036] for Development Consent Order (DCO) / Deemed Marine Licence (DML)

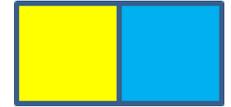
This document is applicable to both the East Anglia ONE North and East Anglia TWO applications, and therefore is endorsed with the yellow and blue icon used to identify materially identical documentation in accordance with the Examining Authority’s (ExA) procedural decisions on document management of 23rd December 2019. Whilst for completeness of the record this document has been submitted to both Examinations, if it is read for one project submission there is no need to read it again for the other project.

Table 1. DCO / DML

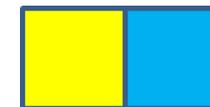
Point	Natural England’s Relevant and Written Representations	Applicant’s Comments	Natural England’s Response to Applicant’s Comments	Risk
1.	Natural England cannot agree to the definitions of “commence” and “offshore preparation works”. As currently drafted the wording the work permits damaging works such as UXO detonation. The wording is also open to the inclusion of more activities than specified and thus could lead to works such as boulder removal, sandwave levelling, pre lay grapnel runs and a range of other potentially environmentally damaging works. These works could commence before the appropriate methodologies and documentation have been approved. As there would be no regulatory involvement it is not certain if pre construction surveys would be	<p>In order to clarify the activities that fall within the definition of “offshore preparation works”, the definition will be updated in the next version of the draft DCO as follows:</p> <p><i>“offshore preparation works” means surveys, monitoring and UXO clearance any activities within the Order limits seaward of MHWS undertaken prior to the commencement of construction to prepare for construction, including but not limited to surveys, monitoring and UXO clearance.</i></p> <p>The Applicant does not agree that reference to UXO clearance should be removed from the definition of “offshore</p>	Natural England notes the proposed changes and in large part welcomes them. However still has issues related to the control of UXO detonations and the other conditions related to UXO. Until these concerns are addressed we are unable to agree with this definition of commence. We note the response that pre construction surveys under condition 20 and 16 of the generation and transmission surveys will allow for protection of benthic features. However, as the conditions referenced are linked to commencement and the UXO is not, there is no certainty and it is not secured in the DCO/DML that the surveys will have been conducted and exclusion	



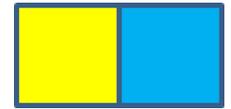
	<p>completed to sufficiently inform and agree micro siting requirements. Thus leading to an increased risk of impact to features of conservation value, such as biogenic reef. The words 'but not limited to' should be removed, as should reference to UXO detonation works.</p>	<p>preparation works” as such activities are assessed within the Environmental Statement and are controlled by the conditions of the DMLs.</p> <p>The DMLs do not permit any UXO clearance activities to be undertaken without the requirements of condition 16 of the generation DML and condition 12 of the transmission DML first being complied with which require the following to be submitted to and approved by the MMO:</p> <p><i>(a) a method statement for UXO clearance which must include—</i></p> <p><i>(i) methodologies for—</i></p> <p><i>(aa) identification and investigation of potential UXO targets;</i></p> <p><i>(bb) clearance of UXO;</i></p> <p><i>(cc) removal and disposal of large debris;</i></p> <p><i>(ii) a plan showing the area in which clearance activities are proposed to take place;</i></p>	<p>zones identified prior to any UXO detonation.</p>	
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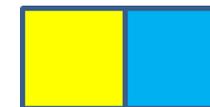
		<p><i>(iii) a programme of works;</i></p> <p><i>(b) a marine mammal mitigation protocol in accordance with the draft marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, following current best practice as advised by the relevant statutory nature conservation bodies; and</i></p> <p><i>(c) an East Anglia ONE North Project Southern North Sea SAC Site Integrity Plan for UXO Clearance which accords with the principles set out in the in principle East Anglia ONE North Project Southern North Sea SAC Site Integrity Plan.</i></p> <p>With regard to the risk of UXO clearance to <i>Sabellaria</i> reef, the pre-construction reef survey, secured under condition 20 of the generation DML and condition 16 of the transmission DML, will be undertaken prior to UXO clearance. Therefore, the plans submitted to the MMO for approval under condition 16 of the generation DML and condition 12 of the transmission DML will</p>		
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		include details of exclusion zones/environmental micro-siting requirements.		
2.	Natural England does not agree with the definition of “maintain”. Specifically that works linked as ancillary works (listed in schedule 1 part 1) are part of maintenance. Works such as cable protection and scour protection deployment are construction activities which can have significant environmental impact. They should not be included within the definition of maintenance. Please see Natural England and the MMO positions on deployment of cable protection.	Under consideration by the Applicant. Through the SoCG process, the Applicant has requested sight of the joint paper by the MMO and NE which the MMO state will offer guidance on the expected marine licensing requirements for such activities. Following review of this guidance, the Applicant will prepare a response on this matter.	Natural England notes the applicant is considering and has provided the cable paper referenced. However, must also note this paper is not a joint paper with the MMO but a paper produced by Natural England.	
3.	Arbitration: Natural England does not consider that it is appropriate for post-consent sign-off of DML conditions to be subject to arbitration. Natural England suggests that this wording be amended to that which was used by the Secretary of State (SoS) while deciding on this issue in the Tilbury 2 application. Natural England also refers to the representations and submissions on arbitration submitted during the recent Hornsea 3, Vanguard and	The Applicant considers it necessary to ensure that there is an appropriate appeals mechanism available to the undertaker during the process of discharging requirements of the DCO and conditions of the DMLs so that this nationally significant infrastructure project is not delayed due to the failure of discharging authorities to determine applications for approval within the agreed timescales.	Natural England notes the response, however, its position has not changed. It also noted that in the Norfolk Vanguard Offshore Wind Farm decision similar arbitration and appeals mechanisms for the DML conditions were removed by the Secretary of State at the recommendation of the Examining Authority. We would refer you to the Vanguard decision letter and the Examining authority’s recommendation report for the Norfolk Vanguard application.	



