



Five Estuaries Offshore Wind Farm Case
Team
Planning Inspectorate
FiveEstuaries@planninginspectorate.gov.uk
(By Email only)

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

03 December 2024

Dear Sir or Madam,

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

Deadline 4 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”).

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 enable the MMO to fulfil these obligations.

This document comprises the MMO comments in respect of the DCO Application submitted in response to Deadline 4. 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,





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Contents

1. MMO Comments on Draft Development Consent Order – Revision D – REP3-005/REP3-006	4
2. MMO Comments on Deadline 1 and 2 Submissions	4
3. MMO Comments on Interested Parties Deadline 1 Submissions	7
4. MMO Comments on Applicant’s Deadline 3 Submissions	9
5. MMO Comments on Interested Parties Deadline 3 Submissions	12
6. MMO Comments on PD-014 - Examining Authority's Written Questions (ExQ2)	13



1. MMO Comments on Draft Development Consent Order – Revision D – REP3-005/REP3-006

1.1. General Comments

- 1.1.1. The MMO notes that the recent updated draft DCO does not have many changes that require comments from the MMO.
- 1.1.2. The MMO will maintain a watching brief on updates to future drafts to address our concerns previously raised.

1.2. Schedule 10/Schedule 11 Comments

- 1.2.1. The MMO welcomes the amendments to Schedule 10, Part 2 Condition 19 and Schedule 11, Part 2 Condition 20 from 'relevant body' to the 'MMO'.
- 1.2.2. The MMO would like to advise the ExA that there are a number of Conditions in addition to those mentioned within this response that are being reviewed and updates will be provided to the Applicant and the ExA in due course. These include:
- Chemicals, drilling and debris 10(1)
 - Construction monitoring 17(1)(b)
 - Reporting of impact pile driving 20(1)(b) & (c)
 - Maintenance reporting 21(3)
 - Completion of construction (23)
 - Decommissioning (new condition)

2. MMO Comments on Deadline 1 and 2 Submissions

2.1. General Comments

- 2.1.1. The MMO noted in our Deadline 3 Response (REP3-029) that the Applicant submitted the following documents in Deadline 1 and 2 to address some of our concerns raised in our Relevant Representation (RR-070):
- a. REP1-049 – 10.4 Applicant's response to Relevant Representations (Clean)
 - b. REP2-018 and REP2-019 – 6.5.6.2 Underwater Noise Technical Report - Revision B (Clean and Tracked)
 - c. REP2-027 – 10.20.1 Technical note - Methodology for Determining MDS (Offshore)
 - d. REP2-028 – 10.20.2 Technical note - Offshore Decommissioning
- 2.1.2. The MMO has reviewed the above documents with our technical advisers and have split our comments into the following topics:
- Fish Ecology



- Underwater Noise
- Dredge and Disposal

2.2. Fish Ecology

2.2.1. In providing this response the MMO has reviewed the following documents:

- REP2-018 and REP2-019 – 6.5.6.2 Underwater Noise Technical Report - Revision B (Clean and Tracked)

2.2.2. The MMO notes the Underwater Noise Technical Report has been updated with minor changes. This consists of the addition of a section and figure showing the predicted reduction of underwater noise with distance from the source (see Section 1.4.4 and Figure 1.9 of REP2-19).

2.2.3. The MMO notes that there are still some outstanding concerns regarding fisheries. The MMO noted that the Applicant provided comments in REP1-049 regarding some of our concerns in REP3-029, which we are still reviewing and aim to provide comments at a later deadline.

2.3. Underwater Noise

2.3.1. In providing this response the MMO has reviewed the following documents:

- REP2-018 and REP2-019 – 6.5.6.2 Underwater Noise Technical Report - Revision B (Clean and Tracked)

2.3.2. The MMO has no further comments to make regarding underwater noise concerns for the Underwater Noise Technical Report, since comments were provided in REP3-029.

2.3.3. The MMO will maintain a watching brief for the Applicant's response to our comments and will continue to discuss the concerns with the Applicant.

2.4. Dredge and Disposal

2.4.1. In providing this response the MMO has reviewed the following documents:

- REP2-027 – 10.20.1 Technical note - Methodology for Determining MDS (Offshore)
- REP2-028 – 10.20.2 Technical note - Offshore Decommissioning

2.4.2. The concerns raised in our Deadline 3 response (REP3-029) in section 1.6 are still relevant and the MMO is maintaining a watching brief for comments from the Applicant.

