



Five Estuaries Offshore Wind Farm Case
Team
Planning Inspectorate
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(Email only)

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

22 October 2024

Dear Sir or Madam,

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

Deadline 2 Submission

On 23 April 2024, the Marine Management Organisation (the “MMO”) received notice under section 56 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”).

This document comprises the MMO comments in respect of the DCO Application submitted in response to Deadline 2.

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,

[Redacted signature]

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1. MMO Comments on REP1-008 - Applicant's Draft DCO Changes

1.1 DCO and DML Major Comments

- 1.1.1 The MMO notes that Condition 11 Force majeure is still included within the DMLs. The MMO welcomes the Applicant's comments in relation to this and will provide an update in due course.
- 1.1.2 Article 7, Benefit of the Order, Paragraph 2b – the MMO notes the inclusion of 'excluding the deemed marine licences referred to in paragraph 3 below'. The MMO is reviewing this addition and will provide comments in due course.
- 1.1.3 Article 7, Benefit of the Order, Paragraph 3b – the MMO notes the change of 'grant' to 'transfer'. The MMO is reviewing this change and will provide comments in due course.
- 1.1.4 Article 7, Benefit of the Order - New sub-paragraph 9 – the MMO notes the inclusion of this new sub-paragraph and will provide comments in due course.
- 1.1.5 The MMO notes that no further amendments to the Benefit of the Order section (Article 7) have been made and notes the response within Table 4.17 of REP1-050. The MMO reiterates our position on this matter still stands. The MMO disagrees with the rationale provided by the Applicant regarding the Benefit of the Order and the provisions relating to the process of transferring and/or granting the deemed marine licences, as explained in Paragraph 1.2 of our Deadline 1 Response (REP1-064), the MMO will review the updated Applicant's response submitted at Deadline 2 on this matter.

1.2 DML Schedules 10 - 11 Comments

- 1.2.1 Schedule 10, Part 1, 1(1) – the MMO notes the amendments made. The MMO is content with the revised MCMS definition. The MMO also welcomes the inclusion of the interpretation for JNCC (Joint Nature Conservation Committee) guidance.
- 1.2.2 With regards to the Site Integrity Plan condition suggested in MMO's Relevant Representation (RR-070), point 3.3.5, the MMO notes these have not been included in the recent DCO draft. The Applicant's response to MMO-RR16 in REP1-050 does not provide justification on why the condition is not a stand-alone condition.
- As part of the Review of Consents undertaken by the Secretary of State (SoS) and approved in 2020, a stand-alone condition was included on multiple Offshore wind Farms Orders. Since this decision the MMO has worked to amend the condition slightly for future projects to make sure it includes all the required information including any updated guidance from JNCC.
- The MMO believes this must be a stand-alone condition with a six-month timescale to ensure the MMO can make a detailed decision in relation to the in combination impacts.
- 1.2.3 The MMO provided further detail on our point regarding the definition of 'maintain' in our Deadline 1 Response (REP1-064). The MMO reiterates that our interpretation of maintain/maintenance is: 'upkeep or repair an existing structure or asset wholly within its existing three-dimensional boundaries'. We will maintain a watching brief for this amendment in the next submission of the draft DCO.
- 1.2.4 The MMO also notes that the amendment to 'cable crossings' requested in our Relevant Representation (RR-070) has still not been actioned. The MMO still requests that additional text is included within the definition or further justification is provided.