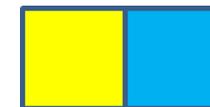
	Thanet Extension applications.	<p><u>DML conditions</u></p> <p>The Applicant will therefore seek to modify the provisions of the Marine Licensing (Licence Application Appeals) Regulations 2011 so that they apply where the MMO refuses an application for approval under one of the conditions of the DMLs or alternatively where the MMO fails to determine an application within the timescales. This is to ensure that the undertaker has an appropriate appeals mechanism in order to resolve matters in a timely manner to reduce the risk of delays to the Project.</p> <p><u>DCO requirements</u></p> <p>The Applicant also intends to include a new schedule within the draft DCO which sets out a procedure in respect of the discharge of requirements which provides timescales for decisions to be made and an appeals process where an approval is refused or where the discharging authority fails to issue a decision within the timescales. This approach is in accordance with PINS</p>	Our position, therefore, remains that these provisions should be amended/removed to make it clear they do not apply to decisions made under a deemed marine licence.	
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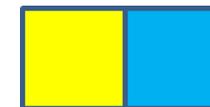
		<p>Advice Note 15: Drafting Development Consent Orders and largely follows the text proposed by PINS within Appendix 1 of that Advice Note. This will not apply in respect of the discharge of conditions of the DMLs.</p> <p><u>Arbitration</u></p> <p>The Arbitration provisions are not intended to apply to decisions of the MMO in discharging DML conditions.</p>		
4.	Many areas and volumes are given as m2 and m3, they should be m ² or m ³	This will be updated in the next version of the draft DCO.	Noted, we will review the next DCO to confirm.	
5.	No volumes or areas of cable protection are provided. Given the potential for significant impact from these works they should be appropriately recoded here. However, it is noted these volumes and areas are recorded within the DMLs. However, the Environmental Statement (ES) project descriptions have separate areas of cable protection for the cable crossings. Clarification is needed to explain whether these volumes are recorded within the totals provided within the DMLs or if	Deposits (including of cable and scour protection and drill arisings, etc.) are licensable marine activities and are therefore regulated by the DMLs, There is therefore no need for these areas or volumes to be specified in Schedule 1 of the DCO. Such parameters should be specified in the DMLs only so that if there is any need to vary the figures in the future, they can be dealt with by way of a DML variation. Specifying these figures in Schedule 1 of the DCO may cause	Natural England notes that the cable protection, disposal and UXO activities are controlled through the DML and that limitations are recorded there to allow for variation should there be a need. Natural England notes that the justification is the use of a more realistic worst case scenario to refine the impact scope, rather than an absolute worst case scenario. Our preference at this juncture is for the details of these activities to be appropriately included within the DCO Schedule 1.	



