Marine Management Organisation

Marine Licensing
Lancaster House
Hampshire Court
Newcastle upon Tyne
NE4 7YH

T +44 (0)300 123 1032
www.gov.uk/mmo

Morgan Offshore Windfarm Generation Assets Case Team
Planning Inspectorate
morganoffshorewindproject@planninginspectorate.gov.uk
(Email only)

MMO Reference: DCO/2022/00003
Planning Inspectorate Reference: EN010136
Identification Number: 20048964

12 November 2024

Dear Susan Hunt,

Planning Act 2008, BP Alternative Energy Investments Ltd, Proposed Morgan Offshore Windfarm Generation Assets Order

Deadline 3

On 30 May 2024 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 bp Alternative Energy Investments Ltd, (the Applicant) for determination of a development consent order (DCO) for the construction, maintenance and operation of the proposed Morgan Generation Offshore Windfarm (the DCO Application) (MMO ref: DCO/2022/00003 PINS ref: EN010136).

The DCO Application seeks authorisation for the construction, operation and maintenance of Morgan Offshore Windfarm Generation Assets (MOWF) located approximately 22 kilometres (km) from the Isle of Man Coastline and approximately 37 km from the Northwest coast of England; comprising of up to 96 wind turbine generators, all associated array area infrastructure and all associated development in an area approximately 280 square kilometres (km^2).

Two Deemed Marine Licences (DML) are included in the draft DCO. One in relation to Wind Turbine Generators (WTG) and Associated Infrastructure, and one for Offshore Substation Platforms and Interconnector Cables.

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's submission for Deadline 3.

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]

Liam Woods
Marine Licensing Case Officer

D +44 (0)[redacted]
E [redacted]marinemanagement.org.uk

Contents

1. Responses to Examiner's Questions (ExQ1)

1.1. The MMO has reviewed the Examiner's Questions and provided responses in the below Table 1.

Table 1. MMO response ExQ1

ExQ1	Question	MMO Response
Cross Topic and General		
GEN 1.3	**Artificial Intelligence (AI)** The Examining Authority (ExA) requests all parties taking part in the Examination to confirm if you have used AI to create or alter any part of your submitted documents, information or data in submissions up to Deadline 2. All future submissions are required to clearly confirm whether AI has been used to create or alter any part of those documents, information or data in accordance with the guidance recently published by the Planning Inspectorate.	The MMO has not used AI to create or alter any part of its submitted documents, information or data in submissions up to Deadline 2. The MMO can confirm that AI will not be used in any future submissions.
GEN 1.8	**Monitoring 1** Paragraph 2.8.221 of National Policy Statement (NPS) EN-3 requires Applicants to develop an ecological monitoring programme to monitor impacts during the pre-construction, construction and operational phases to identify the actual impacts caused by the project and compare them to what was predicted in the EIA/HRA. Natural England (NE) also raise this issue in their Relevant Representations and further advise in their Written Representation at Deadline 1 [REP1-054] that the In-Principle Monitoring Plan (IPMP) should focus on what the uncertainties and evidence gaps of the EIA and /or HRA are. Can the Applicant:	The MMO is reviewing these documents to ensure they are in line with the comments from relevant representation and will provide an update at Deadline 4.

	i) Summarise how it has met the NPS EN-3 requirement and whether it will liaise with NE to improve the IPMP, and if not why not? Can the MMO and NE: ii) Review and provide comments on the Applicant's revised outline Offshore In-Principle Monitoring Plan at Deadline 2 [REP2-014 Tracked Change Version] and the Mitigation and Monitoring Schedule [REP2-016 Tracked Change Version]?	
GEN 1.9	**Monitoring 2** Is the MMO satisfied with the Applicant's position that its precautionary 'Rochdale Envelope' approach to EIA means that monitoring would not be needed where no LSE has been assessed, having regard to NPS EN-3 para 2.8.221 as set out in Question GEN 1.10 above.	The MMO provided the following comments at Deadline 2 relating to additional monitoring where no LSE has been assessed. An assessment of the prevalence / abundance of sediment bound paint flakes pre- and post-construction would further our understanding of this potential impact on benthic ecology. However, the MMO notes that no further assessment of this impact has been proposed. This is in line with other similar developments where Applicants have not been required to undertake additional monitoring or research. Adequate sampling of the pre-construction condition is a pre-requisite for robust comparison with post-construction condition and the MMO requests the Applicant to seek opportunities for collaboration between researchers and industry to ensure that the opportunity to investigate this relatively recently identified potential impact to benthic ecology (see Tagg et al. 2024) is not missed. The MMO have advised the Applicant that MMO.BE.5 in the Statement of Common Ground (SoCG) can be changed to 'agreed' as there is an agreement to the scoping of impacts for the EIA for Benthic Subtidal and Intertidal Ecology. Furthermore, the MMO welcomes the Applicant's commitment to review suitable imagery acquired during

		monitoring related to maintenance activities for the presence of Invasive Non-Native Species (INNS) which will allow for an assessment of unambiguous INNS. However, the presence of cryptic INNS will not be adequately assessed through review of this imagery alone. The MMO notes that no significant effect from INNS was predicted within the Environmental Statement because of the Applicants commitment to adopt measures which act to reduce the likelihood of introduction of INNS. However, should INNS be identified during review of the imagery, the MMO requests that the Applicant reconsiders the collection of samples to: 1) confirm species identification and; 2) understand the fouling assemblage more fully to include cryptic INNS The MMO will review the Applicants response to these points which is expected to be provided at Deadline 3.
GEN 1.14	**Marine Policy Compliance tabulation** Can the MMO confirm satisfaction with the new document [REP2-006] submitted by the Applicant at D2 as Annex 3.1, combining how the North West Marine Plan policies have been considered, topic by topic.	The MMO has reviewed the Applicant's Deadline 2 submission (REP2-006) regarding the North West Marine Plan Policy Assessment and confirm that the assessment is appropriate and has satisfied the MMO's request. The MMO thanks the Applicant for providing the Marine Plan Policy Assessment in a standalone document which has addressed all relevant policies within the North West Marine Plan Policy, and has signposted the relevant documents for further information.
Decommissioning		

GEN 1.21	**Decommissioning Plan** [APP-010] states that a draft of a decommissioning plan "will be submitted prior to construction commencing". i) How is production and approval of a decommissioning plan secured, noting that the draft DCO Requirement 5 only secures submission of a decommissioning programme to the SoS when so required to do so by the SoS? ii) What would be the principal components of the decommissioning plan? iii) Why has an outline plan not been submitted as part of the DCO application? The ExA notes that the [PD1-017] response to NE's RR-026.G11 is unsatisfactory and incomplete? iv) Would it include principles of financial security for decommissioning (see also Question GEN 1.21 above)? v) Provide a briefing note on current industry discussions on decommissioning, as referenced in the Statement of Common Ground (SoCG) with the MMO [REP1-035].	The MMO would like to highlight to the ExA that they are currently reviewing decommissioning for NSIPs and the requirement for an outline plan alongside a new standard DML condition. The MMO notes that decommissioning will not be consented as part of the DCO and a new marine licence will be required but to assist with the holistic review of the project and understanding of the conclusions within the Environmental Statement believe that an outline plan would be beneficial at this stage. The MMO is hoping to have an update for Deadline 4 or 5 and will liaise with the Applicant on this requirement in between deadlines.
Commercial Fisheries		
CF 1.1	**Medium-term monitoring of effects on commercial fisheries** Please confirm whether you agree with both the IoM Government Territorial Seas Committee (TSC) [RR-015] that medium-term monitoring to validate baseline data and assumptions for Commercial Fisheries impacts is preferable to review only and the National Federation of Fishermens Organisation/ Welsh Fishermen's Association WR [REP2-031] that the outline Fisheries Liaison and Co-Existence Plan (FLCP) [APP-065] needs to clarify	The MMO is currently discussing this internally to understand the post consent requirements and will provide an update in due course.

