

# **Vattenfall Wind Power Ltd**

## **Thanet Extension Offshore Wind Farm**

Appendix 6 to Deadline 8 Submission: Legal  
Response to IP Representations

Relevant Examination Deadline: 8

Submitted by Vattenfall Wind Power Ltd

Date: June 2019

Revision A

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

Revision A	Original document submitted to the Examining Authority
N/A	
N/A	
N/A	

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

Document ref	Question/ Reference	Comment	Response
<b>Natural England</b>			
Response to Comments on ExA's dDCO commentary	44	<p>Natural England welcomes the additional text as requested. However, we would suggest a slight 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 <b>noise levels being generated impact</b> 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>	The Applicant notes the representation and has amended the wording of these conditions as proposed by Natural England
Comments on responses to the ExQ3	3.1.2	a) Natural England confirms that there still remains disagreement between ourselves and the applicant regarding this matter. We reiterate that we would be content to conclude no AEol on the SNS SAC in-combination for Thanet Extension at this time if the seasonal restriction were secured in its own right on the	The Applicant has already provided its representations on this matter in full for Deadline 7. In summary, it is not appropriate to require a seasonal restriction to take place if one is not required. The Site Integrity Plan sets out a range of options, one of which includes a seasonal restriction. If a seasonal restriction is necessary, it will be undertaken. The SIP commits to this and such a SIP is provided for and

Document ref	Question/ Reference	Comment	Response
		face of the DCO / DML.	secured by way of condition. It is not appropriate or robust drafting to list in the body of the Development Consent Order the contents of the SIP and its commitments, in the same way it would not be appropriate to do so for all of the various other plans securing forms of mitigation throughout the Development Consent Order and provided for in the Schedule of Mitigation.
Comments on responses to ExA request for further information	4.1.7	a) Natural England acknowledges the Applicant's position within their response. As stated we are "mostly satisfied that this key mitigation has been secured." However, we note that to allow the MMO to make any updates or changes to this document it should be added to the list of documentation within condition 25 to which the MMO may authorise changes.	The Applicant acknowledges the representation and confirms that the Schedule of Mitigation was added to the list of documents in Condition 25 at Deadline 7
Comments on responses to ExA request for further information	4.1.9	<p>As per Natural England's response at Deadline 6 we consider it appropriate that a condition is added to ensure an updated Saltmarsh Mitigation, Reinstatement and Monitoring Plan is submitted for approval prior to works in the saltmarsh commencing.</p> <p>As currently drafted there is no facility to amend the current mitigation or reinstatement works plan should there be a need i.e. through new methodologies, new technology or evidence.</p> <p>Natural England notes that the applicant has confirmed that the mitigation and reinstatement measures to be adopted will be dependent on survey results. This is a standard approach as it is not until the final methodology is defined that the mitigation and reinstatement works can be fully detailed. However, the choice, scope and methodology of these measures should be subject to regulatory approval and consultation with Natural England as the relevant Statutory Nature conservation body. The best way to</p>	<p>It is unnecessary to require the further submission of the Saltmarsh Mitigation, Reinstatement and Monitoring Plan (SMRMP) a second time. The SMRMP states within it that surveys will be undertaken and details of those surveys will be submitted. The plan itself does not require resubmission to achieve this aim, as a monitoring condition exists that requires a survey plan to be submitted. The Applicant therefore considers it unnecessary to amend such a condition on this basis.</p> <p>The Applicant is content to add the SMRMP to the list of documentation that may be amended and the draft DCO has been amended at condition 25 in order to reflect this in Schedule 11 and condition 28 in Schedule 12.</p>