	<p>they are additional to the DML volumes. If additional then these additional volumes should be recorded in the DCO/DML appropriately to ensure the maximums are clearly stated and enforceable.</p> <p>No volumes or areas of disposal are provided here. Maximum amount of disposal should be provided and split into hard substrate (drill arisings) boulder relocation and soft sediments (sandwave levelling and ground preparation). However, it is noted the total volumes are recorded within the DMLs and split according to activity.</p> <p>This application and project description includes detonation of UXO. If these works are to be licenced and given the significant potential for impact the maximum number of detonations and the maximum size of detonation (size of UXO in kg) should be recorded. These factors should also be recorded in the DMLs to ensure no works outside of the scope of the ES details take place.</p>	<p>unnecessary difficulties in the event that the figures require to be varied.</p> <p>The Applicant's assessment has been based on a more realistic worst case scenario drawing on experience from the neighbouring East Anglia ONE project, rather than absolute worst case scenarios that may have assumed greater volumes and areas to mitigate a situation where the site investigation surveys demonstrate that sufficient cable protection and/or disposal has not been provided for. Given this approach, there is a significant programme risk associated with inclusion of such detailed parameters under Schedule 1, Part 3 of the DCO should any changes be required which necessitate an amendment to the DCO.</p> <p>Specifying deposit volumes and areas in the DMLs alone provides for full regulatory control and should any amendments to these figures be necessary, a DML variation will be required and any application for a DML variation will need to be supported by appropriate environmental information at that time.</p>	<p>However, we will further consider the applicant's response and may provide an update in the future.</p>	
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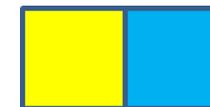
		<p>As with disposal activities, UXO clearance activities are regulated by the DMLs and there is no need for details of such activities to be included within Schedule 1 of the DCO. The DMLs include conditions requiring various documents to be approved by the MMO prior to UXO clearance activities being permitted to proceed. Details of the number and size of detonations will be set out within these documents for approval by the MMO and such details will be within the scope of the impacts assessed within the ES.</p>		
6.	<p>The relevant statutory nature conservation body should be named as a consultee on the updated Code of Construction Practice. This is to ensure the appropriate environmental considerations are provided within these documents.</p>	<p>The Applicant will consult with NE during the preparation of the Code of Construction Practice (CoCP) and the Outline Code of Construction Practice (OCoCP) will be updated to reflect this commitment. The Applicant does not consider it necessary to name NE as a consultee on the face of the DCO in respect of the CoCP.</p>	<p>Natural England notes this response and has had further discussed this issue with the applicant at a meeting on 5 October and agrees that we do not need to be named as consultee upon all sections of the CoCP, only on those sections with relevance to nature conservation. We understand an update to requirement 22 and the OCoCP will be made.</p>	
7.	<p>The relevant statutory nature conservation body should be named as a consultee on the onshore decommissioning plan. This is</p>	<p>The Applicant will update requirement 30 (Onshore decommissioning) of the draft DCO to include the relevant statutory</p>	<p>Natural England welcomes the proposal to update the draft condition and ensure appropriate consultation with the SNCB on</p>	



	to ensure appropriate ecological mitigation and considerations are made within the decommissioning works.	nature conservation body as a consultee in respect of the onshore decommissioning plan.	the decommissioning plan. Once we have seen an updated draft including this change this issue will be considered resolved.	
8.	This requirement makes it clear that onshore connection works built under one order can only be built on one order and not both. However, Natural England questions if this requirement adequately ensures that any ongoing monitoring or mitigation works for those areas are clearly secured. Natural England considers it logical that the party who constructed the works should hold responsibility for any required ongoing requirements.	<p>In accordance with the requirements of the draft DCO, the party constructing the grid connection works will require to submit various plans and documents for approval prior to construction. Some of these plans will contain monitoring obligations for the construction and operational period and so the party constructing and operating works will be required to comply with the monitoring commitments approved within the relevant plans and documents.</p> <p>The transfer provisions within Article 5 of the draft DCO make the exercise by transferees and lessees of any benefits or rights conferred by the DCO subject to the same restrictions, liabilities and obligations as would apply if those benefits or rights were exercised by the undertaker. Therefore in the event of a transfer of benefits or rights under the DCO, any associated restrictions or obligations (such as construction or operational monitoring</p>	Natural England notes this response and is satisfied that under Article 5 the obligations would transfer to the new owner.	