	commitments to monitoring of fisheries activity and effects on commercial fisheries and should include a timetable for regulator review of monitoring during the operations and maintenance phase	
CF 1.7	**Outline Fisheries Liaison and Co-existence Plan - arbitration** The Applicant is requested to further revise the Outline FLCP and make it clear that the MMO will not act as arbitrator regarding compensation and will not be involved in discussions on any compensation.	The MMO welcomes this request.
DCO Draft Development Consent Order (DCO)		
Parts 1 and 2		
DCO 1.1	**Part 1 Article 2: Interpretation** Further to your response to the MMO [PD-017, RR-020.17 and RR-020.18] and looking more closely at precedent from Norfolk Boreas and Hornsea Four made DCOs, the Applicant is asked to reconsider and respond further on the strong request from the MMO in its [RR-020 section 3.5] and its further comments in [REP2-029] that "*wording should be updated to 'do not give rise to any new or different environmental effects to those assessed in the environmental information'. This also applies to the definition of 'maintain'*". Also review and comment on the Norfolk Boreas made DCO cited as precedent which is worded such that permitted amendments or variations are limited to those that are "*minor or immaterial", and consider whether new wording that conditions "different adverse environmental effects" would provide useful control for the MMO*.	The MMO maintains a watching brief on the Applicant's response.
DCO 1.2	**Part 2 Article 7: Benefit of the Order** i) Precedent made DCOs quoted in the Explanatory Memorandum (EM) [REP1-023] include a paragraph in articles regarding benefit of	The MMO maintains a watching brief on the Applicant's response.

	the order: "*The undertaker must consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application*." Explain whether this paragraph has been omitted in error and as appropriate amend the drafting in paragraphs (2) and (3) "*Subject to paragraph (x)…*" or "*Subject to paragraphs (x) and (y)…*" ii) Article 7(4): Precedent made DCOs use the words "*The Secretary of State must consult …"* not *"…shall consult"* and there is no note in the EM [REP1-023] on this change. Justify which usage is appropriate in this draft DCO. iii) Article 7(11): Consider and attempt to agree with the MMO whether Article 7(11) should incorporate extended wording based on that used in the Hornsea Project Four made order: "*…save that the MMO may amend any deemed marine licence granted under Schedule 3 or Schedule 4 of the Order to correct the name of the undertaker to the name of a transferee or lessee under this article 7 (Benefit of the Order).*" iv) If the Applicant considers that the Sheringham and Dudgeon made order recommendation and decision adds or differs from the made order precedent cited in the EM [REP1-023], justify why that may be important and relevant.	
Schedule 1 – Authorised Development		
DCO 1.3	**Piling Hammer Energy** An upper limit on hammer pile energy is not referred to in the draft DCO. Should the maximum hammer energy assessed in the ES for single and concurrent piling be specified within the design parameters in the draft DCO and both draft DML's given that this is	The MMO would request that the piling limit is included on the face of the DML and suggests the following wording: X) In the event that driven or part-driven pile foundations are proposed to be used, the hammer energy used to drive or part-drive the pile foundations must not exceed—

	the best available means to ensure and secure that the sound generated from piling does not exceed that assessed within the ES? If not, why not?	(a) 4,400kJ in respect of pile jacket foundations; and (b) 4,400kJ in respect of pin piles, for 16 locations only then 3,000kJ for any remaining locations.
DCO 1.9	**Requirement 3: Aviation Safety** The DIO, MMO and NATS are asked whether they seek conditions controlling lighting of turbines be included within DML conditions as well as in DCO Requirement 3 [REP2-011] regarding both aviation safety and marine navigational safety.	The MMO understands similar conditions have been included on other offshore wind DCOs either within the DCO or DML or both. As the requirements are already secured within the DCO the MMO questions the benefit of the duplication of including these within the DML but is happy to discuss these requirements with DIO, NATS and the Applicant.
DCO 1.10	**Requirement 7 (and Schedules 3 & 4 paragraph 9): Amendments to approved details** The Applicant quotes the Norfolk Boreas made DCO as precedent [REP1-023], but that DCO has a substantially more comprehensive drafting, including a sub-paragraph (2). The Applicant is asked to add further detail to this draft requirement and attempt to secure MMO agreement, having regard to the MMO's WR [REP1-048].	The MMO welcomes this request and is working with the Applicant to try and reach an agreement during examination.
Schedules 3 & 4 – draft Deemed Marine Licences		
DCO 1.13	**Schedules 3 and 4 – Paragraph 6 decommissioning** The Applicant's response to Natural England RR-026.D26 and RR-026.F16 [PD1-017], states that "It is the Applicant's intention to	i) The MMO has reviewed REP2-002 and is content with the wording used in Paragraph 6 of Schedules 3 and 4 and understands this is standard within OWF DMLs. The MMO would like to highlight to the ExA that they are currently reviewing decommissioning for NSIPs and the

	secure decommissioning activities through separate standalone marine licences at the relevant time." The MMO is asked: i) If it satisfied with that procedure and with draft DCO Schedules 3 & 4 paragraph 6. ii) If the production of an outline Offshore Decommissioning Plan should be secured by condition in the draft DMLs.	requirement for an outline plan alongside a new standard DML condition. The MMO notes that decommissioning will not be consented as part of the DCO and a new marine licence will be required but to assist with the holistic review of the project and understanding of the conclusions within the Environmental Statement believe that an outline plan would be beneficial at this stage. The MMO is hoping to have an update for Deadline 4 or 5 and will liaise with the Applicant on this requirement in between deadlines.
DCO 1.14	**Schedules 3 and 4, Paragraph 9** i) The Applicant is asked to correct the revised wording in the draft DCO [REP2-011] which has a proofreading error missing out the word "or" before the new words "will not". ii) ii) The MMO is asked to clarify if it would like any further action taken with regard to the drafting of the DMLs Paragraph 9.	ii) The MMO has reviewed REP2-002 and thanks the Applicant for the requested changes albeit with a proofreading error. The MMO welcomes the update and is currently reviewing materiality as a whole and will provide an update at Deadline 4.
DCO 1.15	**Schedules 3 and 4 Condition 13 (3) Activities in the Outline Offshore Operations and Maintenance Plan (OOMP)** Is the MMO satisfied with the range of activities identified in the Outline OOMP [APP-079 Table 1.2] and does it accept the qualification presented by [APP-079 paragraph 1.3.1.3]: *"Maintenance due to unexpected occurrences cannot be anticipated and therefore cannot be included within the application for Development Consent or within this plan."*	The MMO has provided further comments within Section 11 of our written response on the activities within the OOMP and the updates required. The MMO understands there needs to be flexibility at the post consent stage for unexpected activities that may be required and review these on a case-by-case basis post consent on if they should be a new licence or variation or are within the parameters assessed.
DCO 1.18	**Schedules 3 and 4 Condition 15 (11)** Which does the MMO consider would be the most appropriate Plan to secure "periodic validation surveys of cable burial and	The MMO always recommends all monitoring to be in the Outline In Principle Monitoring Plan as this makes it clear to all parties what is required post consent.

	protection" post-construction, as proposed by the Applicant in the mitigation and monitoring schedule (item 7.27 [REP2-015]).	The MMO notes that Condition 20 1(d)(cc) states: *"-details of cable monitoring including details of cable protection until the authorised scheme is decommissioned which includes a risk based approach to the management of unburied or shallow buried cables;"* As there is no Outline Construction Method Statement (CMS) (as the MMO understands this is based on the final design parameters) it would be beneficial for another document to secure this at this stage but reference the details would be done through the CMS. The MMO notes that this has been updated within Table 1.8 of the Outline IPMP by the Applicant and welcomes this. The results of this monitoring will be submitted to the MMO for review and approval and is conditioned under **Post construction monitoring** *"**29**(5) Following the installation of cables, details of cable monitoring required under 20(1)(d)(i) must be updated with the results of the post installation surveys. The statement must be implemented until the authorised scheme is implemented and reviewed as specified within the statement, following cable burial surveys, or as instructed by the MMO."* *Please see further comments in response to question DCO 1.22.*
DCO 1.21	**Schedules 3 & 4 Part 2 Condition 20(1)(d)(i): cable installation plan**	The MMO requests Condition 20 (1)(f) is moved to a standalone Condition (e.g. Condition 20 (2) and Condition 20

