

Vattenfall Wind Power Ltd

Thanet Extension Offshore Wind Farm

Appendix 44 to Deadline 6 Submission:
Applicant's response to commentary of dDCO
from Interested Parties

Relevant Examination Deadline: 6

Submitted by Vattenfall Wind Power Ltd

Date: May 2019

Revision A

Drafted By:	Vattenfall Wind Power Ltd
Approved By:	Daniel Bates
Date of Approval:	May 2019
Revision:	A

Revision A	Original document submitted to the Examining Authority

Copyright © 2019 Vattenfall Wind Power Ltd
All pre-existing rights retained

	DL5 submission	"Has the Applicant addressed at DL5A?"	Applicant's response at Deadline 6	Amendments made to the dDCO
	Natural England			
1.	<p>Schedule 12 Export Cable System - Part 4 Conditions – Condition 13 2 (a) – As mentioned previously in section 2.1, there is reference to ground truthing the pre-construction geophysical data within the BRMP and the schedule of monitoring. However, for completeness it would be useful to explicitly state that ground truthing will be carried out within this condition, to ensure a clear mechanism to carry out the surveys is provided.</p>	<p>No -The applicant has not made the ground truthing associated with the Biogenic Reef Plan and the schedule of monitoring explicit within this section. Natural England understand it is stated within the BRMP and the schedule of monitoring, however for completeness it would be useful for it to be explicit on the face of the DCO.</p>	<p>The Applicant considers that such a reference should be to Condition 15 (2) (b), rather than Condition 13. The Applicant is content to explicitly state on the face of the dDCO that the ground truthing and monitoring associated with the BRMP will be carried out. The dDCO will be updated accordingly.</p>	<p><i>(i) cable protection is <u>to be installed within the Goodwin Sands rMCZ (or as designated the Goodwin Sands MCZ) in accordance with <u>condition 11(1)(b)</u>, ground truthing of the geophysical surveys carried out in accordance with subparagraph (2)(ed), using drop down video and to be focussed on the areas where cable protection has been installed to monitor epifaunal communities and inundation by sand;</u></i></p>
2.	<p>Schedule 12 Export Cable System - Part 4 Conditions – Condition 13 (2) (b) – It states “In the event that certain works are carried out in the Goodwin Sands rMCZ...” Further reference to what these works are should be made clearer to avoid any ambiguity.</p>	<p>Yes - The Applicant has removed the wording highlighted in our response which makes it clear on what works the condition is referring to.</p>	<p>The Applicant notes the representation and notes that no further action is required.</p>	<p>No further amendments are required.</p>

	DL5 submission	"Has the Applicant addressed at DL5A?"	Applicant's response at Deadline 6	Amendments made to the dDCO
	Natural England			
3.	<p>Schedule 12 Export Cable System - Part 4 Conditions – Condition 13 (2) (b) (i) – Reference is made to sub paragraph 2(c) however, paragraph 2(c) refers to the saltmarsh plan which is not in line with this paragraph. This requires further clarification from the applicant.</p>	<p>No - This is a minor comment, however any further clarification on this point would be welcomed.</p>	<p>The Applicant considers that such a reference should be to Condition 15 (2) (b), rather than Condition 13.</p> <p>The Applicant welcomes the clarification from Natural England and agrees that the reference should be amended. This will now refer to 2(d), which relates to the full sea floor coverage swath-bathymetry survey.</p>	<p><i>(i) cable protection is <u>to be installed within the Goodwin Sands rMCZ (or as designated the Goodwin Sands MCZ) in accordance with condition 11(1)(b), ground truthing of the geophysical surveys carried out in accordance with sub-paragraph (2)(ed)</u>, using drop down video and to be focussed on the areas where cable protection has been installed to monitor epifaunal communities and inundation by sand;</i></p>

	DL5 submission	"Has the Applicant addressed at DL5A?"	Applicant's response at Deadline 6	Amendments made to the dDCO
	Natural England			
4.	<p>Schedule 12 Export Cable System - Part 4 Conditions – Condition 13 (2) (b) (ii) – It states that geophysical monitoring will be “interpreted” to help monitor changes in sediment type following sandwave clearance. What will this interpretation involve?</p> <p>Furthermore, in line with Natural England’s suggestion at section 9.5.1.6. and the applicants Condition 13 (2) (b) (i), pre-construction ground truthing drop down video surveys should be extended to include areas likely to be impacted by sandwave clearance.</p>	<p>No - Although, the text has been changed there is still no indication what this interpretation will involve. Furthermore, there also seems to be a typo with some repeating text at the end of condition (b) (i).</p> <p>Regarding the second point, although it has now been made explicit in the post-construction stage that ground truthed surveys will be carried out within the pMCZ if sandwave clearance has occurred (see new additional text at condition 17 (5)), condition 13 (2) (b) (ii) still lacks any mention of ground truthing any pre-construction data. To monitor any change there needs to be equal survey effort and methodologies to gather comparable</p>	<p>At b(ii) the Applicant agrees that the language is repetitive; and this has been corrected in the drafting.</p> <p>Regarding the definition of “interpretation”, this is recognised and established phraseology in relation to geophysical survey work. Ordinarily geophysical survey data gives an indication of obstructions, topography and other land form type but it can also be interpreted in addition to describe sediment type. Sandwaves being cleared could lead to a change from sands and gravels to coarser gravel, which would mean a net loss of sands and gravels from the MCZ. This approach has been established in the Walney MCZ (also designated for sediment (muds)) and allows the Applicant to more accurately review, analyse and interpret that data at an appropriate scale.</p> <p>The Applicant is content to explicitly make reference to ground-truthing of pre-construction data on the face</p>	<p><i>“...cable protection is to be installed within the Goodwin Sands rMCZ (or as designated the Goodwin Sands MCZ) in accordance with condition 11(1)(b), ground truthing of the geophysical surveys...”</i></p>

	DL5 submission	"Has the Applicant addressed at DL5A?"	Applicant's response at Deadline 6	Amendments made to the dDCO
	Natural England			
		data for pre and post construction.	of the dDCO.	
5.	Part 4 Conditions – Condition 13 (2) (e) – Natural England welcome the addition of further surveys for ringed plover to inform a ringed plover mitigation plan. However, we would welcome further discussion with the applicant to seek clarity on how the surveys will be used to inform and implement additional mitigation.	Yes – Following discussion at a meeting held with the applicant on the 02/05/2019 we were reassured that measures will be in place to ensure that if ringed plover are present the necessary actions will be taken by the ECoW and the contractors to ensure any mitigation is correctly	The Applicant notes the representation and notes that no further action is required.	No further amendments are required.