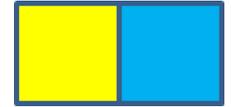
		requirements) would also be transferred and the transferee would be required to comply with such obligations.		
9.	Definitions of “commence”, “offshore preparation works” and “maintain” are not acceptable, see points 1 and 2.	See responses to Points 1 and 2 of DCO, DMLs and Related Certified Documentation above.	See points 1 and 2	
10.	<p>This condition requires a notification of completion of construction activities. Does this condition adequately ensure that no further construction activities can be undertaken under this DML?</p> <p>Natural England considers that this is a notification only. To ensure clarity on the end of the construction period and the start of the operation period and to appropriately trigger the post-construction conditions, Natural England considers that a separate condition may be needed to require the applicant to inform once all construction activities have completed and that no further construction works will be required under this licence.</p> <p>Recent projects have implied that as their DCO and DML has no requirement or condition ending construction they can</p>	<p>The Applicant does not consider that the condition proposed by NE is required for the following reasons:</p> <ul style="list-style-type: none"> • Condition 17 of the generation DML and condition 13 of the transmission DML require submission of a construction programme which will define the construction period; • Condition 10 of the generation DML and condition 6 of the transmission DML requires notifications to various stakeholders that construction is complete; • Condition 17 of the generation DML and condition 13 of the transmission DML secure the requirement for an offshore operations and maintenance plan to be submitted to the MMO at least six months prior to commencement of operation which 	<p>Natural England notes the response. However, also notes that the conditions referenced do not secure that the construction phase cannot be re-opened.</p>	



	<p>complete construction activities throughout the lifetime of the project. Natural England does not consider this appropriate.</p>	<p>will provide details of the activities required during the operations and maintenance phase and will specify when the operational phase will commence.</p>		
<p>11.</p>	<p>Natural England notes the inclusion of these conditions to ensure removal of UXO can proceed without inclusion under commencement. However, these works also require consideration of potential benthic impacts, such as biogenic reef. The requirement to preform pre-construction surveys to inform micro-siting of cables must be included here to ensure appropriate mitigation. The current drafting has no timing requirements for submission. They need to be submitted a minimum of 6 months prior to the detonation of UXOs.</p> <p>However, Natural England considers this work to lead to significant duplication of effort for post-construction document approval. Therefore, Natural England advises inclusion of UXO within the definition of “commence” and the sign off of plans within the pre-construction conditions.</p>	<p><u>Reefs</u></p> <p>As stated in the Applicant’s response to Point 1 of DCO, DMLs and Related Certified Documentation above, the pre-construction reef survey, secured under condition 20 of the generation DML and condition 16 of the transmission DML, will be undertaken prior to UXO clearance. Therefore, the plans submitted to the MMO for approval under condition 16 of the generation DML and condition 12 of the transmission DML will include details of exclusion zones/environmental micro-siting requirements.</p> <p><u>Submission of UXO plans</u></p> <p>The Applicant proposes to submit the plans required under condition 16 of the generation DML and condition 12 of the transmission DML three months prior to the planned commencement of UXO clearance activities. This period is in line with the</p>	<p>As noted in response to point 1, the DML conditions securing survey of the benthic habitat and establishment of any exclusion zones are linked to commencement. There is no condition which ensures these surveys must take place prior to UXO removal, which the current draft DML has excluded from the definition of commence.</p> <p>Natural England notes the plan to submit 3 months prior to UXO detonation works. We will consider this further and may update our position or provide further response in due course. We also note that the 3 month period is not secured within the draft DML and thus does not address our concerns in this matter. The condition should be amended to make this commitment clear and to ensure appropriate time to consider the UXO works ahead of any planned works.</p> <p>Natural England notes the response to the proposed conditions, that the SIP provides</p>	