	Historic England (paragraph 2.7 [REP1-046]) advises that pre-commencement surveys should be analysed to actively inform cable route selection in relation to features of known or potential archaeological interest. Paragraph 7.4 also refers to this. The outline written scheme of investigation (WSI) (paragraph 1.6.2.10 [APP-069] commits to archaeologist input to acquisition of survey data as the project progresses. Paragraph 1.6.3.1] requires archaeologist input to preparation of cable route clearance. However, Historic England recommends (paragraphs 10.3 and 10.4 [REP1-046]) that all such post-consent survey and data analysis *"must occur in a timely way to inform any pre-construction finalisation."* The MMO is asked what additional security it would like to see provided by amendment to the outline WSI and the draft DMLs to enable the MMO advised by Historic England to be satisfied before construction commences that layout, cable routing and engineering design finalisation has been adequately informed in a timely way by archaeological survey data and analysis. Condition 20(1)(f) and/or Condition 20(2) and/or Condition 27 are also potentially affected.	(2) becomes condition 20 (3) and the wording updated to: *"The authorised scheme must not commence unless no later than six months prior to the commencement a written scheme of archaeological investigation has been submitted to and approved by the MMO following consultation with the statutory historic body, in accordance with the outline marine written scheme of investigation, and in accordance with industry good practice, following consultation with the statutory historic body to include—..."* The timeline of six months prior to activities for the provision of the WSI will also be and condition 27. The MMO believes this will allow HE to be satisfied prior to construction that layout, cable routing and engineering design finalisation has been adequately informed in a timely way by archaeological survey data and analysis but is open to further discussion with HE and the Applicant.
DCO 1.22	**Schedules 3 and 4 Part 2 Condition 20(1)(d)(i)(cc): cable monitoring burial surveys post-construction** The MMO is asked if the CMS is an appropriate and adequate means to secure "periodic validation surveys of cable burial and protection" in the Operations and Maintenance phase, as proposed by the Applicant in the mitigation and monitoring schedule (item 7.27 [REP2-015]), considering that it is essentially a plan for the construction phase.	As per the response to DCO 1.20 the MMO notes that this monitoring has been included in the Outline In Principle Monitoring Plan and the MMO believes there will be an overview within this document at the post consent/pre-construction stage. Although the CMS is submitted at the pre-construction stage this can approve all monitoring for the project. The MMO notes are alternatives such as standalone cable and scour installation and monitoring plans alongside the CMS and IPMP on other projects that cover the whole timeline in one document, this is usually to cover more specific

		environmental concerns but could be adapted in this instance if required.
DCO 1.24	**Schedules 3 and 4 Part 2 Condition 20(1)(e): Environmental Management Plan** Having regard to the Applicant's explanation in its written hearing summaries (item 41 [REP1- 004]), would the MMO confirm the following: i) When it would expect final versions of these plans to be submitted for consultation with the MMO and other stakeholders. ii) Whether these plans should include reporting obligations to the Isle of Man authorities. iii) If a separate EMP for the decommissioning phase should be secured by the DCO if made.	i) The MMO would expect to see an outline plan at this stage. This would include the standard requirements and not just be a table of contents. Please See Rampion 2 (REP6-214) and Norfolk Boreas (REP5-035) for examples. The MMO requests an outline PEMP is submitted and Condition 20(1)(e) is updated to: "*a project environment management plan which accords with the outline project environment management plan, which shall be submitted to the MMO at least six months prior to commencement of the authorised scheme or the relevant part thereof, to include details of"* ii) It would be beneficial to include this as part of the plan so it was clear that the Isle of Man would receive this plan. The MMO has included within our internal system the requirement to consult the Isle of Man on this plan should consent be granted. iii) As above in response to question XX the MMO is looking to include a decommissioning plan condition, as part of this plan you could have a section on EMP, however as a new consent will be required the detail of this should be included as part of that consent, therefore the MMO does not believe a full EMP for decommissioning is not required in the DCO.
DCO 1.25	**Schedules 3 and 4 Part 2 Condition 20(1)(e)(v)**	The MMO always prefers any exclusions zones or additional mitigation to be required to be clear on the face of the DML and not within a plan. However, any plan and its contents **is**

	The MMO is asked to clarify: i) Whether it sufficient that the proposed Scallop Mitigation Zone (SMZ) is secured only through the outline FLCP, such that it would only effectively be secured under the condition to develop an offshore EMP. ii) The proposed SMZ is not referenced on the Works Plan [APP-082] whereas the outline fisheries liaison and co-existence plan (FLCP) [REP2-019] illustrates an "indicative SMZ". Should the Works Plan be amended to show the "indicative" SMZ and should co-ordinates for the SMZ be included in the draft DCO/DMLs?	enforceable and would be approved by the MMO in consultation with interested parties prior to the start of construction. The MMO understands this is an ongoing discussion between the Applicant and commercial fisheries interested parties to try to come to an agreement. This includes what activity may take place within the SMZ noting that activity may be close to the SMZ or within depending on the further design refinement at the post consent stage. The MMO has concerns on the SMZ only being indicative at this stage and any outstanding comments. Mainly, if at the post consent stage there were further disagreements between interested parties and the Applicant the MMO would have to make a decision on something the MMO's believes should be agreed during the consenting phase. As set out above the MMO will not act as an arbitrator for compensation matters and as this is linked to potential compensation the MMO could be put in a position where we are unable to approve a document at the post consent phase. If the SMZ is finalised a works plan could be beneficial.
DCO 1.27	**Schedules 3 & 4 Condition 20(h)** i) The ExA notes that Condition 20(h) of the draft DMLs [REP2-011] requires submission of a final Marine Mammal Mitigation Protocol (MMMP) for approval for piling operations and Unexploded Ordnance (UXO) clearance. Can the Applicant clarify if Condition 23(b) of the draft DMLs is therefore necessary and if so, why? ii) In the event that there would be more than one final MMMP, can the Applicant comment if there is a need	iv) The MMO would not object to the inclusion of this on the DML.

	for coordination of their provisions to ensure consistency? iii) Can the Applicant clarify why Condition 20(h) does not contain a requirement for the MMO to consult the relevant statutory conservation nature body. iv) Can the Applicant and the MMO clarify if they would have any objection to including a provision that requires the MMO to consult the Isle of Man Government before approval of any MMMP? v) Can the Applicant clarify if Condition 28(3) of the draft DMLs should be incorporated into Condition 20(h).	
Marine Fish & Shellfish Ecology		
MFS 1.2	**Seasonal Exclusion Period for Piling** A seasonal piling restriction has been suggested by Natural England [RR-026] and the MMO [RR-020] to mitigate underwater sound and vibration effects on herring and cod during installation of the offshore substation. The Applicant's Deadline 1 submission in response to Issue Specific Hearing 1 Action Point 14 [REP1-009] states that the application of blanket seasonal restrictions at this stage could be disproportionate to the ecological risk. i) What is the MMO and Natural England's view on the proportionality point? ii) Is any further evidence available to help define an appropriate and informed 'sensitive' exclusion period for the area of the Proposed Development? iii) Could a refined spatial piling exclusion area be defined instead of an exclusion period over the whole array area? iv) Noting that soft-start ramp ups has been explicitly rejected by the MMO, Natural England and NRW as a primary mitigation measure to reduce the risk of	i) The MMO believes that the project impact alone is significant enough to warrant a seasonal restriction and fundamentally disagrees with the Applicant. ii) The MMO has been working with the Applicant to address this point. The MMO provided a written letter to the Applicant on 28 October 2024 which detailed the reasons behind the MMO's current decision to include a seasonal piling restriction. The letter also detailed what information the Applicant is required to provide to the MMO in order to resolve the current issues surrounding seasonal piling restrictions. The details of this letter have been included in this deadline submission under section 4for the benefit of the ExA and discussions are continuing. iii) This has been part of the discussions with the Applicant and further maps and information is being reviewed. iv) Please see section 4 of this response.

