



Marine Management Organisation

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The Boston Alternative Energy Facility Case Team
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MMO Reference: DCO/2019/00006
Planning Inspectorate Reference: EN010095
Identification Number: 20028136

19 October 2021

Dear Sir or Madam,

Planning Act 2008 – Application by Alternative Use Boston Projects, for an Order Granting Development Consent for the Boston Alternative Energy Facility.

Deadline 1 Submission

On 20 April 2021, the Marine Management Organisation (MMO) received notice under Section 55 of the Planning Act 2008 (PA 2008”) that the Planning Inspectorate (PINS) had accepted an application made by Alternative Use Boston Projects Limited (Applicant) for determination of a development consent order (DCO) for the construction, maintenance, and operation of the proposed Boston Alternative Energy Facility (DCO Application) (MMO ref: DCO/2019/00006; PINS ref: EN010095).

The Applicant seeks authorisation for the construction, operation and maintenance of an ‘Energy from Waste’ (EfW) plant which will have a generating capacity of approximately 102 megawatts electric (MWe) delivering 80 MWe to the National Grid, including an electrical connection, a new site access, and other associated development (together the Proposed Development) on land at or near Riverside Industrial Estate, Bittern Road, Boston, Lincolnshire (Application Site).

The MMO received a Rule 8 letter on 14 October 2021. In response to this letter, the MMO submits the following:

- 1. Comments on Relevant Representations (RRs)**
- 2. Summary of Relevant Representation**
- 3. Summary of Written Representation for Deadline 1**
- 4. Written Representation for Deadline 1**
- 5. Responses to the Examining Authority’s first round of written questions**
- 6. Notification of wish to make oral representations at the Issue Specific Hearings**
- 7. Notification of wish to have future correspondence electronically**

The MMO has entered into a Statement of Common Ground (SoCG) with the Applicant that will be submitted by the Applicant on the MMO’s behalf at written Deadline 1.

Yours faithfully



INVESTORS
IN PEOPLE | Bronze



Katherine Blakey
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Annex 1

1. MMO Comments on Relevant Representations (RR)

Natural England [Examination Library Reference RR-021]

1.1. The MMO supports, and defers, to Natural England's expert opinion as Statutory Nature Conservation Body (SNCB) regarding the impacts to international designated sites and the Habitats Regulations Assessment (HRA) for the project.

Environment Agency [Examination Library Reference R-013]

1.2. The MMO has reviewed and supports the Environment Agency's RR and notes their comments. The MMO will maintain a watching brief on future Environment Agency submissions and will again provide comment in future where necessary.

Historic England [Examination Library Reference RR-027]

1.3. The MMO has reviewed Historic England's RR and supports their comments regarding the Outline Written Scheme of Investigation (OWSI).

Maritime and Coastguard Agency (MCA) [Examination Library Reference RR-010]

1.4. The MMO notes the MCA states that it will be invited to comment on any marine licence application related to the works. Whilst this is correct for any works that are licensable under the Marine and Coastal Access Act 2009 (MCAA) and that are not contained within this DCO Application, the MMO would like to stress that the marine works applied for within this DCO Application will be assessed via the examination process, which is led by PINS under the PA 2008, and the MCA should feed into this process rather than wait to be invited to comment by the MMO. The MMO will be contacting MCA to discuss the DCO Application, and is likely to support any requests relating to the deemed Marine Licence (DML), however the MMO would like to clarify that the marine licence application procedure is different to the DCO application procedure, through which a DML is granted.

2. Summary of the MMOs Relevant Representation [Examination Library Reference RR-008]

2.1. See below a summary of the MMO's RR dated 18 June 2021, not exceeding 1500 words. Please note that some of the issues below have now been resolved and the details of this will be contained in the SoCG. Further comments have been provided to the Applicant since the MMO submitted its RR, and these are contained in its Written Representation in sections 3 and 4.

Development Consent Order /Deemed Marine Licence matters [Examination Library Reference APP-005]

2.2. The DCO includes an arbitration process outlined in Part 6, Article 50. The MMO considers that the described process shifts the responsibility of decision making from the regulator to an independent arbitrator, which would be contrary to the intent of Parliament set out in MCAA and would usurp the role of the MMO as a regulator. The MMO requested that this provision be removed from the DCO. Once the DCO is granted, the DML falls to be dealt with as any other marine licence, and any

decisions and determinations made once a DML is granted fall into the regime set out in MCAA. Any decisions or actions the MMO carries out in respect of a DML should not be made subject to anything other than the normal approach under MCAA. To do so introduces inconsistency and potentially unfairness across a regulated community. In the case of any disagreement which may arise between the Applicant and the MMO throughout this process, there is already a mechanism in place within MCAA to challenge a decision through the appeal routes under Section 73 MCAA.

