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(By email only)

MMO Reference: DCO/2016/00005
Planning Inspectorate Reference: EN010078
Identification Number: 200241119

7 June 2021

Dear Rynd Smith,

Planning Act 2008, Scottish Power Renewables, Proposed East Anglia (EA2) Offshore Windfarm Order

MMO Deadline 11 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 Two Wind Farm (the “DCO Application”) (MMO ref: DCO/2016/00005; PINS ref: EN010078).

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 11.

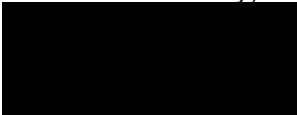
The MMO submits the following:

- 1. Summary of Oral Cases made during the Draft development consent order Issue Specific Hearing (ISH) 17**
- 2. MMO Responses to ExAs Further Written Questions (ExQ3)**
- 3. MMO Responses to ExAs dDCO Commentaries**
- 4. Underwater Noise update**
- 5. Contaminant Sampling Update**
- 6. Comments on any additional information/submissions received at Deadline 10**
- 7. Comments on Applicants comments on MMO Deadline 9 response**

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 applications 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,



Rebecca Reed
Marine Licensing Case Officer



Enc.

- a) East Inshore and East Offshore Marine Plans
- b) SNS Regulators Working Group Terms of Reference Agreed



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1. Summary of Oral Cases made during the Draft Development Consent Order (dDCO) Issue Specific Hearing (ISH) 17

1.1 Agenda Item 2

Herring Spawning

The MMO has previously set out its position that the Applicant must avoid Piling and Unexploded Ordnance (UXO) Clearance activities during a set Herring Spawning period, this has been included as Condition 29, Schedule 13 and Condition 25, Schedule 14 in the current draft Development Consent Order (dDCO). However, it is acknowledged that the exact dates of this period will not be known until after the Applicant has completed the necessary assessments and provided sufficient data.

The MMO is aware that the Applicant disagrees with the current drafting of this condition that the MMO provided and wishes to have the phrase 'approximately 14 days' included in the wording. The MMO considers that this phrase renders the condition unenforceable and therefore, does not meet the 5 tests necessary for a marine licence condition.

The MMO is having active discussions with the Applicant to address this issue. The Applicant proposed in a meeting on 26 May 2021 that the phrase 'up to 31 days' could replace 'approximately 14 days'. In the MMO's view, this will give the Applicant more certainty as to when they can undertake works and would ensure that the condition meets the necessary test of enforceability. The MMO has sought advice from its scientific advisors on the appropriateness of this wording and will endeavour to update the ExA on its position at Deadline 12.

Furthermore, the MMO acknowledges the ExA's use of the Thanet Offshore Wind Farm (OWF) Herring Spawning Condition highlighted in the most recent set of Examiners Questions (ExQ3), the MMO considers that the condition proposed offers the Applicant more flexibility and would ensure that the Applicant would not need to request a variation to the DML from the MMO, this could further halt the progress of the project.

The MMO will endeavour to have a joint position with the Applicant by Deadline 12.

UXO Close-Out Report and Best Practice protocol for Red-Throated Divers

The MMO can confirm that in respect of Conditions 16 and 17 of the Generational DML, the MMO is content with all of the changes made by the Applicant and has no further comments to make.

Offshore Ornithology Compensation Packages

The MMO maintains its position that a 6-week timescale should be included for the compensation measures that are included in this schedule. This would be beneficial to the Interested Parties that have an active interest in Offshore Ornithology and have statutory obligations to review these compensation measures prior to their implementation.

The MMO is likely to maintain this position throughout the remainder of these Examinations but will continue dialogue with both NE and the Applicant on this matter.

In-Combination effects on the Southern North Sea (SNS) Special Area of Conservation (SAC)

The MMO acknowledges that this topic has been covered more fully in ExQ3 and the MMO intends to provide a full answer to that question at Deadline 11 (please see section 2 of this document). However, the MMO considers it appropriate to inform the ExA that it has started using the SNS activity tracker on live casework in an effort to ascertain how well it works. The MMO will update the ExA on any findings it has at an appropriate deadline.

Landfall construction method statement and monitoring plan

The MMO is content that it will be consulted by East Suffolk Council on this document and is very happy to be a part of the decision-making process. The MMO intends to provide further detail on this position at Deadline 12.



