



Five Estuaries Offshore Wind Farm Case Team  
Planning Inspectorate  
[FiveEstuaries@planninginspectorate.gov.uk](mailto:FiveEstuaries@planninginspectorate.gov.uk)  
(Email only)

MMO Reference: DCO/2019/00008  
Planning Inspectorate Reference: EN010115  
Identification Number: 20049306

09 September 2024

Dear Sir or Madam,

## **Planning Act 2008, Five Estuaries Offshore Wind Farm Ltd, Proposed Five Estuaries Offshore Wind Farm Order**

### **Pre-examination Procedural Deadline D**

On 23 April 2024, the Marine Management Organisation (the “MMO”) received notice under section 55 of the Planning Act 2008 (the “PA 2008”) that the Planning Inspectorate (“PINS”) had accepted an application made by Five Estuaries Offshore Wind Farm Ltd (the “Applicant”) for determination of a development consent order for the construction, maintenance and operation of the proposed Five Estuaries Offshore Wind Farm (the “DCO Application”) (MMO ref: DCO/2019/00008; PINS ref: EN010115).

The Applicant seeks authorisation for the construction, operation and maintenance of DCO Application, comprising of up to 79 wind turbine generators together with associated onshore and offshore infrastructure and all associated development (“the “Project”).

As a marine licence has been deemed within the draft DCO, the MMO is the delivery body responsible for post-consent monitoring, variation, enforcement, and revocation of provisions relating to the marine environment. As such, the MMO has an interest in ensuring that provisions drafted in a Deemed Marine Licence (“DML”) enable the MMO to fulfil these obligations.

The MMO received a Rule 6 letter on 20 August 2024. In response to this letter, the MMO submits the following:

- 1. Preliminary Meeting Attendance**
- 2. Comments on Examination Timetable, including Issue Specific Hearing (ISH) Attendance**
- 3. Comments on Relevant Representations (RRs)**
- 4. Further Requests from Examination Authority**



The MMO intends to enter into a Statement of Common Ground (SoCG) with the Applicant and has been in discussion with the Applicant regarding this and has had sight of a SoCG position statement. The MMO will continue to engage with the Applicant during examination.

This written representation is submitted without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This representation is also submitted without prejudice to any decision the MMO may make on any associated application for consent, permission, approval or any other type of authorisation submitted to the MMO either for the works in the marine area or for any other authorisation relevant to the proposed development.

Yours sincerely,



Emma Chalk  
Marine Licensing Case Officer



## Contents

1. Preliminary Meeting Attendance .....	4
2. Comments on Examination Timetable, including Issue Specific Hearing (ISH) .....	4
3. Comments on Relevant Representations (RRs) .....	5
3.1 Environment Agency (EA) (RR - 026) .....	5
3.2 Natural England (NE) (RR - 081) .....	5
3.3 Historic England (HE) (RR - 046).....	9
3.4 Essex Wildlife Trust (EWT) (RR - 030) .....	9
3.5 National Trust (NT) (RR - 080).....	9
3.6 Maritime and Coastguard Agency (MCA) (RR - 071).....	10
3.7 Port of London Authority (PLA) (RR - 090) .....	10
3.8 Inshore Fisheries and Conservation Authorities (IFCA) .....	10
3.9 Corporation of Trinity House of Deptford Strond (TH) (RR - 015) .....	11
3.10 Royal Society for the Protection of Birds (RSPB) (RR - 094) .....	11
3.11 Royal Yachting Association (RYA) (RR - 095) .....	11
3.12 UK Chamber of Shipping (RR - 118).....	11
3.13 National Federation of Fishermen's Organisations (NFFO) (RR – 077).....	12
4. Further Requests from Examination Authority .....	12



## 1. Preliminary Meeting Attendance

1.1 The MMO will not be attending the Preliminary Meeting on 17 September 2024. The MMO has reviewed the draft timetable for the examination of the application and would like to highlight the following concerns for consideration by the Examining Authority (ExA).

## 2. Comments on Examination Timetable, including Issue Specific Hearing (ISH)

2.1 With regards to the Examination Timetable, the MMO notes that the publication of the ExA's Written Questions is dated two weeks prior to Deadline 2 where responses to the questions are requested. This may not be sufficient time to provide a response to any questions posed towards the MMO. Although the MMO will endeavour to provide a response for the requested Deadline, if this is not possible the MMO will defer to the following Deadline to provide comments.