- 2.3. The DML conditions include timeframes for submission of documents by the Applicant. Some of the timeframes for submission of documents prior to works commencing are too short to allow MMO sufficient time to review the submissions and resolve any issues. We advised that a 6-month period (prior to the commencement of activities) would be more appropriate. Similarly, with regard to Part 6 25(3) CHANGES TO THIS LICENCE – the draft states that: -
- *“The MMO will grant the variation to this licence within 13 weeks from the day immediately following that on which the variation was requested, or as soon as reasonably practicable, subject to the licence holder providing updated details of the licenced activity in accordance with paragraph 13 and adequately justifying the requested variation to the reasonable satisfaction of the MMO”.*
- 2.4. Please note that the MMO does not consider this provision to be acceptable as it impacts the MMO’s ability as a regulator to protect the marine environment and we therefore request that this is removed. The MMO endeavours to provide a determination on 90% of applications within 13 weeks but there is no guarantee that this determination when granted will be positive.
- 2.5. The MMO advised the Applicant of areas of disagreement with regards to definitions within the DCO/DML, in particular the definition of ‘licence holder’ and ‘maintain’.
- 2.6. The MMO suggested that the Applicant makes a number of amendments to the wording of the DML conditions to ensure that they were clear, detailed, and enforceable. The MMO applies five tests when drafting conditions and a similar approach should be used here. These five tests are as follows, conditions must be: necessary; precise; enforceable; reasonable; and related to the activity or development.
- 2.7. The MMO has advised that a number of additional conditions not currently contained within the DML may be required under Part 4. The MMO are currently in discussion with the Applicant regarding conditions for the submission of a Construction Environmental Management Plan (CEMP), and Bathymetric surveys. These will follow in subsequent deadline responses.
- 2.8. The MMO noted that any mitigation discussed in the Environmental Statement (ES) must be secured through conditions in the DML. These conditions should pass the MMO’s five tests, as detailed in point 2.6 of this representation.
- 2.9. The MMO deferred to Natural England as the SNCB regarding the HRA and for impacts to any habitats’ species, both terrestrial and marine. The MMO note that the Applicant has included a Habitat Mitigation Area within the application to ‘mitigate’ the loss of foraging area. It is the MMO’s opinion that this is not mitigation and should be viewed as a compensation. Compensatory measures, if used, must be proven to be effective and must be secured as part of the DCO. The MMO

recommends direct engagement by the Applicant with Natural England as SNCB on these matters.

3. Summary of the MMO's Written Representation – Deadline 1

- 3.1. See below a summary of the MMO's Relevant Representation, dated 19 October 2021, not exceeding 1500 words. Please note that some of the issues below have now been resolved and the details of this will be contained in the SoCG.
- 3.2. The MMO advised that further clarification is required on points raised in relation to a number of sections within the ES. These include: -
 - Marine Water and Sediment Quality [Examination Library Reference APP-053]
 - Estuarine Processes [Examination Library Reference APP-054]
 - Marine and Coastal Ecology [Examination Library Reference APP-055]
- 3.3. The main potential marine impacts arising from the proposed scheme are; habitat loss/alteration, increased suspended sediment concentrations and increased noise and visual disturbance caused by piling and ship movements. The sensitive receptors include fish species, benthic communities, birds, marine mammals, saltmarsh, and mudflats.
- 3.4. The MMO considers that there is a high likelihood for potential impacts on fish receptors to occur, and it is expected that further information should be presented on the timing and duration of the works, piling methods, and potential effects from light disturbance.
- 3.5. The MMO considers that there may be an impact on fish species due to underwater noise. The MMO requires further consideration, by the Applicant, of noise displacement and acoustic barriers on fish species.
- 3.6. The MMO notes that the Applicant should consider taking additional surface samples before construction to ensure the surface sediment remains suitable for dredging in terms of water quality. In addition, samples for disposal operations should follow the MMO's guidance and have an MMO approved laboratory undertake the analysis.
- 3.7. Following further internal review, the MMO has provided further recommended changes for all sections of the DML.

