



Hornsea Project Four

Applicant's comments DCO submissions
received at Deadline 5

Deadline 5a, Date: 04 July 2022

Document Reference: G5.39

Revision: 01

Prepared Hannah Towner Roethe, Orsted, July 2022
Checked David King, Orsted, July 2022
Accepted Thomas Watts, Orsted, July 2022
Approved Julian Carolan, Orsted, July 2022

G5.39
Ver. A

Revision Summary

<i>Rev</i>	<i>Date</i>	<i>Prepared by</i>	<i>Checked by</i>	<i>Approved by</i>
01	04/07/2022	Hannah Towner-Roethe, Orsted	David King, Orsted	Julian Carolan, Orsted

Revision Change Log

<i>Rev</i>	<i>Page</i>	<i>Section</i>	<i>Description</i>
01	-	-	Submitted at Deadline 5A

Table of Contents

1	Introduction.....	4
2	Applicant's Comments to the MMO (REP5-107).....	5
3	Applicant's Comments to East Riding of Yorkshire Council (REP5-094).....	18
4	Applicant's Comments to Hull City Council (REP5-105).....	18
5	Applicant's Comments to Maritime and coastguard Agency (REP5-108).....	19
6	Applicant's Comments to Ministry of Defence (REP5-109).....	20
7	Applicant's Comments to Trinity House (REP5-122).....	20
8	Applicant's Comments to RSPB (REP5-119) (REP5-120).....	21

1 Introduction

1.1.1.1 At Deadline 5, 35 submissions were received from 24 stakeholders. This document contains comments on all of the DCO related submissions. DCO comments were received from the following 7 stakeholders:

- East Riding of Yorkshire Council - Responses to the Examining Authority's Further Written Questions (ExQ2) ([REP5-094](#))
- Hull City Council - Comments on any submissions received at Deadline 4 and 4a ([REP5-105](#))
- Hull City Council - Responses to Examining Authority's First Written Questions (ExQ1) ([REP5-106](#))
- Marine Management Organisations (MMO) - Deadline 5 comments, Responses to Examining Authority's Further Written Questions (ExQ2), Comments on any submissions received at Deadline 4 and 4a, Further information requested by the Examining Authority under Rule 17 ([REP5-107](#))
- Maritime and Coastguard Agency - Responses to the Examining Authority's Further Written Questions (ExQ2) and comments on any submissions received at Deadline 4 ([REP5-108](#))
- Ministry of Defence - Responses to the Examining Authority's Further Written Questions (ExQ2) ([REP5-109](#))
- Royal Society for the Protection of Birds (RSPB) - Responses to the Examining Authority's Further Written Questions (ExQ2) ([REP5-119](#))
- Royal Society for the Protection of Birds (RSPB) - Comments on selected Deadline 3 and Deadline 4 submissions ([REP5-120](#))
- The Corporation of Trinity House of Deptford Strond - Responses to the Examining Authority's Further Written Questions (ExQ2) ([REP5-122](#))

1.1.1.2 The Applicant has reviewed all Deadline 5 submissions and responded on individual stakeholders' submissions in Section 2 – 4.

1.1.1.3 Please see the Deadline 3 submission of [G1.1 Overarching Acronyms List \(REP3-014\)](#) and [G1.45 Overarching Glossary \(REP3-027\)](#) for overarching acronym and glossary lists.

2 Applicant's Comments to the MMO (REP5-107)

Reference	Stakeholder's Written Representation	Applicant's Response
N/A	N/A	<p>The following restriction and associated coordinates were added into the draft DCO at Deadline 2 at the request of the MMO in response to their comment 3.3.16 of RR-020 stating that "the MMO cannot designate two overlapping disposal sites" in relation to the Dogger Bank Export Cable Corridor (ECC) disposal site overlapping with the Applicant's ECC.</p> <p>"cable corridor disposal site" means the site, within the cable corridor, to be used for disposal of inert material of natural origin produced during construction drilling and seabed preparation for foundation works and cable sandwave clearance;, except the area of seabed between the following coordinates and shown hatched black on the dogger bank disposal area plan".</p> <p>The Applicant has checked on the Cefas disposal site map on their website (████████████████████), the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 including deemed marine licences, and the MMO's Public Register (████████████████████) and can confirm that there does not appear to be a disposal site designated for Dogger Bank ECC. Therefore, the Applicant has removed this wording in the latest draft of the DCO and DMLs as there does not appear to be an overlapping disposal site with the Applicant's cable corridor disposal site. The Applicant has sought clarity on this matter from the MMO but to date has not received a response.</p>
1.12.2	Regarding without prejudice compensation measures, such as offshore nesting platforms, the MMO maintains its request that these are included as an official schedule into the DCO. For example, the use of an offshore artificial nesting platform to increase the annual recruitment of black-legged kittiwake and northern gannet (APP-057 Environmental Statement Volume A4 Annex 6.1 Compensation Project Description).	<p>Schedule 16 of the draft DCO includes compensatory measures for kittiwake species. As the derogation case remains without prejudice for gannet, guillemot and razorbill species, the Applicant does not consider it necessary to include provisions to secure compensatory measures for those species within the draft DCO at this stage, nor would it be appropriate given the DCO is traditionally the form of Order which is the Applicant is seeking to have granted. The Applicant also provided relevant responses to this comment at:</p> <ol style="list-style-type: none"> 1. Response to HRA.1.24 of G2.2 Applicant's Responses to the ExA's First Written Questions (REP2-038); 2. Response to agenda item 6 in G3.14 Written Summary of the Applicant's Oral Case at Issue Specific Hearing 1 Part 1: DCO and DML (REP3-043); and