2.2 The final three deadlines are close together. The MMO recommends that these deadlines are more spaced out to allow time for responses to be made.

2.3 The MMO notes that the Morgan Offshore Windfarm Generation Assets (EN010136) Project have received their Rule 6 letter on 5 August 2024 and have either the same or similar deadline dates as Five Estuaries. Due to resourcing, this could cause delays in responses, so the MMO advises that this be considered. The MMO and its specialist advisors, Centre for Environment, Fisheries and Aquaculture Science (Cefas), have individuals providing specialist advice working to both projects in the examination process and are concerned that it will not be possible to participate fully in both examinations and provide the detailed responses required.

2.4 The MMO notes that the Examination is principally a written process. The MMO understands that some issues need to be discussed in person to ensure understanding by the ExA. At this stage, the MMO is not planning on attending any ISH, however, will keep a watching brief and respond to any questions posed by the ExA on completion of the ISH. This is to ensure resource is spent on providing detailed written responses and resolving any issues with the Applicant.

2.5 If the ExA requests MMO attendance for an ISH, the MMO would ask that hearings are organised to minimise the need for the MMO to be in attendance for all hearings, (e.g., discussing both offshore matters and onshore matters). In addition to this, the MMO would welcome any discussions on the DML or offshore DCO sections to be discussed at the earliest opportunity within the agenda. For example, in East Anglia One North and East Anglian Two, the agenda was rearranged to enable MMO involvement at the start of the hearing. This would enable better time utilisation, allowing for a more efficient and effective examination.





### 3. Comments on Relevant Representations (RRs)

#### 3.1 Environment Agency (EA) (RR - 026)

3.1.1 The MMO notes that the EA is currently satisfied with the approach outlined for Flood Risk. We defer to the EA on Flood Risk matters but welcome this confirmation.

3.1.2 The MMO notes that the EA has requested further information to be satisfied that risks to the environment are managed.

3.1.3 The MMO defers to the EA on Water Framework Directive (WFD) matters.

#### 3.2 Natural England (NE) (RR - 081)

3.2.1 The MMO is aware that there are concerns regarding impacts to protected features of the below Sites of Special Scientific Interest (SSSI):

- Alde-Ore Estuary SSSI
- Flamborough Head SSSI
- Farne Islands SSSI

3.2.2 The MMO defers to NE on all matters related to SSSI but will maintain a watching brief for any potential mitigation or DML conditions for those areas below Mean High Water Springs (MHWS).

3.2.3 The MMO notes that, as the competent authority (Conservation of Habitats and Species Regulations 2017), NE is not satisfied that it can be excluded beyond reasonable scientific doubt that the project would have an adverse effect alone or in-combination on the integrity of the following designated sites:

- Alde-Ore Estuary Special Protected Area (SPA) and Ramsar
- Flamborough & Filey Coast SPA
- Farne Islands SPA
- Margate and Long Sands SAC
- Orfordness-Shingle Street SAC
- Outer Thames Estuary SPA
- Southern North Sea SAC
- Stour and Orwell SPA

3.2.4 The MMO notes that NE advises full consideration of the likely nature, extent, duration, and significance of impacts upon SPA supporting habitats is required to inform a robust assessment of the likely impacts upon designated ornithological features.