	DL5 submission	"Has the Applicant addressed at DL5A?"	Applicant's response at Deadline 6	Amendments made to the dDCO
	Natural England			
		implemented.		
6.	<p>Schedule 12 Export Cable System - Part 4 Conditions – Condition 15 (5) – Within the pre-construction section at Condition 13 (2) (b) (ii) it states that data will be interpreted to determine the potential effects from sandwave clearance within the pMCZ. At condition 15 (5) regarding the post construction phase there is no reference to monitoring the effects of sandwave clearance within the pMCZ, only cable protection. There needs to be sufficient linkages between the pre and post construction surveys to determine any impacts from these works. Additionally, and as stated in Natural England's response at Deadline 4 within section 3.2.1.4, there needs to be a widening of these post-construction ground truthed surveys to cover the areas impacted by sandwave clearance within the pMCZ.</p>	<p>Yes – What is now condition 17 (5), the applicant has added in the text “or sandwave clearance” which ensures post-construction surveys will determine any impacts from both cable protection and now sandwave clearance within the Goodwin Sands pMCZ.</p>	<p>The Applicant notes the representation and notes that no further action is required.</p>	<p>No further amendments are required.</p>
7.	<p>Schedule 12 Export Cable System - Part 4 Conditions – Condition 15 – Within the BRMP it is made clear that post-construction monitoring will be undertaken to validate the success of any micrositing. However, there is no reference to this within condition 15, and 17 of Schedule 11 Part 4. For completeness, it should explicitly state within this condition that this monitoring will be carried out. This will ensure a clear mechanism is there. Also, in line with the applicant's assertions that ground truthing data will be collected pre-construction for the BRMP this should be</p>	<p>Ongoing – This point was raised within the meeting of the 02/05/2019 with the applicant. The applicant took an action away to review the addition of the BRMP post-construction within the DCO.</p>	<p>The Applicant is content to explicitly state on the face of the dDCO that the post construction monitoring associated with the BRMP will be carried out. The dDCO will be updated accordingly. The Applicant is also content to make clear ground truthing would be collected pre-construction for the BRMP to</p>	<p><i><u>(a) appropriate surveys (including ground-truthing of the bathymetry surveys required under Condition 15(2)(d)) to determine the location and extent of any biogenic reef features (Sabellaria spinulosa) inside the area(s) within the Order limits in which it is proposed to carry out construction</u></i></p>

	DL5 submission	"Has the Applicant addressed at DL5A?"	Applicant's response at Deadline 6	Amendments made to the dDCO
	Natural England			
	committed to post-construction to aid in determining the success of any micro-siting.	From Natural England's perspective the commitment for post-construction surveys is already made within the BRMP and schedule of monitoring. Therefore, like for pre-construction surveys associated with the BRMP, the post-construction surveys should also be added to the DCO.	assist post-construction measures.	<u>works, as provided for in the Biogenic Reef Mitigation Plan;</u>
8.	Specific Query from the applicant following the meeting on the 02/05/2019 – Natural England to review the SIP wording in the dDCO.	Natural England is happy with the wording, however the changes at Schedule 11 – Part 4 - Condition 13 (k), need to be mirrored in the relevant condition of schedule 12 for the export cable system (Schedule 12 – Part 4 – Condition 11 (k)).	The Applicant notes the representation and has updated this condition accordingly in the dDCO submitted at Deadline 6.	<p><i>A site integrity plan, which must <u>be approved in writing by the MMO in consultation with Natural England prior to the commencement of the licensed activities and which must</u> accord with the outline site integrity plan (as certified in accordance with article 35) and in accordance with the site integrity plan:</i></p> <p><i>(2) be approved in writing by the MMO in consultation with Natural England:</i></p> <p><i>(i) four months in advance of any geophysical surveys</i></p>

	DL5 submission	"Has the Applicant addressed at DL5A?"	Applicant's response at Deadline 6	Amendments made to the dDCO
	Natural England			
				<i>being undertaken; and (ii) a second time four months prior to the carry out of the next relevant noisy activity</i>
Deadline 5A submission		Applicant's response at Deadline 6		Amendments made to the dDCO
MCA				
9.	<p><u>Pre-construction plans and documentation</u> The MCA requests that the following paragraph: (4) No part of the authorised scheme may commence until the MMO, in consultation with the MCA, has given written approval of an Emergency Response Co-operation Plan (ERCoP) which includes full details of the plan for emergency response and co-operation for the construction, operation and decommissioning phases of that part of the authorised scheme in accordance with the MCA recommendations contained within MGN543 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues", and has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that part of the authorised scheme, adequately addressed all MCA recommendations contained within MGN543 and its annexes. Is replaced with: No part of the authorised project may commence until the MMO, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that stage of the project, adequately addressed all MCA recommendations as appropriate to the authorised project contained within MGN543 "Offshore Renewable Energy</p>	<p>The Applicant notes the responses but does not agree that the content of the condition requires amendment. The process outlined by the Applicant ensures that there is a specific mechanism through which that approval is documented and evidenced by the Applicant. It would not be robust – and indeed would place the Applicant at a disadvantage - if such approval was simply provided unilaterally by the MMO. The Applicant has included minor amendments to this condition within the revised dDCO, to provide clarity.</p>	<p><i>No part of the authorised scheme may commence until the MMO, in consultation with the MCA, has given written approval of an to an Emergency Response Co-operation Plan (ERCoP), which includes full details of the plan for emergency response and co-operation for the construction, operation and decommissioning phases of that part of the authorised scheme. <u>This must be in accordance with the MCA recommendations contained within MGN543 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues". In providing its approval, the MMO, and has must confirmed</u> in writing that the undertaker has taken into account</i></p>	

