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Dear Mr White,

Planning Act 2008, RWE Renewables UK Dogger Bank South (West) Ltd and RWE Renewables UK Dogger Bank South (East) Ltd, Proposed Dogger Bank South Offshore Wind Farms Order

Rule 9 and Rule 17 Response

On 22 October 2024 the Marine Management Organisation (MMO) received notification from the Planning Inspectorate (PINS) that the Examining Authority (ExA) had made the Procedural Decision to adjourn the Preliminary Meeting (PM) that opened on 22 October 2024 to delay the start of the Examination.

The ExA requested at the PM that the Applicant and Interested Parties submit a written response to the PM with opinions about when sufficient information on the outstanding matters would be available such that the ExA can re-open the PM, redraft the Examination timetable and commence the Examination.

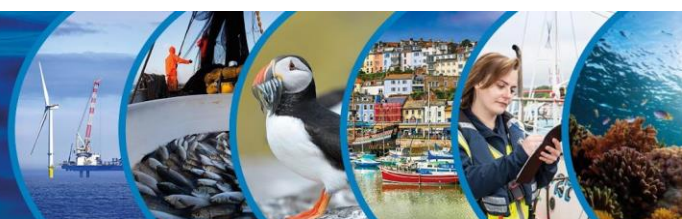
This letter constitutes the MMO written response and is submitted without prejudice to any future representation the MMO may make about the Development Consent Order (DCO) Application throughout the examination process. This written response is also submitted without prejudice to any decision the MMO 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. Delay to the Start of Examination	4
1.1. National Significant Infrastructure Projects (NSIPs) and the Examination Process	4
1.2. Summary of Interested Parties Ornithology Concerns	4
1.3. MMO Concerns Regarding Applicant's HRA.....	5
2. Major Comments Raised by MMO.....	5
2.1. Summary of Major Concerns (RR-030).....	5
3. Action Point 4 - Artificial Intelligence.....	7



1. Delay to the Start of Examination

1.1. National Significant Infrastructure Projects (NSIPs) and the Examination Process

- 1.1.1. The Application for the Development Consent Order (DCO) was accepted by the Examining Authority (ExA) on 10 July 2024. The Preliminary Meeting (PM) held on 22 October 2024 detailed an initial assessment of principle issues and notably issues surrounding Habitat Regulations Assessment (HRA) compensatory measure information planned to be provided at Deadline 2. This includes an updated Kittiwake Compensation Plan, an updated Guillemot and Razorbill Compensation Plan resulting from updated information presented in the Offshore Ornithological Impact Assessment.
- 1.1.2. The MMO notes that Natural England (RR-039), RSPB (RR-049) and the National Trust (RR-038) have all raised concerns regarding Ornithology considerations within the Application lacking specific site detail, scale and deliverability (points 1.2.1 to 1.2.6 below). The MMO also notes the Applicant's response (AS-006) to the Rule 17 letter (PD -004) which states that it is not expected that the updated ornithological assessments to result in any changes to the conclusions made in the RIAA in terms of Adverse Effect on Integrity for the number of species impacted. It is expected that the application of Natural England advice will affect guillemot and razorbill numbers.
- 1.1.3. The NSIP consenting process is intended to be front-loaded. Pre-application work should seek to develop well prepared applications which can then proceed through an efficient examination within the maximum six months provided for by The Planning Act (2008). The importance of consultation during the Pre-application stage cannot be overemphasised, given the 'front loaded' approach established by the Planning Act (2008). The duty is upon Applicants to engage meaningfully with affected communities, local authorities and other statutory consultees over their proposals at Pre-application stage. The pre-application stage is therefore critical and should allow the likely effects of a project to be fully consulted upon. This means if the design of the project requires evolving, this is done up to the point of application submission. Although the Applicant has noted that updated Statutory Nature Conservation Body (SNCB) guidance was not issued until March 2024, the Application was submitted to the Examining Authority (ExA) in June 2024. This updated guidance should have been considered prior to the Application being submitted.
- 1.1.4. The MMO welcomes the EXA decision to defer examination and defers to Natural England on Ornithological matters and supports their comments in relation to the ornithological assessments and the HRA.

1.2. Summary of Interested Parties Ornithology Concerns

- 1.2.1. The MMO notes and supports Natural England's (NE) concerns regarding indirect effects on seabirds and marine mammals with regards to lack of assessments on prey abundance and distribution within the foraging areas of Annex I and Annex II species from designated sites.



- 1.2.2. The MMO notes and supports NE's concerns regarding the lack of robustness in consideration of ornithology impacts in the Applicants designing of the post-Preliminary Environmental Information Report (PEIR) reductions of the array areas.
- 1.2.3. The MMO notes and supports NE's concerns that levels of compensation cannot be agreed until adequate impact assessments have been provided in line with SNCB advice. Additionally, the MMO supports that feasibility assessments for the predator eradication for guillemot and razorbill shortlisted should be provided as a matter of urgency.
- 1.2.4. The MMO notes the Royal Society for the Protection of Birds (RSPB) concerns (RR-049) with regards to the scale of impacts to seabirds and methodological concerns in the Applicant's impact assessments on ornithological matters.
- 1.2.5. The MMO notes the National Trust's concerns that the Applicant's compensation proposals are not developed enough for the National Trust to be able to support the proposed measures at their sites and whether they would be securable and deliverable in the timeframes set in the examination process.
- 1.2.6. However, the MMO defers to Natural England on Ornithological matters.