- 3.2.5 The MMO notes that NE is concerned there is a potential impact to sediment transport processes at Margate and Long Sands Special Area of Conservation (MLS SAC), as well as cumulative impacts, which require further consideration. The MMO, as stated in section 4.2 in MMO's RR, defers to the relevant Statutory Nature Conservation Body (SNCB) regarding cable burial hierarchy, mitigation strategy and impacts from the potential use of cable protection within the MLS SAC.
- 3.2.6 The MMO defers to NE on all matters related to Habitats Regulations Assessments (HRAs). The MMO will maintain a watching brief on these matters and will ensure we are included/are provided updates on any discussions in relation to the HRA. The MMO highlights that any mitigation secured through the HRA will need to be included within the conditions on the DML.
- 3.2.7 The MMO notes NE's decision to use the 'Red Amber Green' ('RAG') system to denote the level of risk associated with a topic related to this development. The MMO welcomes NE's use of this system and considers it a clear and concise way to present the severity of an outstanding concern.
- 3.2.8 Summary of NE Key Environmental Concerns
- 3.2.9 The MMO notes that NE recommends the during construction monitoring conditions within the DML Schedules 10 and 11 should be amended to include the requirement to stop piling should the noise impacts of the works be significantly in excess of those assessed.
- 3.2.10 The MMO notes NE advises that an updated MLS SAC Benthic Mitigation Plan is secured as a condition in Schedule 11 of the DML.
- 3.2.11 The MMO acknowledges that NE recommends Schedule 10 Part 2 Condition 12 (1) (j) should require the Site Integrity Plan (SIP) to be submitted no sooner than nine months and no later than six months prior to the commencement of piling. The MMO highlights that in Section 3.3 of our RR we recommend that the SIP must be submitted to the MMO no later than six months prior to the commencement of piling activities. The MMO welcome NE's advice given the complexity of the SIP and support their recommendation of including additional wording to the condition.
- 3.2.12 The MMO notes that NE advises that monitoring conditions (Schedule 10 Part 2 Condition 16 and 18) should cover marine mammal and ornithology monitoring as well as benthic monitoring.
- 3.2.13 The MMO notes that NE advises that Schedule 11 Part 2 Condition 26 should be amended to ensure cable protection within MLS SAC is only deployed during the construction phase. The MMO supports this inclusion.



- 3.2.14 The MMO notes that NE requests the compensation schedule should be updated to cover all sites and all features where there is currently a disagreement regarding adverse effects on site integrity (AEOI). For lesser black-backed gull compensation, NE suggests that it should be considered to be provided a period of four full breeding seasons instead of three prior to operation. The MMO defers to NE regarding ornithology compensation measures.
- 3.2.15 The MMO notes NE has concerns with the Maximum Design Scenario (MDS)/Worst-Case Scenario (WCS), regarding impacts to SPA and SAC supporting/protected habitats within the arrays; volume of sediment disturbed due to cable trenching and cable protection within MLS SAC. NE is also not in agreement with the Applicant on the presented WCS of lasting habitat loss/change of Annex I Sandbanks within MLS SAC. NE advises that further consideration and detail is provided regarding impacts to the designated site features, as well as to update the impact assessments accordingly. As stated previously, the MMO defers to NE regarding suitable compensation measures and potential impacts to designated features.
- 3.2.16 The MMO acknowledges NE advises that mitigation measures should be adopted to avoid impacts to *Sabellaria spinulosa* reef from the installation of Five Estuaries Offshore Wind Farm and associated Operations and Maintenance (O&M) activities. The MMO also provided a comment regarding this reef under Section 4.2 of the MMO's RR, where we agreed with the applicant's use of micro-siting as mitigation.
- 3.2.17 The MMO supports the advice from NE for more consideration to mitigation measures to reduce the project impacts from transmission asset installation and maintenance.
- 3.2.18 The MMO welcomes that NE has requested clarification on whether scour protection may be required. The MMO also asked for clarification from the Applicant if they intend to use scour protection like similar offshore wind farm projects, in the MMO's RR (Section 3.4).
- 3.2.19 The MMO notes NE welcomes the inclusion of modelling of fish as stationary receptors, but requests clarity as to whether conclusions made from the fish modelling are based on a static or fleeing receptor model. NE makes it clear that they disagree with the use of a fleeing receptor model as there is insufficient evidence to support its use. The MMO would like to highlight that in Section 4.3 of the MMO's RR, it was raised that the stationary receptor modelling for some species groups should be considered, however the MMO also does not support the use of a fleeing fish receptor when modelling the range of effect for underwater noise.





