



THE PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES  
2010

**Thanet Extension Offshore Windfarm**

Planning Inspector Reference: EN010084

**Natural England's Responses to comments on the ExA's draft DCO commentary.**

6<sup>th</sup> June 2019

## Thanet Extension – Natural England’s Natural England’s Responses to comments on the ExA’s draft DCO commentary.

Following submission of Natural England’s and other consultees responses to the Examining Authority’s draft DCO commentary regarding the construction and operation of Thanet Extension Offshore Wind Farm, Natural England has reviewed relevant responses and commented on the major issues within the remit of Natural England. We have not commented on questions which we deem to be outside of our remit or did not answer originally. Relevant responses from other consultees are provided in the table below, together with Natural England’s position on the comments.

**Green Comments** – Natural England have no further comments, comments support/agree with Natural England position or does not impact on Natural England concerns.

**Amber Comments** – Natural England comments may be in contradiction, further advice needed, or potential new issue not included in Natural England comments.

**Red Comments** – Comments in direct contradiction with Natural England position or represents a significant issue not mentioned in Natural England’s comments.

**Grey Comments** – Comments that are not relevant to Natural England.

| Comment No. | Part of DCO | Relevant extract from DCO  | Commentary   | Response sought from   | Natural England Response at DL6   | Applicant or other stakeholder Responses   | Natural England Comments on other stakeholder answers.   |
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| 5           | Art 2       | <p>“commence” (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for archaeological investigations, <u>pre-construction surveys and monitoring</u>, and seabed preparation and clearance (b) in respect of any other works comprised in the authorised project, any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than operations consisting of <u>site clearance, demolition work, environmental surveys, investigations for the purpose of assessing ground conditions, diversion and laying of</u></p> | <p><b>Interpretation: “commence”</b></p> <p>The definition of commence retains scope for some substantial operations relevant to environmental effects to take place in both the marine and terrestrial environments before the formal commencement of the authorised development and the discharge of relevant requirements and/ or DML conditions.</p> <p>a) <b>In the marine environment:</b> are there circumstances in which the nature or scale of any of the pre-commencement works shown underlined in</p> | <p>Applicant, MMO, Natural England, Historic England, Thanet District Council (LPA), Dover District Council (LPA), Kent County Council, Trinity House, Maritime and Coastguard Agency, Thanet Fishermen’s Association.</p> | <p>The definition of commence is currently unacceptable. The exclusion of Seabed Preparation works and clearance from the definition of commence means that the impact to the benthic marine environment will be able to proceed without sufficient regulatory oversight.</p> <p>a) By the very nature and size of these works they are likely to lead to impacts that have significant effect on the environment. These works encompass the vast majority of</p> | <p><b>Applicant’s Response</b></p> <p>As drafted, the dDCO carves out the more substantive elements of the works permitted prior to formal commencement and defines these as “precommencement works”. The requirements then seek to ensure that sufficient information is submitted to the relevant discharging authority in relation to the precommencement works before they are carried out. The Applicant has considered each condition and requirement listed by the ExA in turn:</p> <p>Condition 8 – the listed activities are not precommencement works, so there is no direct risk of these works being</p> | <p>Natural England has commented upon the addition of these amendments in our overall Deadline 7 response, within section 2. Please refer to that document for further information and expansion on the applicant’s amendments to the definition of commencement.</p> <p>We have no further comments to make on any other interested parties comments.</p> |