	injury/mortality to fish, what type of measures are feasible and specific to fish that could prevent the need for a seasonal piling restriction? v) Are any changes necessary to the draft DCO/DMLs to reflect seasonal piling restrictions as a fallback position in the event that appropriate post consent controls/measures are not able to be agreed in the final Underwater Sound Management Strategy?	v) Yes the MMO is currently reviewing the DML and how the seasonal restriction would work alongside the Underwater Sound Management Strategy to provide the Applicant with condition wording and will provide this to the ExA at Deadline 4.
MFS 1.3	**Scoped Out Impacts** In its Scoping Opinion the Planning Inspectorate advised that it was not content to scope out the possible impacts of underwater wind turbine sound and it reserved its position on scoping out underwater sound from vessels. There does not appear to be any information on wind turbine sound impacts on fish and shellfish receptors during the operational phase submitted. The ExA notes the justification provided in Table 3.8 of ES Volume 2, Chapter 3 [APP-021] but is unclear if the evidence referenced can be applied to turbines of the size and number proposed. i) Can the Applicant provide project specific information on underwater sound from wind turbines during the operational phase? ii) Can the MMO and NE advise of any specific concerns regarding potential underwater sound from turbines and/ or vessels during the operational phase impacting fish and shellfish receptors?	ii) The MMO raised no concerns in relation to operational noise during pre-application or at the relevant representation stage. However, the MMO is reviewing this point with our scientific advisors and will provide an update at Deadline 4.
MFS 1.6	**Recovery Period for Temporary Habitat Loss/Disturbance** Paragraph 3.9.2.18 of ES Volume 2, Chapter 3 [APP-021] states that the recoverability and rate of recovery of an area after large scale seabed disturbance is linked largely to substrate type, but that gravelly and sandy habitats, similar to those found in the Morgan	The MMO is reviewing this point with our scientific advisors and will provide an update at Deadline 4.

	fish and shellfish ecology study area, have been shown to return to baseline species abundance in 5-10 years. Paragraph 3.9.2.61 states that the MDS for the decommissioning phase assumes that all foundations and cables will be removed and that the decommissioning sequence will generally be a reverse of the construction sequence. Assuming that it would take another 5-10 years post decommissioning to return to the baseline species abundance, can the Applicant, the MMO and Natural England advise why the impact of construction and decommissioning on large scale seabed disturbance should not be reconsidered as a long-term habitat loss impact.	
Marine Mammals		
MM 1.2	**Concurrent Piling and Unexploded Ordnance (UXO) Clearance** Can the Applicant: i) Advise if it is feasible that piling and UXO clearance activities may be undertaken concurrently? If so what are the implications for potential injury/disturbance to marine mammals (and fish). Can the IPs: ii) Advise whether there is a necessity to restrict or control the possibility of concurrent piling and UXO clearance activities?	The MMO is reviewing this point with our scientific advisors and will provide an update at Deadline 4.
MM 1.3	**Marine Mammal Mitigation Protocol (MMMP): Points of Clarification** At Issue Specific Hearing 1 the Applicant explained that a separate Marine Licence will need to be sought prior to construction for pre-construction geophysical and geotechnical surveys. The MMMP is intended to reduce or eliminate the risk of injurious effects of underwater sound due to piling, UXO clearance and	The MMO maintains a watching brief on this response.

	geophysical surveys on marine mammals, yet if preconstruction geophysical and geotechnical surveys are to be controlled by separate marine licence, the mitigation measures in the MMMP will not be triggered for those operations. This seems at odds with paragraph 1.5.1.2 of the outline MMMP [APP-072] which states that the specific measures to mitigate the injurious effects of UXO clearance, piling and geophysical surveys during the pre-construction and construction phases of the Morgan Generation Assets will be determined post-consent in consultation with the licensing authority (MMO) and SNCBs. i) Can the Applicant therefore confirm for the avoidance of doubt that the MMMP will specifically apply to pre-construction geophysical surveys if they involve sound generating activities such as multibeam echosounders and sub-bottom profilers, and if so which condition(s) in the dDMLs would trigger the submission and approval of a final MMMP before pre-construction geophysical surveys could be conducted? ii) ii) Would the definition of 'commence' (which currently excludes pre-construction surveys) need to be amended? If not, how would pre-construction geophysical surveys currently excluded in the definition of commence be controlled, monitored and mitigated?	
MM 1.5	**Masking** In relation to the assessment of effects from underwater sound on marine mammals the Applicant states at Paragraph 4.9.1.2 of ES Volume 2, Chapter 4 [AS-010] that there is insufficient evidence to properly evaluate masking and no relevant threshold criteria to enable a qualitative assessment.	The MMO is reviewing this point with our scientific advisors and will provide an update at Deadline 4.

	Can the MMO, Natural England and NRW advise if they agree with this statement? If not can they suggest whether the Applicant needs to address the masking scenario?	
MM 1.8	**UXO High Order Clearance Sound Modelling** Paragraph 4.9.3.2 ES Volume 2, Chapter 4 [AS-010] relating to UXO clearance states that sound modelling for high order detonation, acoustic modelling was undertaken following the methodology described in Soloway and Dahl (2014). Given the 2014 date of the Soloway and Dahl publication, can the MMO and NE advise if this is the most up to date/ best practice method?	The MMO is reviewing this point with our scientific advisors and will provide an update at Deadline 4. The MMO advise that the Soloway and Dahl (2014) is widely accepted with regards to the UXO High Order Clearance Sound Modelling, despite its age.
MM 1.12	**Cumulative Underwater Sound: Residual Effects** The cumulative effects assessment in ES Volume 2, Chapter 4 Marine Mammals [AS-010] identifies potentially significant adverse residual effects in terms of cumulative piling sound impacts on Bottlenose Dolphin and cumulative UXO clearance sound on harbour porpoise. The Applicant proposes that mitigation measures will be developed in consultation with the licensing authority and SNCBs post-consent to reduce any potential residual effects for Bottlenose Dolphin and Harbour Porpoise. Can the MMO, Natural England and NRW confirm if they are confident that mitigation options exist to reduce the residual effects.	The MMO is aware of multiple mitigation options for both piling (such as bubble curtains) and UXO clearances (low order techniques) and the MMO understands these will be finalised post consent through the MMMP. The MMO is aware that Defra are actively considering updating marine noise policy, and that an announcement is likely to be made in the near future. The policy direction is towards an expectation that all offshore wind developers carrying out pile driving activity in English waters should demonstrate that they have utilised best endeavours to deliver noise reductions through the use of primary and/or secondary noise mitigation methods in the first instance. The MMO will update the ExA on any policy changes. The MMO will keep a watching brief over NE response to this question.

MM 1.13	**Cumulative Assessment – Injury due to Collision with Vessels** Table 4.57 in ES Volume 2, Chapter 4 [AS-010] relating to the cumulative increased likelihood of injury due to collision with vessels suggests that sound emissions from vessels will likely deter animals from the potential zone of impact. Given that this part of the Irish Sea is well-trafficked with vessels, and given the potential temporal and spatial overlap with other projects, can the Applicant, the MMO, NE and NRW clarify if there a possibility that an animal fleeing the sound of construction/maintenance vessels (or indeed piling/ UXO clearance) from one project might find themselves within the zone of influence of another project?	The MMO notes from NE's issues log that *"It was estimated that there will be an additional 1,929 installation vessel movements during the construction phase within the Morgan Array Area thus there will be a significant increase in traffic in the area outside of the shipping lanes. We also note that the estimated number of animals disturbed by vessels is based on the static impact radii (Table 4.44) thus the conclusions of the assessment are not based on the realistic scenarios. As such, this assessment should be revised, particularly the magnitude, taking into account the increase in the number of vessels in the project area compared to baseline as well as sensitivity of harbour porpoise to vessel noise. This is of particular importance for cumulative assessment with other projects."* The MMO agrees with NE's comments that *"we do not agree with the statement: "Given the existing levels of vessel activity in the Morgan shipping and navigation study area it is expected that marine mammals could tolerate the effects of disturbance..." considering that the tolerance threshold levels of harbour porpoises to vessel disturbance are not known, claims such as this cannot be made."* Given the temporal and spatial overlap with other projects the MMO considers that there is potential that an animal fleeing the sound of construction/maintenance vessels (or indeed piling/ UXO clearance) from one project might find themselves within the zone of influence of another project.
European Protected Species Licences		