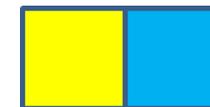
	<p>Furthermore, Natural England considers that conditions should be added to DMLs ensure that:</p> <ul style="list-style-type: none">• Only 1 UXO is detonated across both EA2 and EA1N within a 24 hour period.• No piling will occur concurrent to the UXO detonation or within 24 hours of a detonation.• Only 1 piling event can occur across EA2 and EA1N within any 24 hour period.• A Co-operation Plan/Agreement will be required between EA1N and EA2 in the event that construction periods overlap. <p>These are key mitigations proposed within the outline Site Integrity Plan (SIP) page 30 section 6.1 and should be appropriately secured through condition.</p>	<p>determination period for new marine licences and is therefore considered to be appropriate.</p> <p>Additionally, as the impact assessment for UXO clearance has already been undertaken and is detailed within the Environmental Statement (notwithstanding that there are requirements for a method statement, marine mammal mitigation protocol (MMMP) and site integrity plan (SIP)), the volume of information required to be submitted will be slightly less than that required for a new marine licence application.</p> <p>Furthermore, given that UXO clearance is intended to proceed prior to commencement of construction, submission of the UXO plans would occur prior to submission of the information associated with construction (i.e. design plan, construction method statement, etc) and therefore not during a period where stakeholders are required to review a large number of documents in parallel (which we understand to be the key reason that has</p>	<p>a more flexible control mechanism. However, Natural England does not consider these mitigations to be flexible, as noted in Annex B1b the mitigations are essential mitigation for impact to marine mammals. Therefore, we consider that they need to be secured within the drafting of the DML. However, as discussed in the workshop on the 10 August, we are willing to consider the detonation of clusters of UXO's around a 5km centre point to be detonated.</p>	
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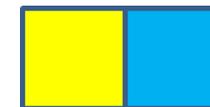
		<p>driven the general requirement for a six month review period for other pre-construction documentation).</p> <p><u><i>Inclusion of UXO clearance within the definition of 'commence'</i></u></p> <p>See response to Point 1 of DCO, DMLs and Related Certified Documentation above.</p> <p><u><i>Proposed conditions</i></u></p> <p>Such conditions are not considered to be appropriate or necessary for the reasons set out in our responses to Points 4, 5 and 6 of Marine Mammals above. As noted by NE, these commitments are set out within the In-Principle SIP (APP 594), and a final version of this plan requires to be submitted to the MMO for approval in accordance with the conditions of the DMLs. The Applicant considers that the SIP provides the most flexible and appropriate mechanism for managing potential impacts.</p>		
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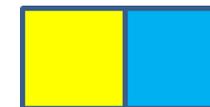
12.	<p>The condition allows for changes to the cable protection if proposed following cable laying operations. However, there is no end date within the condition. Natural England's joint position with the MMO is that it is not appropriate for cable protection to be deployed throughout the operation and maintenance (O&M) phase of a project. This is due to the very large spatial and temporal scale of these licenced works, giving a Rochdale Envelope that is too undefined to appropriately assess. An end date should be included based on the proposals within the Natural England and MMO joint position statement. Any cable protection works after this end date should be licenced separately. It should also be noted that further surveys would be required to confirm the presence/absence of Sabellaria reef, such as is required prior to construction.</p>	<p>As per the Applicant's response to Point 2 of DCO, DMLs and Related Certified Documentation above, this matter is under consideration by the Applicant. Through the SoCG process, the Applicant has requested sight of the joint paper by the MMO and NE which the MMO state will offer guidance on the expected marine licensing requirements for such activities. Following review of this guidance, the Applicant will prepare a response on this matter.</p>	<p>Natural England notes that this position is under consideration. However, to clarify the position is a joint position, but the paper is a Natural England document.</p>	
13.	<p>Natural England considers that within these conditions the requirements to conduct ornithological monitoring (as outlined in the In Principle Monitoring Plan) should be secured.</p>	<p>Under consideration by the Applicant.</p>	<p>Noted, awaiting further response</p>	
14.	<p>Natural England notes that this condition</p>	<p>The Applicant will discuss this comment</p>	<p>Noted, Natural England welcomes</p>	