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|  |  | <p><u>services, temporary structures or hard standing</u>, the temporary display of site notices or advertisements and the words “commencement” and “commenced” will be construed accordingly; ...</p> | <p>column 3 might lead them to have significant effects that should be taken into account prior to the finalisation of relevant plans or strategies and in decisions to discharge any of the following DML conditions (nb – where conditions are repeated in both Sch 11 and Sch 12, the reference here to a condition to Sch 11 shall be taken to refer also to a condition for the same purpose in Sch 12):</p> <ul style="list-style-type: none"> <li>• 8: (aids to navigation and the need for any notice to and direction on these by Trinity House); and</li> <li>• 13: (submission and approval of any preconstruction</li> </ul> |  | <p>the environmental impacts to the seabed and must be appropriately mitigated. The required mitigation must be appropriately regulated and secured through a condition.</p> <p>The applicant’s proposed condition 23 does take some steps to secure mitigation by submission of methodology for approval. However, the condition refers to the biogenic reef mitigation plan which is currently expected 4 months prior to commencement and is unlikely to be approved until much</p> | <p>undertaken without suitable plans in place.</p> <p>Condition 13 – lists precommencement plans and documentation requirements. The Applicant accepts that part of this condition may need discharging before the precommencement works start.</p> <p>Condition 20 – requires compliance with fisheries liaison and coexistence plan, this plan is a certified document and therefore will be in place before any works begin.</p> <p>R14 – it is unlikely any of the pre-commencement works will interfere with the connection works in Pegwell Bay Country Park.</p> <p>R17 – there may be a need for temporary highway accesses as a result of precommencement</p> |  |
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|  |  |  | <p>plans or documents)</p> <ul style="list-style-type: none"> <li>• 20: (the fisheries liaison and co-existence plan)</li> </ul> <p>b) <b>In the terrestrial environment:</b> are there circumstances in which the nature or scale of any of the pre-commencement works shown underlined in column 3 might lead them to have significant effects that should be taken into account prior to the finalisation of relevant plans or strategies and in decisions to discharge any of the following requirements:</p> <ul style="list-style-type: none"> <li>• R14 (access management);</li> <li>• R17 (highway access);</li> <li>• R18 (Construction Environmental</li> </ul> |  | <p>nearer to commencement. This would seem to specifically contradict the intent of the new definition and condition i.e. it doesn't extradite preparation works from the pre-construction commencement documentation / conditions and timings.</p> <p>Additionally, there is little definition of what that methodology would contain and the only mitigation secured is the biogenic reef plan and Archaeological plans. There are many other mitigations / plans that might need to be included</p> | <p>works such as laying of services.</p> <p>R18 the applicant acknowledges the fact that certain aspects of the CEMP may apply to precommencement works.</p> <p>R19, 21 and 24 – these requirements acknowledge the need for certain details to be submitted and approved for the precommencement works.</p> <p>R22, 23 and R25 – the applicant acknowledges the fact that certain aspects of these plans may apply to pre-commencement works.</p> <p>The key point that the Applicant has made previously is that the plans that would be submitted as part of any precommencement work would include all necessary information to satisfy the discharging authority that all relevant</p> |  |
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|  |  |  | <p>Management Plan);</p> <ul style="list-style-type: none"> <li>• R19 (temporary fencing);</li> <li>• R21 (Contaminated land and groundwater plan);</li> <li>• R22 (Construction noise and vibration management plan);</li> <li>• R23 (Construction traffic management plan);</li> <li>• R24 (Onshore archaeological written scheme of investigation); and/ or</li> <li>• R25 (Landscape and Ecological Mitigation plan)?</li> </ul> <p>c) Generally: as a consequence of drafting in Art 2, are</p> |  | <p>depending on the works proposed. Furthermore, the condition has no proposed time for when the methodology needs to be submitted, or how long the regulator can expect to consider the information provided.</p> <p>The condition needs to be amended to ensure that all mitigation required for the pre-commencement works is secured. Additionally, a reasonable time period must be given within the condition for submission, review and approval of this</p> | <p>matters that could affect such works had been properly considered. The discharging authority is also able to request further information, in order to ensure that this is the case. 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"> <li>1. Updated the definition of "pre-commencement works" in the DCO to ensure it includes all works which could have likely significant effects and therefore require mitigation.</li> <li>2. Inserted a new requirement in Schedule 1 and a new condition in each DML in relation to precommencement works. The requirement and</li> </ol> |  |
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|  |  |  | <p>there any remaining proposals for precommencement works that are not (for reasons that must be stated) subject to appropriate control in the dDCO? IPs and Other Persons are requested to respond by Deadline 6 with the Applicant making a final response at Deadline 7.</p> |  | <p>information. However, it is questionable if this can be achieved due to the need to cross reference much of the mitigation with the requirements of condition 13.</p> <p>Previously developers, and regulatory bodies have used the wording at condition 13 (1) to avoid this issue: <i>The licensed activities or any part of those activities must not commence until the following (as relevant to that part) have been submitted to and approved in writing by the MMO.</i></p> | <p>conditions secure the submission and approval of any relevant information required pursuant to the various requirements or conditions listed above in relation to the precommencement 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 precommencement works, not listed in the specific requirements and conditions.</p> <p>The wording makes it clear that the precommencement works can be carried out without</p> |  |
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|  |  |  |  |  | <p>The pre-construction works have been considered as their own part of construction, and documentation that is submitted for them need only be relevant to that part. This has worked for all previous DCO offshore wind projects and Natural England, therefore, questions if there is a real necessity for the proposed change.</p> | <p>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><b>Trinity House Response:</b></p> <p>TH has no comments other than to state that this is standard wording.</p> <p><b>Environment Agency's Response:</b></p> <p>In terms of the above highlighted yellow activities, we do not believe these would lead to "significant effects" in relation to ground conditions and Groundwater impacts. We are assuming other pre-commencement work, i.e. ground investigations will be before they move on to site substantially, so they will understand how to do site compounds, demolition works and</p> |  |
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provision of hard standing with the relevant “understanding” of any issues that these activities may cause and therefor provide suitable mitigation to ensure that “significant effects” will not arise.