Document ref	Question/ Reference	Comment	Response
		<p>achieve this would be through submission of an updated plan following the survey works and identification of the final installation methodology and cable route.</p> <p>Natural England would note that conditions requiring such approval and consultation have been used on the Marine Licence of all OWF projects installing cable through saltmarsh habitat. Such as Race Bank, Lincs, and Thanet OWF. They were also a requirement on the NEMO cable link project which installed cables through the same saltmarsh as proposed for Thanet Extension.</p>	
Response at Deadline 7	Schedule 11 Part 4 Condition 24.	<p>Condition 21 Relates to pre commencement works and the requirement for method statements. This should also be referenced within 24 (1) for example:</p> <p><i>No pre-commencement works may commence until all details relevant to the pre-commencement works required by Condition 13 and 21 in Schedule 11 of this Order have been submitted to and approved by the MMO.</i></p>	The Applicant is content to add condition 21 to the conditions referenced in Condition 24 and has amended the draft DCO accordingly.
Response at Deadline 7	Schedule 11 Part 4 Condition 24.	<p>In addition, condition 24 has no timing requirement. Other pre construction conditions have a 4 month period. Natural England would suggest a similar period would be required to review the information. Much of the information required for these works will also need to be submitted as part of the pre-construction sign off. Thus requiring MMO and statutory consultees to review this information twice.</p> <p>While these new conditions and definition of commence</p>	<p>The Applicant is content to add a four month period to Condition 24 and has amended the draft DCO accordingly to include the following wording:</p> <p><b>(4) The details required pursuant to sub-sections (1) and (2) must be submitted at least four months prior to the commencement of licenced activities.</b></p>

Document ref	Question/ Reference	Comment	Response
		are acceptable (subject to acceptance of the minor change above and inclusion of timing requirements), there is a question on the need for these changes. The wording used on previous DCO's included these types of pre-commencement works within commence and the securing of plans using the pre-construction conditions.	
Response at Deadline 7	Schedule 11 Part 4 Condition 24.	Furthermore, the location of this condition within the deemed marine licences appears inconsistent with the rest of the conditions, being placed after the pre-construction conditions, pre, during and post monitoring conditions and after the decommissioning conditions. It would make sense for condition 21 and 24 to be moved to a pre-commencement section after the Force Majeure and prior to the Pre-construction.	The Applicant does not consider that the location of this condition materially affects the operation or interpretation of the DCO. As a result, the Applicant does not consider it to be proportionate to reposition the clauses due to the number of documents that cross refer to the condition in its current location.
Response at Deadline 7	Schedule 11 Part 4 Condition 25.	In addition to Natural England's recommendation in response to the ExA's recent Rule 17 letter, sent 3 June 2019, Natural England would advise that the Saltmarsh Mitigation, Reinstatement and Monitoring Plan be added to the list of documentation that may be amended by the MMO. Please see Natural England's response to the applicant's comments on the Rule 17 letter, question 4.1.9.	The Applicant is content to add the SMRMP to the list of documentation that may be amended and the draft DCO has been amended at Condition 25 in order to reflect this in Schedule 11 and Condition 28 in Schedule 12.
Response at Deadline 7	Schedule 11	This DML only covers offshore aspects of the works. No works take place within the saltmarsh. Therefore, the	The Applicant is content to remove this reference within Schedule 11 and has done so in the draft DCO.