- 1.2.5 Under definitions in Schedules 10 and 11, Part 1, 4(d): the MMO notes that the telephone number of the local MMO office, Historic England, Ministry of Defence, and the Civil Aviation Authority is missing, the MMO requests these to be included.
- 1.2.6 Schedule 10, Part 1, 1(4) – the MMO notes that the addition of ‘disposal of drill arisings in connection with any foundation drilling up to a total of XX cubic metres.’ has not been included in the draft DCO submitted at Deadline 1 as set out in MMO-RR28 of REP1-050. The MMO will maintain a watching brief for this amendment in the next submission of a draft DCO.
- 1.2.7 Schedule 10, Part 2, 1(7) – the MMO notes that in our Deadline 1 Response (REP1-064) we clarified why the maximum volume of scour protection per turbine and per each structure should be included as well as the total combined volume. We will maintain a watching brief for this update in the next submission of the draft DCO.
- 1.2.8 Schedule 10, Part 2, 6(8) and (16) – the MMO notes the changes made here in response to our comments. The MMO is content with these changes.
- 1.2.9 Schedule 10, Part 2, 10(2), (4), (10) – the MMO notes the amendments made here. The MMO would like to highlight that the inclusion of the timeframe of 96 hours is too long of a period to report dropped objects. The standard timeframe is 24 hours. The MMO will continue to discuss this with the Applicant.
- 1.2.10 Schedule 10, Part 2, 15(2) – the MMO welcomes the inclusion of timing for this condition.
- 1.2.11 Schedule 10, Part 2, 16(5) – the MMO notes the suggestion of the inclusion of a timeframe has not yet been included and will maintain a watching brief for its inclusion in the next revision.
- 1.2.12 Schedule 10, Part 2, 17(2b) – the MMO notes this has not been commented on or had any changes made in the Applicant’s draft DCO submissions for Deadline 1. The MMO will maintain a watching brief for the Applicant’s future comments or amendments regarding this point.
- 1.2.13 Schedule 10, Part 2, 18(5) – the MMO notes the inclusion of the suggested provision. The MMO requests that it is amended to state ‘sub-paragraphs (1-4)’.
- 1.2.14 Schedule 10, Part 2, 19 and Schedule 11, Part 2, 20 – the MMO requests for ‘the relevant body’ in these conditions to be amended to ‘the MMO’.
- 1.2.15 Schedule 10, Part 2, 25 (1) and (2a-c) – the MMO is content that the suggested provision for ‘Reporting of scour and cable protection’ has been included.
- 1.2.16 Schedule 11, Part 2, 26 (1) and (2a-c) – the MMO is content that the suggested provision for ‘Reporting of cable protection’ has been included. The MMO notes that ‘any other information...’ should be listed as point (c) like in Schedule 10.
- 1.2.17 The MMO notes the addition of a seasonal piling restriction condition (Schedule 10, Part 2, 12(6) and that in the Issue Specific Hearing (ISH) 1, it was mentioned that the MMO has not agreed on the suitability of the condition yet. The MMO is reviewing the addition of this condition and aims to provide comments at Deadline 3.
- 1.2.18 The MMO also notes that the Applicant stated in the ISH 1 that a disposal plan will be produced and secured in the conditions of a future draft DCO. The MMO will maintain a watching brief for this addition and will look to make comments on the plan.



2. MMO Comments on REP1-055 – Applicant’s Marine Plan Policy Assessment

2.1 General Comments

- 2.1.1 The MMO notes that the Acronym definition for ADD (used in SE-UWN-2) has not been included. Please can this be included.
- 2.1.2 The MMO notes that in SE-ML-2, the Applicant states that a Project Environmental Management Plan will be secured in the DML and this is secured in Condition 13(1)(d).
- 2.1.3 The MMO notes multiple areas within the assessment where the Applicant refers to mitigation measures included within the application, but does not expand on what the mitigation measures are. An example of this is for policy SE-CO-1. While the MMO appreciates that the Applicant has referenced the chapters where this is visible within the Environmental Statement or within other application documents, the Marine Plan Policy Assessment must be able to be read as a standalone document and must provide evidence of the mitigation measures relevant to the policies within the assessment. SE-HER-1 is a good example of where the mitigation measures have been included in the justification for policy compliance.
- 2.1.4 The MMO wants to highlight that for all policies with a mitigation hierarchy, answers must be provided in full and are applicable to all projects. An example of this type of policy is SE-INF-2. Please give reasoning as to why the Project is compliant with the policy and use the mitigation hierarchy to structure the answer i.e. this project avoids/minimises/mitigates/compensates for impacts because...
- 2.1.5 It is important to note that there are also multiple areas within the assessment where full justifications for why the Project is compliant or not with a policy has not been provided. This is required for each policy, along with evidence of how you have concluded the justification provided. It is not enough to state that the Project is compliant or not with a policy, or to write N/A. The MMO notes that for policy AQ1 in particular the Applicant has written ‘N/A’. A conclusion of why the Applicant considers each policy to be ‘not applicable’ must be added. The explanation should include whether the Applicant considers the project in accordance with the policy objectives, and if so how. If the Project is not in accordance with the policy, the Applicant must explain why not and include any considerations they believe should be taken into account.
- 2.1.6 The MMO therefore requests that the Applicant ensures all policies include justifications and where necessary the mitigation measures that will be used.