**Historic England Response:**

Our initial concern with regard to the definition of ‘commence’ stemmed from how it was phrased, which we considered, could permit certain intrusive activities out with the definition of ‘pre-commencement’. Since our last submission, in consultation with the MMO, it has come to our attention that the inclusion of condition 12 (2) states: “Any pre-commencement works of an intrusive nature must not take place prior to the approval of the onshore written scheme of investigation



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|    |         |  |   |   |  | submitted in accordance with subparagraph (1)". Which we think when noted in conjunction with the referred to above subparagraph (1) issues acceptable provisions - subject to consent - covering activities, intrusive and non-intrusive, within all areas of the permitted development up to mean high water springs.   |  |
| 20 | Art. 36 | Subject to Article 39 (Saving provisions for Trinity House), any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled in arbitration in accordance with the rules at Schedule 9 of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be | <p><b>Arbitration: application to determinations by statutory and regulatory authorities</b></p> <p>As currently drafted, Art 36 might apply to "any difference under any provision of this Order" which concerned a statutory/regulatory body or public authority. There are multiple examples of this, affecting consents or approvals to be given by street authorities (Art 8(3) and Art 10(3), highway</p> | Applicant, Thanet District Council (LPA), Dover District Council (LPA), MMO, Maritime and Coastguard Agency, Trinity House, Kent County Council, Environment Agency, Natural England, | Natural England has no further comment regarding this comment currently. | <p><b>Applicant's Response</b></p> <p>The Applicant's reason for removing the backstop appointing power of the Secretary of State is as described in their written summary of oral case put at Issue Specific Hearing 7 (REO3-020). It is not asserted by the Applicant that this power could result in excessive costs or administrative difficulties. The Applicant has removed this power because the Secretary of State</p> | Natural England has no further comment to make – however this does not assume agreement with the arbitration clause. |