Document ref	Question/ Reference	Comment	Response
		definition related to the saltmarsh works should be removed from the generation assets licence to avoid any confusion in the future.	
Response at Deadline 7	Part 5 – Procedure for Appeals – Schedule 11 and 12	Natural England notes the addition of an appeals process. Natural England supports the comments made by the Marine Management Organisation with regard to appeals and arbitration. However, if the appeals process is included, under the current 4 months prior to construction and 4 months to reach a determination, then there is no time for any appeals process to be run without significant delay to the construction start date. However, if the documentation was submitted 6 months before construction then this gives a minimum of 2 months for appeals and for discussions and agreements on potential alternatives that could gain approval.	The Applicant notes that an appeals process would increase the time involved to obtain a decision. This is also the same for arbitration. The key point however that the Applicant has already made in its submissions is that an appeal or arbitration mechanism provides expediency – and certainty – of process within a time frame that would be far quicker than judicial review and would also operate to consider matters of fact and law, rather than simple public law principles.
Response at Deadline 7	Schedule 11 Part 4 Condition 15(4)	Natural England disagrees with this condition, in that that it should not be a deemed acceptance / approval after 4 months. It should be an assumed refusal instead. Furthermore, this current condition is inconsistent with Norfolk Vanguard’s similar condition which is a deemed refusal.	The Applicant refers Natural England to their final position statement in relation to arbitration, appeals and deemed approval submitted as a position statement at Deadline 8. In summary however, the Applicant sees absolutely no legal justification for a deemed refusal as opposed to a deemed approval and a deemed approval is the more legally sound mechanism. The former usurps the statutory obligations of parties to provide a reasons based approach to decision making when refusing applications for approval.
Response at Deadline 7	Throughout the DCO	All references to Natural England should be amended to state the “Relevant Statutory Nature conservation Body”. This is to ensure consistency with other DCOs. In addition it removes the need to amend the DCO/DML should there be a change in legislation that changes who the Relevant Statutory Nature Conservation Body is.	This matter was discussed with the Examining Authority at a Compulsory Acquisition Hearing. The Examining Authority requested that, for clarity, the DCO be amended to specifically refer to Natural England as the only body that could be referred to as the "Relevant Statutory Nature Conservation Body" is Natural England. The Applicant also notes that the DCO would operate as a matter of law to apply

Document ref	Question/ Reference	Comment	Response
		Natural England would refer you to the current draft Vanguard DCO/DML as an example and suggest the definition of Relevant Statutory Nature Conservation Body be taken from this document.	to any successor body to Natural England.
<b>Maritime &amp; Coastguard Agency</b>			
Thanet Deadline 7 Response Table	13. Art 16	<p>In its deadline 5 submission, the MCA questioned why the extinguishment of the rights of navigation was 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.</p> <p>DfT Legal: The concern with article 16 remains the automatic extinguishment of the rights of navigation after 14 days of a submitted plan. DfT are of the view the view that article 16 ought to be amended to make it clear that the rights of navigation may only be extinguished once the area has been marked to the reasonable satisfaction of Trinity House. DfT would expect the extinguishment of such navigation rights to then be communicated to interested parties such as the MCA so that mariners can be informed.</p>	<p>Article 16 has already been amended, at the request of Trinity House, to require the following</p> <p>"(4) The undertaker will exhibit such lights, marks, sounds and signals and other aids to navigation and take such reasonable steps for prevention of danger to navigation caused by the construction of the permanent structures as Trinity House directs".</p> <p>Trinity House considered this was sufficient control and protection and ensures that when directed to do so, can follow the submission of the plan showing such extinguishment to Trinity House, that the Applicant marks any area to their reasonable satisfaction.</p>
<b>Port of London Authority and Estuary Services Limited</b>			
Port of London Authority and Estuary Services Limited – Written Rep	Appendix 24/Appendix 44 Art 16 (Comment No. 13)	The PLA supports Trinity House's D5A submissions [REP5A-006] to the effect that it is not necessary or desirable to include a general power to extinguish public rights of navigation in the dDCO. The Applicant has given no compelling reason for the extinguishment of these public rights over an area which is a highly-used area by commercial, fishing and leisure traffic and which	The Applicant has explained, and made clear in its submission at item 13 of Appendix 24 of its Deadline 6 submission [REP6-034], the dDCO has been amended to suspend, rather than extinguish, the public rights of navigation. Nonetheless, no general power of extinguishment ever existed in the dDCO. This was a specific power to extinguish rights of navigation (now suspend) in specific turbine locations, which will be submitted to Trinity House.