4. MMO Written Representation – Deadline 1

The MMO did not receive notice under Section 56 of the PA 2008 that PINS had accepted an application made by Boston Alternative Energy Facility (BAEF) (the Applicant) for a DCO until later than the day of acceptance. As such, the RR submitted on 18 June 2021 only comprised the MMO's initial comments in respect of the DCO Application, following internal consultation and review of the submission. The MMO noted at the time, that further technical comments would be forthcoming at future deadlines following consultation with our scientific advisors as The Centre for Environment, Fisheries and Aquaculture Science (Cefas). The written representation submitted here is the outcome of this initial consultation.

Coastal Processes

- 4.1. The main components of the Proposed Development that are most likely to impact the marine and coastal processes during both construction and operation are the proposed wharf, and the capital and maintenance dredging necessary for vessel access. Two elements of wharf construction could potentially influence estuarine processes: -
- Excavation of the slope for the revetment; and
 - Capital dredging in front of the quay wall to create the berthing areas.
- 4.2. The DCO Application states “*There would be less wave reflection off the embankment, but more wave reflection off the rocks. These two effects would balance each other to effect little change to the overall wave climate*”. However, it is unclear how this statement is justified in the absence of any wave modelling. The MMO will require this to be clarified and explained.
- 4.3. The MMO is satisfied that the appropriate evidence base has been used in regard to coastal processes, and that sufficient information has been presented to inform decision making. The MMO notes, however, that the clarifications, as noted above, are still necessary.
- 4.4. The main potential impacts arising from the Proposed Development are habitat loss/alteration, increased suspended sediment concentrations and increased noise and visual disturbance caused by piling and ship movements. The sensitive receptors include fish species, benthic communities, birds, marine mammals, saltmarsh, and mudflats. The MMO is satisfied with the proposed mitigation measures and note that the bathymetric surveys will be undertaken every six months to monitor any potential erosion of the intertidal habitats.
- 4.5. The MMO would like to highlight that an accumulation of sediment of approximately 8,000m³/year is estimated around the berthing area, yet no mitigation plan has been discussed around this accumulation site.
- 4.6. In terms of modelled data, the MMO would also like to note that evidence derived from previous studies based on modelled data have not been statistically assessed.
- 4.7. The estuarine processes effects that have been assessed for the Proposed Development alone are anticipated to result in no effect or negligible effect to The Wash European Marine Site and Havenside Local Nature Reserve receptors. However, there may be potential cumulative effects on some of the identified receptor groups arising from interaction of changes to estuarine processes with those changes generated by other plans, projects, and activities. It is likely that only the Boston Tidal Barrier project is estuary-based and close enough to the Proposed Development to act cumulatively. Cumulative effects may arise due to:
- simultaneous capital dredging activities;
 - simultaneous operation; and
 - simultaneous maintenance dredging activities.
- 4.8. These potential cumulative impacts are assessed based on high confidence data. Based on the Boston Tidal Barrier Environmental Impact Assessment (EIA) it is concluded that the cumulative impact from the plume of the two projects being dredged in this area at the same time would be negligible.

Fisheries

- 4.9. The ES report has correctly identified the main fish receptors present in The Haven and The Wash, including sole (*Solea solea*), plaice (*Pleuronectes platessa*), and herring (*Clupea harengus*), as well as migratory fish species such as smelt (*Osmerus eperlanus*), European eel (*Anguilla anguilla*), river lamprey (*Lampræta fluviatilis*) and sea trout (*Salmo trutta*). Particular attention has been given to smelt as this species has been consistently recorded in estuarine waters of Boston Docks and The Wash.
- 4.10. The MMO has noted some discrepancies between Table 17-6 in the 'Marine and Coastal Ecology' section of the ES, and Table 4.5 within 'A17/2b - Volume 2b: Technical Report: Ecology and Nature Conservation' which has been referenced as the source for Table 17-6. For instance:
- Table 17-6 shows that for river lamprey (juvenile) migration times are from July-September whereas in Table 4.5 river lamprey (juvenile) migration times are from September to October.
 - Similarly, for river lamprey (adults), Table 4.5 shows migrations times from September to October whereas Table 17-6 shows April to May.
 - Also, for sea trout, Table 17-6 shows migratory times from April to September for adults and March to April for juvenile, however, Table 4.5 states that sea trout adults migrate all year around whereas juvenile migration occurs from April to May.
- 4.11. The MMO requests that the Applicant review the migratory times and update the information provided in the ES accordingly. If known, it would be beneficial for the peak months of each species' migratory periods to be denoted on the table with '*'.
- 4.12. Although not stated in the table legend, the MMO notes that Table 17-6 (from row 9 to 12) shows herring, sprat, cod (*Gadus morhua*) and whiting (*Merlangius merlangus*) with specific seasons highlighted in green. It is the MMO's understanding that, as The Wash has been reported as a nursery area for herring, sole, plaice, whiting and cod, their presence in table 17-6 suggests these species' nursery times in The Wash. The MMO requires clarification on this with a revision of the table legend to include the updated information.
- 4.13. In terms of potential impacts on fish receptors, the MMO is satisfied that the description of the potential impacts to fish ecology arising from the construction and operation of the proposed scheme is appropriate.
- 4.14. The MMO notes that the Proposed Development would operate 24 hours a day requiring lighting during hours of darkness. However, from the documents reviewed, it is not clear whether artificial lighting over the water column would be required for dredging or piling works. If this is the case, there is potential for artificial lighting to result in further disturbance to fish. Therefore, the MMO would expect potential effects from light disturbance on fish receptors to be scoped in for further assessment.
- 4.15. The MMO also notes that mussel and cockle beds have been identified as economic resources for the local inshore fishermen in The Wash by Eastern Inshore Fisheries Conservation Authority (IFCA). However, an assessment of