2.4.3. The MMO notes the Applicant has provided a technical note providing description of how some of the values in the Maximum Design Scenario (MDS) have been calculated (REP3-027). This provides further details in relation to the MDS for cable



crossings, construction impacts on seabed morphology, boulder clearance and pre lay grapnel run, fluidized material and potential impacts to Margate and Long Sands Special Protection Area (SPA).

- 2.4.4. In relation to fluidized material, the Applicant states the MDS for trial trenching (see Table 1.6 in REP2-027) is “...estimated with a 50% assumption, regarding the amount of sediment disturbed. This value is used because during the trenching not 100% of the material is dispersed into the water column. An example of this for jetting is shown in the sketch in Figure 4. Some of the sand is fluidized into the water column and may disperse, however some backfills over the cable. The values in the table for the maximum volume are calculated from a typical average burial depth of 1.75 m, the maximum value of 3.5 m is a maximum indicative value. The actual burial depth will be below the average, hence this value has been used to assess the impact of sediment dispersal on sensitive receptors in the marine environment.”

The MMO would like to highlight that the Figure number within the paragraph above is missing within the document.

- 2.4.5. The MMO notes that although the Applicant states this assumption is used as the trenching will not disperse 100% of the material into the water column, it is not clear why a value of 50% has been applied. The amount the material disperses is likely to vary based on sediment composition - for example silt will disperse to a greater degree than sand or gravel. The use of any such value should be evidence-based and appropriately justified. The MMO asks the Applicant to clarify what this value is based on.
- 2.4.6. The MMO notes the technical note for offshore decommissioning (REP3-028) aims to (i) explain the nature of the decommissioning activities and (ii) provide justification for the assumptions that noise created during decommissioning would be comparable or less than construction and installation noise.
- 2.4.7. In regard to the approach to decommissioning, the Applicant states: “*The approach to decommissioning, will be detailed within the final Decommissioning Programme submitted to the Secretary of State for approval approximately 1-2 years prior to decommissioning commencing. This will be subject to agreement with the relevant authorities based on further and more refined Environmental Impact Assessments (EIA) and surveys performed prior to decommissioning. The approach will be based on an assessment of relative net environmental benefit, taking into consideration the in situ ecological value of the offshore components alongside other factors such as navigational safety, available technology and the feasibility of recycling. Further consents, including marine licensing, will be sought at the time of decommissioning and will factor in these assessments carried out*”. The MMO is currently working on a Decommissioning Condition to be added to the Deemed Marine Licences (DML) and will provide comments in due course.
- 2.4.8. The MMO notes decommissioning is expected to remove all foundations or cut at/below the surface and may retrieve the inter-array and interconnector cables to be disposed of onshore. No trenching is required for decommissioning, as such the Applicant states the removal of cables is not likely to result in the level of seabed disturbance experienced during installation.



2.4.9. The MMO notes that there are still several concerns regarding dredge and disposal that remains unresolved. The MMO will maintain a watching brief for the Applicant's comments on these and will continue to be in discussion with the Applicant.

3. MMO Comments on Interested Parties Deadline 1 Submissions

3.1. Maritime and Coastguard Agency (MCA) – REP1-065

3.1.1. The MMO noted in REP2-054 that we were in discussion regarding some of the suggested changes MCA made in REP1-065. The MMO notes the Applicant has not responded to the MCA initial comments but have addressed the changes to conditions in their response to ExQ1 (REP2-039).

3.1.2. The MMO held a meeting with MCA on Friday 08 November 2024 to discuss the comments MCA made, regarding suggested changes to DML conditions.

3.1.3. Schedule 10, Part 2, 3(3): the MMO noted that MCA requested this to be amended to include MCA. The MMO is content with this amendment.

3.1.4. Schedule 10, Part 2, 3(4): the MMO noted that MCA requested this to be amended to include MCA for consultation. The MMO is content with this amendment.

3.1.5. The MMO agrees with MCA and requests that Schedule 10, Part 2 6(12) & 6(13) is updated to:

'(12) In case of damage to, or destruction or decay of, the authorised development seaward of MHWS or any part thereof, excluding the exposure of cables, the undertaker must as soon as reasonably practicable and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify the MMO, the MCA, Trinity House, the Kingfisher Information Service, the UK Hydrographic Office and the regional fisheries contact.'