- 3.2.20 The MMO notes NE advises that the sensitivity of spawning herring to underwater noise impacts should be assessed as greater than medium, but welcomes the implementation of additional mitigation measures, including a seasonal piling restriction during the peak Downs herring spawning period. The MMO highlighted, in our RR (Section 4.3), that the Applicant's proposed mitigation measures presented at the PEIR stage are not appropriate in their current form. The MMO therefore requested that a peak herring spawning period is agreed along with a suitable buffer period that will allow migration of herring to their spawning grounds.
- 3.2.21 The MMO acknowledges that NE strongly advises the Applicant to commit to using noise abatement as mitigation at application stage, should driven or part-driven piles be used during construction. The MMO also advised that suitable mitigation and/or noise abatement measures should be further explored in Section 4.3 in the MMO's RR.
- 3.2.22 The MMO notes that NE defers to Cefas regarding the matter of the suitability of the sediment disposal restriction as mitigation for impacts of high levels of suspended sediment concentration (SSC). The MMO wants to highlight that in our RR (Section 4.3), we recommended a temporal restriction condition on the DML is secured to restrict impacts to herring eggs and larvae from activities likely to generate high SSC.
- 3.2.23 The MMO notes NE does not agree with several conclusions in the Environmental Impact Assessment (EIA) and Habitats Regulations Assessment (HRA) because they lack robust evidence supporting the conclusion. In such cases, NE recommends population modelling be conducted, for example Interim Population Consequences of Disturbance (iPCoD), to understand the impacts of the project alone and in-combination with other plans and projects at a population level and consequently inform the conclusions of the EIA and HRA. The MMO welcomes this suggestion and defers to NE on HRA matters.
- 3.2.24 The MMO notes that NE does not agree that a combination of medium sensitivity and medium magnitude should result in a non-significant effect. As such, the Cumulative Effects Assessment (CEA) for disturbance to harbour porpoise and harbour seals should result in moderate effect. Otherwise, the Applicant needs to provide robust evidence to justify the conclusion of not significant for such scenarios. The MMO welcomes this suggestion.
- 3.2.25 The MMO notes that NE recommends several changes to the Marine Mammal Mitigation Protocol. The MMO has offered to review any updated Marine Mammal Mitigation Plans in Section 4.4 of our RR.
- 3.2.26 The MMO acknowledges concerns raised by NE regarding seascape, landscape, and visual impacts. The MMO is aware the LPA will have comments on this topic, but would like to highlight that the consideration of landscape and seascape features is required as part of the SCP-1 policy of the South East Marine Plan. The MMO would like to advise the Applicant that they must ensure their project is in line with this policy and any other relevant Marine Plan Policies.





### 3.3 Historic England (HE) (RR - 046)

3.3.1 The MMO supports that HE confirmed marine survey programmes, including all geotechnical works, are to be designed to include the collection of archaeologically specific cores. This is in order to meet the archaeological objectives set out in an agreed Written Scheme of Investigation (WSI), building on the Outline WSI submitted by the Applicant.

3.3.2 The MMO defers to HE regarding any further comments in relation to the historic environment.

### 3.4 Essex Wildlife Trust (EWT) (RR - 030)

3.4.1 The MMO notes that EWT wish to address concerns through the DCO process, regarding impacts on the following designated sites:

- Margate and Long Sands SAC
- Southern North Sea SAC
- Outer Thames Estuary SPA
- Estuaries SAC
- Colne Estuary SPA/Ramsar
- Hamford Water SAC/SPA/Ramsar
- Abberton Reservoir SPA/Ramsar
- Stour and Orwell Estuaries SPA/Ramsar
- Blackwater Estuary SPA/Ramsar

3.4.2 The MMO notes EWT expects the Applicant to fully explore opportunities for strategic compensation and enhance approaches to achieve an overall net positive impact on biodiversity and ecology in the marine environment. The MMO defers to NE on compensation measures and impacts on designated sites.

### 3.5 National Trust (NT) (RR - 080)

4.4.2 The MMO notes that NT does not object to the principle of the proposed Five Estuaries Offshore Wind Farm Project.

4.4.3 The MMO also notes that NT acknowledges the Project has identified that it will, in combination with other projects, have adverse effects on lesser black-backed gulls. NT states that they will not support proposals that would give rise to an adverse effect on the integrity of the lesser black-backed gull feature of Alde-Ore Estuary SPA without a satisfactory derogation case. The MMO defers to NE regarding compensation measures.



### **3.6 Maritime and Coastguard Agency (MCA) (RR - 071)**

3.6.1 The MMO welcomes the MCA's confirmation that the MCA will be responding on matters of navigational safety and maritime emergency response. The MMO notes that the MCA have concerns about vessel routing, vessels' ability for continued safe passage, that risks to all vessels and craft are at an acceptable level, and the project is not at the detriment to the provision of Search and Rescue, and other emergency response. The MMO defers to MCA for their comments on navigational safety and hopes to see these concerns addressed throughout examination. The MMO will maintain a watching brief of any comments raised.