Document ref	Question/ Reference	Comment	Response
		comprises key navigational routes into and from the Thames Estuary.	The PLA are mistaken that some form of compulsory acquisition "compelling interest" test exists to extinguish those rights. The simple answer is that the "commercial fishing and leisure traffic" referenced in their response physically are unable to navigate through a wind turbine generator location. The right therefore cannot exist in that specific place and that is why it is extinguished for a period of time whilst the project is operational.
Port of London Authority and Estuary Services Limited – Written Rep	Appendix 24/Appendix 44 Art 16 (Comment No. 15)	At Deadline 6, the ExA requested that the Applicant provide proposed relevant changes or an explanation as to why a change in drafting was not warranted in relation to navigation safety measures for temporary construction works.  The Applicant's Appendix 24 to Deadline 6 Submission: Applicant's comments on the ExA's preferred dDCO or dDCO commentary does not appear to include a response to this comment from the Applicant.  The PLA and ESL are, therefore, unable to provide a response on this point.	The Applicant is not proposing any temporary structures at sea during the commencement of construction, apart from buoys, which will only be present for a very limited period of time. Temporary works relate to construction vessels, such as jack-up barges, which move on a daily basis. Construction movements and ensuring safety at sea is controlled by the Aids to Navigation Condition 8 in Schedules 11 and 12 of the draft DCO.
Port of London Authority and Estuary Services Limited – Written Rep	Appendix 24/Appendix 44 Sch 1 Parts 1 and 3 (Comment No. 30)	The PLA and ESL refer to their previous submissions on the dDCO. The Applicant states (Appendix 44 to Deadline 6 Submission: Applicant's response to commentary of dDCO from Interested Parties, p14) that the requirement to produce a construction programme and monitoring plan, as well as the requirement to submit a construction method statement to the Marine Management Organisation is more than sufficient to ensure complete clarity about the nature of the works and where they will be placed within the SEZ. There is, however, no clarity on the positioning of those works at this stage, and no party has had an opportunity to comment on the precise location of those	The Applicant has made several submissions on this point and does not propose to repeat them in full here but, in summary, it is not feasible or possible to include on the works plans the limits of the cabling works. The Applicant is required to submit layout and design plans in discharging this condition, which will clearly display to the relevant authority where cables will be and will go. The plans can be provided to interested parties for information and the MMO can consult with whoever they deem fit or appropriate.  To provide absolutely clarity, the Applicant is content to amend Condition 13(1)(b)(v) in Schedule 11 to state:  (v) details of the works to be undertaken within the structures

Document ref	Question/ Reference	Comment	Response
		<p>works during the DCO process as the Applicant has not made that information available. There will be very limited oversight or approval of the nature of those works and where they will be, and the PLA and ESL will have no involvement in that process.</p> <p>The Applicant should be required to show the limits of the cabling works precisely on the works plans (through the DCO) – rather than the excessively large area covering the whole of the SEZ – in order to give Interested Parties and others certainty about the extent and location of those works.</p>	exclusion zone, <b>including the location of cables</b> ".
<b>Port of Tilbury London Limited and London Gateway Port Limited</b>			
Port of Tilbury London Limited and London Gateway Port Limited – Written rep	4.2 and 4.3	<p><i>"Public rights of navigation: additional security for navigation safety in construction Port of Tilbury London Ltd., London Gateway Port Ltd. have requested [REP5A-001] that Art 16 be amended to extend the navigation safety measures for permanent structures to cover temporary construction works. It flags that similar measures enabling Trinity House to give directions for the lighting and marking of works are a standard provision in Ports DCOs and Harbour Orders. The Applicant is requested at Deadline 6 to either:</i></p> <p><i>a) Propose relevant changes; or</i></p> <p><i>b) Provide an explanation why such drafting is not warranted.</i></p> <p><i>The relevant IPs and Other persons are asked to make concluding submissions on this point at Deadline 7"</i></p> <p>The Applicant has not responded to this point in its Deadline 6 representations. The Ports therefore have no further comments to add to those made in respect of this article at Deadline 5A and it is noted that the Applicant is in discussions with Trinity House in respect of this article.</p>	Please see the Applicant's response above to the PLA.
Port of Tilbury	4.8 and 4.9	The Ports note that the MCA does not consider that such	The Applicant notes the Ports' response but fundamentally