Reference	Stakeholder's Written Representation	Applicant's Response
		<p>3. With the provision of document G3.12 Without Prejudice Derogation Draft Development Consent Order Schedules (REP3-041).</p>
DCO.2.3	<p>The MMO's jurisdiction is below Mean High Water Springs (MHWS), should the access ramp extend below this mark, then it would need to be incorporated into the Deemed Marine Licence (DML) as a licensable activity, over which the MMO would enforce should it be required. There would need to be a duplication of requirements within both the DMLs and within the DCO, to allow for ERYC to regulate the works within their jurisdiction. The Applicant would require sign off from both authorities, as one does not negate the need for another. The MMO welcomes discussions with ERYC if required.</p>	<p>The access ramp has been included within the transmission assets deemed marine licence (Schedule 12) since the point of DCO application. Please see Work. No. 9(a) and (b) in paragraph 3 of Part 1 of Schedule 12. Work. No. 9 is then subject to the deemed marine licence conditions included in Part 2 of that Schedule.</p>
4.4.3	<p>DCO Part 1, Article 2, "box-type gravity base structures"; "gravity base structure"; "jacket foundation"; "monopile foundation"; "mono suction bucket foundation"; "pontoon gravity base type 1 structure"; and "pontoon gravity base type 2 structure". The MMO maintains the position that additional information would be useful within these interpretations such as: transition piece, fenders and maintenance equipment, boat access systems, access ladders and access and rest platform(s) and equipment. However, this is a minor point</p>	<p>The Applicant continues to consider the definitions provide an appropriate level of detail and that no changes are required. Please see the Applicant's response to RR-020-2.2.2 in G1.9 Applicant's comments on Relevant Representations (REP1-038).</p>
4.4.4	<p>DCO Part 1, Article 2, "horizontal directional drilling". The MMO maintains that further information could be set out in this definition such as "'horizontal directional drilling" means a trenchless technique for installing an underground duct between two points without the need to excavate vertical shafts". However, this is a minor point.</p>	<p>The Applicant continues to consider the definitions provide an appropriate level of detail and that no changes are required. Please see the Applicant's response to RR-020-2.2.10 in G1.9 Applicant's comments on Relevant Representations (REP1-038).</p>
4.4.5	<p>DCO Part 1, Article 2: "maintain". The MMO maintains that further information should be included within this interpretation and that it should be similar to: "'maintain" includes inspect, upkeep, repair, adjust, and alter, and further includes remove, reconstruct and replace (but only in relation to any of the ancillary works in Part 2 of Schedule 1 (ancillary works), any cable, any component part of any wind turbine generator, offshore electrical substation, offshore accommodation platform,</p>	<p>The Applicant maintains that the current definition is appropriate and that it is consistent with the Hornsea Three Offshore Wind Farm Order 2020. Please see the Applicant's response to RR-020-2.2.13 in G1.9 Applicant's comments on Relevant Representations (REP1-038).</p>

Reference	Stakeholder's Written Representation	Applicant's Response
	<p>meteorological mast, and the onshore transmission works described in Part 1 of Schedule 1 (authorised development) not including the removal, reconstruction or replacement of foundations and buildings associated with the onshore project substation), to the extent assessed in the environmental statement; and "maintenance" must be construed accordingly". This provides greater clarity on the extent to which "maintain" can be applied throughout the Order.</p>	
4.4.6	<p>DCO, Part 2 Article 5. The MMO does not agree with the inclusion of Article 5 in its current form and requests that all references to the MMO and DMLs should be removed from Article 5 of the DCO. The MMO maintains the position that that once a DCO is consented the DMLs become standalone consents to be administered by the MMO and governed by the Marine and Coastal Access Act 2009 ("MCAA 2009"). The MMO does not believe the Applicant has provided adequate justification or rationale as to why these provisions and a deviation from the provisions of MCAA 2009 are required for the purpose of the two DMLs for this project. See section 2.1.1 to 2.1.3 of AS-031 for further details on this.</p>	<p>The Applicant maintains its position that Article 5 is appropriate in its current form. The Applicant most recently responded to this point in response to DCO.2.5 in G5.2 Applicant's Responses to the ExA's Second Written Questions.</p> <p>For ease of reference, the Applicant confirmed in response to that question that the transfer of part of a deemed marine licence is competent, appropriate and well preceded in its other Hornsea portfolio projects, which are considered the most relevant given their location and commonality of ownership and operation. There is no legal impediment which prevents the Applicant's preferred drafting, nor is there any published policy advising against such an approach, and the Applicant's approach provides greater flexibility. For all these reasons, the Applicant has a strong preference for its proposed drafting.</p> <p>The Applicant has also provided relevant responses to this comment at:</p> <ol style="list-style-type: none"> 1. Response to DCO.1.6 in G2.2 Applicant's Responses to the ExA's First Written Questions (REP2-038); and 2. Response to Reference 2.4.1 in G3.3 Applicant's comments on other submissions received at Deadline 2 (REP3-031).
4.4.7	<p>DCO, Schedule 1, Part 3, Article 5 (5). The MMO requests that "unless otherwise agreed with the MMO" includes "in writing" at the end.</p>	<p>This change is unnecessary as Requirement 29 of Part 3 of Schedule 1 requires all approvals, agreements or confirmations under that part to be provided in writing.</p>
4.4.8	<p>DML Schedule 11, Part 1, Article 1. The MMO notes the typographical error in footnote "c", there should be no spaces between "c." and "23".</p>	<p>The relevant footnote has been updated in the draft DCO provided at deadline 5a to correct this typographical error.</p>