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|  |  | <p>appointed on application of either party (after giving written notice to the other) by the Centre for Effective Dispute Resolution.</p> | <p>authority (Art 11), owners of watercourses (Art 14(3)), etc. The arbitration procedure would not apply to differences between the Applicant and any of the relevant bodies concerned by the requirements listed in Art 37(2) (those bodies covered by Sch 10, where an appointed person appeal procedure is set out). This is because Art 36 only applies “unless otherwise provided for”, and Art 37 would be such an alternative provision.</p> <p>However, as currently drafted, this provision and Art 37 mean that there could be differences between how some disputes would be handled, even between the same parties. For example, a difference with a highway authority under a requirement in Art</p> | <p>Historic England and any other relevant public authority, statutory or regulatory body</p> |  | <p>could be directly affected by, or in some way an interested party to, the difference which is being arbitrated. The Applicant was concerned that a conflict of interest could be created in this scenario.</p> <p>If the Secretary of State is comfortable it wouldn't be conflicted as acting in some capacity as part of the decision making process, the Applicant is content that the Secretary of State is inserted as the backstop appointing role for specific provisions outwith the Transfer of Benefit arrangement or matters on which the Secretary of State determines specific provisions under the Order.</p> <p>The Applicant has considered very carefully both the role of the Secretary of State, and indeed the MMO, in relation to the draft Order. It is clear to the Applicant</p> |  |
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|  |  |  | <p>37(2) (such as R17) would be handled in accordance with Sch 10, but a difference with a highway authority under Art 11(1)(b) would appear to be handled under the arbitration provisions.</p> <p>a) Are potential differences of this nature intended and are the mechanics and effect of these differences well understood?</p> <p>b) If so, is it sufficiently clear as to whom (particularly to statutory/ regulatory bodies or public authorities) and when (in what particular circumstances) the arbitration provisions should apply and whether the cut-off between</p> |  |  | <p>that clear concerns remain in respect of both parties, in addition to Natural England and other specific stakeholders, depending on their role as relevant authority or indeed consultee.</p> <p>The Applicant would like to make explicitly clear that the purpose of seeking this arbitration provision originates in the following key principles:</p> <p>a) an arbitration provision already exists within the development consent orders made to date<br/> (b) nationally significant infrastructure projects must be constructed expediently and delivered effectively<br/> (c) judicial review only is not an appropriate recourse for questioning the determination (or lack thereof) of specific plans and provisions within an order, much in the same way that an applicant for a</p> |  |
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|  |  |  | <p>arbitration and a Sch 10 process is sufficiently clear and justified?</p> <p>There is an argument that if these distinctions are to be retained, they need to be made explicit on the face of the dDCO, in the same way that the matters to be dealt with by way of an appeal to an appointed person has been listed in Art 37(2). The Applicant is requested to set out a form of words that add additional clarity.</p> |  |  | <p>planning permission wouldn't simply judicially review the approval of a condition – they would be entitled to appeal it.</p> <p>The Applicant has liaised with the Norfolk Vanguard Team and has of course reviewed the Hornsea Project 3 final submitted draft Order. The Applicant has, as such, included an appeal mechanism, in addition to an arbitration mechanism, on the face of the latest version of the draft Order submitted at Deadline 6 for decisions made pursuant to article 5 and Schedule 11 Conditions 13 and 14 and Schedule 12 Conditions 11 and 12.</p> <p>The appeal mechanism provides an alternative to arbitration and so would apply for determination or non-determination of decisions. If the</p> |  |
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|    |        |            |  |  |   | Secretary of State's decision is appealed, it would defer to the Law Society who would appoint the appropriate legal expert to deal with that appeal if the transfer of benefit provision was not determined within the correct timescales. As such, the Secretary of State would not be the appropriate body, in the view of the Applicant, to determine the appointment of such an independent person. This also explains why timescales are required (in addition to all of the other reasons provided for in this document). |  |
| 24 | Art 36 | [As above] | <b>Arbitration:</b><br>application to determinations under Requirements (Schedules 1 and 10) and Conditions (Schedules 11 and 12)<br>Is it sufficiently clear and, if not, is any further drafting required to place | Applicant, Thanet District Council (LPA), Dover District Council (LPA), MMO, Maritime and Coastguard | Natural England notes that the article 36 wording states: <i>any difference under any provision of this Order, unless otherwise provided for.</i> | <b>Applicant's Response</b><br><br>The Applicant has submitted previously – and considers – that the arbitration provision must apply to Schedules 11 and 12. The Applicant however is content to amend the dDCO to  | As per previous comments Natural England does not support the inclusion of arbitration. We support the MMO's current position regarding arbitration and appeals. |