3. MMO Comments on Applicant's Deadline 1 Submissions

3.1 General Comments

- 3.1.1 In addition to the documents reviewed above the MMO notes the Applicant submitted the following documents in Deadline 1:
- REP1-024 and REP1-025 – Environmental Statement Annex Herring Seasonal Restriction Note (Clean) and (Tracked)
 - REP1-033 and REP1-034 – Outline Marine Mammal Mitigation Protocol – Piling (Clean) and (Tracked)



- REP1-035 and REP1-036 – Outline Marine Mammal Mitigation Protocol - UXO - Revision B (Clean) and (Tracked)
- REP1-037 and REP1-038 – Outline Fisheries Liaison and Co-existence Plan - Revision B (Clean) and (Tracked)
- REP1-045 and REP1-046 – Offshore In Principle Monitoring Plan - Revision B (Clean) and (Tracked)
- REP1-056 – Marine Mammal iPCoD Modelling for Project alone
- REP1-057 – Marine Geology, Oceanography and Physical Processes Sediment Plume Modelling
- REP1-058 – Revised International Herring Larval Survey Heat Map Figures

3.1.2 The MMO is reviewing the documents with our technical advisers and will look to provide a response regarding the changes made in due course.

3.1.3 REP1-052 – 10.10 Statement of Commonality – the MMO notes the Applicant states that a draft Statement of Common Grounds (SoCG) is in preparation and awaiting engagement. The MMO received a draft on 15 October 2024 and will look to continue discussing it with the Applicant and make comments on the draft at a future deadline.

3.1.4 The MMO notes the additional submissions that the Applicant requested changes to, submitted on 15 October 2024. The MMO notes the Examining Authority are still reviewing these changes and will provide comments when requested.

4. MMO Comments on PD-011 - Examining Authority's Written Questions (ExQ1)

4.1 DCO.1.21 - Deemed Marine Licensing – Articles 5 (Deemed marine licences under the 2009 Act and 7) *Do the changes made by the Applicant to the drafting of Article 7 in the version of the dDCO submitted at Deadline 1 [REP1-008] address the MMO's concerns with respect to this article, as expressed most particularly in section 1.2 of your Deadline 1 written submission [REP1-064]? If the amendments made to Article 7 have not addressed your concerns, explain why that is the case, providing any suggested alternative wording.*

4.1.1 The MMO has made minor comments to some of the changes to the DCO in section 1 of this response.

4.1.2 However, the MMO wants to reiterate that our position on this matter still stands, as explained in Paragraph 1.2 of our Deadline 1 Response (REP1-064). No additional information has been provided by the Applicant in relation to our Deadline 1 Response and we will review this information and provide comments in due course.

4.2 DCO.1.22 - Deemed Marine Licensing – Articles 5 (Deemed marine licences under the 2009 Act and 7) *Do the changes made by the Applicant to the drafting of Article 7 in the version of the dDCO submitted at Deadline 1 [REP1-008] address the MMO's concerns with respect to this article, as expressed most particularly in section 1.2 of your Deadline 1 written submission [REP1-064]? If the amendments made to Article 7 have not addressed your concerns, explain why that is the case, providing any suggested alternative wording.*



4.2.1 The MMO notes that this is a repeat question of DCO.1.21. Can the Examining Authority please confirm that a question has not been missed and that this is a duplication?

4.3 ME.1.01 - IP Methodological Concerns - *The ExA notes the documents submitted by the Applicant, together with updates to the Environmental Statement, pursuant to addressing the methodological concerns of Interested Parties. This includes a ExQ1 8 October 2024 Page 31 of 50 Question to: Question Herring Seasonal Restriction Note [REP1-024], an Apportioning Note [REP1-020], Guillemot and Razorbill Survey Reports [REP1-054], Population Viability Analysis [REP1-022] and Marine Mammal Modelling [REP1-056]. Can the Parties identify areas of outstanding disagreement with regard to assessment methodologies, as well as provide an update in relation to how such concerns are being addressed.*

4.3.1 The MMO's main comments were in relation to the following:

Dredge and Disposal

4.3.2 The MMO considered the cable corridor to be inconsistently and insufficiently characterised and requested justification on comments made in point 4.1.2 i-iii of our Relevant Representation (RR-070). The MMO notes the Applicant initially provided comments on this in Procedural Deadline D (PD4-006) and we responded to them in our Deadline 1 Response (REP1-064), stating that we are reviewing the comments made and will provide a response in due course.

Benthic Ecology

4.3.3 The MMO suggested that the monitoring of paint flakes should be considered pre and post-construction monitoring. We note the Applicant maintains their position in REP1-050, however the MMO disagrees with this and will provide further comments on this in due course.

