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**Subject:** EN010084 Thanet Extension: Deadline 5 Submission  
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**Attachments:** [EN010084 Marine Management Organisation Deadline 5 Submission.pdf](#)

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To Whom It May Concern,

Following the Planning Inspectorate's Rule 8 letter dated 18 December 2018 and the latest round of Issue Specific Hearings, please find enclosed the Marine Management Organisation's submission for Deadline 5.

Kind regards,

Adam

Adam Suleiman | Marine Licensing Case Officer | Her Majesty's Government – Marine Management Organisation.

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# Marine Management Organisation

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EN010084  
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29 April 2019

To Whom It May Concern,

## **Planning Act 2008, Vattenfall Wind Power Limited, Proposed Thanet Extension Offshore Wind Farm**

The MMO is an interested party for the examination of Development Consent Order (DCO) applications for Nationally Significant Infrastructure Projects (NSIPs) in the marine area. Should consent be granted for the project, the MMO will be responsible for monitoring, compliance and enforcement of Deemed Marine Licence (DML) conditions.

On 30 July 2018, the Marine Management Organisation (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 Vattenfall Wind Power Limited (the "Applicant") for a development consent order (the "DCO Application") (MMO ref: DCO/2016/00003; PINS ref: EN010084), for the construction, operation and maintenance of the proposed Thanet Extension Offshore Wind Farm (TEOWF).

This document forms the MMO's deadline 5 submission, comprising:

- responses to submissions received at deadline 4, 4b and 4c
- comments on actions arising from the latest round of Issue Specific Hearings (ISH)
- comments on the applicant's draft DCO Revision E
- responses to the Examining Authority's (ExA) second round of written questions (ExQ2)

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.



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Yours faithfully



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## Response to submissions received at deadline 4, 4b and 4c

### 1.1 Response to Applicant's 'Response to Deadline 4 Submissions by Interested Parties (REP4C-007)'

1.1.1 **Construction noise effects on herring & sole** – the applicant has provided additional modelling at deadline 4c. The MMO is currently considering this submission in consultation with its technical advisors to ascertain whether the modelling addresses prior concerns. The MMO will provide an update at deadline 5a.

1.1.2 **DML maximum parameters** - the MMO acknowledges the applicant's response however maintains its position and concerns outlined at deadline 4 (REP4-031). The project should be limited to the maximum parameters assessed in the Environmental Statement (ES), and that these should be clearly defined on the face of the DMLs. Please see further detail at paragraphs 4.1.6 - 4.1.9.

1.1.3 **Arbitration** – please see comments on arbitration at 3.1.3 - 3.1.9.

1.1.4 **DML drafting matters** – the applicant states that the definition of commence has been updated. This does not appear to be the case in Revision E of the dDCO, the MMO seeks clarification from the applicant on the proposed revision.

With respect to inclusion of volumes, figures and hammer energy maximum parameters, the applicant states they have been included in the updated "*PD audit note*" at deadline 4C. The MMO maintains that these should be explicitly provided for on the DMLs for reasons stated at paragraphs 4.1.6 - 4.1.9.

1.1.5 **Schedule of Monitoring** – the MMO notes the applicant's response that it does not intend to produce an updated schedule of monitoring though recognises this has now been requested by the ExA. The MMO will review the updated schedule in due course. Please see further comments in response to the Examining Authority's second set of written questions (ExQ2) at 0.

### 1.2 Response to submissions related to the Structures Exclusion Zone (SEZ)

1.2.1 The MMO acknowledges the submissions made in reference to the SEZ and defers to the respective navigational, historic and SNCB stakeholders as to the robustness of the information provided for those areas screened in.

1.2.2 With respect to the DMLs the MMO is satisfied that the SEZ is sufficiently secured however would be happy to review any proposed wording should any issues be raised by other stakeholders.

1.2.3 The MMO further notes the separate consultation underway with respect to the material change request and will provide full comment for the associated deadline.

## 2. Response to actions arising from Issue Specific Hearing 8

## 2.1 Action 9 – Harbour Porpoise of the Southern North Sea SAC

2.1.1 Following Revision B of the draft Site Integrity Plan (SIP) ([REP4-022](#)) the MMO has the following comments:

2.1.2 Current wording in the dDCO suggests the Site Integrity Plan (SIP) is to be approved prior to ‘operation’ of the scheme. The MMO queries whether this is an error and that the applicant intended the wording to schedule 11, part 4 condition 12(k) and schedule 12 part 4 condition 10(l) to require the SIP to be submitted prior to commencement of the licensed activities.

2.1.3 The condition should also be amended to recognise that the timescales on the DMLs are not currently consistent with the draft SIP which proposes two 4-month review stages.

## 2.2 Action 12 – Cable Protection Installation within the Inter-Tidal Area

2.2.1 The MMO advises that further to the SoCG at deadline 3 this point has since been agreed and is adequately secured on the DCO.