1.2 Agenda Item 3

The Potential Operation of Each dDCO as a Standalone Consent

In the event that one application proceeds to development whilst the other does not, the MMO is content that each dDCO is capable of acting as a standalone consent, and that there are no interdependencies between each project and dDCO such that they cannot be consented separately and subsequently built.



2. MMO Responses to ExAs Further Written Questions (ExQ3)

ExQs	Question to	Question	MMO Response
3.0 Overarching, general and cross-topic questions			
3.0.1	East Suffolk Council, Suffolk County Council, Suffolk Coasts and Heaths AONB, New Anglia LEP, MMO.	<p>Plans and strategies</p> <p>Please submit copies of the following documents to the Examinations. You are only requested to submit those documents for which you are the owner/author. Full documents in PDF format are requested.</p> <p>a) Suffolk County Council</p> <ul style="list-style-type: none"> a. Local Transport Plan 2011 – 2031; b. Suffolk Green Access Strategy (Rights of Way Improvement Plan); c. Suffolk Minerals and Waste Local Plan 2020. <p>b) East Suffolk Council</p> <ul style="list-style-type: none"> a. East Suffolk Strategic Plan 2020 - 2024; b. East Suffolk Economic Growth Plan 2018-2023; c. Suffolk Coastal Local Plan 2020; d. If any policies in the Waveney Local Plan 2019 are considered to be important and relevant then please submit it also; e. The made Leiston Neighbourhood Plan (2017); f. A description of progress on and latest drafts (if available) of the Aldringham cum Thorpe, Saxmundham, and Kelsale cum Carlton Neighbourhood Plans and any other Neighbourhood Plan(s) considered likely to have important and relevant content. <p>c) Suffolk Coast and Heaths AONB</p>	<p>e)</p> <p>a) The MMO highlights to the ExA that The Environment Agency (EA) is the authority responsible for sea defence (management of coastal flood risk). The MMO is not a stakeholder contributing to these plans, the MMO advises EXA to contact the EA in order to obtain the most up to date documents.</p> <p>b) The MMO has submitted the East Inshore and East Offshore Marine Plan into these Examinations.</p>

		<p>a. Suffolk Coast and Heaths AONB – Natural Beauty and Special Qualities Indicators document;</p> <p>b. Suffolk Coast and Heaths AONB Management Plan 2018-2023;</p> <p>d) New Anglia LEP</p> <p>a). Economic Strategy for Norfolk and Suffolk 2017;</p> <p>b). New Anglia Local Industrial Strategy;</p> <p>e) MMO</p> <p>a). Suffolk Shoreline Management Plan 7, 2012;</p> <p>b). East Inshore and East Offshore Marine Plans.</p>	
3.2 Biodiversity, Ecology and Natural Environment (including Habitats Regulations Assessment (HRA))			
3.2.21	MMO	<p>In-combination effects on the Southern North Sea (SNS) SAC</p> <p>Natural England’s position has remained throughout examination that it cannot exclude adverse effect on integrity of the SNS SAC in combination until a mechanism is in place to manage multiple SIPs. This is a matter that Natural England acknowledges is a wider, regulatory issue rather than a project-specific one. Nonetheless, the ExAs will need to form recommendations on this matter for the projects before us. In [REP9-060], the Marine Management Organisation (MMO) states that it “<i>acknowledges these comments and believes that the SNS SAC SIP is the appropriate document to manage the in-combination noise impacts, along with the SNS Regulators Working Group</i>”.</p> <p>a) Could the MMO please submit the terms of reference for the SNS Regulators Working Group and confirm whether the control of in combination</p>	<p>a) The MMO has submitted the SNS SAC Regulators Working Group Terms of Reference into these Examinations. The MMO highlights the first two objectives, which state that the Working Group will:</p> <ul style="list-style-type: none"> • <i>Work together as Regulators and collaborate to manage impulsive underwater noise in the SNS harbour porpoise SAC in line with the Statutory Nature Conservation Bodies (SNCB) noise guidance;</i> • <i>Maintain an Activity Tracker for all consented underwater noise generating activities within the SNS harbour porpoise SAC (i.e. piling, seismic surveys etc) that is updated by Regulators and publicly available for applicants.</i> <p>The MMO can therefore confirm that control of in-combination of underwater noise impacts on</p>