MM 1.24	**European Protected Species (EPS) licences** The MMO is responsible for wildlife licensing of activity in English waters. The Applicant [APP-064] states that any necessary EPS licences would be applied for post grant of DCO. The Applicant does not explain which species this may/would relate to, but it is likely to be marine mammals. Can the MMO confirm if it is satisfied with the Applicant's approach as set out in [APP-064] to submit any necessary EPS licence applications post-consent?	The MMO is content that the Applicant will submit any necessary EPS licence applications post consent. The approval of the EPS licence requires more detail in relation to the design and any required mitigation. The MMO would highlight that the EPS has different legislative requirements in providing consent and the test for mitigation could be considered higher. Therefore, as per our comments in REP1-053 the MMO strongly advises that NAS is committed to at this stage.
Marine Physical Processes and Benthic Ecology		
MP 1.5	**Secondary Scour** Both the MMO and Natural England have raised concerns that secondary scour has been scoped out of the ES. The Applicant's response [PD1-017] stated that "secondary scour has been assessed within the context of impacts to sediment transport and sediment transport pathways due to presence of infrastructure in section 1.9.5 of Volume 2, Chapter 1: Physical processes (APP-013) for the operations and maintenance phase. Where scour protection measures are to be furnished, they will be subject to engineering design to ensure they minimise as much as practical the occurrence of scour. Therefore, any residual/secondary scour would be very localised and of negligible magnitude." i) Can the Applicant advise how it has arrived at the conclusion of negligible magnitude given that final design of scour protection is not yet determined, whether secondary scour will be monitored over time,	The MMO is reviewing this point with our scientific advisors and will provide an update at Deadline 4.

	and what provisions will be in place to deal with scour in the event that the protection measures fail. ii) Can the MMO and Natural England comment on the likelihood of scour occurring if best practice scour protection methods are employed, and provide examples of where secondary scour has occurred on other operational windfarms and what the implications were.	
MP 1.6	**Drilling Arisings** The Planning Inspectorate advised the Applicant at Scoping stage that the ES should identify the likely site for disposal of drilling arisings and include an assessment of effects from these activities. Schedule 1, Part 1, 1(f) of the draft DCO [REP2-011] seeks to consent '*the removal of material from the seabed and the disposal of inert material of natural origin within the Order Limits produced during construction drilling…*'. The Morgan Array Area Site Characterisation Report [APP-067] also states that drill arisings may consist of large, granular materials that are too large to be moved by tidal currents and may remain in situ for long periods of time. Can the MMO advise if it is satisfied with the proposed disposal arrangement without knowing the exact scope for this potential impact and without further conditions.	The MMO has reviewed the Site Characterisation Report and is content with the assessment of the Array disposal site. The MMO is currently designating disposal sites and once these references are identified will request these are included within the DML.
MP 1.10	**Inter-related Effects: monitoring and surveying** Several ES chapters have referred to the possible biodiversity benefits from the introduction of artificial structures and the potential for increased foraging opportunities for fish and thus increased prey opportunities for marine mammals, as well as potential benefits to the fisheries from colonisation of the	The MMO will look to provide a response to the Applicant's suggested wording at Deadline 4.

	structures and reef effects allowing species like crab and lobster for example to expand their habitats. The ExA notes that the evidence presented for such benefits is limited and not conclusive, to the extent that it is not possible for the Applicant to quantity the biodiversity benefit that artificial structures may have over time and thus also not possible to appraise the future impact of the subsequent loss of that biodiversity benefit during the decommissioning stage when the artificial structures are removed. i) The Applicant is asked to justify as to why it does not intend to undertake any operational phase monitoring to verify and supplement the findings of the ES in this regard. ii) The Applicant is requested to suggest wording for a condition being added to the DMLs requiring that a survey of any species, habitats and reef structures present on the foundation structures is undertaken prior to decommissioning. Natural England and the MMO are invited to respond to the Applicant's suggested wording at the subsequent deadline.	
MP 1.12	**Unexploded Ordnance Clearance Impacts** The ExA notes that UXO clearance has not been considered for impacts on physical processes and benthic habitats. While the ExA acknowledges the Applicant's response on this matter to Natural England [PD1-017] (RR-26.D17 and RR-26.F15), the ExA notes that paragraph 2.9.2.9 of ES Volume 2, Chapter 2 [APP-020] seems to base the impacts of UXO clearance on the most likely (common) UXO clearance of 130kg. However, the absolute maximum UXO clearance could be a 907kg high order explosion.	The MMO will keep a watching brief over the Applicant's response to this and look to provide a response at Deadline 5.

	The Applicant is asked to direct the ExA to the details of the worst case (907kg) assessment for physical processes and benthic subtidal ecology receptors. If such an assessment has not been undertaken, one is required to be carried out and Chapters 1 and 2 updated by no later than Deadline 4. The MMO and NE are requested to submit a response to the Applicant's response at Deadline 5.	

2. Comments on the Applicant's first update to the draft Development Consent Order (REP2-011)

- The MMO is currently reviewing the Draft DCO/DML and will look to provide a full response by Deadline 4. The MMO has however, noticed amendments to the draft DCO/DML as a result of previous comments raised by the MMO and other independent parties (IP's) during the examination process. The MMO's previous comments are listed in Table 2 below with reference made to the changes and further requests from the MMO.

Table 2. Comments on the updated draft Development Consent Order

Ref	Relevant Representation Comment	Applicant's Response	MMO's Deadline 2 response	MMO's Deadline 3 Response
RR-020.2	**Marine Plans** The ES correctly identified that the proposed development is within the North West Offshore Plan Area. The MMO requests that all policies are reviewed within a table to show compliance. This must be produced as the Secretary of State must use the North West Offshore Marine Plan when making planning decisions for the sea, coast, estuaries and tidal waters, as well as developments that impacts these areas, such as infrastructure. The relevant marine plan policies that should be met can be identified using the Explore Marine Plans tool and policy information on the following website: https://www.gov.uk/guidance/explore-marine-plans	The Planning Statement (APP-074) has regard to the relevant policies of the North West Offshore Marine Plan and how the proposed development accords with it. The conclusions throughout the Planning Statement are that the proposed development accords with the plan. The Applicant does not consider it necessary to submit a standalone document setting out policy compliance with marine plan policy, as this information is already included in the Planning Statement.	The MMO maintains the position that a document showing compliance with all plans is submitted as even those that are not applicable need to be revised to show that each policy has been assessed. The MMO has reviewed the Planning Statement (J2) and has identified that the following policies within the North West Offshore Marine Plan Policy have not been assessed for compliance: NW-ACC-1, NW-AGG-3, NW-AQ-2, NW-CAB-2, NW-CC-1, NW-CCUS-1, NW-CCUS-2, NW-CCUS-3, NW-DD-3, NW-DEF-1, NW-FISH-1, NW-INNS-2, NW-ML-1, NW-ML-2, NW-MPA-2, NW-MPA-3, NW-MPA-4, NW-OG-2, NW-PS-4, NW-UWN-1	The MMO thanks the Applicant for providing a separate document (REP2-006) which shows compliance with all policies contained within the North West Inshore and North West Offshore Marine Plan Policy. The MMO now considers this point resolved.

RR-020.3	Although some marine plan policies are discussed under the relevant chapters to which they relate, the MMO requires the Applicant to detail how the proposed project is compliant with the relevant marine plans by producing a marine plan policy assessment in one document.	Refer to initial response above (RR-020.2)	Please see response to RR-020.2 above.	Please see response to RR-020.2 above.
RR-020.5	**Unexploded Ordnance (UXO)** The MMO would like clarity on whether the investigation of and the detonation of unexploded ordnance (UXO) are included within the licenced activities. These are not part of any of the works orders or set out within the activities of Schedule 3 and 4, however, a draft UXO marine mammal mitigation plan is proposed.	The Applicant can confirm the investigation and detonation of unexploded ordinance is included within the licenced activities. This is authorised by paragraph 2(e) of each deemed marine licence in schedules 3 and 4, which state inter alia: *"2. Subject to the conditions, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act* *…* *(e) site clearance and preparation works including clearance of unexploded ordnance, debris, boulder clearance and the removal of out of service cables and static fishing equipment;"*	The MMO's general position is that UXO activities are sought within a separate marine licence due to the nature of the impacts. The MMO is currently discussing the inclusion of the UXO clearance within the DML and will provide further comments in due course. The MMO is content for the UXO investigation activities to be included and recommend this is a clearly identifiable activity within the DML. If the Examining Authority (ExA) and Secretary of State (SoS) are minded to include UXO clearances the DML should be updated to ensure these activities are set out as a separate activity taking into account activities 10-13 under section 66(1) (licensable marine activities) of the Marine and Coastal Access	The MMO notes that there has been no change to the draft DCO regarding UXO clearance. The request detailed at Deadline 2 is still open and the MMO will look to see a response from the Applicant in their Deadline 3 submission and if there have been any amendments in future submissions.