Deadline 5A submission	Applicant's response at Deadline 6	Amendments made to the dDCO
<p>Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues" and its annexes. Although the ERCoP is an important document which MCA must approve, it is a working document throughout the lifetime of the development. The purpose of this revision is to ensure the applicant discusses the requirements of MGN 543, which includes a SAR checklist to demonstrate all aspects have been addressed including the ERCoP.</p>		<p><i>and, so far as is applicable to that part of the authorised scheme, adequately addressed all MCA recommendations contained within MGN543 and its annexes.</i></p>
<p>10. <u>Notifications and inspections condition 6</u> The MCA requests that clause (11): 11) In case of damage to, or destruction or decay of, the authorised scheme seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify MMO, MCA, Trinity House and the UK Hydrographic Office. Is amended to include the following, to ensure that the MMO and MCA receives notification of any cable exposure. In case of exposure of cables on or above the seabed, the undertaker must within three days following identification of a cable exposure, notify mariners by issuing a notice to mariners and by informing Kingfisher Information Service of the location and extent of exposure.</p>	<p>The Applicant notes the representation and would like to highlight that this wording was included at Schedule 11, Part 4 (7)(12) and Schedule 12, Part 4 (6)(12) within the dDCO submitted at Deadline 5.</p>	<p>No further amendments are required.</p>

Deadline 5A submission	Applicant's response at Deadline 6	Amendments made to the dDCO
<p>11. <u>Pre-construction plans and documentation</u> The MCA would expect to see the following pre-construction plans submitted as part of the DML, which at present we believe are missing from the current draft: Lighting and Marking plan Operation and Maintenance Programme</p>	<p>The Applicant considers that such documentation has already been provided within the dDCO, through the Aids to Navigation Management Plan (Condition 13(1)(j)) and the Operation and Maintenance Plan (Condition 13(1)(l)).</p>	<p>No further amendments are required.</p>
<p>12. <u>Post construction</u> In article 15, the MCA would also expect to see 'post-construction traffic monitoring' in accordance with an outline plan, including the provision of reports on the results of that monitoring periodically as requested by the MMO in consultation with the MCA.</p>	<p>The Applicant is content to include post construction traffic monitoring for a period of three years within the dDCO. This is standard industry practice and has been based on the drafting contained within other development consent orders, such as Hornsea Offshore Wind Farm Project 1 and 2. The Applicant has provided for further monitoring for an additional two years to ensure a fully robust approach has been taken.</p>	<p><i>(4) Post construction monitoring must include vessel traffic monitoring by automatic identification system for a duration of three years following the completion of construction of authorised scheme. A report must be submitted to the MMO and the MCA at the end of each year of the three year period.</i></p>
<p>13. <u>Public Rights of Navigation: Article 16</u> The MCA would like to question why the extinguishment of the rights of navigation is considered necessary by the applicant, how it will be enforced and the reasons behind its inclusion which is not seen in other DCO/DMLs. Until we receive compelling reason or justification, we do not support its inclusion at present.</p>	<p>The Applicant would like to highlight that equivalent articles have been included in many recent offshore wind DCOs including The Walney Extension Offshore Wind Farm Order 2014, the Burbo Bank Extension Offshore Wind Farm Order 2014, the Rampion Offshore Wind Farm Order 2014 and the Galloper Wind Farm Order 2013. This article is not novel and where the wording differs within the dDCO and other made Orders, this is because of amendments made following dialogue</p>	<p><i>(1) Subject to paragraph (2), (4) and (5), the rights of navigation over the places in the sea where any of the permanent structures are located within territorial waters will be extinguished suspended.</i></p> <p><i>(5) Subject to the undertaker complying with paragraph (4), 14 days prior to the commencement of the works, the public right of navigation over the places of the</i></p>

Deadline 5A submission	Applicant's response at Deadline 6	Amendments made to the dDCO
		<p>with Trinity House.</p> <p>The Article clarifies that at the exact locations of the permanent structures, where it would not be physically possible for one to pass through, public rights of navigation are extinguished. This Article does not relate to the waters surrounding the permanent structures, as the Applicant has previously explained.</p> <p>Article 16(6) of the dDCO also makes clear that such rights would resume after decommissioning.</p> <p>The Applicant has considered the use of the term "extinguishment" and whether "suspension" of the right would be more appropriate, particularly given that the project will be decommissioned at some point in the future and the rights of navigation reinstated in exactly the same form. In that regard, the Applicant considered that "suspension" would be legally more accurate than "extinguishment", notwithstanding the precedent set by numerous and previous development consent orders. The Applicant has amended the wording on that basis in the dDCO submitted for Deadline 6.</p>
		<p><i>sea where the plan indicates each permanent structure is to be located will be <u>extinguished</u> <u>suspended</u>.</i></p>