		<p>underwater noise impacts on features of the SAC is within the scope of the Group's responsibilities.</p> <p>b) Please could the MMO elaborate on how this management of in combination noise impacts will work in a practical sense - is it limited to the management of the SNS activity tracker or are there other functions of the Working Group in coordinating the noisy activities of multiple projects?</p>	<p>features of the SAC is within the scope of the Group's responsibilities.</p> <p>The MMO would highlight that consenting of noisy activities remains the responsibility of each relevant regulator, e.g. Offshore Petroleum Regulator for Environment and Decommissioning (OPRED) regulate Oil and Gas activities. The MMO would also highlight that developers across all sectors should work with each other to align their planned noisy activities within the SNS SAC.</p> <p>b) The MMO can confirm that management of the tracker forms one of the main functions of the Working Group. The Group also works closely with SNCBs regarding implementation and management of SNCB noise guidance, as well as informing UK Government Policy on how to best manage competing Sectors' noisy activities in the SNS SAC.</p> <p>In terms of a practical sense, it will be up to the MMO to complete a habitats regulations assessment (for standalone marine licence applications) or by reviewing the SNS SAC Site Integrity Plans (for DCO cases) against the activity tracker and the Joint Nature Conservation Committee (JNCC) guidance. The MMO will include a tracker snapshot within the decision document that highlights the in-combination impact. If any mitigation, monitoring, or additional restrictions are required as part of the decision these will be highlighted within the decision document.</p>
3.2.24	MMO	<p>Marine mammals: underwater noise modelling update [REP8040]</p> <p>It is apparent from submissions that there are ongoing discussions between the Applicants and the MMO in</p>	<p>The MMO has no outstanding concerns in relation to this document. Please see section 3.1 of this document for the MMO's full position on sequential piling.</p>

		<p>relation to underwater noise modelling and specifically [REP8-040].</p> <p>Please could the MMO respond to [REP8-040] and set out any outstanding concerns in full by Deadline 11.</p>	
3.2.25	Natural England, MMO	<p>Benthic ecology: Security for reef buffer</p> <p>Noting the Applicants response to ExQ2.2.15 [REP6-061], does NE and the MMO consider that the MMO has adequate control through the approval process as currently documented to ensure that significant impacts on <i>Sabellaria</i> reef are avoided?</p>	<p>The MMO considers that the Sabellaria Reef Management Plan is the appropriate way to avoid negative impacts to Sabellaria Reef.</p> <p>Any reef buffer proposed by the Applicant should be included in the Sabellaria Reef Management Plan and must be signed off by the MMO in consultation with Natural England.</p> <p>The MMO considers that any mitigation must be secured in the Sabellaria Reef Management plan and understands NE are content with the updated wording within the Plan (REP6-041).</p>
3.2.26	Natural England, MMO	<p>Benthic ecology: Cable installation in mixed sediments</p> <p>Noting the Applicants response to ExQ2.2.17 [REP6-061] and taking specific note that the additional measured used at Boreas related to cable installation with a SAC whereas that is not proposed here, does NE and the MMO consider that any additional measures or controls around cable installations in mixed sediments are required?</p>	<p>The MMO does not consider that any additional measures or controls around cable installations in mixed sediments are required for these projects.</p>
3.2.27	The Applicants, Marine Management Organisation and any Interested Party concerned with fish ecology and fisheries	<p>Herring Spawning</p> <p>The MMO made comments at D9 [REP9-060] raising ongoing concerns about DMLs conditions 29 (Schs 13) and 25 (Schs 14) in relation to herring spawning. The Applicants' D10 Submission [D10-014] identified this as an ongoing unresolved matter. The MMO continues to seek a seasonal piling and UXO detonation restriction during the herring spawning period, (but subject to confirmation/ variation in writing</p>	<p>The MMO's proposed condition allows for flexibility as the exact dates of this period will not be known until after the Applicant has completed the necessary assessments and provided sufficient data.</p> <p>The MMO has reviewed the Secretary of State (SoS) Para 10 of Thanet Extension OWF</p>