potential impacts arising from the construction and operation of the Proposed Development on commercial fisheries in the area has not been presented for review. Nonetheless, the MMO notes that the Applicant has already engaged with a representative of the fishers of Boston to address their concerns.

4.16. The MMO considers that there is a high likelihood of potential impacts on fish receptors to occur as a result of increased suspended sediment concentrations, poor water quality from dredging works, and underwater noise from piling causing an acoustic 'barrier' to fish movement, impeding travel/migration. Whilst we appreciate the ES' acknowledgement of these impacts and the proposal for mitigation measures to protect fish species at this stage, the following points should be addressed and presented for review: -

- Timing and duration of the proposed works: specific months, number of piles to be installed per day below the water line.
- Piling methods: vibro vs percussive, piles diameter, hammer energy and timing to drive each pile to the design depth.
- Clarification is needed on whether the project intends to undertake simultaneous piling i.e., impact or vibratory piling of more than one pile at any one time.

4.17. No dredging works are anticipated to be undertaken at night-time which will minimise the exposure of some migratory species such as eels and trout smolts which migrate at night. The MMO is in agreement with the ES that avoiding dredging at night will allow eels and lamprey to migrate upstream and downstream during hours of darkness when they are typically active. The MMO notes however that although we agree that this mitigation in terms of spawning and migratory activity is also appropriate to reduce (not avoid) the impacts of noise and vibration on those species of concern, the information provided on migratory times within Chapter 17 of the ES is contradictory and should be reviewed. Furthermore, in order to define a temporal restriction during key migration periods, the MMO recommends that the exact timing of the construction works (i.e., months when dredging and piling works are likely to be undertaken) is presented by the Applicant to help identify potential overlaps with peak migratory seasons for sensitive fish species and to evaluate the effectiveness of the mitigation measures already proposed.

4.18. The MMO appreciates the mitigation measures proposed for piling works and recognises that piling works will be undertaken above the water (i.e., in the dry) whenever possible. However, due to the likelihood of piling works being undertaken below the water line and given the narrow nature of The Haven at this location, and the results of the underwater noise (UWN) assessment, the MMO has concerns regarding the potential for an acoustic 'barrier' to occur during migratory seasons for the key sensitive fish species. Effects will still be localized, as this will be within the river, but an acoustic barrier across the river is expected from piling works below the water line (which could potentially disrupt migration). Therefore, the MMO requests that the Applicant provides further information on when dredging and piling works are likely to be undertaken to help identify the specific potential overlap with peak migratory seasons of fish.

Shellfish Fisheries

4.19. The MMO acknowledges that a description of the environment based on mudflat habitat surveys, data from sediment samples and fishing surveys has been

provided, however, it noted that a full list of species present as found in these surveys has not been provided by the Applicant.

- 4.20. The MMO would expect to see a list of any commercial species or species of conservation importance present. If no shellfish species meeting this description are present, this should be noted. The MMO requests that the Applicant present information on the shellfish species recorded in the site-specific fishing survey so that these species can be considered when assessing impacts, where appropriate. The Applicant should also include the caveat of using fishing surveys to identify shellfish species present. The MMO considers that the evidence, when fully presented, is expected to be sufficient.