4.3.4 The MMO notes that the Applicant has removed the Gravity Based Structures from the design envelope, in relation to our comment made in point 4.2.2 of our Relevant Representation (RR-070). The MMO welcomes this change and has no further comments at this time.

Fish Ecology

4.3.5 The MMO made comments regarding the suggested mitigation measures for the seasonal piling restriction and sediment disposal restriction. Our comments recommended that further back calculations were carried out for the peak herring spawning period. A further recommendation was to produce Level vs Range plots to provide more context for better comparison with future monitoring measures, for noise levels. All comments on Fish Ecology can be found in Section 4.3 of our Relevant Representation (RR-070). The MMO is reviewing the comments raised by the Applicant in REP1-050 and the relevant submissions to Deadline 1 and will provide further comments in due course.



Underwater Noise

4.3.6 The MMO made comments regarding the Applicant providing further mitigation measures to be considered for potential underwater noise impacts and highlighted that we were happy to review any Marine Mammal Mitigation Plans. All comments on Underwater Noise can be found in Section 4.4 of our Relevant Representation (RR-070). The MMO is reviewing the comments raised by the Applicant in REP1-050 and the relevant submissions to Deadline 1 and will provide further comments in due course.

Overall:

4.3.7 The MMO notes the Applicant responded to each concern presented in our Relevant Representation (RR-070), in their Response to Relevant Representations (REP1-050). The MMO is reviewing these responses and aims to provide comments at Deadline 3. The MMO has also held meetings with the Applicant and our technical advisers to discuss the concerns raised and aims to continue working with the Applicant on these matters.

4.3.8 The MMO also notes the inclusion of the documents stated in the ME.1.01 which were submitted in Deadline 1. As stated in Section 3 of this response, the MMO is reviewing the relevant documents listed and aims to provide comments at Deadline 3.

5. MMO Comments on Stakeholders' Deadline 1 Submissions

5.1 Natural England (REP1-067)

5.1.1 The MMO has no comments to make on this document.

5.2 Harwich Harbour Fishermen's Association (HHFA) (REP1-063)

5.2.1 The MMO notes that HHFA objects to the application and has concerns regarding the burial of cables and any hazards for vessels within Harwich and east coast area. The MMO will maintain a watching brief on any further comments raised.

5.3 Maritime and Coastguard Agency (MCA) (REP1-065)

5.3.1 The MMO notes that MCA welcomes the suggestion of preparing a Navigation Installation Plan (NIP) for the offshore Export Cable Corridor (ECC). The MMO will maintain a watching brief for further comments raised on this.

5.3.2 The MMO also notes that MCA states the requirement for an Emergency Response Cooperation Plan (ERCoP), will be secured in the DCO/DML under the condition for complying with MGN 654. There will not be a specific condition for the completion of an ERCoP. The MMO welcomes this clarification and understands no updates are required to Condition 14.

5.3.3 Schedule 10, Part 2, 3(3): the MMO notes that MCA requests this to be amended to include MCA. The MMO is discussing this with the MCA and will provide an update in due course.

5.3.4 Schedule 10, Part 2, 3(4): the MMO notes that MCA requests this to be amended to include MCA for consultation. The MMO is discussing this with the MCA and will provide an update in due course.