Document ref	Question/ Reference	Comment	Response
London Limited and London Gateway Port Limited – Written rep		<p>a requirement would be sufficient to address the MCA's overall concerns and its Deadline 6 position that it "<i>is unable to agree that the proposed project is acceptable with regards to the safety of navigation</i>". The Ports agree that such a requirement would not fully address such concerns however it would add an element of control to works carried out in the SEZ, which is the purpose of the proposed requirement. The MCA does not dismiss the notion of control being added and appears to agree that it should be consulted on the construction programme monitoring plan through the consultation with the MMO on the DML condition.</p> <p>The Ports maintain that the MCA is the appropriate authority to approve the construction programme and monitoring plan (alongside the MMO) due to its functions in respect of shipping. If explicitly secured through such a requirement, 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. The requirement suggested by the Ports would codify the MCA's position and ensure that it had control of the construction programme and monitoring plan in the interests of navigational safety.</p>	disagrees that the inclusion of a separate requirement is necessary. The Applicant has already provided responses to this point previously in the Examination. The MMO will consult with a number of statutory bodies when approving the construction programme and monitoring plan. This will include Trinity House, the MCA and other relevant bodies it sees fit, before approving such a plan. The MCA is not the appropriate body to approve a construction programme and monitoring plan. Its functions do not simply relate to shipping or indeed to safety. The MMO enforces the entirety of the deemed marine licence and ensures that all relevant plans are properly complied with. The Applicant notes that the MMO has not provided submissions in support of either the Ports or the MCA.
<b>Marine Management Organisation</b>			
Deadline 7 Submission	2.4.1	The MMO advises that it shares the concern raised by the ExA in the question above and agrees that the dDCO, as suggested, should be amended to fully reflect the most up to date definition of what comprises the ES.	The Applicant can confirm in its response to R17 Q4.8.1 that a summary of all documentation relating to the Environmental Statement was listed and also then included in Schedule 13 of the draft DCO.

Document ref	Question/ Reference	Comment	Response
Deadline 7 Submission	3.5	<p>At deadline 6 the MMO commented that the parameters outlined below should be included in the DMLs to ensure the maximum impacts remain within those assessed and approved in the ES.</p> <p>The MMO noted that the Applicant had suggested they would accede to this request, however notes their comments on responses to the ExA's second round of written questions stating otherwise. The MMO does not believe the Applicant responses to date address the concerns raised in respect of securing these parameters on the DMLs. The MMO has provided full commentary on this at deadline 4 (REP4-031) – see '2.2 Action 20 – DML Maximum parameters', however in summary:</p> <p>The MMO notes the Applicant's position that they are 'generally' restricted to carrying out the development in accordance with the certified ES which also sets out the maximum parameters of the projects, and therefore as they have to comply with the certified ES it is unnecessary to repeat maximum parameters on the face of the DML. Whilst this proposition may work for the main body of the DCO; 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 MACAA2009. In Revision F (RevF) of the DCO, there does not currently appear to be any conditions limiting the works to the parameters defined in the certified ES which would secure their enforceability. Consequently, the MMO expects that on the current drafting the maximum parameters should be set out in the body of the DML.</p> <p>The MMO would also like to point out that if the maximum parameters are not stated in the DML, but a condition included limiting the works to these, then this could be</p>	<p>The Applicant has not at any point confirmed they would put on the face of the draft DCO all parameters outlined at paragraphs 3.5.7 to 3.5.11. In relation to parameters, the Applicant has set out in full its responses at item 2.4.7 of Appendix 23 [REP6-032] and item 26 of Appendix 44 [REP6-066] of the Applicant's submission at Deadline 6 and item 40 [REP6A-015] of Appendix 4 of the Applicant's submission at Deadline 6A. This is the Applicant's final position on the matter.</p>