Underwater Noise

- 4.21. The MMO notes that one of the potential impacts identified on p.89 of Chapter 17 of the ES, is 'Impact 4 – Underwater noise (piling and dredging). Fish behaviour and migration'. The assessment that follows is primarily focused on the effects of recoverable injury, mortality, and potential mortal injury. Consideration has not been given to the fact that noise may displace species and may create an acoustic barrier preventing fish passage or migration, especially in a relatively narrow river. The ES states that the section of The Haven near the Application Site is approximately 40 m wide at low tide and approximately 100 m wide at high tide. The MMO requires consideration of noise displacement and acoustic barriers on fish species.
- 4.22. Paragraph 17.8.103, states "*With regard to underwater noise impacts from dredging activities, only backhoe dredging has the potential to impact on fish species (Table 17-15), with mortality and potential mortal injury, and recoverable injury, predicted to occur less than 10 m from the dredging activities*". The MMO considers this conclusion to be too specific and may not be applicable to this Proposed Development. It is important to note that noise modelling is case/site specific and depends on many variables.
- 4.23. The MMO notes that a desk-based assessment of other similar projects was undertaken, to estimate the potential impact ranges for fish species and harbour seals. The impact ranges from these similar projects have been used to inform the assessment for the Proposed Development. The MMO considers that using other project specific assessments (assuming that the assessments and modelling have been undertaken appropriately and in accordance with best practice), can only provide a rough estimation of the magnitude (i.e., tens of meters or hundreds of meters) of potential effects. It is important to note that noise modelling depends on many variables and is case/site specific. Therefore, it is not appropriate to draw precise conclusions in this instance (i.e., "with regard to the underwater noise impacts from piling, the most sensitive fish species group (swim bladder is involved in hearing) would be at risk of serious injury or fatality if they were closer than 50 m to the source of the piling noise" (para 17.8.101)), particularly when it is not clear how applicable these other assessments are to the Application Site. Even if we take the worst-case effect ranges for fish species (for a stationary receptor) that are presented in Table 17-15, which is 100 m for recoverable injury, this is the entire width of The River Haven at high tide.
- 4.24. It is difficult to comment on the adequacy of the desk-based assessment and potential effect ranges without seeing a detailed account of the modelling and assumptions. Based on Table 17-15, the cumulative exposure modelling for piling is based on a piling period of only 1 hour.

- 4.25. A desk-based assessment of other similar projects was undertaken, in order to estimate the potential impact ranges for fish species and harbour seals. The impact ranges from these similar projects have been used to inform the assessment for The Proposed Development. For example, see Table 17-15 in Chapter 17. Please note that using other project specific assessments (assuming that the assessments and modelling have been undertaken appropriately and in accordance with best practice), can only provide a rough estimation of the magnitude (i.e., tens of meters or hundreds of meters) of potential effects. It is important to note that noise modelling depends on many variables and is case/site specific. Therefore, it is not appropriate to draw precise conclusions in this instance (i.e., “with regard to the underwater noise impacts from piling, the most sensitive fish species group (swim bladder is involved in hearing) would be at risk of serious injury or fatality if they were closer than 50 m to the source of the piling noise” (para 17.8.101)), particularly when it is not clear how applicable these other assessments are to the Application Site. Nevertheless, even if we take the worst-case effect ranges for fish species (for a stationary receptor) that are presented in Table 17-15, which is 100 m for recoverable injury, this is the entire width of The River Haven at high tide.
- 4.26. The MMO requests submission of further details of the proposed piling and dredging works, such as the anticipated duration of the activity per day, the anticipated months of the year when these activities will be taking place. Further information detailing whether any vibro-piling will be undertaken, or whether the piling works will just consist of impact/percussive piling should also be submitted.

Benthic Ecology

- 4.27. The MMO considers that the description of the baseline situation regarding benthic ecology (invertebrates) appears suitable given the habitats in the region and the nature of the physical impacts during construction and operation. The MMO notes that the baseline description of marine ecology has been based on a desk-based assessment, augmented by benthic sampling undertaken at specific stations within a sufficiently contemporary timeframe.
- 4.28. The MMO concurs with the proposed impacts resulting from the project during construction and operation and agree with the assessment of their overall significance on marine ecology receptors.