		<p>between the MMO and the undertaker(s)). The Applicants seek to maintain their position at D9 [REP9-021] that current drafting referring to a period of ‘approximately 14 days’ is precise and enforceable and so meets the five tests for a planning condition set out in the NPPF at paragraph 55. The MMO maintains its view that they are not and has advanced alternative wording that the Applicants have not adopted. The ExAs remind both parties of the importance of, where possible, reaching an agreed position before the end of the Examinations and the undesirability of further consultation being required on this point during the decision-making period by the SoS, as occurred in the Thanet Extension Offshore Wind Farm decision-making process on the same point – in correspondence from BEIS to the parties in that Examination dated 21 November 2019 at paragraph 10 – fish spawning). The ExAs refer the parties to the drafting consulted on by the SoS in that case to assist discussions. By D11 the parties are requested to have agreed drafting on this point or to put in final alternative drafts, followed by final comments from the MMO at D12 and a closing position from the Applicants at D13, enabling the matter to be adjudicated by the ExAs. The dDCO Commentaries also refer at page 18 (Fish Spawning Conditions (Schs 13 Conditions 29 and Schs 14 Conditions 25)).</p>	<p>consultation and has continued discussions with the Applicant.</p> <p>The MMO considers that the condition that has been proposed offers the Applicant more flexibility as the dates of the restriction will be identified with the submission of documentation. This ensures that the Applicant would not need to request a variation from the MMO, which could further halt the progress of the project.</p> <p>The Applicant proposed in a meeting on 26 May 2021 that the phrase ‘up to 31 days’ could replace ‘approximately 14 days’ as due to the location of the projects the main concern within the season is January. In the MMO’s view, this will give the Applicant more certainty as to when they can undertake works and would ensure that the condition meets the necessary test of enforceability.</p> <p>The MMO has sought advice from its scientific advisors on the appropriateness of this wording and will endeavour to update the ExA on its position at Deadline 12.</p>
3.11 Marine and Coastal Physical Processes			
3.11.1	EDF Energy Nuclear Generation Ltd, ESC, MMO	<p>Avoidance of the Coralline Crag</p> <p>Paragraph 15 of the Landfall Hydrogeological Risk Assessment [REP6- 021] states that the HDD is expected to be within the Coralline Crag beneath the cliffs, and the strength of the Coralline Crag is expected to prevent any drilling fluid breakout at this point. In [REP8-052] the Applicants state that</p>	<p>The MMO is currently of the position that the Applicants proposals are correct and that drilling through the Coralline Crag is acceptable and largely unavoidable.</p> <p>The MMO has consulted its scientific advisors on this point to confirm their position and we will provide an update at Deadline 12.</p>

		<p>complete avoidance of the Coralline Crag has never been proposed. The Applicants go on to state any reference to avoiding direct physical disruption to the outcrop of Coralline Crag refers to the parts of the Crag that are visible at the surface; the HDD bores as proposed pass through the Coralline Crag, but beneath its visible surface before 'punching out'. a) Please could you confirm that in referring to the avoidance of direct physical disruption to the outcrop of Coralline Crag it was also your understanding that this meant only those parts visible at the surface and that the HDD bores would in fact pass through the Coralline Crag? b) If this was not your understanding does this cause any concern and what would be the implications?</p>	
3.11.2	The Applicants, MMO	<p>HDD and the lead regulator</p> <p>In [REP7-074] NE states that for most other OWF projects, excluding EA1 and EA3, the MMO has been the lead regulator due to environmental issues normally occurring below Mean High Water. a) How would this work in practice with the LPA leading on HDD activities? b) How will MMO be incorporated in the decision making for the marine elements of HDD?</p>	<p>The MMO notes that the Works No.6 provision is covered in the DCO and DML. The MMO is content that the MMO will be included in the consultation of the HDD element.</p> <p>The MMO notes that NE is also being consulted and that both bodies will be part of the decision making process.</p> <p>The MMO looks forward to collaborative working with East Suffolk Council on this matter.</p>

3. MMO Responses to ExAs dDCO Commentaries

dDCO Commentaries	For the attention of	Matter, Issue or Question	MMO Response
General observations			
Matter raised in previous commentaries [PD-031]	The Applicant bodies discharging consents (MMO, SCC, ESC)	<p>Deemed consent provisions</p> <p>There is precedent for the inclusion of deemed consents in DCOs in circumstances where approvals are required under Articles or Requirements but are not forthcoming in a defined time period. The justification for such an approach rests on the desirability of providing a unified consent under a made DCO and on specific risks to the timely and economic delivery of a nationally significant infrastructure project (NSIP) that it is in the public interest to maintain. It follows that deemed consent provisions are not universally appropriate in all circumstances where a consent is sought. Equally, in assessing the reasonableness of a duration after which a deemed consent comes into force, regard must be had to the technical and institutional complexity of the matters to be decided and whether a decision could reasonably be made in the time-period allowed, prior to the operation of the deemed consent.</p> <p>The reasonableness of deemed consent provisions and the time-period for the grant of deemed consent under a number of provisions remain unagreed between the Applicants, ESC and SCC. Discussions are ongoing.</p> <p>Please provide a latest statement of position ensuring that agreed positions are documented and unagreed positions are clear and enabling the ExAs to adjudicate unagreed positions. Refer specifically to:</p> <ul style="list-style-type: none"> a) Street authority consent under Arts 12; b) Highway authority consent under Arts 13 and 15; c) Water discharge approval under Arts 16; and 	The MMO has no comments to make on this matter.