(13) In case of exposure of cables on or above the seabed, the undertaker must within three days following identification of a potential cable exposure, notify mariners, including the regional fisheries contact and inform the Kingfisher Information Service of the location and extent of exposure. Copies of all notices must be provided to the MMO, the MCA, Trinity House and the UK Hydrographic Office within five days.'

The MMO requests that regional fisheries contact is added to the interpretation, address section or the condition referenced if this information is within a plan.

3.1.6. The MMO agrees with MCA and requests Schedule 10, Part 2, 8(1) is updated to the following:

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 highest astronomical tide to a height as directed by Trinity House.

3.1.7. Schedule 10, Part 2, 10(10): the MMO noted MCA requested 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 currently reviewing the wording of this condition and will provide an update to the Applicant as soon as possible and an update to the ExA at Deadline 5.

3.1.8. The MMO requests that Schedule 10, Part 2, 16(3) is updated to the following:

'The pre-construction survey(s) carried out pursuant to condition 16(2)(a)(ii) and 16(2)(b) must fulfil the requirements of MGN654 and its supporting 'Hydrographic Guidelines for Offshore Renewable Energy Developer' (as relevant), 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, alongside Order Limit shapefiles must be submitted to the MMO in consultation with MCA and UKHO as soon as possible, and no later than four months prior to construction.'

3.1.9. The MMO noted that MCA requested 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 change in 3.1.8 is made then this requested change should be completed to prevent duplication.

3.1.10. The MMO requests that Schedule 10, Part 2, 24(c) is updated to the following:

'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.'

3.1.11. The MMO requests Schedule 11, Part 2, 4(3) is updated with the following:

'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.'

3.1.12. Schedule 11, Part 2, 11(10): The MMO noted that MCA requested 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 currently reviewing the wording of this condition and will provide an update to the Applicant as soon as possible and an update to the ExA at Deadline 5.

3.1.13. Schedule 11, Part 2, 17(2): The MMO noted that MCA requested that this condition needs to make clear that the survey will include all proposed cable routes. The MMO is content with this suggestion.

3.1.14. The MMO requests that Schedule 11, Part 2, 17(3) is updated with the following:

'The pre-construction survey(s) carried out pursuant to condition 16(2)(a)(ii) and 16(2)(b) must fulfil the requirements of MGN654 and its supporting 'Hydrographic Guidelines for Offshore Renewable Energy Developer' (as relevant), 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, alongside Order Limit shapefiles must be submitted to the MMO in consultation with MCA and UKHO as soon as possible, and no later than four months prior to construction.

3.1.15. The MMO noted that MCA requested 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 change in 3.1.14 is made then this requested change should be completed to prevent duplication.

3.1.16. The MMO is currently reviewing the requested update for Schedule 11, Part 2, 19 and will provide an update in due course.

4. MMO Comments on Applicant's Deadline 3 Submissions

4.1. General Comments

4.1.1. The MMO notes the Applicant submitted the following documents in Deadline 3:

- a. REP3-018 – 10.12 Marine Plan Policy Assessment - Revision B (Clean)
- b. REP3-019 – 10.12 Marine Plan Policy Assessment - Revision B (Tracked)
- c. REP3-020 – 10.20.5 Technical Note: Number of Wind Turbine Generators
- d. REP3-024 – 10.26 Applicant's Comments on Deadline 2 Submissions

4.2. REP3-019 – 10.12 Marine Plan Policy Assessment - Revision B (Tracked)

4.2.1. The MMO acknowledges the revised Marine Plan Policy Assessment and thanks the Applicant for responding to our Deadline 2 response (REP2-054).

4.2.2. The MMO notes and welcomes the inclusion of policies SE-PS-1, SE-PS-2, SE-PS-3, SE-DD-1 and CAB-1.

4.2.3. The MMO welcomes the additional information added to SE-CO-1.

4.2.4. The MMO notes that with policy SE-CE-1, the Applicant signposts to the document with mitigation to show compliance, however they do not give a summary or example of the mitigation options. The MMO requests this policy is updated. SE-HER-1 and



SE-DIST-1 are exemplar policies where examples of mitigation have been provided to justify how the Project will avoid, minimise or mitigate any adverse impacts.