Dredge and Disposal

- 4.29. The MMO has assumed that the requirement for no disposal site is also true for the maintenance dredged material as this is not specifically mentioned in the options for disposal. If this is incorrect, the MMO requires to be notified as soon as possible for review alongside our scientific advisors.
- 4.30. The MMO notes that within paragraph 15.6.8 of the Marine Water and Sediment Quality section of the ES, the contaminant data are based on samples and analyses undertaken in 2017. There were sixteen surface samples taken and twelve vibrocore samples taken from depths of 0.5 m, 1 m, and then maximum dredged depth. Whilst these data are still considered timely based on the results, the MMO notes that the Applicant may wish to consider taking additional surface samples before construction to ensure the surface sediment remains suitable for dredging in terms of water quality.

- 4.31. The MMO notes that only a selection of polyaromatic hydrocarbons (PAH analytes) are presented in the ES and notes that the ES has compared the results to the Canadian Sediment Quality Guidelines where most concentrations result in an exceedance of the Threshold Effects Level, and there was one “exceedance” of the Probably Effect Level. As the dredged material is being disposed of the land, the MMO is content that these results are sufficient to characterize the material and do not preclude the material from being dredged, however the MMO defers comment to the Environment Agency regarding the adequacy of the methods and results in relation to water quality.
- 4.32. Samples for disposal operations should follow the MMO’s guidance and have an MMO approved laboratory undertake the analysis. The MMO cannot find reference of the laboratory that carried out the analyses within the ES.
- 4.33. Given that all dredged material is to be disposed to land, and not to sea, the MMO considers that the project is unlikely to result in significant adverse impacts on the marine environment.
- 4.34. The MMO requires further information regarding the capital and maintenance dredge and disposal methods, alongside expected quantities, to be entered into the examination. The MMO notes that the Applicant no longer intends to use the Port of Boston’s dredge powers for this task. The MMO defers making further comment on this issue until this information has been confirmed within the examination.

Development Consent Order /Deemed Marine Licence matters [Examination Library Reference APP-005]

- 4.35. The MMO considers that a number of provisions under Part 3, 4, 5 & 6 of the DML, require more detail and further justification. After further internal review of the DML, the MMO request the following changes as detailed below.
- 4.36. Within Part 1 INTRODUCTION, the MMO requests the following changes:
- 1(1) “harbour authority” – the definition should be amended to “Port of Boston Limited”
 - 1(1) “Licence Holder” – A company number should be included here.
 - 1(1) “The Haven” – This definition should be developed further, to match that included within the DCO. This is required to ensure clarity and certainty.
 - 1(1) A definition for “office hours” should be added to support Section 2(2). *“office hours” means the period from 09:00 until 17:00 on any business day;*. The MMO acknowledges that business day is already defined.
 - 1(1) “environmental information” means the Environmental Statement and any further information as defined in the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 relating to the application for development consent in respect of the marine works;
 - 1(1) “Environmental Statement” means the document certified as such by the Secretary of State under article 80;
 - 2(1)(a) - The removal of the fax details. This is not currently relevant within MMO offices, and it not the means of preferred contact.
 - 2(2) – As noted above for the definition of office hours
 - 2(3) – Notices required by the DML should be submitted through the Marine Case Management System (MCMS). Once a DCO is granted and the DML powers handed to the MMO, a returns case will be created on MCMS allowing

for the submission of all relevant post consent documents. Submission to MCMS may be followed up by an email notification from the Applicant, but primary submission should be made through MCMS. This allows relevant discharge, audit, publication, and consultation actions to be taken.

4.37. Within Part 2 LICENSED ACTIVITIES, the MMO has the following comments: -

- 3. The MMO suggest the wording should be amended to the following:- Subject to the licence conditions in Part 4 of this licence, this licence authorises the licence holder (and any agent, contractor or subcontractor acting on its behalf) to carry out any licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act which—
 - (a) form part of, or are related to, the authorised development; and
 - (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 (exemption specified by order) of the 2009 Act; and
 - (c) do not give rise to any new or different environmental effects to those assessed in the environmental information.
- 4. The MMO suggest that current Section 4 is simply not needed and should be removed from the DML.
- 5. The MMO requires the works detailed in this section to be cross referenced with Works Numbers. The MMO requests further detail is added to provisions (a) – (i) in terms of works to be undertaken under the DML.
- 5(1)(a) – A.O.D should be defined within the DML. AOD (without stops) is defined within the DCO. The MMO requests the definition is also added here, and the difference between the abbreviations rectified.
- 5(1)(l) - “*may be necessary or convenient*” – the MMO highlights that this phrase may not be appropriate. If the intended works are not covered by the ES or the current application, a further marine licence application, and EIA screening may be required. The MMO requests clarification on what is meant by “*necessary or convenient works*”.
- 5(1)(l)(i) – The MMO highlights that once specific information regarding the maintenance dredging is received, the DML may require an additional specific condition related to this activity. The MMO will provide further comment on this upon receipt of additional clarity from the applicant.