- 5.3.5 Schedule 10, Part 2, 6(12): the MMO notes that MCA requests this to be amended to include 'regional fisheries contacts' to the notifications. The MMO is content with this amendment.
- 5.3.6 Schedule 10, Part 2, 6(13): the MMO notes that MCA requests this to be amended to include 'regional fisheries contact' after 'notify mariners'. The MMO is content with this amendment.
- 5.3.7 Schedule 10, Part 2, 8(1): the MMO notes that MCA requests this be amended to: 'Except as otherwise required by Trinity House the undertaker must paint all structures forming part of the authorised project yellow (colour code RAL 1023) from at least HAT to a height as directed by Trinity House.' The MMO would welcome this amendment.
- 5.3.8 Schedule 10, Part 2, 10(10): the MMO notes MCA requests to reword this condition to: 'All dropped objects must be reported to the MMO, UKHO and HMCG using the Dropped Object Procedure Form as soon as reasonably practicable and no later than 6 hours of the undertaker becoming aware of an incident. Immediate notification should be made to HM Coastguard via telephone where there is a perceived danger or hazard to navigation. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and the MMO may require obstructions to be removed from the seabed at the undertaker's expense if reasonable to do so.' The MMO is discussing this with the MCA and will provide an update in due course.
- 5.3.9 Schedule 10, Part 2, 16(3): the MMO notes the following has been requested to be added: 'which includes the requirement for the full density data and reports to be delivered to the MCA and the UKHO for the update of nautical charts and publications. This must be submitted as soon as possible, and no later than [three months] prior to construction. The Order Limit shapefiles must be submitted to MCA. The Report of Survey must also be sent to the MMO.' The MMO is reviewing this request and will provide comments in due course.
- 5.3.10 The MMO notes that MCA requests that with the addition of the above to 16(3), remove 16(5) or reword to only apply to the statutory nature conservation body. The MMO is reviewing this request and will provide comments in due course. The MMO notes that if the above change is made then this requested change should be completed to prevent duplication.
- 5.3.11 Schedule 10, Part 2, 24(c): The MMO notes that MCA requests that this is replaced with: 'latitude and longitude coordinates of the centre point of the location for each wind turbine generator and offshore platform, substation, booster station and meteorological mast; provided as Geographical Information System data referenced to WGS84 datum.' The MMO is reviewing this request and will provide a comment in due course.
- 5.3.12 Schedule 11, Part 2, 4(3): The MMO notes that MCA requests this is amended to: 'the undertaker must not reduce water depth by more than 5% of navigable depth referenced to chart datum unless agreed with the MMO and MCA in writing.' The MMO is discussing this with the MCA and will provide an update in due course.
- 5.3.13 Schedule 11, Part 2, 7(13): The MMO notes that MCA requests the following is added 'regional fisheries contacts' after 'notify mariners'. The MMO is content with this amendment.



- 5.3.14 Schedule 11, Part 2, 9(1): The MMO notes that MCA requests this is reworded to 'Except as otherwise required by Trinity House the undertaker must paint all structures forming part of the authorised project yellow (colour code RAL 1023) from at least HAT to a height as directed by Trinity House. Unless the MMO otherwise directs, the undertaker must paint the remainder of the structures grey (colour code RAL 7035).' The MMO welcomes this amendment.
- 5.3.15 Schedule 11, Part 2, 11(10): The MMO notes that MCA requests this is reworded to 'All dropped objects must be reported to the MMO, UKHO and HMCG using the Dropped Object Procedure Form as soon as reasonably practicable and no later than 6 hours of the undertaker becoming aware of an incident. Immediate notification should be made to HM Coastguard via telephone where there is a perceived danger or hazard to navigation. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and the MMO may require obstructions to be removed from the seabed at the undertaker's expense if reasonable to do so.' The MMO is discussing this with the MCA and will provide an update in due course.
- 5.3.16 Schedule 11, Part 2, 17(2): The MMO notes that MCA requests that this needs to make clear that the survey will include all proposed cable routes. The MMO is reviewing this request and will provide a response in due course.
- 5.3.17 Schedule 11, Part 2, 17(3): The MMO notes that MCA requests the following to be added 'which includes the requirement for the full density data and reports to be delivered to the MCA and the UKHO for the update of nautical charts and publications. This must be submitted as soon as possible, and no later than [three months] prior to construction. The Order Limit shapefiles must be submitted to MCA. The Report of Survey must also be sent to the MMO.' The MMO is reviewing this request and will provide comments in due course.
- 5.3.18 The MMO notes that MCA requests that with the addition of the above to 17(3), remove 17(5) or reword to only apply to the statutory nature conservation body. The MMO notes that if the above change is made then this requested change should be completed to prevent duplication.
- 5.3.19 Schedule 11, Part 2, 19: The MMO notes that MCA requests the following is added 'The undertaker must conduct a swath bathymetric survey to IHO Order 1a of the installed export cable route and provide the data and survey report(s) to the MCA and UKHO. The MMO should be notified once this has been done, with a copy of the Report of Survey also sent to the MMO. This should fulfil the requirements of MGN654 and its supporting 'Hydrographic Guidelines for Offshore Renewable Energy Developers', which includes the requirement for the full density data and reports to be delivered to the MCA and the UKHO for the update of nautical charts and publications.' The MMO is reviewing this request and will provide comments in due course.
- 5.3.20 Schedule 11, Part 2, 25: The MMO notes that MCA requests that MMO is added to the reporting and to add as (d): latitude and longitude coordinates of the inter array and export cable routes; provided as Geographical Information System data referenced to WGS84 datum.' The MMO welcomes this amendment.



Yours sincerely,



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