## 2.3 Action 17 - Outline Offshore Operation and Maintenance Plan

2.3.1 In response to the ExA’s query regarding changes made, the MMO requested changing of the colours of certain activities from amber to green to correctly illustrate that those in amber may not be undertaken under the existing DMLs, if consented. Rather, an additional marine licence(s) or variation to the existing licence would be required to assess the potential impact of those activities at the given time and in the circumstances of which they would be undertaken. This was requested to ensure that the MMO can exercise sufficient control and approval over O&M activities.

## 3. Comments on the Applicant’s Draft Development Consent Order (dDCO) Revision E

### 3.1 The dDCO and DMLs

3.1.1 The following issues in respect of the dDCO/DMLs remain outstanding and under discussion with the applicant:

3.1.2 **Minor drafting requests** – there are a number of minor wording amendments being discussed between the MMO and the applicant. If necessary the MMO will provide full clarification of any unresolved requests at deadline 5A, when comments are submitted on any revised dDCO submitted by the Applicant at Deadline 5).

3.1.3 **Arbitration** – the MMO maintains that the current dDCO drafting does not make it explicit that the arbitration provisions do not apply to approvals under the DMLs.

3.1.4 Article 36 in the dDCO applies to ‘differences’ which arise under the provisions in the Order. The MMO believes that ‘differences’ only arise when the MMO is to provide further approval, for example in the discharging of conditions around pre-construction documentation and monitoring plans. The MMO maintains that such an

approval is a regulatory decision, it is not 'agreeing' or 'disagreeing' with the applicant so that a divergence of views can properly be characterised as a 'difference'.

3.1.5 The applicant states in their deadline 4c submission that: “...*the arbitration process is not solely to be utilised following a decision being made by a stakeholder as part of the DMLs. The arbitration process can be used to resolve disagreements between the parties and to minimise the delay caused by this. This could include, for example, disagreements about the type or production of evidence.*” Such examples are technical decisions which fall correctly on the MMO to take. The MMO questions whether an independent arbiter with no technical background would be best placed to make such a decision on evidence requirements.

3.1.6 Nonetheless, as previously stated, an arbitration mechanism involving the MMO would in practice only be related to an approval process. Since Parliament has vested the public-law functions regarding discharging marine licence conditions in the MMO, removing its decision-making functions and placing them into the hands of a private arbiter is inconsistent with the MMO’s responsibilities.

3.1.7 The MMO recognises the intention of the arbitration provision to resolve disputes between the applicant and third parties, however maintains that this provision should not be used to remove the decision making powers from the MMO (as the regulator delegated by Parliament to take such decisions) and place this in the hands of an independent arbiter.

3.1.8 The applicant further comments that “...*the MMO has previously admitted to being under resourced and has accordingly requested an extension of the time available for them to approve the discharge of conditions.*” The MMO would add that the increases in timescales that have been requested are not primarily due to MMO resources. This request is primarily due to the increasing complexity of the documents that require approval as well as the wider considerations of impacts on the environment, human health and other marine users. In the MMO’s experience it is often the case that documents submitted are not fit for purpose at the first iteration, resulting in several rounds amendments and further consultation with other stakeholders prior to approval. Notwithstanding, it is unclear how an arbitration mechanism would assist in such a situation.

3.1.9 The MMO’s full position on arbitration is presented in further detail at deadline 3 ([REP3-078](#)) and deadline 4 ([REP4-031](#)) respectively.

3.1.10 The MMO supports the amended wording to article 36 propose by Trinity House (TH) in their deadline 3 submission ([REP3-071](#)).

3.1.11 Following ISH9, the MMO notes action 5 directed to the applicant and TH whereby the applicant is requested to research the precedent for arbitration. If necessary the MMO will provide comment in due course on the findings.

3.1.12 **Interpretation of commence** – The provisions for pre-commencement activities (i.e. seabed preparation) are at present not sufficient and therefore, as currently drafted, the MMO considers that seabed preparation activities should be included in the definition of commence. The definition of pre-commencement activities and how they are secured on the DML remains under discussion through the SoCG. The MMO has engaged directly with the applicant to highlight those conditions currently only linked to the definition of commence which also need to apply to pre-commencement activities. The MMO awaits clarification on how this will be reflected on

the DML.

**3.1.13 Volumes and figures** – The MMO considers that the project should be limited to the maximum volume and impact areas for sandwave levelling that were assessed in the ES, and that these limits are clearly stated on the DMLs. Should the applicant wish to seek agreement to undertake licensed activities outside of these limits, the impact of this amendment should then be most appropriately considered and approved through a variation request. Whilst these values have been provided in various documents throughout the examination period, there is currently nothing on the face of the DMLs (that would act as standalone marine licenses post consent) that specifies these limits.

**3.1.14** The MMO requests that the maximum disposal volumes for each activity are clearly defined on the DML for each disposal site, and the disposal sites are accurately referenced on the DMLs. The MMO has recently provided the disposal site references to the applicant and will therefore look for these changes in the next revision of the dDCO.