- 4.2.5. The MMO notes that with policies SE-PS-1, SE-PS-2 and SE-PS-3, the Applicant signposts to documents where impacts or risks are considered but does not give a summary of what the risks or impacts are. The MMO requests that this is provided.
- 4.2.6. The MMO reiterates that you may direct the MMO to supporting information relevant to your consideration of the specific policy, clearly signposting to the relevant section(s) of the appropriate document(s). However, it is important to still provide a summary and examples, setting out the policy considerations and the document outcomes clearly.
- 4.2.7. The MMO asks for the Applicant to clarify the explanation within AQ1. Is this meant to say: 'The Application is not within a sustainable aquaculture site'?
- 4.2.8. The MMO notes in policy SE-AIR-1, the Applicant states that it was concluded no significant effects in EIA terms on air quality. The MMO requests that this is further explained to demonstrate why and how there is no significant effects.
- 4.2.9. The MMO notes in policy SE-ACC-1, the Applicant states that it was concluded no significant effects on public rights of way and access to the marine area. The MMO requests that this is further explained to demonstrate why and how there is no significant effects.
- 4.2.10. The MMO notes in policy ECO1 and BIO1, the Applicant states that mitigation measures have been included in the application or environmental statement, however examples of the mitigation have not been included. The MMO requests this to be provided.
- 4.2.11. The MMO notes in policy FISH2, the Applicant refers to the environmental statement for results of the commercial fisheries assessment. As the Marine Plan Policy Assessment is a standalone document, the MMO requests the Applicant to provide a summary of the results within the assessment.
- 4.2.12. The MMO notes in policy TR2, the Applicant refers to the environmental statement regarding the assessment of recreational craft. As the Marine Plan Policy Assessment is a standalone document, the MMO requests the Applicant to provide a summary of the assessment within the Marine Plan Policy Assessment.

4.3. REP3-020 – 10.20.5 Technical Note: Number of Wind Turbine Generators

- 4.3.1. The MMO notes the Applicant submitted a technical note to explain the methodology behind the maximum number of wind turbine generators.
- 4.3.2. The MMO has no further comments to make at this time.



4.4.REP3-024 – 10.26 Applicant's Comments on Deadline 2 Submissions

- 4.4.1. The MMO notes the Applicant's response for MMO1.01. The MMO provides comments regarding the Site Integrity Plan condition (SIP) in response to EXQ2 question DCO.2.07 in section 6.
- 4.4.2. The MMO notes the Applicant will provide the SIP condition within a future deadline. The MMO welcomes this and will maintain a watching brief for this addition.
- 4.4.3. The MMO notes the Applicant's response for MMO1.02 and will maintain a watching brief for the addition of the contact details.
- 4.4.4. The MMO notes the Applicant's comment for MMO1.04. The MMO has included the wording for Schedule 10, Part 2, condition 18(5) below for clarification. The condition is under 'Post-construction monitoring' on page 131 of REP3-006. The paragraph (5) wording is:

'In the event that the reports provided to the MMO under sub-paragraph (4) identify a need for additional monitoring, the requirement for any additional monitoring will be agreed with the MMO in writing and implemented as agreed.'

The MMO requests that it is amended to state 'sub-paragraphs (1-4)'.

- 4.4.5. The MMO welcomes the amendments to Schedule 10, Part 2, condition 19 and Schedule 11, Part 2, condition 20, where 'relevant body' was changed to the 'MMO'.
- 4.4.6. The MMO notes the Applicant's point in MMO1.08. The MMO has provided comments on the updated Marine Plan Policy Assessment (REP3-019) in Section 4.2 of this response.
- 4.4.7. The MMO notes the Applicant's comment HE2.02 to Historic England. The MMO believes where projects contain plans that impact both the MMO below MHWS (in the DML), and the Local Planning Authority (in the DCO) it should be clear who is required to review these documents – to ensure document approvals can be aligned. The MMO notes the Applicant's comment is that the LPA only has a small area of overlap. This is correct but both parties need to ensure the documents are suitable. Therefore, the MMO requests Essex County Council is included within Schedule 11, part 2 condition 13(2).
- 4.4.8. The MMO notes the Applicant's comments to the Port of London Authority (PLA) (REP2-066). The MMO understands there are multiple outstanding issues with the PLA. This includes the potential for protective provisions. The MMO hopes that the issues can be resolved however is in discussion with the PLA to discuss any DML amendments required. The MMO will provide these at Deadline 5 or 6 for comments from interested parties, depending on the outcome of the discussions between the PLA and the Applicant.