			Act, 2009 (the 2009 Act). This would also include any lift and shift opportunities. The MMO also requests the number of UXOs to be fully assessed at this stage and the maximum number to be included within the DML. The MMO has reviewed the Underwater Sound Management Strategy (Document reference J13) which indicates a maximum UXO clearance number of 13. The MMO requests clarification on this number.	
RR-020.6-8	**Arbitration** Article 13 proposes a new enhanced appeals procedure for the Applicant should the MMO refuse an application. This appeals procedure is not available for other marine licence holders. The MMO strongly requests that the appeals procedure for the MMO is removed from the DCO.	The Applicant agrees that this article does not need to be included within the draft DCO for the Proposed Development. The Applicant will update the next version of the draft DCO to reflect this. This article has been included in a number of recent DCOs to manage the appeals procedure for the discharge of requirements, rather than DMLs, and it was not the Applicant's intention to apply this to the discharge of DML conditions.	The MMO welcomes this update.	The MMO notes that Article 13 has been removed in its entirety from the DCO (REP2-011) and thanks the Applicant for the resolution. The MMO now considers this point resolved.
RR-020.9-16	**Transfer of Benefit of the Order** The MMO understands that Article 7 – Benefit of the Order is drafted in a similar way to previous consents	Article 7 of the draft DCO (AS-003) contains provisions for the transfer or lease of powers under the DCO. As set out in the	Please see MMO comments within section 2 of this document regarding Article 7.	The MMO has provided substantive comments on this within its Deadline 2 response. The MMO will look to see a

	granted by the Secretary of State (SoS), however the MMO has major concerns over the wording. Article 7(1)-(3) gives the right to permanently transfer the benefits of the DCO including the deemed marine licences (DML) in Schedule 3 and 4 to a third party with the consent of the SoS. Part 2: Article 7(1)-(3) *"(1) Subject to this article, the provisions of this Order have effect solely for the benefit of the undertaker.* *(2) Subject to paragraph (5), the undertaker may with the written consent of the Secretary of State—(a) transfer to another person (the transferee) any or all of the benefit of the provisions of this Order (excluding licence 1 or licence 2) and such related statutory rights as may be agreed between the undertaker and the transferee; and (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 this Order (excluding licence 1 or licence 2) and such related statutory rights as may be so agreed, except where paragraph (6) applies, in which case the consent of the Secretary of State is not required.*	Explanatory Memorandum (AS-005) these provisions are based on the Model Provisions and the drafting has developed through their inclusion in many offshore wind farm development consent orders. Following the precedent drafting from other offshore wind farm orders article 7(2) provides the transfer or grant of DCO powers to take place with the written consent of the Secretary of State and article 7(5) provides for this transfer or grant to take place without the need for consent in the circumstances specified in the paragraph. Both of these allow for the transfer or grant of powers under the deemed marine licence. Article 7(4) requires the Secretary of State to consult with the MMO before giving consent to the transfer or grant to another person of the benefit of either deemed marine licence. Article 7(11) disapplies sections 72(7) and (8) of the Marine and Coastal Access Act 2009 in relation to a transfer or grant of the benefit of the deemed marine licence. The drafting in the draft DCO reflects a long-established precedent regarding the transfer		response from the Applicant in their Deadline 3 response and for updates on this point in future submissions.

	(3) Subject to paragraph (5), the undertaker may with the written consent of the Secretary of State—(a) where an agreement has been made in accordance with paragraph (2)(a), transfer to the transferee the whole of licence 1 or licence 2 (as appropriate) and such related statutory rights as may be agreed between the undertaker and the transferee; and (b) where an agreement has been made in accordance with paragraph (2)(b), grant to the lessee for the duration mentioned in paragraph (2)(b), the whole of licence 1 or licence 2 (as appropriate) and such related statutory rights as may be so agreed." The MMO considers that this is a clear departure from the 2009 Act, 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. Parliament has already created a statutory regime for such a process, and it is unclear what purpose the written consent of the SoS actually serves. If the intention is for the	of DCO powers and deemed marine licences that has been endorsed by the Secretary of State many times, including most recently in the Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024. Where a transfer of the deemed marine licence is sought under Article 7(2), the Secretary of State would consider the appropriateness of the party to whom the transfer or grant is proposed and would also take into account any representations made by the MMO before determining whether to grant consent. From the procedural perspective it is important that the DCO and any deemed marine licence can be transferred together using the process set out in Article 7. It is considered important that the timing of any transfer or grant of powers/authorisations under the DCO and DMLs be aligned, as there is considerable overlap between the authorisations and the requirements/conditions. This justifies a departure from the procedure under the Marine and Coastal Access Act 2009. Having deemed the marine licence in the DCO, it is also appropriate that any transfer		

	undertaker to be able to transfer the benefits under the terms of the DCO outside the established procedures under 2009 Act, the MMO queries why is it considered necessary or appropriate for the SoS to 'approve' the transfer of the DML. It is also unclear what criteria the SoS would be taking in determining whether to approve any transfer, and how this would differ from a consent granted by the MMO under the existing 2009 Act regime. Because of this confusion and potential duplication, it is the position of the MMO that these provisions are removed and that any transfer should be subject to the existing regime under the 2009 Act, with the decision maker remaining the MMO. Article 7(2)(b) and 7(3)(b) gives the right to temporarily transfer the benefits of the DCO (including DML) to a third party. Article 7(2)(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 this Order (excluding licence 1 or licence 2) and such related statutory rights as may be so agreed, except where paragraph (6) applies, in which case*	under the Order include the deemed marine licence as part of the wider transfer – it is one element of the wider order powers and should not be separated out from the authority to construct, operate and maintain the NSIP granted by the Order. The Planning Act 2008 is clear that marine licences may be deemed in a DCO in appropriate areas (s149A) and that a DCO may include such further provisions ancillary to the operation of that DML (s122(3)), including transfer along with the benefit. Section 122(5)(a) and (c) set out that a DCO may "apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order" or "include any provision that appears to the Secretary of State to be necessary or expedient for giving full effect to any other provision of the order". The ability to transfer the DML is related to the deeming and is submitted to be a sensible, expedient part of the wider power to transfer the benefit of the order. There is accordingly no legal barrier to including these provisions in the draft DCO and there is a clear advantage to		

	the consent of the Secretary of State is not required." Article 7(3)(b) *"where an agreement has been made in accordance with paragraph (2)(b), grant to the lessee for the duration mentioned in paragraph (2)(b), the whole of licence 1 or licence 2 (as appropriate) and such related statutory rights as may be so agreed."* The MMO resists the inclusion of this article. Here the written consent of the SoS is not required. The MMO does not recognise that this would create a more streamlined system. Rather, it operates simply to create an additional administrative procedure for marine licences (and one not envisaged by Parliament) and with no clarity in how it will operate. The MMO has concerns regarding Article 7(4). Article 7(4) *"The Secretary of State shall consult the MMO before giving consent to the transfer or grant to another person of the benefit of the provisions of licence 1 or licence 2."* The MMO notes that there is no obligation for the SoS to take into account the views of the MMO when providing its consent. Furthermore, there is no obligation for the MMO to be informed of the decision of the SoS, notwithstanding its impact on the	doing so for the reasons set out above. This has been accepted by the Secretary of State in a number of offshore wind farm DCOs and is well precedented.		