Reference	Stakeholder's Written Representation	Applicant's Response
4.4.9	DMLs Schedule 12, Part 1, Article 1(12). The MMO notes the error in the wording "must not ten"	Condition 1(12) of Part 2 of Schedule 12 has been updated in the draft DCO provided at deadline 5a to correct this typographical error.
4.4.10	"DMLs Schedule 11 and 12, Part 1, Article 2 (a). The MMO maintains the position that this condition should be updated to include reference to the disposal sites and also to separate the volumes per disposal activity, and that boulder clearance needs to be included within the description. This would provide the most appropriate clarity. The MMO reiterates it's suggestion of the following wording: "(a) the deposit at sea within the Order limits seaward of MHWS of the substances and articles specified in paragraph 4 below and within Work No.1 when combined with the disposal authorised within the array area disposal site by the deemed marine licence granted under Schedule 12 of the Order of up to 7,300,596 cubic metres of inert material of natural origin produced during construction drilling or seabed preparation for foundation works and cable installation preparation works, including sandwave clearance and boulder clearance within the array area disposal site reference [XX] comprising; (i) XX m ³ for cable installation;(ii) XX m ³ for the wind turbine generators; and (iii) XX m ³ for the offshore accommodation platform".	The Applicant continues to believe that such specification in the draft DCO is unnecessary and that the pro-rata annex provides the relevant information. Please see the Applicant's response to RR-020-2.5.7 in G1.9 Applicant's comments on Relevant Representations (REP1-038) .
4.4.11	DMLs Schedule 11 and 12, Part 1, Article 2. The MMO maintains the advice that drill arisings should be included within this section and include the following section: "(h) the disposal of drill arisings in connection with any foundation drilling up to a total of 399,776 cubic metres".	<p>The Applicant maintains that specifying the volume of drill arisings in the DCO is unnecessary. This detail is currently in the A4.4.8 Pro-rata Annex (APP-046) which is a certified document under article 38 of the dDCO and secured for these purposes by condition 1(9) of Schedule 11 and condition 1(13) of Schedule 12.</p> <p>The Applicant has also provided relevant responses to this comment at:</p> <ol style="list-style-type: none"> 1. Response to RR-020-2.4.3 in G1.9 Applicant's comments on Relevant Representations (REP1-038); 2. Response to RR-020-2.5.8 in G1.9 Applicant's comments on Relevant Representations (REP1-038);

Reference	Stakeholder's Written Representation	Applicant's Response
		<p>3. Response to DCO.1.25 in G2.2 Applicant's Responses to the ExA's First Written Questions (REP2-038); and</p> <p>4. Response to item 3 "volume of drill arisings" in G3.14 Written Summary of the Applicant's Oral Case at Issue Specific Hearing 1 Part 1: DCO and DML (REP3-043) on page 13.</p> <p>Additionally, the Applicant is not clear on how the MMO have calculated the figure of 399,776 cubic meters. A query has been outstanding with the MMO to clarify this figure since their original Relevant Representation.</p>
4.4.12	DMLs Schedule 12, Part 1, Article 6. The MMO enquires whether "(reviews and revisions of decommissioning programmes)" should be included after "section 108"	This text has been added in the draft DCO provided at deadline 5a.
4.4.13	DMLs Schedule 11 and 12, Part 1, Article 7. The MMO requests that this is removed, in line with the position to remove all reference to the MMO and the DMLs from DCO Article 5.	In light of the Applicant's position on Article 5 of the draft DCO (see 4.4.6 above), this change is unnecessary.
4.4.14	DMLs Schedule 12, Part 2, Article 3(1). The MMO notes the inclusion of "[I]" brackets, and queries whether this is in error.	Condition 3 of Part 2 of Schedule 12 has been updated in the draft DCO provided at deadline 5a to correct this typographical error.
4.4.15	DMLs Schedule 11 and 12, Part 2, Article 4 (6). The MMO notes and appreciates the inclusion of an Operation and Maintenance plan to be submitted to the MMO prior to any maintenance works taking place. We advise a timeframe for submission to be six months prior to the planned works commencing. The MMO enquires whether in light of this inclusion of (6) "No maintenance works authorised by this licence may be carried out until an operations and maintenance plan substantially in accordance with the outline operations and maintenance plan has been submitted to and approved by the MMO in writing", that (2) "No maintenance works whose likely effects are not assessed in the environmental statement may be carried out, unless otherwise approved by the MMO in writing" and (4) "Where the MMO's approval is required under paragraph (2), approval may be given only where it has been	<p>The Applicant's position is that the standard period of four months is appropriate for submission of the operations and maintenance plan for approval as provided for by condition 14 of Part 2 of Schedules 11 and 12.</p> <p>The Applicant notes the suggestion from the MMO and agrees that condition 4(2) and condition 4(4) are no longer necessary. The Applicant has removed these sub-paragraphs from condition 4 in Part 2 of Schedules 11 and 12 in the draft DCO provided at deadline 5a.</p>