		d) Authority to survey and investigate the land onshore under Arts 17.	
Articles			
Arts 2	The Applicant East Suffolk Council Suffolk County Council The Marine Management Organisation	Art 2(1) definitions: grid connection works and transmission works Definitions of “grid connection works” and “transmission works” include ‘any related associated development’. a) Are Schs 1 Pt 1 sufficiently clear about what the related associated development is? b) The latest version of the Norfolk Boreas dDCO submitted at D18 in that Examination refines this drafting as follows to say: ‘and any related further associated development in connection with those works’. This appears to add useful precision. Comments on the adoption of this drafting are sought.	a) The MMO does not have any outstanding concerns on the wording. b) The MMO thinks this is helpful and would not object to the inclusion of this wording.
Arts 2	All Interested Parties	Art 2(1) definitions: maintain This definition is wide, a matter raised at ISHs6, but is expressly limited ‘to the extent assessed in the [ESs]’. Parties’ concerns in relation to this matter are noted.	The MMO has no comments to make on this item.
Arts 2	All Interested Parties	Art 2(1) definitions: relevant to onshore substation design Reference to the “substations design principles statement” certified document are noted, and the operation of the substations design process will be discussed further at ISHs16 and 17.	The MMO has no comments to make on this item.
Arts 2/28	The Applicant Any Statutory Undertaker IPs NDA and/ or Magnox Ltd.	Art 2(1) definitions: statutory undertaker In this definition, “statutory undertaker” means any person falling within section 127(8) of the 2008 Act and a public communications provider as defined in section 151 of the 2003 Act...’. a) Does this definition entrain the Nuclear Decommissioning Authority (NDA) and or Magnox Ltd. in	The MMO has no comments to make on this item.

		<p>relation to the decommissioning of Sizewell A Nuclear Power Station?</p> <p>b) If not, is there any need for it (or another definition) to do so, or for further protections to be provided for NDA and/ or Magnox Ltd. See also Arts 28.</p>	
SCHEDULES 13 & 14 — Deemed licences under the 2009 Act – generation assets and offshore transmission assets (the DMLs)			
	The Marine Management Organisation	<p>General</p> <p>The MMO's Deadline 10 submission [REP10-049] at section 4 indicates broad satisfaction with the state of drafting. The ExA understands that the MMO is not seeking further drafting changes to the DMLs. Is this understanding correct?</p>	<p>The MMO can confirm that the ExA's understanding is correct.</p> <p>The current drafting of the DMLs is agreed. Noting that for UXO activities and new scour and cable protection that the inclusion of these conditions are the MMO's without prejudice positions.</p> <p>The MMO still believes these should not be included in the DMLs.</p>
	The Marine Management Organisation	<p>UXO Conditions (Schs 13 Conditions 16 and Schs 14 Conditions 12)</p> <p>The MMO [REP10-049] indicates at paragraph 4.1 that it is 'largely content with the wording' of these conditions, which implies that there may be some final matters remaining to be resolved. If there are any remaining drafting issues that are not resolved, these should be explained in ISHs17 or at Deadline 11.</p>	<p>The MMO is content with the wording of the UXO conditions, noting that the inclusion of these conditions is the MMO's without prejudice position.</p> <p>The MMO still believes these should not be included in the DMLs.</p>
	The Applicant The Marine Management Organisation	<p>Fish Spawning Conditions (Schs 13 Conditions 29 and Schs 14 Conditions 25)</p> <p>ExQ3.2.26 refers. There is apparent outstanding disagreement between the Applicants and the MMO in relation to the precision and enforceability of the current</p>	<p>Please see response above to ExQ 3.2.27.</p>