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|  |  |  | <p>beyond doubt that the provisions of Art 36 do not apply to determinations under, discharges or appeals in relation to Requirements (Schs 1 and 10) or to determinations under and discharges of Conditions in the DMLs (Schs 11 and 12)?</p> | <p>Agency, Trinity House, Kent County Council, Environment Agency, Natural England, Historic England and any other relevant public authority, statutory or regulatory body</p> | <p>Is this wording intended to mean provided for within the order (which is not made explicit) or provided for elsewhere, such as through other legislation or Judicial Review?</p> <p>Natural England considers that if the requirements (Schedules 1 and 10) and determinations under and discharge of conditions in Schedules 11 and 12 are to be excluded from arbitration, then the current wording does not make this sufficiently explicit.</p> | <p>make clear that Article 36 does not apply to Schedule 10 and has amended the dDCO accordingly to reflect this.</p> <p><b>TH's Response:</b></p> <p>As set out in the response to Question 23 above, TH considers that clarity is required on the face of the dDCO that article 36 must not apply to determinations made by the MMO (in consultation with its statutory consultees) or other public bodies under the DML conditions in Schedule 11 and 12 of the dDCO. In TH's view, this is the necessary consequence of the SoS decision to the Tilbury 2 application, which confirms that, once deemed granted under an order granting development consent, any DML should operate in the same way as any other marine licence</p> |  |
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granted under the 2009 act.

TH is aware that the ExA's report and recommendations in relation to the Tilbury 2 application turned on the inclusion of an express arbitration clause within the DMLs. That is not an issue here. However, the same principle must apply, in TH's view, in relation to Article 36, since the applicant seeks to rely upon that article as the basis of its purported authority to refer to arbitration determinations under the DMLs.

TH also notes that there is no express wording in the Tilbury 2 Order (as made) clarifying that arbitration does not apply to determinations made by the MMO under the DMLs. TH would make two submissions in this respect. First, the principal issue under consideration in the context of the Tilbury





2 application was the inclusion of an express arbitration clause in the DMLs, which is not the case here. Second, TH considers that it is important, in the context of both this and other offshore wind farm Orders and more generally, for it to be made clear that arbitration does not apply in the context of the DMLs.

For completeness, TH has previously suggested drafting which would address this concern and provide clarity referred to above. This drafting can be found at Appendix 2 of TH's written submissions dated 4<sup>th</sup> March 2019, which is set out again in the appendix to these submissions for completeness.

**Environment Agency's Response:**

As already advised about having looked at the arbitration provisions in light of what we are



concerned with in the draft DCO, we believe the provisions are sufficiently clear for our purposes and we do not require/request for them to be amended.

**Historic England Response:**

In discussions we have internally with our legal team, we feel as the primary responsibility, as relevant to specific measures in the draft DCO (and DMLs), rests with the Marine Management Organisation and Kent County Council, we are not in a position to offer any alternative comments on this matter at this time.

**DDC Response:**

DDC agree that there may be some need for further clarity on this Article, but have no further comments.