Reference	Stakeholder's Written Representation	Applicant's Response
	demonstrated to the satisfaction of the MMO that the approval sought is unlikely to give rise to any materially new or materially greater environmental effects from those assessed in the environmental statement" should be removed?	
4.4.16	DMLs Schedule 11 and 12, Part 2: Article 5 (1). The MMO notes that the phrase "under its control" should be deleted as it restricts the provision to only those vessels under the direct control of the undertaker and not agents or contractors.	The Applicant continues to disagree with the MMO's interpretation and does not consider amendments to the draft DCO to be necessary. The phrase "under its control" ensures the condition applies to vessel's operating under the control of the undertaker's agents and contractors. Please see the Applicant's response to Reference 2.6.2 of G3.3 Applicant's comments on other submissions received at Deadline 2 (REP3-031) .
4.4.17	DML Schedule 11, Part 2, Article 6. The MMO notes there is a full-stop missing from the end of this Article.	Condition 6 of Part 2 of Schedule 11 has been updated in the draft DCO provided at deadline 5a to correct this typographical error.
4.4.18	DMLs Schedule 11 and 12, Part 2, Article 7 (1)(b). The MMO notes whether "confirmation form" should be included under Part 1 Article 1(1)?	The confirmation form is a form from the relevant agents/contractors confirming receipt of a copy of the licence. The Applicant continues to consider the meaning to be clear in the context in which it is used and does not consider amendments to the draft DCO to be necessary. Please see the Applicants response to Reference 2.6.24 of G3.3 Applicant's comments on other submissions received at Deadline 2 (REP3-031) .
4.4.19	DMLs Schedule 11 and 12, Part 2: Article 7 (8)(b). The MMO flags whether the term "all offshore activities" is sufficiently clear? It is not used elsewhere in the Order and is referred to as "the construction of the authorised project or relevant stage" in the provision of Article 7 (8) itself.	The Applicant continues to consider the reference is sufficiently clear and covers activities carried out below MHWS and therefore within the scope of the DMLs. The Applicant does not consider amendments to the draft DCO to be necessary. Please see the Applicants response to Reference 2.6.27 of G3.3 Applicant's comments on other submissions received at Deadline 2 (REP3-031) .
4.4.20	DMLs Schedule 11 and 12, Part 2, Article 7 (7). The MMO maintains that this should be updated to "at least fourteen days prior" instead of five days. This is the updated wording for this standard condition to allow for better inspection management.	The Applicant continues to consider it unnecessary to extend the timeframe in condition 7(7) of Part 2 of Schedules 11 and 12. The timeframe of five days prior to commencement was accepted in all recently made offshore wind DCOs including the Hornsea Three Offshore Wind Farm Order 2020, the Norfolk Boreas Offshore Wind Farm Order 2021, the Norfolk Vanguard Offshore Wind Farm Order 2022, the East Anglia One North Offshore Wind Farm Order 2022 and the East Anglia Two Offshore Wind Farm Order 2022.

Reference	Stakeholder's Written Representation	Applicant's Response
		<p>Please see the Applicant's response to RR-020-2.5.24 in G1.9 Applicant's comments on Relevant Representations (REP1-038).</p>
4.4.21	<p>DMLs Schedule 11 and 12, Part 2, Article 7 (9) and (10). The MMO advises that "UKHO" should state "UK Hydrographic Office" as this is what is defined.</p>	<p>The draft DCO was updated at deadline 5 to refer to UK Hydrographic Office throughout.</p>
4.4.22	<p>Schedule 11 and 12: Part 2, Article 7 (11). The MMO notes the Applicant has inserted "within 5 days", the MMO reiterates the request that this should state "within 24 hours of the notification".</p>	<p>The Applicant considers a period of 5 days to be appropriate and notes that this timeframe was included in the Norfolk Boreas Offshore Wind Farm Order 2021, the Norfolk Vanguard Offshore Wind Farm Order 2022, the East Anglia ONE North Offshore Wind Farm Order 2022 and the East Anglia Two Offshore Wind Farm Order 2022.</p> <p>Please see the Applicants response to Reference 2.6.29 of G3.3 Applicant's comments on other submissions received at Deadline 2 (REP3-031).</p>
4.4.23	<p>DMLs Schedule 11 and 12, Part 2, Article 11(4). The MMO advises [REP4-052] that sampling is required either every three years, or every five, depending on the results of the sediment sample analysis. There are still ongoing issues with the sampling, as outlined within section 4.2 of this submission. The MMO requests clarity on how OSPAR requirements would be adhered to, and how this would be secured, should there be a delay in construction. The MMO suggests that the OSPAR sampling requirements are clearly outlined as a matter to be signed off in the DMLs.</p>	<p>The Applicant refers to its response to MC.2.7 in G5.2 Applicant's Responses to the ExA's Second Written Questions (REP5-074) which is copied below for ease of reference.</p> <p><i>"In reference to OSPAR, the Applicant has assumed the MMO is referring to the OSPAR Guidelines for the Management of Dredged Material.</i></p> <p><i>The MMO will therefore have regulatory responsibility to approve the construction project environmental management and monitoring plan including the waste management and disposal arrangements and an opportunity to ensure that the plan gives due consideration to OSPAR guidelines. The Applicant does not consider it necessary for the OSPAR guidelines to be explicitly conditioned within the DMLs as these guidelines represent best environmental practice at a point in time, and are subject to change as practice evolves (the most recent Guidelines were published in 2014). The construction project environmental management and monitoring plan is thus a more appropriate control on waste management and disposal arrangements, as already secured via the draft DCO. The Applicant is also unaware of any similar condition having been included in other recent offshore wind farm DCOs. The Applicant would welcome confirmation from the MMO on the frequency of sampling that would be required, based on their consideration of the clarifications provided.</i></p>