4.38. The MMO considers that Part 3 – ENFORCEMENT- to be unnecessary. The issuing of a DML under MCAA ensures that the enforcement for the licence is within MCAA. The provision submitted here is superfluous to requirements.

4.39. Within Part 4 CONDITIONS, the MMO has the following comments: -

- 8. – “Licensed marine activities” – “marine” is not required here. The condition goes on to define that it is in reference to works “*in or over the sea or under the seabed*”.
- 8. - “works” should be defined as those within the order of DML.
- 8.- “*the conditions below apply to any person who for the time being owns, occupies or enjoys any use of those works*”. – The MMO requests change to the wording of this condition. The MMO is currently unclear as to the intention of this condition and queries the use of the term “*enjoy*” for those who these conditions apply to.
- 9. – Details of the change to the licensed activities should also be submitted to the MMO. Notification should be provided in writing and should contain full details of the change to licensed activities. The MMO notes that if changes are substantial then a DML variation, or additional marine licence, and EIA screening, may need to be submitted for the licensable activities.

- The MMO highlights that other organisations may require notification, such as the UK Hydrographic Office, and Trinity House. The MMO will provide further comment on this following the submission of updated representations.
- 12(1) This condition does not state when the licence and revisions should be supplied. The MMO requests further information.
- 12(1) “Masters” should be amended to “masters”.
- 12(2) The MMO requests the addition of “*and subsequent revisions*” be added, for consistency with condition 12(1).
- 13(2)(a) and (d) – The MMO requires additional details of the person responsible for undertaking the licensed activity, including contractor and vessel details. This must include name, contact information, name of the company or organisation, and position within that company or organisation. This information must be provided to the MMO, in writing, no less than 24 hours before the agent, contractor or sub-contractor carries out any licensed activity.
- 13(2)(f) – Environmental Statement is not a defined term within the DML. This should be defined and the definition should be used consistently throughout the DML.
- 13(2)(g) – “details” is not a sufficient term for information to be submitted. For items to be placed in, or removed from, the marine environment, we will require volume, size, methods of placement and removal, types of materials, disposal information, and source of materials.
- 14(1) – The Applicant should submit the piling method statement to the MMO in writing. In addition, MMO approval will be required in writing prior to any activities commencing.
- 14(1)(c) – The MMO highlights that there may be some text missing from the start of this condition.
- 14(3) – The addition of “*as approved in writing by the MMO*” is required at the end of this condition.
- 15(2) – “contained” – the MMO requests further detail be added to this condition. The containment must be appropriate to the material and have the appropriate 110% bunding.
- 17(b) – There is currently no definition for the MCA within the DML. The MMO highlights that the following definition could be included within Part 1 – “*means the executive agency of the Department for Transport*”.
- 17(c) – The provision should end “*to contain any spillage*”.
- 19. – Dropped objects should also be notified to the MMO licensing team. Dependant on the size and nature of the dropped object, the MMO may require surveys be undertaken, and potential removal of the object.
- 22(2) – The MMO do not agree to the 30-day deadline stated here. As a regulatory body the MMO reserve the right to request further information on an application at any point during the application.

4.40. The MMO notes that impact piling activities will require submission of information to the Marine Noise Registry. This will need to be secured through a condition. Suggested wording is provided below:

- *Reporting of impact pile driving*
Only when driven or part-driven pile foundations or detonation of explosives are proposed to be used as part of the foundation installation the undertaker must provide the following information to the Marine Noise Registry (MNR)—
 - a) *prior to the commencement of the licenced activities, information on the expected location, start and end dates of impact pile driving/detonation of*

explosives to satisfy the Marine Noise Registry's Forward Look requirements.