Deadline 5A submission		Applicant's response at Deadline 6	Amendments made to the dDCO
14.	<p><u>Arbitration</u> It is considered sensible for the MCA to endorse the MMO's approach in regards to Arbitration as the MMO is the relevant regulator, and licensing and consent body. The significant point to note is that arbitration is typically limited to disputes between the scheme promoter and 3rd parties (e.g. regarding rights of entry or to install apparatus). We understand that MMO's concerns about being drawn into Arbitration on matters for which there are already appeal routes (such as licensing) have been raised following the outcome of recent ExA hearings. We think these concerns could be adequately addressed by inserting the amendment proposed by TH in their representations dated 4th March 2019. However, we also include below an alternative suggestion for consideration: 36(2) For the avoidance of doubt, any matter which the consent or approval of the Secretary of State is required, including any consent or approval delegated to or taken by the MMO is not to be subject to arbitration."</p>	<p>As set out in the Applicant's submission "Counsel's written opinion in relation to arbitration" (REP5-923), it is important to recognise that the arbitration provision will only apply to disputes which fall within its scope. The arbitration provision will only apply to "any dispute or decision under any provision of this Order" and as such, neither the MMO or any other statutory consultees' general functions or duties would be caught, save insofar as they are engaged by one of the provisions in the Order. In addition, as further described within this submission, the jurisdiction of any arbitrator can be unilaterally challenged under section 31(4) of the Arbitration Act 1996. This acts as an important safeguard in determining the appropriateness of the arbitration proceedings.</p> <p>It is also important to note that there would be no barrier for the MMO bringing the views of their statutory consultees to the attention of the arbitrator; and there would be no barrier to this in making their award.</p>	No amendments required.
Trinity House			
15.	<p>Article 16 - Public Rights of Navigation THLS note and welcome the insertion of their suggested wording but maintain that other Orders do not contain the express provision for extinguishment of PRON and they do not believe it to be necessary. THLS do not believe the Applicant has provided compelling justification for the inclusion of this provision.</p>	<p>The Applicant has already considered this point in response to the MCA at response 13.</p> <p>In addition, the Applicant would highlight that such wording was provided by Trinity House's legal team</p>	No amendment required.

Deadline 5A submission		Applicant's response at Deadline 6	Amendments made to the dDCO
		and has been amended – and inserted – at their request.	
16.	Sch 11, Condition 7(11) and Sch 12, Condition 6(11) – THLS suggest that as a matter of good drafting this wording should be set out in a separate sub paragraph in each case.	The Applicant notes the representation and has updated this condition accordingly in the dDCO submitted at Deadline 6.	<i>(12) In case of exposure of cables on or above the seabed, the undertaker must within five days following the receipt by the undertaker of the final survey report from the periodic burial survey, notify mariners by issuing a notice to mariners and by informing Kingfisher Information Service of the location and extent of exposure.</i>
17.	Construction vessel traffic monitoring: THLS request to be added to the list of recipients of monitoring reports required to be submitted under this condition.	The Applicant is content to include Trinity House in the list of recipients of monitoring reports and the dDCO has been amended accordingly to reflect this.	<i>Construction monitoring must include vessel traffic monitoring by automatic identification system for the duration of the construction period. A report must be submitted to the MMO, <u>Trinity House</u> and the MCA at the end of each year of the construction period.</i>
18.	Construction vessel traffic monitoring: THLS request this be added to the Post-construction condition.	The Applicant is content to include three years of post-construction vessel monitoring and the dDCO has been amended accordingly to reflect such amendments.	<i><u>(4) Post construction monitoring must include vessel traffic monitoring by automatic identification system for a duration of three years following the completion of construction of authorised scheme. A report must be submitted to the MMO, Trinity</u></i>

Deadline 5A submission		Applicant's response at Deadline 6	Amendments made to the dDCO
			<u>House and the MCA at the end of each year of the three year period.</u>
Port of London Authority			
19.	<p>The PLA has raised at previous ISHs that it is essential for navigational safety for the PLA to be notified of the precise locations of the foundations of the various structures which will be constructed as part of the authorised project. It should therefore be included within Article 16.</p> <p>No protective provision has been made for the PLA, which is a departure from previous Development Consent Orders which affect the PLA's operations. The PLA accepts the lack of protective provisions in this case, as the structures will be sited outside of the PLA's statutory harbour area. However, as a party with VTS (Vessel Traffic Services) operations in the area and given that the PLA is responsible for the issuing of notices to mariners, the PLA considers that its inclusion is necessary in this Article and to do otherwise would prejudice navigational safety. The necessary protection is not afforded for the PLA elsewhere in the Order, and it needs to be given advance notice of the location of the structures in the area within which it is responsible for VTS and issuing notices to mariners. The PLA is responsible, as VTS provider, for managing shipping traffic, suggesting best routes and ensuring that vessels are on routes that do not conflict with each other, or with marine structures. Without knowing where the structures will be, the PLA will be unable to perform this function in full, which may increase the navigational and collision risk to vessels.</p> <p>The action points arising from ISH9 included a request from the ExA that the Applicant engage directly with the PLA about whether the PLA ought to be a named notifiable party. The Applicant has not amended the wording of Article 16 in the revised dDCO submitted by the Applicant at Deadline 5 to</p>	<p>The Applicant is content to include the PLA within Article 16 to provide notice of such extinguishment on the face of the dDCO. The dDCO has been amended to reflect this reference to the PLA.</p>	<p><i>The undertaker will submit a plan showing the precise locations of each permanent structure to Trinity House, the MCA, the MMO, <u>the Port of London Authority</u> and the Secretary of State;</i></p>