Reference	Stakeholder's Written Representation	Applicant's Response
		<p><i>The Applicant would welcome confirmation from the MMO on the frequency of sampling that would be required, based on their consideration of the clarifications provided.</i></p> <p>Please see the response to 4.2.3 in G5.30 Applicant's comments on other submissions received at Deadline 5. for further update on the sampling related documents submitted to the MMO.</p>
4.4.24	DMLs 11 and 12, Part 2, Article 11(10). The MMO advises a 6 hour period for reporting dropped objects which are considered a danger or hazard to navigation.	The Applicant has agreed with the MMO and the MCA to update the DCO condition wording to remove the timings from the condition and to instead reference the reporting form only. This will ensure that the DCO remains valid and in line with current reporting requirements.
4.4.25	DMLs Schedule 11 and 12, Part 2, Article 12. The MMO continues to advise that this provision is not necessary, there is already a defence under Section 86 of MCAA 2009. It provides a defence for action taken in an emergency in breach of any licence conditions.	<p>As clarified by the Applicant at Issue Specific Hearing 1, condition 12 does not duplicate the provisions of the MCAA 2009, rather it is a reporting requirement which obliges the Applicant to notify the MMO if emergency unauthorised deposits are made in the case of an emergency.</p> <p>The Applicant refers to its response to item 3 "Condition 12" on page 15 of G3.14 Written Summary of the Applicant's Oral Case at Issue Specific Hearing 1 Part 1: DCO and DML (REP3-043).</p>
4.4.26	DMLs Schedule 11 and 12, Part 2, Condition 13 (1)(a). The MMO notes that "conditions 1 to 3 above" at the end of section (a) for Schedule 12 is worded "conditions 1, 2 and 3" in Schedule 11, and notes that wording should remain consistent across the Schedules.	The Applicant has amended condition 13(1)(a) to refer to "conditions 1, 2 and 3" in Schedule 12 of the draft DCO provided at deadline 5a.
4.4.27	DMLs Schedule 11 and 12, Part 2, Article 13(1)(h)(ii). The MMO notes that the term "Chart Datum" is not defined and should be	<p>The Applicant continues to consider this to be a widely used and commonly understood term and that no changes are therefore necessary.</p> <p>Please see the Applicants response to Reference 2.6.47 of G3.3 Applicant's comments on other submissions received at Deadline 2 (REP3-031).</p>
4.4.28	DMLs Schedule 11 and 12, Part 2, Condition 13 (1)(j). The MMO still strongly maintains the following position:	The Applicant does not consider it necessary to amend the drafting of the condition, which is well understood, long- established and precedented within the offshore wind industry. The Applicant considers that its drafting of condition 13(1)(j) of Part 2 of Schedules 11 and 12 is preferable to that proposed by the MMO, as it is more precise and enforceable.
4.4.29	The MMO has updated the standard condition in relation to designated sites for harbour porpoise. This is due to the outcome of the Review of	

Reference	Stakeholder's Written Representation	Applicant's Response
	<p>Consents undertaken by the Secretary of State, the MMO advise that, like any new application, it will need to be in line with the Review of Consents condition. The MMO would like condition 13 (1)(j) to be removed and replaced with the new standalone condition outlined below.</p>	<p>The Applicant also considers that its preferred drafting remains in line with the vast majority of industry precedent and that includes very recently granted Orders made by the Secretary of State such as the Norfolk Vanguard Offshore Wind Farm Order 2022.</p>
4.4.30	<p>When the standalone condition is added, the Interpretations section will need to be updated to include: "JNCC Guidance" means the statutory nature conservation body 'Guidance for assessing the significance of noise disturbance against Conservation Objectives of harbour porpoise SACs' Joint Nature Conservation Committee Report No.654, May 2020 published in June 2020 as amended, updated or superseded from time to time".</p>	<p>The Applicant refers to its response to HRA.2.1 in G5.2 Applicant's Responses to the ExA's Second Written Questions (REP5-074).</p>
4.4.31	<p>The MMO propose the following wording for the new SIP condition: "Southern North Sea Special Area of Conservation Site Integrity Plan 25-(1) No piling activities can take place until a Site Integrity Plan (SIP), which accords with the principles set out in the in principle XX Project Southern North Sea SAC Site Integrity Plan, has been submitted to, and approved in writing, by the MMO in consultation with the relevant statutory nature conservation body. (2) The SIP submitted for approval must contain a description of the conservation objectives for the Southern North Sea Special Area of Conservation (SNS SAC) as well as any relevant management measures and it must set out the key statutory nature conservation body advice on activities within the SNS SAC relating to piling as set out within the JNCC Guidance and how this has been considered in the context of the authorised scheme. (3) The SIP must be submitted to the MMO no later than six months prior to the commencement of the piling activities. (4) In approving the SIP the MMO must be satisfied that the authorised scheme at the pre-construction stage, in-combination with other plans and projects, is in line with the JNCC Guidance. (5) The approved SIP may be amended with the prior written approval of the MMO, in consultation with the relevant statutory nature conservation body, where the MMO remains satisfied that the</p>	

Reference	Stakeholder's Written Representation	Applicant's Response
	Project, in-combination with other plans or projects at the preconstruction stage, is in line with the JNCC Guidance."	
4.4.32	This is to ensure it is in line with the MMO's latest measures to enable efficient management of SIPs.	
4.4.33	DMLs Schedule 11 and 12, Part 2, Article 13(2)(f). The MMO advises contact details for the National Record of the Historic Environment are added. We also highlight the typographical errors in "(Online AccesS to the Index of archaeological investigationS)" that should be corrected.	Adding contact details for the National Record of the Historic Environment is unnecessary and potentially confusing as the OASIS tool is an online reporting function. Condition 13(2)(f) of Part 2 of Schedules 11 and 12 included capitals to denote the commonly used "OASIS" acronym however to avoid any confusion the Applicant has removed the capital letters.
4.4.34	Schedule 11 and 12, Part 2, Article 13(8). Without prejudice to our comments regarding DCO Part 2: Article 5, the MMO is unclear as to the purpose of this provision. It relates to the relationship between the licence holder and any third party to which the benefit of the Order has been transferred to and does not relate to the relationship between the MMO and the undertaker.	<p>This condition was included in response to a concern raised in the MMO's relevant representation relating to collaboration. Please see the Applicant's response to RR-020-2.1.1 in G1.9 Applicant's comments on Relevant Representations (REP1-038).</p> <p>This was further explained by the Applicant at Issue Specific Hearing 1. The Applicant refers to its response to item 3 "Condition 13(8)" on page 15 and page 16 of G3.14 Written Summary of the Applicant's Oral Case at Issue Specific Hearing 1 Part 1: DCO and DML (REP3-043).</p>
4.4.35	"DMLs Schedule 11 and 12, Part 2, Condition 14. The MMO strongly maintains its position set out in sections 3.3.1 to 3.3.8 of AS-031 regarding 4 month timescales. We note that the Applicant has extended this to 6 months for a few of the plans, however we continue to request it is extended for all plans. Specifically, the plans in addition to those added already, the "outline operations and maintenance plan" (in Part 2, Article 4 of both Schedule 11 and 12); the "outline southern north sea special area of conservation site integrity plan" (which should also have its own condition (4.4.29 of this submission); and the "outline marine mammal mitigation protocol"."	<p>The Applicant continues to consider four months is an appropriate and proportionate timescale for the submission of documents.</p> <p>The Applicant has also provided relevant responses to this comment in response to 4.4.15 above and at:</p> <ol style="list-style-type: none"> 1. Response to RR-020-2.1.3 in G1.9 Applicant's comments on Relevant Representations (REP1-038); 2. Response to RR-029-APDX:A-10 in G1.9 Applicant's comments on Relevant Representations (REP1-038); 3. Response to REP2-076: 9.1 – 9.8 in G3.3 Applicant's comments on other submissions received at Deadline 2 (REP3-031); and 4. Response to item 3 "Condition 14" on page 16 of G3.14 Written Summary of the Applicant's Oral Case at Issue Specific Hearing 1 Part 1: DCO and DML (REP3-043).