- b) *within 12 weeks of completion of impact pile driving/detonation of explosives, information on the locations and dates of impact pile driving/detonation of explosives to satisfy the Marine Noise Registry's Close Out requirements.*

- *The undertaker must notify the MMO of the successful submission of Forward Look or Close Out data pursuant to paragraph (1) above within 7 days of the submission.*

For the purpose of this condition—

(a) "Marine Noise Registry" means the database developed and maintained by JNCC on behalf of Defra to record the spatial and temporal distribution of impulsive noise generating activities in UK seas; "Forward Look" and "Close Out" requirements are as set out in the UK Marine Noise Registry Information Document Version 1 (July [2015](#)) or any updated information document.

4.41. The MMO highlights in Part 5 PROCEDURE FOR THE DISCHARGE OF CONDITIONS, that the term "*application*" should be "*returns*". When a submission is requested through a condition on a licence, these are submitted through MCMS as returns, not applications. 21(a) and (b) will require updating once all conditions are secured, to ensure all returns are covered.

4.42. Within Part 5, the MMO has the following further comments: -

- 22(1) - insert after "*such further information*" "*to be provided in writing*".
- 23. the MMO notes that this provision is a restatement of the requirements under the MCAA and may not be required here.
- 24. The MMO does not consider this provision to be acceptable as per the reasons set out in points 2.3 and 2.4 of this response, the MMO will not commit to issuing a decision within 13 weeks.
- 23(2)(b) – replacement of "and" with "or".

4.43. The MMO notes in Part 6 CHANGES TO THE LICENCE 25(3) the Applicant has stated "*the MMO will grant the variation*". This is not appropriate wording for this provision. The MMO does not predetermine applications and cannot guarantee that it will grant a variation. The MMO will provide a determination on a variation request, once the appropriate process has been followed. As noted in point 2.3 of this response, the MMO will not commit to issuing a decision within 13 weeks.

4.44. As noted in point 2.6 of this response, the MMO is yet to provide wording for a CEMP condition to be included within the DML. The MMO notes that this will likely include the provision for the submission of a Marine Pollution Contingency Plan.

4.45. In addition to the above and in connection with 5.2 of this response, the MMO recommends that the following conditions may be required in Part 4:

Vessels

- *The MMO must be notified in writing of any vessel being used to carry on any licensed activity on behalf of the licence holder. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity. Notification must include the master's name, vessel type, vessel IMO number and vessel owner or operating company.*

The licence holder must ensure that a copy of this licence and any subsequent revisions or amendments are provided to, read and understood by the masters of any vessel being used to carry on any licensed activity, and that a copy of this licence must be held on board any such vessel.

Agents / contractors / sub-contractors

- *The licence holder must provide the name, address and function in writing of any agents, contractors or sub-contractors that will carry on any licensed activity on behalf of the licence holder. Such notification must be received by the MMO in writing no less than 24 hours before the commencement of the licensed activity.*

The licence holder must ensure that a copy of this licence and any subsequent revisions or amendments are provided to, read and understood by any agents, contractors or sub-contractors that will carry on any licensed activity.

5. Responses to the ExA's Written Questions

5.1. The MMO notes that the ExA's Written questions were published on the 14 October 2021. As requested, we will provide response at Deadline 2.

6. Notification of wish to make oral representations at an Issue Specific Hearing (ISH)

6.1. The MMO wishes to make oral representations at the ISH that discuss topics within its remit. At this stage the MMO does not know which topics will be discussed at each ISH and as such cannot confirm all of the dates at present. It note that the ExA will notify all Interested Parties of any hearings scheduled as part of the Examination at least 21 days in advance of them taking place, and so the MMO will notify the ExA at this stage if we wish to make oral representations.

6.2. The MMO may wish to make oral representation at the ISH on the draft DCO on Tuesday 23 November 2021 on the following topics:

- Article 36 – Arbitration
- Timeframes for submission of documents
- Wording of the DML

6.3. The MMO may wish to make oral representations at the ISH on Environmental Matters on Wednesday 24 November 2021 on the following topics:

- Marine Processes
- Benthic Ecology
- Fish and Shellfish
- Underwater Noise
- In Principle Monitoring Plan

6.4. The MMO may wish to make oral representations at the ISH on navigation and fishing matters (date yet to be confirmed).

7. Notification of wish to have future correspondence electronically

7.1. The MMO wishes to receive all future correspondence electronically. Please can all correspondence be sent to the following: -

- Joseph Wilson, Marine Licensing Senior Case Manager -
[REDACTED]@marinemanagement.org.uk
- Christie Powell, Marine Licensing Case Manager -
[REDACTED]@marinemanagement.org.uk
- Katherine Blakey, Marine Licensing Case Officer -
[REDACTED]@marinemanagement.org.uk