1.3. MMO Concerns Regarding Applicant's HRA

- 1.3.1. The MMO has major concerns regarding the comments raised by Natural England and particularly those relating to the HRA. The MMO notes these issues must be resolved to enable confidence in the HRA to enable all impacts during construction and operation to be considered in a robust manner. It is important to be sufficiently confident about the deliverability of all of the mitigation on to which the plan relies, to avoid an adverse effect on site integrity. The MMO has concerns on the knock-on effect regarding determination of post-consent plans relating to ornithology.
- 1.3.2. The MMO believes it is for the Secretary of State to make a determination based on the best available evidence at the time. Post consent plans are to be used to ensure the HRA conclusion made by the Secretary of State is validated and not to defer a determination on a specific issue at the post consent stage. The worst case scenario and impacts should be known and this should be adequately assessed during the pre-application process and Examination.

2. Major Comments Raised by MMO

2.1. Summary of Major Concerns (RR-030)

- 2.1.1. Although the main reason for deferral of the Examination start was Ornithological related the MMO would highlight that multiple topics have been discussed during the Evidence Plan Process and requests have been made to the Applicant for further information (main topics are Marine Processes and Under Water Noise) and this information has not been provided.
- 2.1.2. At this stage the MMO would welcome any additional information requested in Our Relevant Representation (RR-030) to be provided as soon as possible and earlier in Examination, rather than the Applicant pushing back on our advice.



- 2.1.3. The MMO's experience is that the Examining Authority generally request this information during Examination, and this would be welcomed at the earliest opportunity as leaving major unresolved issues until later in Examination causes a risk to both the advice being provided and resource issues.
- 2.1.4. The MMO would highlight that even where the Applicant may disagree with our position that a without prejudice position would be welcomed to enable full review and provide the most robust response and allow as much information to be taken into account during the determination stage.
- 2.1.5. The MMO raised multiple concerns (RR-030) regarding the Applicant's application these have been summarised for reference. This included DCO and Deemed Marine Licence (DML) wording and the inclusion of Article 5 'Benefit of the Order' which remains a principal issue for the MMO. The proposed drafting represents a clear departure from the Marine and Coastal Access Act (MCAA) 2009, which would normally require the licence holder (here "the undertaker") to make an application to the MMO for a licence to be transferred. Instead, this provision operates to make the decision that of the undertaker, with the Secretary of State (SoS) providing consent to the transfer, rather than the MMO as the regulatory authority for marine licences considering the merits of any application for a transfer. The DML granted under a DCO should be regulated by the provisions of MCAA 2009, and specifically by all provisions of section 72.
- 2.1.6. The MMO does not agree with the Applicant's position that the definition of maintenance does not to be updated in the Draft DCO and in each DML in schedules 10-14 of the Draft DCO. The MMO considers there needs to be a limit on what is defined as maintenance as these works are not linked to the Outline Offshore Operations and Maintenance Plan (OOOMP) or those assessed in the Environmental Statement (ES). The MMO considers that these works should be restricted to those that have been assessed and consented and the definition should clearly demonstrate this.
- 2.1.7. The MMO does not agree with the Applicants' views on timescales for reviewing plans. Although the MMO aims to make a decision on most marine licence applications within 13 weeks of an application being validated, the 13 weeks for the MMO to review plans does not include 'on hold' time and if the documents are submitted with insufficient information it can result in a number of submissions and consultations. The MMO is also dependant on its primary advisor's capacity to respond to consultations which is out of the MMO ability to control. Therefore, the MMO cannot guarantee a determination within a set time period.
- 2.1.8. In addition to points 2.1.1 to 2.1.4 above, the MMO also raised major concerns (RR-030) with some areas of the ES as currently presented. This included the following:
- 2.1.9. The request for the Applicant to amend the ES chapters to include anticipated impacts to receptors from decommissioning stage of the development. Including a high-level outline of works anticipates and likely impacts arising from them.
- 2.1.10. The MMO requested that the Applicant discusses 30-year operational lifespan on coastal processes (RR-030 points 5.2.1 - 5.2.3).
- 2.1.11. The MMO queried volume for the changes on suspended sediment concentration and transport due to seabed preparation for foundation installation.



- 2.1.12. The MMO noted that mitigation measures in Table 8.3 of the ES should be clearly reflected in DML.
- 2.1.13. The MMO recommended that the Applicant interprets available geophysical data to inform a ground truthing survey to confirm the presence/absence of Annex I biogenic reef along the entire cable route.
- 2.1.14. The MMO raised major concerns relating to Fish ecology (RR-030 points 5.5.1 to 5.5.39). There are several points that need to be resolved.
- 2.1.15. The MMO requested that the Applicant considers a monitoring program for shellfish species, and conditions for the approval of shellfish monitoring plan and submission of the results must be included within the DMLs as part of the In Principle Monitoring Plan.
- 2.1.16. The MMO noted major concerns relating to UWN (RR-030 points 5.7.1 to 5.7.17).
- 2.1.17. The MMO believes there is clear justification and evidence that Noise Abatement measures will be required for the Project. The MMO requested that modelling and mitigation requirements are updated to include Noise Abatement measures throughout.

3. Action Point 4 - Artificial Intelligence

- 3.1.1. An action point from the PM (EV02-002) requested all Interested Parties to confirm if Artificial Intelligence (AI) has been used to create or alter evidence, information or material submitted to date. The MMO confirms that no AI has been used to create or alter any part of our documents submitted to the ExA.

Yours sincerely,

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