Deadline 5A submission	Applicant's response at Deadline 6	Amendments made to the dDCO
<p>include the PLA, nor has it given any comfort to the PLA as to how the risk to navigational safety will be mitigated. The continued exclusion of the PLA from the notice requirement in the latest dDCO is therefore of critical concern for the PLA.</p>		
<p>20. The PLA and ESL welcome the amendments made by the Applicant at Deadline 5 to the dDCO.</p> <p>The amendment to paragraph 6 of Part 3 of Schedule 1 helpfully clarifies that no infrastructure that forms part of Work No. 1 (a) to (c), Work No. 2, in connection with Work No.s 1 to 3, Further Work (a), nor Ancillary Works (a), (c) and (d) may be installed within the structures exclusion zone (SEZ). And no part of any wind turbine generator, including its blades, may oversail into the SEZ. This, together with the deletion of the “subject to” wording in Part 1 of Schedule 1 resolves the PLA and ESL’s concerns with that previous wording and the uncertainty as to which of Work Nos. 1 to 3 were being excluded and that the “temporary” nature of the exclusion.</p>	<p>The Applicant notes and welcome the representation.</p>	<p>No further amendments are required.</p>
<p>21. Cabbling works within SEZ</p> <p>The laying and maintaining of cabling will still be permitted within the SEZ. The PLA and ESL recognise the need for cabling, to provide a connection for the proposed wind farm extension. However, it is still unclear as to where precisely these cables will be and the timing of cabling works. As a result, the Applicant would be permitted by the DCO to interfere with navigation within the SEZ for an unlimited period and over an unlimited area within the SEZ.</p> <p>This clearly does not achieve the certainty which the PLA and ESL are seeking when it comes to resolving their concerns in so far as they relate to the use of the SEZ by the Applicant and the impact of that use on navigational safety.</p>	<p>Prior to construction, the Applicant is required to submit a construction programme and monitoring plan to include details of the works to be undertaken within the structures exclusion zone and the proposed timetable for undertaking of such works (Schedule 11, Part 4 (13)(1)(b)). The Applicant is also required to submit for approval a construction method statement including details of the interaction between safety zones to be implemented and the structures exclusion zone (Schedule 11, Part 4 (13)(1)(c)(v)).</p> <p>The Applicant maintains that these requirements are more than sufficient</p>	<p>The Applicant has amended Schedule 12. Part 4 (11)(1)(c)(v) and (vi) to ensure consistency with Schedule 11, Part 4, (13)(1)(b) for the avoidance of doubt.</p> <p><i>(c) A construction programme and monitoring plan to include details of—</i></p> <p><i>(i) the proposed construction start date;</i></p> <p><i>(ii) proposed timings for mobilisation of plant delivery of materials and installation works having due regard to seasonal restrictions as assessed within the</i></p>

Deadline 5A submission		Applicant's response at Deadline 6	Amendments made to the dDCO
		to ensure complete clarity about the nature of the works and where they will be placed within the structures exclusion zone.	<p>ES;</p> <p><i>(iii) proposed pre-construction surveys, baseline report format and content, construction monitoring, post-construction monitoring and related reporting in accordance with sub-paragraph (i) and conditions 134, 145 and 156;</i></p> <p><i>(iv) an indicative written construction programme for the offshore substations and cables comprised in the works at paragraph 3(1) to (3) of Part 3 (licensed activities) of this Schedule (insofar as not shown in paragraph (ii) above);</i></p> <p><i><u>(v) details of the works to be undertaken within the structures exclusion zone; and</u></i></p> <p><i><u>(vi) the proposed timetable for undertaking of such works within the structures exclusion zone.</u></i></p>
22.	<p>Construction, operation, maintenance and decommissioning</p> <p>The amendment to paragraph 6 of Part 3 of Schedule 1 places a limitation on the “installation” of certain Works within the SEZ. It does not limit the use of the SEZ for the operation, maintenance or decommissioning of Works which are not within the SEZ. The Applicant will therefore have the power to use the SEZ in connection with the operation, maintenance and decommissioning of the rest of the wind farm. These activities, if undertaken within the SEZ, could be highly disruptive to navigation and pose a risk to navigational safety, as described in detail in the PLA and ESL's previous submissions and those of</p>	The Applicant has clearly explained in its consultation material submitted for the SEZ exactly what will take place within the SEZ and why this is necessary. The assessment is also clear that this is acceptable, has been properly assessed and will not pose any risk to navigational safety. The Applicant awaits the PLA's consultation response to this material and trusts that it assists in alleviating any concerns that they may have.	No amendments required

Deadline 5A submission		Applicant's response at Deadline 6	Amendments made to the dDCO
	other IPs. The PLA and ESL would therefore request that the dDCO be amended to exclude the use of the SEZ other than for cabling, provided that the cable locations and associated works are clearly identified and limited on the works plans.		
23.	In relation to paragraph 5 of Part 4 of Schedule 11, see comments on Schedule 1 above under the heading 'Construction, operation, maintenance and decommissioning', and the issues that arise from restricting the SEZ activities to "installation" only.	See response above.	No amendments required
Port of Tilbury and London Gateway			
24.	<p>Impact on shipping – the ports note that the Applicant has afforded a form of control in respect of SEZ works to the MMO through condition 13 of Schedule 11 (Deemed Licence under the 2009 Act – Generation Assets). This provides that licensed activities must not commence until a construction programme and monitoring plan has been submitted to and approved in writing by the MMO. The condition provides that such a construction programme and monitoring plan will include: (v) details of the works to be undertaken within the structures exclusion zone; and (vi) the proposed timetable for undertaking of such works within the structures exclusion zone. This provides a form of control over activities in the SEZ.</p> <p>The ports consider that a similar provision should be made in Schedule 1, Part 3, Requirements with the Marine and Coastguard Agency (MCA) as the approving authority. It is considered that the MCA is the appropriate authority due to its functions in respect of shipping. This would provide an element of control over works carried out in the SEZ and would help to ensure safety for the potential construction impacts on shipping. Works in the inshore channel would therefore be approved by an appropriate body having a concern for shipping interests. This is not the MMO's role, hence the controls in the DML alone are not sufficient.</p>	The Applicant considers that the Port of Tilbury and London Gateway have misunderstood the functions of both the MMO and the MCA. The MMO is the body entirely responsible for the management and enforcement of deemed marine licences. Regardless of whether works are carried out inshore or not, it is the MMO that is the appropriate authority to manage what works take place in accordance with the DML. Of course, on matters that concern the MCA, the MMO will consult with them, as is ordinarily the case.	No amendments required.