**3.1.15** The maximum disposal volumes stated in part 3, condition 1(d), have combined the disposal volumes from drill arisings and the disposal volumes for seabed preparation. These should be separated out by activity. Disposal from drill arisings is of different material to sandwave levelling, and the current wording could allow for the disposal of more drill arisings than has been assessed in the ES. Furthermore, the total figure stated in the condition does not total the two figures cited in (i) and (ii).

**3.1.16 Hammer Energy** – the MMO requests the maximum hammer energy be stated on the DMLs. The maximum hammer energy is an important metric in ensuring that impulsive noise is within the maximum that was assessed in the ES (and potentially the HRA). If the proposed hammer energy is to increase, the implication is that underwater noise impacts will increase, and further modelling would be required to demonstrate the scale of this impact. Such a change would most appropriately be dealt with through a variation to the DML.

**3.1.17 Timescales for approval of pre-construction plans and documentation** – at deadline 4 the MMO commented that it was in consultation regarding a case-specific approach regarding approval periods for pre-construction plans and documentation. Discussion remains ongoing through the SoCG on this matter. Following recent developments on other OWF cases progressing through Examination the MMO is considering its position and will provide a suggested approach in due course.

**3.1.18 Cessation of piling – noise levels** - The MMO submitted its response at deadline 3 providing further detail on its powers to stop works, and the limitations in regards to the current wording of the condition at schedule 12, condition 16(3) and schedule 11, condition 18(3). The MMO seeks to ensure that it is notified as soon as possible of any issues that indicate noise levels may be greater than predicted in order to agree any potential additional monitoring or mitigation measures in a timely manner. As such, the MMO supports the amended condition wording proposed by Natural England and included in the MMO's deadline 3 response. This is a noted area of

disagreement on the SoCG with the applicant.

#### 4. Responses to the Examining Authority's (ExA) second round of written questions (ExQ2)

##### Question 2.1.5 – Schedule of Monitoring: Geophysical and Benthic Monitoring

Question to: The Applicant and the MMO:

*“Section 3.2 of Natural England’s [REP4-033] sets out comments in relation to the Applicant’s Schedule of Monitoring [REP3-067] and as a consequence, the Biogenic Reef Mitigation Plan and geophysical and benthic monitoring provisions for Goodwin Sands pMCZ.*

*“c) Could the Marine Management Organisation please comment as to whether the new pre- and post-construction monitoring provisions in respect of Goodwin Sands pMCZ included at DML Conditions 13(2)(b) and 15(5) of [REP4-003] address its concerns about the certainty of the MCZ assessment?”*

4.1.1 The MMO welcomes securing the pre- and post-construction monitoring provisions for Goodwin Sands pMCZ on the DML, however suggests the following amendments:

4.1.2 At 13(2)(b) – “certain works” should be revised to say “licensed activities”.

4.1.3 At 13(2)(i) – the MMO questions whether reference to “sub-paragraph (2)(c)” in this section is correct given this refers to a different set of surveys related to saltmarsh.

4.1.4 At 13(2)(b)(i) and (ii) – the current wording only provides for surveys to be undertaken post-construction – i.e. after cable protection has been installed. This wording needs to be amended to make it clear that surveys will also be undertaken pre-construction – i.e. where it is anticipated cable protection will be installed and prior to such works being carried out.

4.1.5 At 13(2)(b)(i) – the current wording should also be amended to provide for surveys taken out pre-construction and post-construction for sandwave clearance and post-construction, in order to be able to fully assess the potential impact if sandwave clearance were undertaken in the pMCZ.

##### 4.1.6 Question 2.4.7 – Certified Documents: DML security: realistic worst-case scenario parameters for the offshore project description

Question to: The Applicant and the MMO:

*“The Applicant’s [REP3-053] sets out the realistic worst-case scenario parameters for the offshore project description assessed in the Environmental Statement. The Marine Management Organisation maintains that the offshore design parameters should be defined on the face of the DML which, it says, would be consistent with the normal approach to marine licences and would ensure a proper public consultation mechanism should a DML variation be sought in the future.*



*“c) Would it assist if the document at [REP3-053] (or an updated version) became a separate certified document?”*

4.1.7 The MMO understands that this may have been suggested by the ExA to offer clarity on where specific parameters are contained and agrees that the summary document would be a clearer document to include.

4.1.8 However, as outlined at deadline 4, once granted, the marine licence essentially becomes a standalone document from the rest of the DCO and falls back to the MMO to regulate and amend in accordance with part 4 of the Maine and Coastal Access Act (2009). In Revision E (RevE) of the DCO, there does not currently appear to be any conditions limiting the works to the parameters defined in the certified ES (or any documents associated with the ES). The MMO would need such a condition in order to limit the maximum parameters that are permitted under the DML to those set out in the ES. However, this could be more restrictive for the applicant if they were to seek agreement from the MMO to move outside of the activities considered in the ES should they want to.

4.1.9 The MMO therefore believes it would be more appropriate to transfer the maximum parameters defined in the ES onto the DML (as limits on the authorisation imposed through the licence). These parameters can then be amended, if required through a variation request (subject to the MMO being satisfied the change in parameters does not result in any materially new or materially different effects from what was assessed in the ES).