**Applicant's Response**

The Applicant has provided further clarification

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|    |                |        |                             |                 |   | <p>concerned with in the draft DCO, we believe the provisions are sufficiently clear for our purposes and we do not require/request for them to be amended.</p> <p><b>Historic England Response:</b></p> <p>In discussions we have internally with our legal team, we feel as the primary responsibility, as relevant to specific measures in the draft DCO (and DMLs), rests with the Marine Management Organisation and Kent County Council, we are not in a position to offer any alternative comments on this matter at this time.</p> <p><b>DDC Response:</b></p> <p>DDC agree that there may be some need for further clarity on this Article, but have no further comments.</p> <p><b>Applicant's Response</b></p> |  |
| 33 | R26 and others | [none] | <b>Seasonal restriction</b> | Natural England | It is clear at condition 26 there is a seasonal | <b>Applicant's Response</b>   | The Applicant has provided further clarification |

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|  |  |  | <p>The Applicant amended the DCO at Deadline 5 to insert a provision applying seasonal restrictions on construction activities (including piling) in respect of non-breeding waterbirds.</p> <p>Is Natural England now content with the scope and duration of security for the seasonal restriction on construction activities? If any additional provisions are required to give effect to it, these should be identified at Deadline 6 and the Applicant should provide final wording or reasons to make no change at Deadline 7.</p> |  | <p>restriction in place between the 1<sup>st</sup> October and the 31<sup>st</sup> March for works 3A and 3B. These works are primarily within the intertidal and saltmarsh area and Natural England welcome these restrictions.</p> <p>However, we would like to draw the ExA's attention to the latest OLEMP (Revision B), in particular paragraphs 5.3.18 to 5.3.21. Here, the applicant also states "<i>In addition, all driven/ percussive piling within <b>Pegwell Bay Country Park</b>, if required, would also be subject to a timing restriction and would not take place during the period October to March inclusive.</i>" Further still the applicant states</p> | <p>The Applicant notes that this representation is directed at Natural England and will await further comments.</p> | <p>regarding this point at Deadline 6A following the ExA's request for further information.</p> <p>Natural England recognise the applicant's statement that the commitment of the seasonal restrictions is secured within the Schedule of Mitigation and OLEMP.</p> |
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|  |  |  |  |  | <p>“Any works <b>within 250 m</b> of intertidal habitats (i.e. any works to the east of the black dashed line shown in Figure 4) that are in <b>direct line of sight of intertidal habitats</b> (e.g. works on the TJBs) would only take place during the period October to March following the erection of screening fencing to avoid visual disturbance to non-breeding waterbirds.”</p> <p>This mitigation outlined above is required to rule out any AEoI on the SPA. As a result, Natural England advises that this mitigation is included in the DCO to ensure the Applicant carries out the necessary actions.</p> |  |  |
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| 43 | Schedules 11 and 12 (Deemed Marine Licences)<br><br>Condition 13(1)(k) Sch 11<br>Condition 11(1)(l) Sch 12 | (k) A site integrity plan, which must be approved in writing by the MMO in consultation with Natural England prior to the commencement of operation of the licensed activities and which must accord with the outline site integrity plan (as certified in accordance with article 35). | <b>Pre-construction plans and documentation: site integrity plan</b><br><br>Natural England has welcomed its addition as a consultee on the preparation of a site integrity plan (SIP) for the Generation Assets DML [REP5A005]. It has requested that the same amendment be made to the parallel provision in the Export Cable System DML at Condition 11(i)(l) of Sch 12 which currently provides only for the MMO to approve the SIP. The Applicant is requested to review Condition 11(1)(l) of Sch 12 and present its final wording and reasoning at Deadline 6. | Applicant,<br>Natural England         | Natural England agree that the same amendment should be made to the parallel provision in the Export cable System DML at condition 11(i)(l). | <b>Applicant's Response</b><br><br>The Applicant notes the representation and has amended the wording of this condition within Schedule 12 for consistency with Schedule 11. | Natural England has no further comments to make but welcomes the amended wording within Schedule 12 for consistency with Schedule 11. |
| 44 | Schedules 11 and 12 (Deemed Marine Licences)   | (3) The results of the initial noise measurements monitored in accordance with  | <b>Construction monitoring: noise measurements and cessation of piling</b>  | Applicant,<br>Natural England,<br>MMO | Natural England is still of the opinion that the condition regarding the cessation of piling   | <b>Applicant's Response</b><br><br>The Applicant accedes and   | Natural England welcomes the additional text as requested. However, we would suggest a slight   |