Reference	Stakeholder's Written Representation	Applicant's Response
4.4.36	<p>DMLs Schedule 11 and 12, Part 2, Condition 14 (3). The MMO strongly maintains its position set out in sections 3.3.9 to 3.3.12 of AS-031. It is inappropriate to apply a strict timeframe to approvals under the conditions of the DML given this would create disparity between licences issued under the DCO process and those issued directly by the MMO, as marine licences issued by the MMO are not subject to set determination periods. The MMO's view is that it is for the developer to ensure that it applies for any such approval in sufficient time as to allow the MMO to properly determine whether to grant or refuse the approval application.</p>	<p>The Applicant continues to consider this condition to be appropriate to ensure the timely delivery of Hornsea Four. There is precedent for the Applicant's approach in the Hornsea Three Offshore Wind Farm Order 2020, the Norfolk Boreas Offshore Wind Farm Order 2021 and the Norfolk Vanguard Offshore Wind Farm Order 2022.</p> <p>The Applicant has also provided a relevant response to this comment at Response to RR-020-2.1.14 in G1.9 Applicant's comments on Relevant Representations (REP1-038).</p>
4.4.37	<p>Whilst the MMO's position on determination dates remains as follows (AP-031); "The MMO has major concerns with the inclusion of Article 14 (3) "(3) The MMO must determine an application for consent made under Condition 13 within a period of four months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker such agreement not to be unreasonably withheld or delayed" and requests that this is removed. The MMO strongly considers it inappropriate to put timeframes on decisions of such a nature. Under such tight restrictions if the evidence obtained does not provide the MMO with confidence that risks have been dealt with robustly, the determination may result in a refusal of the application for discharge. The undertaker would then have to restart the process and provide updated documentation in this instance. The MMO acknowledges that the Applicant may wish to create certainty around when to expect a determine on applications for approvals required under the conditions of a licence, and whilst the MMO acknowledges that delays can be problematic for developers, the MMO advises that it does not delay determining whether to grant or refuse such approvals unnecessarily, we make determinations in as timely a manner as is possible." The MMO observes that the Applicant has actioned our request, that should it be included, the following wording has been added at the end of the clause "such agreement not to be unreasonably withheld or delay".</p>	<p>The Applicant refers to its response to 4.4.36 above.</p>

Reference	Stakeholder's Written Representation	Applicant's Response
4.4.38	DMLs Schedule 11 and 12, Part 2, Condition 17(5). The MMO advises "UKHO" should state "UK Hydrographic Office" rather as this is what is defined.	The draft DCO was updated at deadline 5 to refer to UK Hydrographic Office throughout.
4.4.39	DMLs Schedule 11 and 12, Part 2, Condition 18 (2)(b). The MMO maintains the request that this is updated to include "the first four monopile foundations of each piled foundation type to be constructed".	<p>The Applicant has amended condition 18(2)(b) to refer to "the first four piled foundations of each piled foundation type" to align with condition 18(3).</p> <p>The Applicant has removed reference to the first four monopile foundations of each piled foundation type as that assumes there are monopiles when other piled foundations are possible (e.g. jackets and pin piles).</p>
4.4.40	DMLs Schedule 11 and 12, Part 2, Condition 18 (3). The MMO maintains the request that this condition is updated to the following wording: "The results of the initial noise measurements monitored in accordance with subparagraph (1) must be provided in writing to the MMO within six weeks of the installation of the first four piled foundations of each piled foundation type. The assessment of this report by the MMO will determine whether any further noise monitoring is required. If, in the opinion of the MMO in consultation with the statutory nature conservation body, the assessment shows significantly different impacts to those assessed in the environmental statement or failures in mitigation, all piling activity must cease until an update to the marine mammal mitigation protocol and further monitoring requirements have been agreed."	<p>The Applicant has updated condition 18(3) of Schedules 11 and 12 to read:</p> <p>"The results of the initial noise measurements monitored in accordance with sub-paragraph (2)(b) must be provided in writing to the MMO within six weeks of the installation (unless otherwise agreed) of the first four piled foundations of each piled foundation type. The assessment of this report by the MMO will determine whether any further noise monitoring is required. If, in the opinion of the MMO in consultation with the statutory nature conservation body, the assessment shows impacts significantly in excess to those assessed in the environmental statement and there has been a failure of the mitigations set out in the marine mammal mitigation protocol, all piling activity must cease until an update to the marine mammal mitigation protocol and further monitoring requirements have been agreed."</p> <p>This substantively aligns with the MMO's request with some minor amendments: to:</p> <ol style="list-style-type: none"> 1. Allow the MMO to agree to an alternative period for submission of the noise measurement results; 2. Refer to impacts in excess to those assessed, to clarify the purpose of the condition; 3. Clarify that the mitigation measures are those specified in the marine mammal mitigation protocol.
4.4.41	DMLs Schedule 12, Part 2, Condition 19 (2)(c). The MMO enquires as to why vessel traffic monitoring was removed?	The Applicant can confirm this has been reintroduced in the draft DCO submitted at deadline 5a following further comments from the MCA.