5. MMO Comments on Interested Parties Deadline 3 Submissions

5.1. Natural England (NE)

5.1.1. The MMO notes NE submitted the following documents for Deadline 3:

- a. REP3-031 – Cover Letter
- b. REP3-032 – Appendix I3 Comments on Seascape Landscape and Visual Assessment
- c. REP3-033– Appendix L3 Risk and Issues Log
- d. REP3-034 – Appendix M2 Comments on the Examining Authority’s Written Questions (ExQ1)

5.1.2. The MMO notes NE will comment on fish ecology and marine mammal methodological concerns at Deadline 4.

5.1.3. The MMO notes that NE welcomes the additional sediment plume modelling carried out (REP1-057).

5.1.4. The MMO notes that NE advises that the ‘worst-case scenario for sediment deposition thickness due to multiple, adjacent, and/or simultaneous construction-related activities should be clarified’ in REP3-031.

5.1.5. The MMO notes NE still has uncertainties regarding the evidence base for their proposed guillemot and razorbill compensation. The MMO defers to NE regarding ornithological concerns.

5.2. Port of London Authority (PLA)

5.2.1. The MMO notes NE submitted the following documents for Deadline 3:

- a. REP3-035 – Comments on any submissions received at Deadline 2
- b. REP3-036 – Post-Hearing submissions including written submissions of oral case as requested by Examining Authority

5.2.2. The MMO notes the PLA responded to the MMO’s Deadline 2 submission in section 4.0 and supports the MMO’s comments regarding the definition of maintain.

5.2.3. The MMO notes the PLA is reviewing a plan from the Applicant which shows the areas where deeper cable burial is proposed. The MMO notes PLA’s concerns in regard to potential impacts to the Sunk and Trinity Deep Water Routes (DWR). The MMO notes that the PLA is requesting for protective provisions to ensure that water depths are protected at the DWRs.

5.2.4. The MMO attended a meeting with the PLA on 19 November 2024 to discuss comments regarding conditions within Schedule 10 and Schedule 11 and navigational impact concerns.



5.2.5. The MMO aims to continue discussions with the PLA regarding their concerns and any DML amendments required. As stated in point 4.4.8, the MMO will provide these at Deadline 5 or 6 for comments from interested parties, depending on the outcome of the discussions between the PLA and the Applicant.

5.3. Royal Society for the Protection of Birds (RSPB) – REP3-037 – Summary of Written Representation

5.3.1. The MMO notes the RSPB provided a summary of their written representation from Deadline 2.

5.3.2. The MMO has no further comments to make.

6. MMO Comments on PD-014 - Examining Authority's Written Questions (ExQ2)

6.1. DCO.2.03 - Article 7 (Benefit of the DCO) – For the MMO – *identify any concerns you continue to have with respect to the drafting of Article 7 (Benefit of the Order). How do you consider those concerns would affect the MMO's ability to undertake its duties pursuant to Article 5 (Deemed marine licences under the 2009 Act) and Schedules 10 and 11 (the Deemed Marine Licences) included in the dDCO and explain how those concerns might be addressed?*

6.1.1. The MMO still maintains its position regarding Article 7 (Benefit of the Order).

6.1.2. As stated in REP1-064, the MMO objects to the provisions relating to the process of transferring and/or granting the deemed marine licences set out in the draft DCO at Article 5 and our position on the matter, in response to the Applicants comments in MMO-RR01 to MMO-RR14 of PD4-006 (10.4 Applicant's Response to Relevant Representations).

6.1.3. Currently, with the inclusion of Article 7, there is power whereby the undertaker can:

- a. Transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order (including the deemed marine licences); or
- b. Grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of the Order (including the deemed marine licences).

6.1.4. The DCO does state that the Secretary of State's consent to the transfer or grant of a DML is not required and thus there is no requirement for consultation with the MMO prior to the undertaker making that transfer or grant where:

- a. The transferee or lessee is the holder of a licence under section 6 of the 1989 Act (licences authorising supply etc.); or



- b. The transferee or lessee is a holding company or subsidiary of the undertaker; or
- c. The time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - i. no such claims have been made,
 - ii. any such claim has been made and has been compromised or withdrawn,
 - iii. compensation has been paid in final settlement of any such claim,
 - iv. payment of compensation into court has taken place in lieu of settlement of any such claim, or
 - v. it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.

6.1.5. As there is potential for the MMO not to be consulted, this will impact our duty as the regulatory authority of the DMLs. Even where the MMO must be consulted, there is no provision for the MMO's comments to be adhered to, therefore there is no power to the MMO to complete its regulatory duty.