Deadline 5A submission		Applicant's response at Deadline 6	Amendments made to the dDCO
25.	<p>Safety of navigation – in addition to the MCA's functions and the above proposed protection for shipping, the ports consider that the functions of Trinity House in respect of the safety of navigation should be more obviously safeguarded through the dDCO. Article 16 (Public rights of navigation) provides at paragraph 4 for steps to be taken to prevent danger to navigation caused by the construction of (i.e. existence of) "permanent structures". This is a standard provision dealing with lighting and marking of the permanent works, i.e. the end state. PoTLL and LGPL consider that a similar provision should be added to the dDCO to have effect during construction, so that Trinity House has the ability to give directions as to the lighting and marking, etc., of works, during the construction phase. This is a standard provision in DCOs and harbour orders.</p>	<p>Such wording is already contained within the dDCO. The Applicant is required to exhibit such lights, marks, sounds, signals and other aids to navigation as directed by Trinity House throughout the commencement of construction through to the completion of decommissioning (Schedule 11, Part 4(8)(1) and Schedule 12, Part 4(7)(1)). This is consistent with other made Orders including the East Anglia Three Offshore Wind Farm 2017.</p> <p>The Applicant notes that this has not been raised as a navigational safety issue by Trinity House.</p>	No amendments required.
MMO			
26.	<p>Maximum parameters in the DMLs The following parameters should be included on the DMLs to ensure the maximum impacts remain within those assessed and approved in the Environmental Statement (ES):</p> <p>Footprint for disposal activities - The MMO welcomes the inclusion of the disposal volumes, respective activities and disposal sites on the DMLs however requests that the maximum footprint (area) is also included. The footprint is an important metric in assessing the overall impact of an activity in combination with the volume</p> <p>Maximum permitted cable protection footprint</p> <p>Maximum permitted scour protection footprint</p> <p>Maximum number of cable crossings</p> <p>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</p>	<p>It is the Applicant's view that the parameters are adequately secured within the Environmental Statement and there is no need to include the additional parameters on the DML.</p> <p>In particular, there is an established precedent for hammer energy (amongst other construction methodologies such as cable installation) not being on the face of the DCO, and for it not being necessary to do so. In the event that a change in hammer energy is requested by a developer post consent, this change in installation methodology is usually addressed within the Construction Method Statement when it is submitted as</p>	No amendments required.

Deadline 5A submission		Applicant's response at Deadline 6	Amendments made to the dDCO
	<p>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.</p>	<p>required in the dML(s). Where a change in construction methodology is requested the developer submits an accompanying note outlining how the change in methodology is still in accordance with the methods assessed in the ES (as required in the dMLs). It is the Applicant's position therefore that to label all project methodologies and parameters within the dML is not necessary, and nor is it appropriate. In response to the MMO's requests the Applicant has instead provided a document of all project parameters that sits as an annex to the DCO explanatory memorandum.</p>	
27.	<p>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 notes this remained unchanged in the current revision of the dDCO and awaits clarification on how this will be reflected on the DML.</p> <p>The MMO notes the applicant has previously proposed to specify the Environmental Statement as a certified document, rather than include the maximum parameters on the face of the DMLs. 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</p>	<p>The key point that the Applicant has made previously is that the plans that would be submitted as part of any pre-commencement work would include all necessary information to satisfy the di that all relevant matters that could affect such works had been properly considered. Nonetheless, in order to address any overlap and ensure that sufficient mitigation is secured for any works carried out prior to formal commencement, the Applicant has done two things:</p> <ol style="list-style-type: none"> 1. reviewed the definition of "pre-commencement works" in the DML to ensure it includes all works which could have likely significant effects and therefore require mitigation. 2. inserted a new condition in each DML in relation to pre-commencement 	<p>New Conditions in Schedule 11 and 12</p> <p><u>Pre-commencement works</u></p> <p><u>No pre-commencement works may commence until all details relevant to the pre-commencement works required by Condition 11 in Schedule 12 of this Order have been submitted to and approved by the MMO.</u></p> <p><u>In addition to sub-section (1):</u></p> <ol style="list-style-type: none"> <u>a) the undertaker may submit, and</u> <u>b) the MMO may request</u> <p><u>any additional information deemed necessary to ensure adequate mitigation is secured in relation to the pre-commencement works.</u></p>

Deadline 5A submission	Applicant's response at Deadline 6	Amendments made to the dDCO
<p>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.</p> <p>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).</p>	<p>works. The requirement and conditions secure the submission and approval of any relevant information required pursuant to the various requirements or conditions listed above in relation to the pre-commencement works before they can begin.</p> <p>A catch all provision has also been included to allow the discharging authority to request and the undertaker to supply voluntarily any other additional information required in relation to mitigation for the pre-commencement works, not listed in the specific requirements and conditions.</p> <p>The wording makes it clear that the pre-commencement works can be carried out without having to discharge each of the requirements in full, only the information that is relevant to those early stage works needs to be approved before works can start.</p> <p>The Applicant has included a condition which requires compliance with the documents certified pursuant to Article 35. However, it maintains it is not appropriate for every parameter to be defined on the face of the Order. The Offshore Project Description Assessed in the Environmental Statement document appended to the Explanatory Memorandum (REP5-046) is intended as a reference document for contractors and contains</p>	<p><u><i>The details required pursuant to sub-sections (1) and (2) may be submitted separately and in advance of the details required to discharge the condition in advance of commencement.</i></u></p> <p><u>Certified documents</u></p> <p><u><i>Subject to paragraph (2) each programme, statement, plan, protocol or scheme listed in Schedule 13 of the Order (Documents to be certified under Article 35) which is submitted to the Secretary of State for certification pursuant to Article 35 must be complied with as certified.</i></u></p> <p><u><i>Where the MMO is the discharging authority, it may approve an amendment or variation to the following documents certified under paragraph (1) provided such approval is not given except in relation to minor or immaterial changes or deviations where it has been demonstrated to the satisfaction of the MMO that the subject matter of the approval or agreement sought does not give rise to any materially new or materially different environmental effects to those assessed in the Environmental Statement: Offshore Archaeological Written Scheme of Investigation, Fishing Liaison and Coexistence Plan, Offshore Operations and Maintenance Plan,</i></u></p>