Reference	Stakeholder's Written Representation	Applicant's Response
4.4.42	DMLs Schedule 11, Part 2, Condition 23. The MMO advises that a timescale is included for clarity, the MMO would advise a six month time scale.	The Applicant considers a specified timescale to be unnecessary.
4.4.43	DMLs Schedule 12, Part 2, Condition 23. The MMO maintains the position that the restriction should be "between 1st August and 31st October each year"	<p>The Applicant has responded to all relevant points in the MMO's Deadline 4 comments (REP4-052) in relation to G1.10 Clarification Note on Peak Herring Spawning Period within G5.3 Applicant's Comments on Other Submissions (REP5-081) at Deadline 5. Additionally, the Applicant has provided an update to G1.10 Clarification Note on Peak Herring Spawning Period and Seasonal Piling Restriction at Deadline 5 (REP5-048) to incorporate changes made as a result of the MMO's Deadline 4 comments.</p> <p>The Applicant awaits the MMO's review of REP5-048 and REP5-081 and is making efforts to arrange a meeting with the MMO in advance of the Issue Specific Hearings to discuss and agree an appropriate restriction with both parties.</p>
4.4.44	Reference to "immaterial" and "materially". The MMO strongly maintains its consideration that the activities authorised under the DCO and DML should be limited to those that are assessed within the EIA, and so the statements such as "unlikely to give rise to any materially new or materially greater environmental effects" should be updated to clarify this. Please see our full position within written representation RR-020 sections 2.1.16-2.1.20.	The Applicant considers such a definition to be unnecessary for the reasons previously provided. Please see the Applicant's response to RR-020-2.1.16 in G1.9 Applicant's comments on Relevant Representations (REP1-038) .
4.4.45	The Applicants comments "The Environmental Statement captures the results of the EIA, meaning that this paragraph limits the activities permitted by the DCO and DMLs to those assessed by the EIA. Any change to approved details which leads to a change in the likely significant effects assessed in the Environmental Statement would be considered material and would no longer be authorised by the DMLs" [REP1-038] provides us with comfort, however, the use of the wording "immaterial changes" continues to leave this unclear within the DCO and DMLs. The MMO notes that the Applicant could add the later comments	

Reference	Stakeholder's Written Representation	Applicant's Response
	within a definition for "immaterial changes" within Article 1 of the DML and this could help resolve this matter.	

3 Applicant's Comments to East Riding of Yorkshire Council (REP5-094)

Reference	Stakeholder's Written Representation	Applicant's Response
TT.2.5	The JLAF have recommended that specific monitoring of the soil reinstatement is required for all the PROWs affected. The preferred position of the highway authority is that this condition is a requirement on the applicant to undertake the monitoring on a regular basis for 7 years.	The Applicant has updated the definition of "maintenance period" in article 29(11) of the draft DCO at deadline 5a to provide flexibility with regards to the length of the monitoring period for any affected PRow. The Applicant's position is that the appropriate length of the monitoring period will depend on the nature of the impact on the PRow and can be agreed with the relevant planning authority as part of the final Public Right of Way Management Plan forming part of the Code of Construction Practice submitted pursuant to requirement 27 . Paragraph 6.2.2.7 of the Outline Public Right of Way Management Plan at Appendix C to the Outline Code of Construction Practice (REP4-019) states that <i>"following completion of construction activities, all public access within the working area will be reinstated to a standard commensurate to that existing prior to the commencement of construction works or an improved condition. The Agriculture Liaison Officer will act as the point of contact for the restoration of the PRow between the developer, landowner, ERYC and Principal Contractor to ensure the PRow reinstatement is in accordance with the agreed requirements and specification"</i> . The Applicant considers that the length of the monitoring period will form part of the "agreed requirements and specification" referred to in paragraph 6.2.2.7.

4 Applicant's Comments to Hull City Council (REP5-105)

Reference	Stakeholder's Written Representation	Applicant's Response
REP5-105	Requirement no. 18 as currently drafted only requires the relevant planning authority to consult the relevant highway authority singular, defined within Par1, 2(1) of the draft Order as meaning the East Riding of Yorkshire Council (or successor) as highways authority, on the occasion of the formal submission of any construction traffic management plan. Given the inclusion of the Strategic Road Network and Hull City Council's	The Applicant has updated the draft DCO at deadline 5a to add Hull City Council as a relevant highway authority for these purposes and to amend requirement 18 accordingly.

Reference	Stakeholder's Written Representation	Applicant's Response
	local highway network within the identified zone of influence for traffic and transport effects (oCTMP para. 1.1.1.3). Hull city Council would request that the wording of Requirement no.18 be amended to require the relevant local planning authority to consult the relevant highways authorities plural, and that Part1, 2(1) of the dDCO be amended or added to accordingly, to reflect the interpretation of ' <i>relevant highway authorities</i> ' at paragraph 1.2.1.1 within the oCTMP.	

5 Applicant's Comments to Maritime and coastguard Agency (REP5-108)

Reference	Stakeholder's Written Representation	Applicant's Response
NAR.2.1.a	Schedule 11, Part 2, 11(10). We requested an amendment to the procedure for reporting dropped objects whereby that any dropped object that is a navigation hazard must be reported to the relevant HM Coastguard Maritime Rescue Coordination Centre by telephone, and the UK Hydrographic Office (UKHO) within 6 hours. We have received email confirmation on 16/06/22 that it will be incorporated.	The Applicant has agreed with the MMO and the MCA to update the DCO condition wording to remove the timings from the condition and to instead reference the reporting form only. This will ensure that the DCO remains valid and in line with current reporting requirements.
NAR.2.1.b	Schedule 11, Part 2, 19(2). A correction to our earlier response in Deadline 4 where we suggested this condition for traffic monitoring applicable to transmission assets could be removed, we would like to request that the condition is included for postconstruction traffic monitoring of the booster station(s).	The Applicant can confirm this has been reintroduced in the draft DCO submitted at deadline 5a.