	MMO as the licencing authority. From a regulatory perspective it is highly irregular that a decision to transfer a licence should not be the decision of the regulatory authority in that area (the MMO), but instead should be subject to such a cursory process as is set out in Article 7(1)-(3). The MMO thus resists this change as unworkable. As explained above, Articles 7 (1)-(3) sets out what is effectively a new non-legislative regime for the variation and transfers of marine licences. In support of these provisions, Article 7(11) explicitly disapplies sections 72(7) and (8) of the 2009 Act, which would otherwise govern these procedures. Article 7(11). *"Section 72(7) and (8) of the 2009 Act do not apply to a transfer or grant of the benefit of the provisions of licence 1 or licence 2 to another person by the undertaker pursuant to an agreement under* this *article."* This conflicts with the MMO's stated position that the DML granted under a DCO should be regulated by the provisions of the 2009 Act, and specifically by all provisions of section 72. Section 72(7)(a) of the 2009 Act permits a licence holder to make an application for a marine licence to be			

	transferred, and, where such an application is approved, for the MMO to then vary the licence accordingly (s. 72(7)(b)). This power that should be retained and used in relation to the DML granted under the DCO and the MMO therefore resists the inclusion of this article 7(11) to disapply these provisions. The key concern held by the MMO is that Article 7 operates to override and/or unsatisfactorily duplicate provision that already exist within the 2009 Act for dealing with variations to marine licences. Such provisions are also inconsistent with the PINS Guidance on how DMLs should operate within a DCO. Advice Note Eleven, Annex B, as referenced in comment 3.3.2, provides that where the undertaker choses to have a marine licence deemed by a DCO, the MMO, "will seek to ensure wherever possible that any deemed licence is generally consistent with those issued independently by the MMO." Article 7 as drafted is not in compliance with this guidance. 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 Part 2, Article 7 insofar as these are intended to apply to the MMO and requests paragraphs 7(4), 7(8) and 7			

	(11)be removed in their entirety, with a clarification added to specifically exclude these provisions from applying to the MMO (with corresponding wording amended in the Deemed Marine Licences). The MMO is concerned that the procedure proposed represents an unnecessary duplication of the existing statutory regime set out in s72 of the 2009 Act and that it will give rise to significant enforcement difficulties for the MMO. The MMO also considers that it has the potential to prejudice the operation of the system of marine regulatory control in relation to the proposed development. The MMO also regards the proposed procedure as cumbersome, more administratively burdensome, slower and less reliable than the existing statutory regime set out in s72 of the 2009 Act. To summarise, the MMO considers that little advantage is gained for the Applicant by these provisions, and the tangible risks and disadvantages that it poses can be avoided by retaining the existing statutory regime in full.			
RR-020.17-23	**Use of 'Maintain' and 'Materially'** The MMO strongly considers that the activities authorised under the DCO and DML should be limited to those that are EIA assessed within the ES,	The Applicant does not consider that the wording within the definition of "maintain" in each deemed marine licence in schedules 3 and 4 of the draft	Please see MMO comments within section 2 of the Deadline 2 submission document regarding the use of maintain and materially.	The MMO has provided substantive comments within its Deadline 2 submission regarding the use of maintain and materially within the DCO and

	and the statement that activities will be limited to those that 'do not give rise to any materially new or materially different environmental effects' should be updated to clarify this. The MMO considers that wording should be updated to 'do not give rise to any new or different environmental effects to those assessed in the environmental information'. This also applies to the definition of "maintain". The intention behind the EIA legislation is to protect the environment by ensuring that in deciding whether to grant a development consent for a project, and in deciding what conditions to attach to that consent, the decision has full knowledge of what the likely significant environmental effects of the project/development will be. That knowledge then guides the consent process and what conditions, if any, to attach to the consent. Additionally, there is considerable public consultation under the EIA legislation process because the process recognises the importance of local knowledge in environmental decision making. The EIA legislation was designed to apply to those plans/projects which could be sufficiently detailed and particularised at the application stage,	DCO (AS-003) needs to be updated. The purpose of the EIA Regulations is to identify the likely significant environmental effects that will arise from a project. That facilitates the relevant decision maker making an informed decision on the likely effects of the project before they grant or refuse consent. The detail in an Environmental Statement is not intended to be wholly prescriptive. That is not how the EIA regime operates. In undertaking an EIA, a developer has to make certain assumptions about how the project will be undertaken, particularly in respect of the operation and maintenance phase. Key parameters that underpin the assessment will then be included in the terms of the consent granted. In respect of operation and maintenance activities, the use of the word "materially" reflects that the detail of potential maintenance activities included in an Environmental Statement are based on assumptions. The word "materially" gives a limited degree of flexibility, but would not authorise any activities that would give rise to new or different significant effects. Thatf would clearly be outwith the		DML. The MMO will seek a response from the Applicant regarding this and will look for any updates in future Applicant submissions.

	to allow the consenting decision to be taken in the full knowledge of what the likely significant effects of that plan or project would be. In such circumstances, it would be unnecessary to create a legal obligation under the order which requires the activities to remain within what was assessed within the ES under the EIA legislation. This is because the consent authorises the detailed and well particularised project, assessed in the ES, to be carried out, and, therefore, providing the development is constructed as per the consent, those works would, by default, remain within the parameters of the EIA assessment. The difficulty identified with assessment of environmental impact, as was discussed in the Rochdale Envelope case, is that to deal with an outline planning case, where the project will flex over time, you need to undertake the assessment at the outline permission stage when there is not enough detail to identify properly what the final design of the project will actually be. In the case of Rochdale, the court was saying things could remain flexible providing the assessment of environmental impact took account of the need for evolution of the project over time and assessed the likely significant effects within clearly defined parameters, and then	scope of the deemed marine licence. The Applicant therefore considers the existing definition to be appropriate. It is well precedented in DCOs for offshore wind farms, including East Anglia One North Offshore Wind Farm Order 2022, the East Anglia Two Offshore Wind Farm Order 2022, the Norfolk Boreas Offshore Wind Farm Order 2021, the Norfolk Vanguard Offshore Wind Farm Order 2022.		

	the consent granted imposed conditions to ensure that the process of evolution kept within the parameters of the assessment of environmental impact. Whilst there might not be an express provision that you can point to in the legislation that says that a project cannot exceed the effects assessed in the assessment, it is implied (or the purpose of EIA would be undermined) and the Rochdale case discusses this. In this DCO and the DML, the Applicant is wanting flexibility in terms of the design details (both in terms of some of the construction details, and in relation to some of the maintenance activities). Where those design details are not finalised at the application stage, the Applicant is wanting to retain some flexibility and is proposing that the works that can be carried out should be restricted to those which do not give rise to materially new or materially different environmental effects to those assessed in the ES. The concern with this is that the inclusion of the word materially here would allow the undertaker to carry out works whose effects are outside of the likely significant effects assessed in the ES, providing they do not do so materially, that is, in any significant way, greatly, or considerably. This is not what the purpose of the EIA process is, and it runs contrary to the			

	purpose of EIA. In addition, whilst the undertaker is responsible for producing the environmental information and statement on which the EIA decision is based, the appropriate authority is responsible for the EIA consent decision. The inclusion of the word materially means essentially that the undertaker makes the decision as to what is and what is not material. Under EIA legislation it is for the appropriate authority to determine what the likely significant effects will be, and how those should be mitigated. The MMO does not consider that it is appropriate to use the word 'material' in these circumstances. If the Applicant wants the flexibility of not being prescriptive about the design from the start, the Order, and the DML granted through it, should restrict works which can be carried out to those which do not give rise to any new or different environmental effects to those assessed in the ES.			
RR-020.24	**Schedules 3 and 4** Paragraph 7 of Part 1 which refers the provisions of section 72 should be removed in its entirety.	As set out in more detail above, the Applicant is seeking to disapply sections 72(7) and (8) of the Marine and Coastal Access Act 2009. This paragraph provides clarity that the remainder of that section remains applicable to each DML.	Please see MMO comments within section 2 of this document regarding the provisions of section 72.	The MMO has provided comments on this in its Deadline 2 response. The MMO awaits a response from the Applicant regarding this and will look for any changes during examination.

		Therefore, no amendment is proposed.		
RR-020.25	For regulatory certainty and consistency with other DMLs, the MMO proposes that Paragraph 9, Part 1 is amended to state the following: *Any amendments to or variations from the approved details, plans or schemes must be in accordance with the principles and assessments set out in the environmental statements. Such agreement may only be given where it has been demonstrated to the satisfaction of the MMO that it will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.*	The Applicant has reviewed the wording in paragraph 9, Part 1 of each DML and considers that this is substantively the same as that requested by the MMO. Therefore no amendment is considered necessary.	The MMO does not agree with the Applicant's response. These changes are necessary to ensure that the power to amend or vary is consistent with the requirements of the EIA regime as explained in the case of R. (Barker) v Bromley LBC [2007] 1 A.C. 470. That case concluded that EIA will be required at stages subsequent to an initial grant of consent where those likely significant effects were not identified at the earlier consenting stage. It follows that a mechanism to permit a variation or amendment will not be lawful until it prevents any possibility of a materially new or different significant environmental effects arising as a result of the variation or amendment. The MMO notes that the Applicant informed the MMO during a meeting dated 21 October 2024 that Paragraph 9 will be amended as requested. The MMO will review the updated DML once submitted and if updated	The MMO has noted the amendments actioned by the Applicant regarding paragraph 9 in Schedules 3 and 4 of the draft DCO (REP2-011) and thanks the Applicant for making the requested amendment. The MMO now considers this point resolved.