		<p>provisions. These define the herring spawning period as follows:</p> <p><i>(2) The “herring spawning period” means a period of approximately 14 days between 1 November and 31 January to be confirmed in writing by the MMO following submission of a herring spawning report by the undertaker which analyses the International Herring Larval Survey data for the periods 1-15 January and 16-31 January for the preceding ten years in order to determine when the highest larval densities occur and which includes a methodology for the analysis.</i></p> <p>It should be noted that the MMO position remains that this drafting breaches the guidance on drafting of conditions found in NPPF paragraph 55. They have proposed:</p> <p><i>(2) The “herring spawning period” means the period between 1 November and 31 January to be confirmed in writing by the MMO following submission of a herring spawning report by the undertaker which analyses the International Herring Larval Survey data for the periods 1-15 January and 16-31 January for the preceding ten years in order to determine when the highest larval densities occur.</i></p> <p>The Applicants do not accept this proposal and seek to retain their current drafting.</p> <p>Attention is drawn to a consultation of parties by the SoS on the Thanet Extension Offshore Windfarm dated 21 November 2019. That consultation was conducted in circumstances in which there was an outstanding disagreement between parties on the drafting of a herring spawning condition. Paragraph 10 of that document seeks views on a draft condition which nominates specific and certain dates for the herring spawning period. The parties are referred to the approach proposed there by the SoS and are asked to note that it is most undesirable that this matter</p>	
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		<p>remains outstanding beyond the end of these Examinations.</p> <p>The Applicants and the MMO should note the ExAs' position that any condition should be enforceable, precise and reasonable in all other respects and that in principle the Applicants' current preferred drafting does not meet those tests. They are requested to respond to ExQ3.2.27 submitting either an agreed position or preferred drafts with reasons for differences, enabling the ExAs to adjudicate and recommend final drafting on this point.</p>	
SCHEDULE 17 — Documents to be Certified			
Generally	The Applicants All Interested Parties	<p>Certified documents audit</p> <p>The ExAs welcome the introduction of Schedule 17. The content and effect of documents recorded in the schedule will be raised in ISHs17. The Applicants will be requested to undertake an audit of all certified documents to ensure that version control and citations are correct. This work is to be submitted at Deadline 11. Interested Parties may comment on it at Deadline 12, enabling the Applicants to provide any final correcting revisions at Deadline 13.</p>	The MMO will review the audit and respond at Deadline 12.
Part 2	The Applicants All Interested Parties	<p>Certified documents audit: approval and consultation processes</p> <p>The certified documents include outline and in-principle plans and strategies secured by Requirements and to which the relevant decision maker (normally the relevant local planning authority or the MMO) must refer when discharging Requirements. As part of the audit of certified documents, and with reference to the preferred draft DCOs, the Applicants are requested to prepare a table that identifies the following elements:</p> <ul style="list-style-type: none"> • The name of each outline or in-principle plan and strategy; The name of any body consulted during its preparation; 	The MMO will review the audit and respond at Deadline 12.

		<ul style="list-style-type: none"> • Whether and if so which provisions in the dDCOs are relied upon to secure a final or detailed version of the document; • The identity of the body approving any final or detailed version of the document; and • The identity of any consultees engaged in the preparation or approval of the final or detailed version of the document. 	
SCHEDULE 18 — Offshore Ornithology Compensation Measures			
	<p>The Applicants The Marine Management Organisation</p>	<p>Consultation on Schedule 18 Measures</p> <p>In [REP10-049], the MMO maintains the view that a consultation period of six weeks should be specified within Schedule 18 for reasons set out in [REP8-156]. The Applicants' positions remain [REP10-014] that this level of detail is inappropriate and that such details will be determined by the SoS at the relevant time post-consent. The ExAs consider that there is benefit in drafting a specific and certain provision (see NPPF para 55).</p> <p>a) Do the Applicants continue to object to a six-week consultation period?</p> <p>b) If so, please propose an alternative period.</p> <p>c) If this matter remains unagreed, the MMO is requested to set out its final position at D12.</p>	<p>c) The MMO notes the request set by the ExA and will provide the final position at Deadline 12.</p>

4. Underwater Noise Update

4.1 Sequential Piling

In REP10-049 the MMO outlined that it was not content that the Applicant has adequately assessed the risk of installing more than one monopile in a 24-hour period in their Underwater Noise Modelling Update [REP8-040] submitted at Deadline 8. The MMO also stated that it was working with the its scientific advisors and the Applicant to reach an agreement on this modelling by Deadline 11.