Deadline 5A submission		Applicant's response at Deadline 6	Amendments made to the dDCO
		information such as an indicative programme, which would not be suitable on the face of the Order.	<u>Draft Marine Mammal Mitigation Protocol, In-principle Offshore Ornithology Monitoring Plan, Shipping and Navigation Liaison Plan and the Outline Site Integrity Plan</u>
28.	Notifications and inspections – condition 6(10) at schedule 11 stipulates that “Copies of all notices must be provided to the MMO within 5 days.” The same condition in schedule 12 should be revised to also include this timeframe.	The Applicant notes the representation and has amended this condition within the dDCO submitted at Deadline 6.	<i>(10) The undertaker must notify the UK Hydrographic Office both of the commencement (within ten days), progress and completion of construction (within ten days) of the licensed activities in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO.</i> <u>Copies of all notices must be provided to the MMO within five days.</u>
29.	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. The MMO has considered such an approach and reflected on other offshore wind farms (OWF) currently undergoing examination. To maintain consistency across licensing the MMO suggests condition 15 is amended to allow a six month approval period, except where otherwise agreed in writing by the MMO. The MMO and its advisors need an appropriate timeframe to analyse technical information, consult and make informed judgements and decisions. In most circumstances a 4 month pre-construction submission date is unrealistic and potentially counterproductive. The MMO always endeavour to remain as flexible as possible in relation to developer requirements, and a	The Applicant has made detailed representations on this point at the Issue Specific Hearing 9 and in previous Deadline submissions. The Applicant has asked the MMO to provide details of specific plans they consider would take longer than four months to approve, however no such documentation has been forthcoming. The Applicant simply does not agree that it is proportionate to increase approval time by 50% in respect of all plans and documentation. The Applicant notes that in respect of	No amendments required.

Deadline 5A submission	Applicant's response at Deadline 6	Amendments made to the dDCO
<p>formalising of timescales could lead to MMO resources reducing this flexibility to prioritise the suggested statutory timescale obligations. It should also be noted that developers can occasionally submit discharges late due to unforeseen circumstances, and while the MMO should officially seek to introduce licence enforcement measures at this point, the MMO would prefer to maintain a flexible approach and work with the developer to reach a timely resolution. However, again the introduction of formal timescales for decisions may require the MMO to revert to enforcement measures for late or staged submissions to ensure that it, and the applicant, can avoid missing their statutory schedule milestones.</p> <p>An approximate overview of the decision making process for discharged documents is outlined as follows:</p> <ol style="list-style-type: none"> 1. 4 weeks to acknowledge and review the document within the MMO 2. External consultation of this documentation could take up to 6 weeks 3. Once consultation is closed the MMO has to review the response and possibly ask for additional information from the applicant. At this stage the MMO and the applicant would be in discussion to agree on an approach to the responses. This could be for up to 4 weeks. 4. The MMO could then request further information from the applicant, which dependent on the level of detail, could represent a further significant time period of for example 4 further weeks 5. Once this is returned by the applicant, the MMO would begin the consultation process again. <p>It is noted from the above that, even if discharge documentation were to follow the current timescales, and no further communication was required from the applicant (which is highly unlikely) the current turnaround equates to 18 weeks, which is longer than the 16 weeks suggested by the applicant. It should also be noted that the above timescale applies to only one document, when in reality, the number of in-depth discharge requirements could far exceed 30 in total The request for 6 months also reflects the increasing complexity of existing OWF projects due to HRA, case law, an increasing volume of documents and a rise in in-combination issues associated with</p>	<p>the Hornsea Project 3 Offshore Wind Farm Development Consent Order, in the Examining Authority's version of the draft Order they disagreed with the MMO's six-month period and reinstated a four-month approval period in its place.</p>	

Deadline 5A submission	Applicant's response at Deadline 6	Amendments made to the dDCO
<p>other projects. Of particular note is the anticipated growth in the UK offshore wind sector – noting an additional 8 proposed extension projects and the Crown Estate's round 4 leasing underway.</p>		
<p>30. Site Integrity Plan - 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 13(k) and schedule 12 part 4 condition 11(l) to require the SIP to be submitted prior to commencement of the licensed activities.</p> <p>1.2.16 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.</p>	<p>The Applicant can confirm that this was a drafting error. This condition has been updated within the dDCO submitted at Deadline 6.</p> <p>the condition wording has been amended to ensure that the timescales are consistent with the draft SIP.</p>	<p><i>A site integrity plan, which must be approved in writing by the MMO in consultation with Natural England prior to the commencement of the licensed activities and which must accord with the outline site integrity plan (as certified in accordance with article 35) and in accordance with the site integrity plan:</i></p> <p><i>(2) be approved in writing by the MMO in consultation with Natural England:</i></p> <p><i>(i) four months in advance of any geophysical surveys being undertaken; and</i></p> <p><i>(ii) a second time four months prior to the carry out of the next relevant noisy activity</i></p>