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|  | <p>Condition 17(3) Sch 11<br/>Condition 16(3) Sch 12</p> | <p>subparagraph (1) 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.</p> | <p>Natural England [RR-053][REP2-045] and the MMO [REP5-062][REP5A-003] have requested a mechanism within DML conditions 17(3) (Generation Assets: Sch 11) and 16(3) (Export Cable System: Sch 12) for piling to cease quickly in a situation where construction noise monitoring confirms there is a significant adverse effect. (This relates to noise effects from piling on marine mammals and fish.)</p> <p>The ExA heard submissions for the Applicant at ISH5 that such a limitation is not required in the dDCO because the MMO already have a statutory power enabling it to control piling in this way. However, we are not currently clear that the MMO's statutory powers do already</p> |  | <p>is still required. The MMO is better positioned to provide a drafting of this condition, however we are happy to work alongside them and the applicant to get the best outcome.</p> <p>With regard to the ExA's final point regarding AEoI, securing this condition would not make any difference to the current conclusion of AEoI. As stated above, the condition regarding cessation of piling is requested to ensure that if the construction noise monitoring demonstrates the piling works are significantly louder than assessed in the EIA, they can be stopped from continuing until further mitigation and/or monitoring</p> | <p>proposes additional wording as requested.</p> | <p>change to the wording (highlighted in blue):</p> <p>(3) The results of the initial noise measurements monitored in accordance with condition 17(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. The MMO may request that further monitoring is undertaken, unless otherwise agreed in writing with the undertaker. If, in the opinion of the MMO in consultation with Natural England, the assessment shows significantly different noise levels being generated impact</p> |
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|  |  | <p>provide for this eventuality and hence the matter of the adequacy of control in the dDCO remains unresolved.</p> <p>Could the Applicant by Deadline 6 please either accede to this request and propose drafting or alternatively provide further justification for its position that this provision is not necessary. Natural England and the MMO may comment and provide drafting by Deadline 7, with final Applicant comments at Deadline 8 if required.</p> <p>In framing final drafting, parties are requested to clarify whether or not, in their view, the amended wording would be necessary to secure a conclusion of No Adverse Effect on Integrity in relation to the Harbour Porpoise</p> |  | <p>can be agreed and implemented. This issue is not related to the SIP and our current advice regarding AEol on the SNS SAC.</p> |  | <p>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 requirements have been agreed.</p> |
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|    |   |   | feature of the Southern North Sea SAC.  |                            |   |  |  |
| 48 | Schedule 12 (Export Cable System Deemed Marine Licence)<br><br>Condition 15(2)(a) | (2) The pre-construction surveys referred to in sub-paragraph (1) to be undertaken, unless otherwise agreed by the MMO, are—<br><br>(a) appropriate surveys 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 works, as provided for in the Biogenic Reef Mitigation Plan... | <b>Pre-construction monitoring and surveys</b><br><br>Natural England advises [REP5A-005] that although pre-construction ground-truthing is provided for in the Biogenic Reef Mitigation Plan (BRMP), it is of sufficient importance to merit being included within a more precise description of appropriate surveys secured on the face of this Condition. The Applicant is requested to either accede to this request at Deadline 6 or to explain why such an approach is not warranted. | Applicant, Natural England | Natural England has no further comment beyond what was stated at Deadline 5 / 5A. | <b>Applicant's response</b><br><br>The Applicant has amended conditions 15 and 17 in order to explicitly state on the face of the dDCO that such surveys will be undertaken in accordance with the BRMP. | Natural England has no further comment and welcomes the changes made by the applicant. |
| 49 | Schedule 12 (Export Cable System Deemed   | (i) cable protection is installed within the Goodwin Sands rMCZ, ground truthing of the geophysical   | <b>Pre-construction monitoring and surveys: (good drafting and referencing error)</b>   | Applicant, Natural England | In line the ExAs query is the reference to sub-paragraph 2C                       | <b>Applicant's Response</b><br><br>The Applicant has reformatted this Article as recommended in the  | Natural England has no further comments.   |