Reference	Stakeholder's Written Representation	Applicant's Response
NAR.2.1.c	<p>" Schedule 12, Part 2, Condition 27. We have requested the inclusion of the below condition for providing coordinates of transmission assets to MCA and the UKHO:</p> <p>27. The undertaker must submit a close out report to the MCA and the UKHO within three months of the date of completion of construction. The close out report must confirm the date of completion of construction and must include the following –</p> <p>(a) a plan of the layout of installed export and inter-array cables, offshore substations and booster stations; and</p> <p>(b) latitude and longitude coordinates of the location of export and inter-array cables, offshore substations and booster stations, provided as Geographical Information System data referenced to WGS84 datum. "</p>	<p>The Applicant can confirm this condition was added as condition 26 of Part 2 of Schedule 12 of the draft DCO at deadline 5.</p>

6 Applicant's Comments to Ministry of Defence (REP5-109)

Reference	Stakeholder's Written Representation	Applicant's Response
BGC.2.4	<p>I can confirm that there has been very constructive engagement between the applicant and the MOD which has provided a good understanding of the perspectives of both parties on the provisions contained in the wording of the draft version of Requirement 23 that was identified by the MOD. This has enabled the MOD to offer an amended version of the Requirement which is currently under consideration.</p>	<p>The Applicant and the Ministry of Defence have agreed the wording of requirement 23. The draft DCO has been updated at deadline 5a to reflect this agreed drafting.</p>

7 Applicant's Comments to Trinity House (REP5-122)

Reference	Stakeholder's Written Representation	Applicant's Response
NAR.2.1	<p>"However, Trinity House notes that, in the updated draft DCO submitted at Deadline 4 [REP 4-049], condition 19(2) at Part 2 of Schedule 12 (DML under the 2009 Act – Transmission Assets) has been amended by the applicant to remove the requirement for post construction vessel traffic monitoring in respect of the transmission assets"</p>	<p>The Applicant can confirm this has been reintroduced in the draft DCO submitted at deadline 5a following further comments from the MCA.</p>

8 Applicant's Comments to RSPB (REP5-119) (REP5-120)

Reference	Stakeholder's Written Representation	Applicant's Response
DCO.2.4.1	<p>Whilst we appreciate the helpful roadmap to guide all as to where the relevant documents are, this does not address our comments on what the DCO should include (see our Written Representations (paragraphs 6.42-50))</p>	<p>Please see the Applicant's response to 6.42-6.50 in G3.3 Applicant's comments on other submissions received at Deadline 2 (REP3-031). As noted there, it is important to note that the Applicant is not seeking to obtain planning consent or land rights to deliver the compensatory measures via the DCO. The question of "jurisdiction" of the Secretary of State or the MMO is not therefore relevant.</p> <p>Draft DCO provisions to secure compensatory measures for guillemot and razorbill have been provided by the Applicant (G3.12 Without Prejudice Derogation Draft Development Consent Order Schedules (REP3-041)). These can be included in the Order made by the Secretary of State if he cannot rule out AEol for those species.</p> <p>These provisions contain a restriction on the operation of the wind turbine generators (which are the subject of the DCO application and within the remit of the Secretary of State) until the predator eradication measure has been carried out. The fact that the predator eradication measure may be carried out in a location outside of the UK (but with connectivity to the national site network) has no bearing on the ability of the Secretary of State to enforce this provision against the Applicant. It is not necessary for the Secretary of State (or the MMO) to also be responsible for permitting or property rights over the area in which the compensation measures are located. A parallel can be drawn with artificial nest structures for kittiwake (accepted on five DCOs to date). The Secretary of State is not responsible for permitting the structures (this will be the local planning authority onshore or the MMO offshore). Property rights are granted by private landowners or The Crown Estate. Responsibility for permitting or granting land rights has no bearing on the ability of the Secretary of State to secure the compensatory measures, and if it were ever necessary, to enforce the provisions of the DCO against the relevant undertaker.</p>
DCO.2.4.4	<p>In our view "a restriction on the operation of the wind turbine generators" is not enough for the Habitats Regulations to be complied with as well as our concerns discussed above and below about the ecological effectiveness of the compensation measures with again full details being delayed until after the DCO has been granted, with the DCO still only</p>	<p>A restriction on the operation of wind turbine generators is appropriate as the impacts to which the compensatory measures relate are operational impacts.</p> <p>Such a restriction is consistent with the approach taken by the Secretary of State in relation to compensatory measures for impacts associated with operation only in the Hornsea Three Offshore Wind Farm Order 2020, Norfolk Boreas Offshore Wind Farm 2021, the Norfolk Vanguard Offshore</p>

Reference	Stakeholder's Written Representation	Applicant's Response
	committing the Applicant to producing compensation plans before construction starts not the implementation of actual measures.	Wind Farm 2022, the East Anglia ONE North Offshore Wind Farm Order 2022 and the East Anglia Two Offshore Wind Farm Order 2022.
DCO.2.4.5	<p>In addition we await a response to the following point made in paragraph 6.48 of the RSPB's Written representation (REP2-089) and repeated at page 28 of our Deadline 4 submission (REP4-057), namely:</p> <p>"6.48....it is not entirely clear whether the provision of compensation outside the UK could properly be made a requirement of the DCO or deemed marine licence condition since outside the Secretary of State and/or the MMO's jurisdiction. More critically, perhaps, is how any failure to fulfil DCO requirements could be enforced...."</p>	<p>Please see the Applicant's response to 6.42-6.50 of G3.3 Applicant's comments on other submissions received at Deadline 2 (REP3-031) and the response to DCO.2.4.1 above.</p>