The MMO can now confirm that the updated Underwater Modelling Document to be submitted by the Applicant at Deadline 11 is acceptable to both the MMO and its scientific advisors. The MMO welcomes the changes made to the data by the Applicant and welcomes the inclusion of the phrase *“If at the installation programme design stage a scenario is identified where two piles may be installed sequentially at a distance greater than 2500m in a 24-hour period, further modelling would be provided, if requested by the MMO”* which was agreed between the MMO and the Applicant. The MMO has no outstanding issues remaining and considers this topic to be closed.

5. Contaminant Sampling Update

5.1 Sediment Sampling

In REP10-049 the MMO outlined that the Applicant had submitted a sampling plan request to the MMO (ref: SAM/2021/00026) and that the MMO would provide the Examining Authority (ExA) with a written update at Deadline 11.

At present, the MMO’s scientific advisors have received the information submitted by the Applicant and have produced a sample plan for the Applicant to use when undertaking sediment sampling.

The MMO is currently preparing the sample plan response to the Applicant and will provide an update to the ExA at Deadline 12.

6. Comments on any additional information/submissions received at Deadline 10

6.1 Natural England (NE)

The MMO has reviewed the following documents submitted by NE and has no comments to make on their content:

- NE Cover Letter Deadline 10 [REP10-050]
- Appendix I1h- NE Risk and Issues Log- Deadline 10 [REP10-053]
- Appendix C10- NE Further Advice to the Watercourse Crossing of the Hundred River- Deadline 10 [REP10-052]

Appendix A21- Natural England’s Comments on Without Prejudice Compensation Mechanisms - Annex 1 – Prey Availability Compensation Mechanisms [REP10-051]

The MMO understands that compensation packages for these projects remains an area of disagreement between NE and the Applicant, however, the MMO welcomes the regular dialogue between both parties and is hopeful that finalised compensation packages will be produced prior to the end of these Examinations.

The MMO also notes that NE has stated that prey availability measures are the most appropriate compensatory mechanism to attempt to progress these projects, the MMO defers to NE on the appropriateness of any compensation packages but reminds the Applicant that should any marine licensable activities form part of the proposed compensation measures, the MMO must be consulted as a part of their implementation and a separate marine licence application will be required.

Finally, the MMO agrees with NE’s assertion that the regulatory bodies for commercial fisheries in English waters (beyond 6nm) are Defra and the MMO and should any proposed compensation package potentially impact commercial fisheries, the MMO must be consulted.



6.2 The Applicant

The MMO has reviewed the following documents submitted by the Applicant and has no comments to make on their content:

- Applicant's Deadline 10 Cover Letter [REP10-001]
- Applicants' Comments on Historic England Deadline 9 Submissions [REP10-013]
- Applicants' Comments on Trinity House Deadline 9 Submissions [REP10-022]

Applicants' Comments on Natural England's Deadline 9 Submissions [REP10-017]

The MMO welcomes NE's clarification that they welcome the additional modelling undertaken by the Applicant in their Underwater Noise Modelling Update [REP8-040]. Please see Section 4 of this document for the updated MMO position on this issue.

The MMO notes that there remains disagreement between the Applicant and NE as to the potential impacts to Red-Throated Divers as a result of these projects. The MMO defers to NE on all Ornithological matters.

The MMO notes that there remains disagreement between the Applicant and NE as to the appropriateness of the proposed compensation packages for all the Ornithological features. The MMO welcomes the continued engagement on this matter and is hopeful that a mutual position can be reached prior to the close of these Examinations for the SoS to make a clear judgement as to the need for any compensation packages. The MMO defers to NE on content of the proposed compensation measures.

The MMO notes the potential in-combination impacts of these works on Ornithological features remains an outstanding issue between the Applicant and NE. The MMO defers to NE on this matter but hopes that both parties can reach a satisfactory position prior to the close of these Examinations.

The MMO welcomes further confirmation that the Applicant has addressed the majority of issues held by NE and notes that all remaining, outstanding issues are associated with Schedule 18.