### **3.7 Port of London Authority (PLA) (RR - 090)**

3.7.1 The MMO notes that PLA has concerns regarding the potential short and long term impacts to navigation and to the capacity and operation of the PLA, particularly from the works associated with the export cable corridor (ECC). These impacts include:

- Permanent impacts because of Five Estuaries Offshore Wind Farm cable depths
- Temporary impacts from cable laying and repair
- Permanent impacts from interaction with third party schemes (cable crossings)
- Temporary impacts from interaction with third party schemes (simultaneous operations)
- Permanent impacts from the location of the offshore sub station platforms
- Temporary and permanent impacts from the safety zones
- Temporary and permanent impacts from dredging
- Temporary impacts on the PLA's onshore navigational equipment

3.7.2 The MMO notes that the PLA have requested clarity and confidence that long term access to the PLA would be maintained, and any short-term impacts would be minimised.

3.7.3 The MMO notes the PLA also have concerns regarding the location of the offshore substation platforms being placed within the ECC.

3.7.4 The MMO echoes the concerns regarding the lack of controls in relation to the placing of inert material within the ECC. The MMO defers to the PLA and MCA regarding navigational concerns.

### **3.8 Inshore Fisheries and Conservation Authorities (IFCA)**

3.8.1 The MMO notes that a Relevant Representation was not received by IFCA.



### 3.9 Corporation of Trinity House of Deptford Strond (TH) (RR - 015)

3.9.1 The MMO notes that TH will have comments to make during the application process. The MMO defers to Trinity House for their comments on the safety of shipping and seafarers, the superintendence and management of all lighthouses, buoys and beacons within its area of jurisdiction. The MMO will maintain a watching brief on the response from this Interested Party (IP).

### 3.10 Royal Society for the Protection of Birds (RSPB) (RR - 094)

3.10.1 The MMO notes that RSPB has methodological concerns that some of the offshore ornithology impacts have not been adequately assessed and, as such consider that an AEOL on the Northern Gannet feature of the Flamborough and Filey Coast SPA and the Red-throated Diver feature Outer Thames Estuary SPA cannot be ruled out at this stage.

3.10.2 The MMO notes that RSPB also cannot rule out an adverse effect on the integrity of features for the following sites:

- Flamborough and Filey Coast SPA – Northern Gannet feature for the project alone; Kittiwake, guillemot and razorbill features for the project in combination with other plans or projects
- Outer Thames Estuary SPA - Red-throated Diver feature for the project alone and in combination with other plans/projects
- Alde-Ore Estuary SPA – Lesser Black-back Gull feature for the project alone

3.10.3 The MMO notes that RSPB has significant concerns regarding issues relating to offshore ornithology, including collision, displacement, distribution change and mortality of a number of bird species.

3.10.4 The MMO defers to NE regarding issues related to offshore ornithology. The MMO will keep a watching brief of further comments raised.

3.10.5 The MMO defers to RSPB and NE regarding issues and advice related to compensation measures for ornithology.

### 3.11 Royal Yachting Association (RYA) (RR - 095)

3.11.1 The MMO defers to RYA on issues regarding recreational boating and navigational and cruising routes. The MMO will maintain a watching brief on the response from this IP.

### 3.12 UK Chamber of Shipping (RR - 118)

3.12.1 The MMO defers to the UK Chamber of Shipping on shipping matters but will maintain a watching brief on further comments from this IP.





### 3.13 National Federation of Fishermen's Organisations (NFFO) (RR – 077)

3.13.1 The MMO notes that NFFO has concerns regarding the lack of contemporary and site-specific data presented in the fish and shellfish ecology assessments, as well as the lack of focus on key commercial species. NFFO welcomes the development of a Fisheries Liaison and Coexistence Plan. The MMO will maintain a watching brief on further comments raised from this IP and welcomes the inclusion of the Fisheries Liaison Officer becoming a condition on the DML if it is required.

## 4. Further Requests from Examination Authority

4.1. The MMO is content to provide a summary of our RR for Deadline 1.

Yours sincerely,

[Redacted signature]

Emma Chalk  
Marine Licensing Case Officer

D [Redacted]  
E [Redacted] [@marinemanagement.org.uk](mailto:[Redacted]@marinemanagement.org.uk)