Document ref	Question/ Reference	Comment	Response
		<p>ultimately more restrictive for the Applicant than the approach outlined in 3.5.3. If the Applicant were required to comply with maximum parameters defined in the certified ES but decided to move outside of these, it would be more procedurally difficult for them than a variation to the parameters on the DML.</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>The MMO does not feel that the Applicant has put robust arguments as to why it should depart from the general approach. As previously stated at deadline 6, the following parameters should be included on the DMLs:</p> <p><b>Footprint for disposal activities</b> - 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><b>Maximum permitted cable protection footprint</b>  <b>Maximum permitted scour protection footprint</b>  <b>Maximum number of cable crossings</b></p> <p><b>Hammer Energy</b> – the MMO requests the maximum hammer energy be stated on the DMLs. The maximum hammer energy is an important metric in ensuring that impulsive noise is within the maximum that was assessed in the ES (and potentially the HRA). If the proposed</p>	

Document ref	Question/ Reference	Comment	Response
		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. The Applicant maintains in their response to interested parties DCO commentary that <i>“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.”</i> This is incorrect; whilst this may have been the case historically, hammer energy now features on a number of recent offshore windfarm DCOs. Most recently, though not consented as yet, it has been included on the Hornsea Project Three Order.	
Deadline 7 Submission	3.6	The MMO suggests condition 15 is amended to allow a six month approval period, except where otherwise agreed in writing by the MMO. A full explanation on the rationale for this request has been provided at deadline 6 (REP6-088)	The Applicant does not agree that increasing the approval process to six months is appropriate or proportionate. Previous responses have been provided, including the rationale for the Applicant's position, at item 29 of Appendix 44 of the Applicant's submission at Deadline 6 [REP6-066]
Deadline 7 Submission	3.7	<p>Sub-paragraph (2) of condition 22 states: <i>“Any man-made material must be separated from the dredged material and disposed of on land, where reasonably practical.”</i></p> <p>The MMO questions whether the reference to ‘disposed’ could contradict the purpose of the Written Scheme of Investigations (WSI). In addition, were the material to be ‘landed’ the MMO may not have the full power to enforce the WSI.</p> <p>The MMO has sought clarification on this from the Applicant, however in the absence of a response prior to deadline 7, suggests amendments are made to clarify that only material of non-historical significance, or that</p>	The Applicant has now amended sub-paragraph (2) following representations made by Historic England and has made clear that such material would be disposed that is not in contravention of the offshore archaeological written scheme of investigation.

Document ref	Question/ Reference	Comment	Response
		would not be in contravention of the WSI is disposed of.	
Deadline 7 Submission	3.8.2	The MMO adds that the Operations and Maintenance Plan listed in schedule 13 should be revised to make clear that this is an outline plan. Assuming consent is given, a final plan will be approved prior to commencement of the licensed activities.	The Applicant is content to revise the definition of the Operations and Maintenance Plan is an "outline" document and reflect this where referenced throughout the draft DCO.
Deadline 7 Submission	3.9.2	The MMO notes the revisions at condition 15 (b) of schedule 12 including the insertion of "to be" which makes it clearer that action is required if it is anticipated that cable protection would be installed. However later in the paragraph reference is made to "...areas where cable protection has been installed..." The MMO suggests this is revised accordingly so the condition requirements are clear.	The Applicant notes the comments of the MMO and has revised the draft DCO accordingly to make clear throughout Condition 15(b) that such cable protection is "to be" and has not already been, installed.
Deadline 7 Submission	3.10	<p>The MMO has provided extensive commentary on the circumstances surrounding proposed mitigation for herring and sole spawning grounds, most recently at deadline 6 (REP6-088), and further in response to the ExA's final written questions at 2.2 and 2.3 respectively.</p> <p>Taking final matters into account and further to commentary provided at <b>section 2</b> - response to the ExA's final written questions, the MMO advise that mitigation for herring and sole spawning grounds should be secured on the DMLs in the form of seasonal restrictions. Such restrictions should be drafted as conditions on the DMLs as follows:</p> <p><b>Downs (North Sea) herring stock:</b> <i>"No pile driving works shall be carried out by or on behalf of the undertaker as part of or in relation to the authorised scheme between <b>1st November and 31st January</b> each year unless the MMO provides written confirmation to the undertaker beforehand that such works can take place, in all or in a specified part of the site, during this period or a part of this period."</i> Reason: to minimise the risk of potential impact from underwater noise resulting from</p>	The Applicant has provided substantive responses to the MMO identifying that such a measure would be disproportionate and draconian when considered against the scale of effect on healthy populations of fish species. A detailed response is provided at Appendix 3 of this D8 submission.