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|  | <p>Marine Licence)</p> <p>Condition 15 (2)(b)</p> | <p>surveys carried out in accordance with subparagraph (2)(c), 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, in the event that cable protection is installed within the Goodwin Sands rMCZ;</p> <p>(ii) sandwave clearance is required within the Goodwin Sands rMCZ, interpreted geophysical monitoring to monitor changes in sediment type, in the event that sandwave clearance is required within the Goodwin Sands rMCZ</p> | <p>As currently drafted, the formatting of Condition 15(2)(b) (i) and (ii) appears that it would be more preferably drafted with 15(2)(b) (i) as a self-contained sub paragraph (b) and then 15(2)(b) (ii) as a self-contained sub paragraph (c), with sub paragraphs (c) to (e) re-lettered accordingly.</p> <p>Is the reference “carried out in accordance with subparagraph (2)(c)” which calls up the Saltmarsh Mitigation, Reinstatement and Monitoring Plan (SMRMP) the correct reference? Natural England suggests not [REP5A-005]. The Applicant is requested to review its approach on these matters and present its final position at Deadline 6.</p> |  | <p>correct and appropriate?</p> | <p>revised dDCO submitted at Deadline 6. The Applicant has also amended the reference to state 2(d), rather than 2(c).</p> |  |
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| 50 | <p>Schedule 12 (Export Cable System Deemed Marine Licence)</p> <p>Condition 15(2)(b)</p> | [As above] | <p><b>Pre-construction monitoring and surveys: “interpreted geophysical monitoring” and survey effort</b></p> <p>Can the Applicant please explain what “interpreted geophysical monitoring” means? Natural England suggests [REP5A-005] that the activity taking place pursuant to this drafting may require more precise definition on the face of the Condition. It also considers that ground-truthing needs to occur and to be secured at both preconstruction and post construction, with equal survey method and effort at both stages.</p> | Applicant, Natural England | Natural England would also welcome further information from the Applicant regarding this point which was raised by ourselves at Deadline 5 / 5A. | <p><b>Applicant’s Response</b></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. The Applicant is content to explicitly</p> | <p>Natural England welcomes the expansion on the definition of “interpretation.” These surveys, in the event that sandwave clearance occurs within Goodwin Sands MCZ, are now secured pre and post construction and should allow good comparisons to be made. This is alongside the monitoring secured within the BRMP, which will avoid and reduce the impacts upon biogenic reefs, which are now a designated feature of the MCZ.</p> |
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|    |   |        |   |                            |   | make reference to ground-truthing of preconstruction data on the face of the dDCO.  |  |
| 51 | Schedule 12 (Export Cable System Deemed Marine Licence)<br><br>Condition 17 | [None] | <b>Post construction</b><br><br>Natural England highlights [REP5A-005] an unresolved action accepted by the Applicant to secure the post construction monitoring provided for in the Biogenic Reef Mitigation Plan (BRMP) on the face of this Condition. The Applicant is requested to review its approach on this matter and present its final position at Deadline 6. | Applicant, Natural England | To reiterate, within the BRMP it is made clear that post-construction monitoring will be undertaken to validate the success of any micro-siting. 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 | The Applicant has provided post construction monitoring in the BRMP on the face of the Condition in the dDCO as submitted for Deadline 6. | Natural England welcomes the Applicant's additional text at condition 17 (a). We believe this now mirrors the commitments made during pre-construction and ensures sufficient data will be collected to monitor and identify any impact upon potential areas of biogenic reef identified through the BRMP. |

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|  |  |  |  |  | assertions that ground truthing data will be collected pre-construction for the BRMP this should be committed to post-construction to aid in determining the success of any micrositing. |  |  |
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