6.1.6. As a matter of public law, the MMO does not think the Order can contain a provision transfer of Benefit of the DML as is being proposed. PA 2008 Section 120(3) should read against Section 120(4) and Part 1 of Schedule 5, which the MMO thinks limits what the Order can contain to provisions which deem a marine licence to be granted under the order and to the conditions that should be deemed attached to that licence. The MMO does not consider this to be sufficiently wide as to allow the inclusion of provisions which transfer the Benefit of the Order.

6.1.7. If the Order cannot contain a DML transfer provision for the reasons set out, then it cannot exclude Section 72 of Marine and Coastal Access Act 2009 (MCAA 2009) in the way proposed as Section 120(5) is limited to applying/modifying/excluding only those statutory provisions which relate to any matter for which a provision may be made in the order.

6.1.8. The MMO has noted the additional sub-paragraphs the Applicant included (9 and 10), welcomes the inclusions but does not agree with the overall inclusion of the Article. We will provide further comments as soon as possible.

6.1.9. Overall, the MMO continues to raise objection to Article 7 and will provide further comments to the Applicant as soon as possible and follow that to the ExA at each deadline.

6.2.DCO.2.06 Wording of the Force majeure conditions in Schedules 10 and 11 -
Further to the Applicant's response to ExQ DCO.1.25, apart from adverse weather conditions, what other circumstances might cause the master of a vessel to deposit authorised deposits within or outside the Order Limits.



6.2.1. The MMO aims to provide further comments regarding our concerns on Force Majeure and Materiality as soon as possible, as above the MMO will provide the Applicant any updated comments outside of the Deadlines and present this to the ExA at the earliest opportunity.

6.3. DCO.2.07 – Deemed Marine Licences (DML) – Schedules 10 and 11 – A Site Integrity Plan does not form a standalone condition within the DMLs. On a without prejudice basis, submit wording that would secure the inclusion of a Site Integrity Plan within the DMLs.

6.2.2. The MMO still maintains our position and requests the SIP wording from our Relevant Representation (RR-070) is included within the DMLs. Please see the wording below:

6.2.3. *SNS SAC SIP Condition:*

(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 preconstruction 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 Project, in-combination with other plans or projects at the pre-construction stage, is in line with the JNCC Guidance.”

JNCC Guidance must be added as an interpretation:

“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;”

6.2.4. As a minimum the SIP should include the following sections:

Introduction

- *Purpose of this document*
- *Project Background*



- *The Southern North Sea SAC*
- *Requirements for this Document*

Consultation

- *Schedule for Agreement*
- *Southern North Sea SAC for Harbour Porpoise*
- *Conservation Objectives*
- *Management Measures*
- *Advice on Activities*

Project Description

- *Project Commitments*

Potential Effects

- *Summary of Potential Effects of the proposed Project Alone*
- *Summary of Potential In-Combination Effects*

In Principle Management and Mitigation Measures

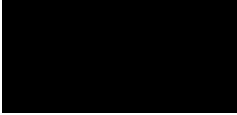
- *Measure 1: Alternate Foundation Methodologies*
- *Measure 2: Noise Mitigation Systems*
- *Measure 3: Scheduling of Pile Driving*
- *In-Combination Management*
- *Other Potential Measures*
- *Measures Not Applicable*
- *Assessment of Efficacy of Measures and Implementation*
- *Other Mitigation Measures outside the Scope of the SIP*
- *EPS Licence*
- *Additional Marine Licence*
- *Summary*
- *References*

- 6.2.5. The MMO notes the Applicant still does not understand the need for a standalone condition, however the condition will ensure the MMO can make a detailed decision in relation to the in-combination impacts and overall impacts to the SNS SAC.
- 6.2.6. As stated in our Deadline 2 response (REP2-054), 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.
- 6.2.7. The MMO requests this condition from any new DCO/DML cases with noisy activities occurring within the SNS SAC. It enables management of the activities that impact or are within the SNS SAC and ensures all the necessary information is included.
- 6.2.8. The MMO notes the Applicant has agreed in principle that it can be a standalone condition. The MMO will maintain a watching brief for this addition in an updated DCO draft.



6.2.9. The MMO is still reviewing the comments the Applicant made in response to our other DCO/DML concerns. The MMO looks to provide further comments in a future deadline.

Yours sincerely,



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