Applicants' Comments on Royal Society for the Protection of Birds' (RSPB) Deadline 9 Submissions [REP10-018]

The MMO notes that the RSPB and the Applicant do not agree on the compensation measures proposed by the Applicant for any Ornithological features that may be impacted by these works. The MMO defers to NE and RSPB on this matter but is hopeful that an agreement can be reached between all parties specialising in Ornithology to ensure that robust compensation measures are in place at the close of these Examinations.

The MMO notes the level of expertise as well as the work conducted by RSPB with regards to Seabird by-catch reduction measures and notes that the Applicant has committed to working closely with RSPB to make use of the knowledge. The MMO welcomes this and would encourage dialogue of this nature between Applicants and stakeholders for future applications.

7. Comments on Applicant's comments on MMO Deadline 9 Response [REP10-014]

Action Points from Issue Specific Hearing (ISH) 15

ID-4

The MMO notes that the Applicant remains of the opinion that the inclusion of a 6-week timescale for consultation of compensation measures is not appropriate to be on the face of the DCO for these projects. The MMO still disagrees with this point and considers that this timescale should be included so all parties understand their requirements at the post-consent stage. However, the MMO agrees with the Applicant that these positions are unlikely to change prior to the end of these Examinations and will be decided by the SoS, as such, the MMO considers this issue to be closed.

ID-7



The MMO notes that the Applicants have not altered their position on Condition 28 of Schedule 13 and Condition 24 of Schedule 14, with regards to Herring Spawning and have continued to include the phrase 'period of approximately 14 days'. The MMO still considers that the inclusion of this phrase would mean that the condition would not meet the tests of enforceability or precision that all marine licence conditions need to meet.

As per the Discussions above and the information highlighted by the ExA the MMO remains in discussion with the Applicant on the wording of this condition and will provide a finalised agreed position with the Applicant at Deadline 12 after consultation with our scientific advisors.

ID-10

The MMO notes that the Applicant considers that the matter of contaminant sampling is unlikely to be concluded within the timeframe of these Examinations, this is due to the timescale required for engagement on and approval of the sampling plan, collection of samples, analysis, reporting and sufficient time for engagement on the report with the MMO and its advisors. The MMO agrees with this opinion. The MMO also notes that the Applicant does not consider that any changes will be required to the DML's because of this updated sampling, the MMO concurs with this position. Please see Section 5.1 of this document for the updated MMO position on the sampling plan requested by the Applicant.

Comments on any additional information/submissions received at Deadline 8

ID-18

The MMO notes that the Applicant does not consider that the outline Offshore Operation and Maintenance Plan (OOMP) should be updated to reflect that a separate marine licence should be required for the installation of cable or scour protection in areas where it was not installed previously. The MMO notes this is due to a without prejudice position and that the dDCO includes the current condition wording to allow for five years.

The MMO acknowledges this position but maintains that reference to installing any additional cable/scour protection in different locations to cable/scour protection installed during construction should be removed from the DML, and the OOMP should highlight that a new marine licence would be required.

The MMO believes that this is an agree-to-disagree position and it is now for the SoS to decide on if new cable and scour protection should be included within the dDCO at all.

ID-19

The MMO welcomes the Applicant's confirmation that the formatting error contained within Condition 3; Part 5 of Schedule 18 has been corrected. The MMO has no further comments to make on this point.

ID-51

The MMO welcomes the Applicant's clarification that the removal of plastic waste has not been put forward as a proposed compensation measure at this time but has been mentioned as a potential line of inquiry in the future. The MMO would ask to be included in any potential conversations regarding this compensation strategy.

The MMO notes that the Applicant considers the Outline Sabellaria Reef Management Plan is agreed with NE.

ID-56 & ID-57

The MMO also notes that the Applicant has stated that NE are content with both the In-Principle Monitoring Plan and Outline Landfall Construction Method Statement, the MMO welcomes this.

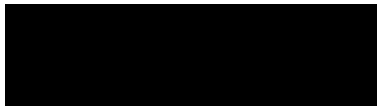
ID-58

The MMO welcomes the Applicant's clarification regarding the Horizontal Directional Drilling Verification Clarification Note [REP6-024], highlighting the outstanding issue with NE is whether this



document should be certified in the DCO/DML. The MMO notes that the Applicant considers this should not be the case as this document will be superseded by the Landfall Construction Method Statement. The MMO understands this position however it considers that, as the document is providing further information on the methods to allow NE to be content with the works, then this document should be certified.

Yours Sincerely,



Rebecca Reed
Marine Licensing Case Officer