	includes a requirement to monitor the first four piles and that under sub-paragraph (2) the MMO may require further monitoring. This requirement is in line with previous requirements for similar projects. However, Natural England would consider the first four piles represent the minimum requirement and would welcome discussion on expanding this proposed monitoring to include an agreed selection of the most resistant piles. The most resistant piles are likely to represent the largest noise impacts and could be further used to validate the noise impact predictions of the ES.	with NE through the SoCG process but does not consider any changes are required to the conditions of the DMLs.	engagement on this topic.	
15.	All issues raised under Schedule 13 also apply to Schedule 14 where similar conditions exist.	Noted	Noted	
16.	Please see point 3 regarding Arbitration.	See response to Point 3 of DCO, DMLs and Related Certified Documentation above.	Please see point 3	
17.	The definition of green items states that these items may go ahead and that no additional Marine Licences are needed, but that notification may be required. This is not entirely accurate, some of the items listed as green require resubmission of	It is not entirely clear what items are being referred to and the Applicant would request further clarification from Natural England on this point.	Activities such as additional cable laying are identified within the document as not requiring a new licence, provided they are within the scope of the original ES, but requiring consultation with MMO and NE and approval prior to works. However, the	



	<p>plans and documentation and further approvals from the MMO. Natural England suggests that the text is amended to reflect that some green items will require approval and not just notification.</p>		<p>definition of green implies these works may continue with only notification, when they would need approval by the MMO. Natural England considers that the document should be updated to ensure that these important approvals are made clear to avoid any misunderstandings during operation. It is noted that the applicant will be updating and resubmitting the OOMP at Deadline 3. Natural England will review the updated submission and advise if this issue remains.</p>	
18.	<p>Cable burial using surface protection: Natural England assumes this refers to deployment of cable protection, although the table is not clear on this point. This is listed as green indicating that a further marine licence is not required. Natural England does not agree and considers this should be amber. Please see point 2 and the MMO and Natural England position statements on cable protection. This issue is replicated in the transmission section of the plan and both sections should be amended.</p>	<p>See response to Point 2 of DCO, DMLs and Related Certified Documentation.</p>	<p>Please see point 2.</p>	
19.	<p>Scour protection is listed within the table as green. Therefore, it may be deployed with</p>	<p>The Applicant will review the OOMP in light of NE's comments and, where considered</p>	<p>Noted, Natural England awaits updated document at Deadline 3. See point 2 re</p>	



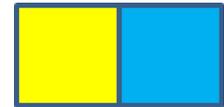
	<p>no additional licence required. This should be changed to amber. Scour protection may be deployed up until the maximum assessed in the ES. Any additional protection above the amount assessed in the ES would need additional licences. Natural England advises that maximum amount allowed should be based on the maximum amount assessed in the ES for the individual foundation type. Not the total assessed volume of scour for the entire project and the document should be amended to reflect this. This issue is replicated in the transmission section of the plan and both sections should be amended.</p>	<p>appropriate, will update the OOMP.</p> <p>With respect to scour and cable protection during O&M see the Applicant's response to NE Point 2 of DCO, DMLs and Related Certified Documentation.</p>	<p>scour protection during Operations.</p>	
20.	<p>Natural England does not consider it appropriate to grant a licence to detonate UXO over such a long period of time as the lifetime of the project. This is especially relevant to projects located within the Southern North Sea Special Area Of Conservation (SAC) where detonation could have significant impacts and should be assessed based on updated information to show consideration of such things as in-combination impacts.</p>	<p>The intention is not to carry out UXO clearance activities throughout the operational period and therefore this reference will be corrected in the OOMP.</p> <p>With respect to the comments about EPS licences being required, this is not relevant in the context of the OOMP as the OOMP relates to maintenance activities authorised by DML or marine licence. Separate EPS licences will be sought outwith the DCO as</p>	<p>Natural England notes that this will be updated in the plan to be submitted at Deadline 3. It also notes that any EPS licences required will be sought at an appropriate time. Once an updated plan has confirmed the changes then this item may be considered resolved.</p>	