Deadline 5A submission	Applicant's response at Deadline 6	Amendments made to the dDCO
<p>31. Certified documents, schedule 13 - The MMO notes the applicant intends to certify a number of documents in order that they are “complied with as certified”. The MMO advises that current drafting does not provide a mechanism to undertake revisions for those documents where this may be required such as in the case of the Biogenic Reef Mitigation Plan which is not finalised and the Fisheries Liaison and Co-existence Plan which is considered a ‘live’ document subject to ongoing changes throughout the project.</p>	<p>The Applicant has inserted a new condition in Schedule 11 and 12 which requires compliance with the certified documents, but also allows minor changes to be made to the document with the consent of the MMO, provided the changes sought do not give rise to any materially new or materially different environmental effects to those assessed in the Environmental Statement.</p>	<p><i>Certified documents</i></p> <p><i><u>(1) Subject to paragraph (2) each programme, statement, plan, protocol or scheme listed in Schedule 13 of the Order (Documents to be certified under Article 35) which is submitted to the Secretary of State for certification pursuant to Article 35 must be complied with as certified.</u></i></p> <p><i><u>(2) Where the MMO is the discharging authority, it may approve an amendment or variation to the following documents certified under paragraph (1) provided such approval is not given except in relation to minor or immaterial changes or deviations where it has been demonstrated to the satisfaction of the MMO that the subject matter of the approval or agreement sought does not give rise to any materially new or materially different environmental effects to those assessed in the Environmental Statement: Offshore Archaeological Written Scheme of Investigation, Fishing Liaison and Coexistence Plan, Offshore Operations and Maintenance Plan, Draft Marine Mammal Mitigation Protocol, In-principle Offshore Ornithology Monitoring Plan, Shipping and Navigation Liaison Plan and the Outline Site Integrity</u></i></p>

Deadline 5A submission		Applicant's response at Deadline 6	Amendments made to the dDCO
	<p>Furthermore please note the Fisheries Liaison and Co-existence Plan is listed incorrectly at the 'Fishing Liaison and Co-existence Plan' in schedule 13.</p>	<p>The Applicant notes the representation regarding the typographical error and has updated this Schedule accordingly in the dDCO submitted at Deadline 6.</p>	<p><u>Plan</u></p> <p><i>Fisheries ing Liaison and Coexistence Plan</i></p>
32.	<p>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.</p> <p>As such, the MMO supports the amended condition wording proposed by Natural England and outlined below. Similar recommendations were made for the Norfolk Vanguard and Hornsea 3 OWF dDCO representations. Indeed, the ExA's schedule of changes to the dDCO for Hornsea 3 issued on 26 February 2019 includes the amended condition wording as follows:</p> <p><i>“(4) The results of the initial noise measurements monitored in accordance with condition 18(2)(a) must be provided to the MMO within six weeks of the installation of the first four piled foundations of each piled foundation type. The assessment of this report by the MMO will determine whether any further noise monitoring is required. If, in the opinion of the MMO in consultation with Natural England, the assessment shows significantly different impact to those assessed in the environmental statement or failures in mitigation, all piling activity must cease until an update to the MMMP and further monitoring</i></p>	<p>The Applicant provided a full response in Action Point 16 to Issue Specific Hearing 3 on this point. For reasons previously described the Applicant does not consider that further amendments to the dDCO are necessary.</p>	<p>No amendments required.</p>

Deadline 5A submission		Applicant's response at Deadline 6	Amendments made to the dDCO
	<p><i>requirements have been agreed.</i>"</p> <p>With the amendment being justified "In the interests of protecting the integrity of the Site of Community Interest."</p> <p>This is a noted area of disagreement on the SoCG with the applicant.</p>		
33.	<p>Pre-construction monitoring and surveys in Goodwin Sands</p> <p>- The MMO notes the revision made to schedule 12, condition 15 regarding monitoring provisions for Goodwin Sands pMCZ on the DML, however suggests the following amendments:</p> <p>At 15(2)(b)(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</p>	<p>The Applicant has already responded to this point at response 3 above and is content to amend the reference to be clear that it should refer to sub-paragraph 2(d).</p>	<p>(i) cable protection is <u>to be</u> installed within the Goodwin Sands rMCZ <u>(or as designated the Goodwin Sands MCZ) in accordance with condition 11(1)(b)</u>, ground truthing of the geophysical surveys carried out in accordance with sub-paragraph (2)(<u>ed</u>), using drop down video and to be focussed on the areas where cable protection has been installed to monitor epifaunal communities and inundation by sand;</p>
34.	<p>At 15(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.</p>	<p>The Applicant has agreed to amend the dDCO accordingly in order to make clear that surveys will be undertaken pre-construction.</p>	<p>(i) cable protection is <u>to be</u> installed within the Goodwin Sands rMCZ <u>(or as designated the Goodwin Sands MCZ) in accordance with condition 11(1)(b)</u>, ground truthing of the geophysical surveys carried out in accordance with sub-paragraph (2)(<u>ed</u>), using drop down video and to be focussed on the areas where cable protection has been installed to monitor epifaunal communities and inundation by sand;</p> <p>(ii) sandwave clearance is required within the Goodwin Sands rMCZ <u>(or as designated the Goodwin</u></p>

Deadline 5A submission		Applicant's response at Deadline 6	Amendments made to the dDCO
			<i><u>Sands MCZ</u></i> , interpreted geophysical monitoring to monitor changes in sediment type; <i>sandwave clearance is required within the Goodwin Sands rMCZ;</i>
35.	At 15(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.	The Applicant has agreed to amend the dDCO to provide that for sandwave clearance surveys will be taken pre-construction and post-construction.	<i>(ii) sandwave clearance is required within the Goodwin Sands rMCZ</i> <i>(or as designated the Goodwin Sands MCZ)</i> , interpreted geophysical monitoring to monitor changes in sediment type; <i>sandwave clearance is required within the Goodwin Sands rMCZ;</i>
KCC			
36.	Requirement 15 includes provision for flood risk management. The County Council therefore considers that it would be more appropriate for the requirement to reference “flood risk and surface water management” so that it includes drainage for general operations/arrangements.	The Applicant has agreed to make this change to what is now requirement 18	<i>Flood risk <u>and surface water</u> management</i>