Document ref	Question/ Reference	Comment	Response
		<p>piling operations on the Downs herring stock.</p> <p><b>Thames herring stock:</b> <i>“No pile driving works shall be carried out by or on behalf of the undertaker as part of or in relation to the authorised scheme between <b>1st February and 30th April</b> each year unless the MMO provides written confirmation to the undertaker beforehand that such works can take place, in all or in a specified part of the site, during this period or a part of this period.”</i> Reason: to minimise the risk of potential impact from underwater noise resulting from piling operations on the Thames herring stock.</p> <p><b>Dover sole stock:</b> <i>“No pile driving works shall be carried out by or on behalf of the undertaker as part of or in relation to the authorised scheme between <b>1st March and 30th April</b> each year unless the MMO provides written confirmation to the undertaker beforehand that such works can take place, in all or in a specified part of the site, during this period or a part of this period.”</i> Reason: to minimise the risk of potential impact</p> <p>Broad spawning seasons for the aforementioned species are as follows; Downs herring from November to January inclusive, Thames herring from February to April, and Dover sole from March to May (peaking in April) (Coull <i>et al.</i>, 1998). Table 1 provides a summary for a visual overview. Please note that fish may spawn earlier or later in the season in response to environmental changes such as temperature and salinity.</p> <p>The MMO acknowledge that Examination is drawing to a close. However, further to the recommendations by the ExA and subsequent decision by the Secretary of State, the Applicant is encouraged to provide the following information to fully assess potential impacts:</p> <p><b>For Sole:</b></p>	



Document ref	Question/ Reference	Comment	Response
		<ul style="list-style-type: none"> <li>• Predicted injury and Temporary Threshold Shift effect zones (based on a stationary receptor and Popper noise exposure criteria) overlaid onto appropriate sole spawning ground data.</li> <li>• A figure showing the modelled SPL<sub>peak</sub> or SEL<sub>ss</sub> noise isopleths overlaid onto sole spawning grounds, for the two locations – East and South-West.</li> </ul> <p><b>For Herring:</b></p> <ul style="list-style-type: none"> <li>• A figure showing the modelled SPL<sub>peak</sub> or SEL<sub>ss</sub> noise isopleths overlaid onto herring spawning grounds/appropriate IHLS data - East and South West.</li> </ul> <p>In the event TEOWF is given consent and seasonal restrictions are secured on the DMLs, provision of the above evidence will enable the MMO to fully assess potential effects and advise if and under what circumstances such restrictions could be revised.</p>	
<b>Trinity House</b>			
Deadline 7	Schedule 11 Part 4 - Post construction: vessel traffic monitoring	<p>Trinity House requested at Deadline 5A [REP5A-006] that Condition 18 of Schedule 11 Part 4 should be amended to provide for operational vessel traffic modelling in similar terms to the construction vessel traffic modelling provided for in Condition 17. It has requested to be a recipient of monitoring reports.</p> <p>Trinity House note that whilst the applicant has provided for such reports (as per the latest version of the DCO Rev. F at Deadline 6) for construction traffic monitoring to be submitted to TH this is not provided in the case of post construction traffic monitoring reports. Accordingly Trinity House requests that an appropriate amendment is made</p>	The Applicant notes the representation and confirms that Trinity House has been added to the recipients of post-construction monitoring reports in the DCO submitted at Deadline 7.

Document ref	Question/ Reference	Comment	Response
		to Condition 18(1)(4).	