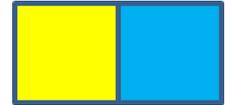
	<p>Notwithstanding our arguments above, if it is decided that it is appropriate to include UXO detonation for the lifetime of the project, then Natural England notes that UXO detonations are listed as green. Natural England would advise that this should be listed as amber as the ES has assessed only a total of 80 detonations up to a maximum size of 700kg and therefore if more than 80 UXO's are found, or a UXO of size greater than 700kg, a new Marine Licence would be required. Additionally, consent will be required for disturbance of European Protected Species (EPS) for all instances and, therefore, it may be more appropriate to list this as red. However, in all instances the need for the EPS consent should be appropriately reflected in this document to ensure appropriate consent is sought within a reasonable time frame.</p>	and when required.		
21.	<p>The proposed benthic monitoring only considers construction activities. The requirement for monitoring for O&M activities, which directly impact the seabed, should be included. This monitoring will be required in the form of geophysical and</p>	<p>Under consideration by the Applicant. This matter is linked to NE Point 2 of DCO, DMLs and Related Certified Documentation. The Applicant requests sight of the Natural England / MMO joint positions on deployment of cable</p>	<p>As noted above the cable protection paper by Natural England has been shared. We await the Applicant's further response.</p>	



	<p>ground truthing (drop down video) surveys for any areas which have no monitoring and no construction activity within 2 years prior to the proposed O&M works. The post-construction structural/engineering surveys suggested in Table 1 could be used to inform any monitoring should they be in the appropriate location and within an appropriate timeframe.</p>	<p>protection, which the MMO state will offer guidance on the expected marine licensing requirements for such activities. Following review of this guidance, the Applicant will prepare a response on this matter.</p>		
22.	<p>Natural England notes that we would like to engage with the applicant on the potential monitoring requirements for marine mammals and the potential for contribution to strategic monitoring. Following this discussion there may be a need to update this section to better reflect the monitoring that will be required.</p>	<p>The Applicant is a subsidiary of Scottish Power Renewables (UK) Limited (SPR) and SPR has a strong track record of engagement on strategic monitoring projects for marine mammals including:</p> <ul style="list-style-type: none">• providing technical input and funding to develop the DEPONS59.• commissioning the collection and managing the ongoing assessment of project level piling data on East Anglia ONE with the intent that this could be used to advance understanding of the effectiveness and limitations of the• DEPONS and iPCOD population effect models;	<p>Noted, Natural England will consider further and advise.</p>	



		<ul style="list-style-type: none">• the intent to provide underwater noise data collected during UXO detonation at East Anglia ONE to support ongoing BEIS work contracted to Hartley Anderson to understand the noise profiles of underwater explosions which would be used to produce new industry guidance;• participation in the Joint Cetacean Protocol and commitment to data sharing.• The Applicant will engage with Natural England however it is not considered that strategic monitoring is appropriate at a project level in the context of the application.		
23.	Natural England refers to our points 47 and 48 in Annex A Offshore Ornithology.	See the responses to points 47 and 48 of Offshore Ornithology above.	See Natural England's further comments on points 47 and 48 in Deadline 1 Appendix A1b Offshore Ornithology of this document. For completeness, this issue will remain open in the DCO DML Appendix.	



Natural England's key to RAG status	Risk
<p>Purple Note for Examiners and/or competent authority. May relate to DCO/DML</p>	
<p>Red Natural England considers that unless these issues are resolved it will have to advise that (in relation to any one of them, and as appropriate) it is not possible to ascertain that the project will not affect the integrity of an SAC/SPA and/or comply fully with the Environmental Impact Assessment requirements and/or avoid significant adverse effect on landscape/seascape, unless the following are satisfactorily provided: <ul style="list-style-type: none"> new baseline data; significant design changes; and/or significant mitigation; Natural England feels that issues given Red status are so complex, or require the provision of so much outstanding information, that they are unlikely to be resolved during examination, and respectfully suggests that they be addressed beforehand.</p>	
<p>Amber Natural England considers that if these issues are not addressed or resolved by the end of examination then they would become a Red risk as set out above. Likely to relate to fundamental issues with assessment or methodology which could be rectified; preferably before examination.</p>	
<p>Yellow These are issues/comments where Natural England doesn't agree with the Applicant's position or approach. We would flag these at the PEI stage with the view that they would be addressed in the Application. But otherwise we are satisfied for <u>this particular project</u> that it will not make a material difference to our advice or the outcome of the decision-making process. However, it should be noted that this may not be the case for other projects. Therefore it should be noted by interested parties that just because these issues/comments are not raised as part of our Relevant Representations in this instance it should not be understood or inferred that in other cases or circumstances Natural England will take this approach. Furthermore, these may become issues should further evidence be presented.</p>	
<p>Green Natural England supports the Applicant's approach.</p>	