			would consider this point to be resolved.	
RR-020.26-27	**Determination Dates** The MMO strongly considers that it is inappropriate to put timeframes on complex technical decisions of this nature. The time it takes the MMO to make such determinations depends on the quality of the application made, the complexity of the issues, and the amount of consultation the MMO is required to undertake with other organisations to seek resolutions. The MMO's position remains that it is inappropriate to apply a strict timeframe to the approvals the MMO is required to give under the conditions of the DML given this would create disparity between licences issued under the DCO process and those issued directly by the MMO, as marine licences issued by the MMO is not subject to set determination periods Whilst the MMO acknowledges that the Applicant may wish to create some certainty around when it can expect the MMO to determine any applications for an approval required under the conditions of a licence, and whilst the MMO acknowledges that delays can be problematic for developers and that they can have financial implications, the MMO stresses that it does not delay	The Applicant will continue discussions with the MMO about timings for submission of documents for approval in terms of conditions in the deemed marine licence. Including timescales within the conditions of the deemed marine licence provide a degree of certainty to the Applicant when it is discharging conditions to allow works to commence. The timeous discharge of conditions is important to ensure that the Applicant can meet its construction programme. The Applicant notes that it is well precedented in offshore wind DCOs for such timescales to be included in conditions of a deemed marine licence.	The MMO acknowledges the Applicant's comments. The MMO believes a timescale to discharge a document is inappropriate. The MMO has internal Key Performance Indicators (KIPs) which work towards a 13-week turn around. The MMO will never unduly delay but cannot be bound by arbitrary deadlines imposed by the Applicant since this would potentially prejudice other licence applications by offering expediency to the Applicant at the expense of other applications. It is also unclear what consequences would result if this deadline was not met, and how that would impact on the MMO's regulatory function. The MMO would highlight that this has been requested by the MMO since the Hornsea Project Three Offshore Wind Farm Examination. Since this examination, there is even more of a concern that more and more time is being spent working to determine	The MMO has provided comments on this in its Deadline 2 response. The MMO awaits a response from the Applicant regarding this and will look for any changes during examination.

	determining whether to grant or refuse such approvals unnecessarily. The MMO makes these determinations in as timely a manner as it is able to do so. The MMO's view is that it is for the developer to ensure that it applies for any such approval in sufficient time as to allow the MMO to properly determine whether to grant or refuse the approval application.		documents submitted. There are a number of instances on projects where the submission at the four or six month date does not include everything that is required or within the outline plans and is more of a compliance requirement to ensure something is submitted in line with the consent. This leads to requests for additional information and multiple rounds of consultation and updates to ensure enough information is provided for the MMO to make a determination. It is becoming increasingly difficult to review the first submission of a document and therefore delays to the determination could cause significant impact to both the MMO and the Applicant. In relation to precedented timescales within other offshore wind DCOs. The MMO, of course, accept that there is a need for consistency in decision making. However, a decision maker is not bound by previous decisions and can depart from them where there is good reason to do so.	

			The MMO would reiterate that it does not delay approvals unnecessarily and believes more realistic timescales should be included to allow for the Applicant to account for this within their programming. However, without prejudice to this position, the MMO believes that if time scales are included within the DML for plans then these should be six months not four months and is open to discussions on which documents must be six months and which documents could be four months to take into account the concerns that the Applicant may have. The MMO will continue to work with the Applicant to advise on any plans or documents that could have a four-month timescale.	
RR-020.28	**Additional Conditions** Condition 13(3) uses the following wording: "13(3) An operations and maintenance plan substantially in accordance with the outline offshore operations and maintenance plan" The MMO requests that the word 'substantially' is removed from this condition as it is not required.	The Applicant considers that the word 'substantially' is a reasonably qualifying term to include in this sub-paragraph. It reflects the fact that the final offshore operations and maintenance plan may not fully align with the outline version submitted with the application (e.g. additional measures could	The MMO believes that 'in accordance' is enough to allow any changes to the operations and maintenance plan. The outline operations and maintenance plan must have the minimum requirements the MMO and other Interested Parties believe is required at this	The MMO notes that the Applicant has amended the wording of condition 13(3) to state the following. *(3) An operations and maintenance plan in accordance with the outline operations and maintenance plan must be submitted to the MMO for*

		be added to reflect updates to the project) but must be broadly in the same terms. Ultimately, the MMO will retain control on whether or not the terms of the final plan submitted to it are acceptable. As such, no amendment to this sub-paragraph is proposed.	stage. The inclusion of 'substantially' does not provide any additional requirements of the condition and is a surplus requirement. The MMO would highlight that although each case is reviewed on a case by case basis this wording has not been used in similar Offshore Wind DCOs granted recently. The MMO notes that the Applicant informed the MMO during a meeting dated 21 October 2024 that the condition wording will be amended as requested. The MMO will review the updated DML once submitted and if updated would consider this point to be resolved.	*approval in writing at least four months prior to commencement of the operation of licensed activities. All operation and maintenance activities must be carried out in accordance with the approved plan*. The MMO now considers this point resolved.
RR-020.29	**Maintenance of the Authorised Scheme** Condition 13(4) refers to activities being carried out with accordance with a plan. The MMO assumes that this plan is the operations and maintenance plan referenced in 13(3) however the DML contains a number of plans. The MMO requests that the wording is amended making it explicit for the avoidance of doubt. For example: All operations and maintenance activities must be	The Applicant will update condition 13(4) of the next version of the draft DCO as suggested.	The MMO welcomes this update.	The MMO notes that the Applicant has made the requested changes to the condition wording which now reads: *(4) All operation and maintenance activities must be carried out in accordance with the plan approved under sub-paragraph (3).*

	carried out in accordance with the approved plan approved under sub-paragraph (3).			The MMO now considers this point resolved.
RR-020.30	**Notifications and Inspections** Should the undertaker become aware that any of the information on which the granting of this licence was based was materially false or misleading, the undertaker must notify the MMO of this fact in writing as soon as is reasonably practicable. The undertaker must explain in writing what information was materially false or misleading and must provide to the MMO the correct information. The MMO, in addition to being informed of cable damage, destruction and decay further requires a notification of cable repair. The MMO has provided the following wording for condition 15(11): The undertaker must ensure that the MMO, the MMO Local Office, local fishermen's organisations, and the Source Data Receipt Team at the UKHO Taunton, Somerset, TA1 2DN (sdr@ukho.gov.uk) are notified within five days of each instance of cable repair, replacement or protection replenishment activity.	The Applicant will update the condition in the deemed marine licence in the next version of the draft DCO that is submitted during the Examination to reflect this request.	The MMO welcomes this update.	The MMO notes that this requested change has not been made in the latest updated version of the Draft DCO submitted by the Applicant at Deadline 2. This issue is still outstanding.
RR-020.31	**Adaptive Management** The MMO requests that the following conditions be added to the post-construction monitoring and surveys condition (condition 29 of Schedules 3 and 4) to allow the Applicant to provide potential solutions when	The Applicant notes that a similar condition was included within the recently granted Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024 following a recommendation by the	The MMO has noted the Applicant's comments and although the condition was included due to 'the impact of that project on sensitive habitats and species.', if any monitoring shows an impact	The MMO is still reviewing this and will provide an update in due course.

	reviewing the results of monitoring, to be discussed with the MMO and Statutory Nature Conservation Bodies (SNCB). "(6). In the event that the reports provided to the MMO under sub-paragraph (3) identify a need for additional monitoring, the requirement for any additional monitoring will be agreed with the MMO in writing and implemented as agreed." "(7). In the event that monitoring reports provided to the MMO under subparagraph (3), identifies impacts which are beyond those predicted within the Environmental Statement/Habitat Regulations Assessment, adaptive management/mitigation may be required. An Adaptive Management/Mitigation Plan to reduce effects to within what was predicted within the Environmental Statement/Habitat Regulations Assessment, unless otherwise agreed in writing by the MMO, must be submitted alongside the monitoring reports submitted under sub-paragraph (3), including timelines and associated monitoring to test effectiveness. This plan must be agreed with the MMO in consultation with the relevant SNCBs to reduce effects to a suitable level for this project. Any such agreed or approved adaptive management/mitigation should be implemented and monitored in full. In the event that this adaptive management/mitigation	Examining Authority on that application. That recommendation related specifically to concerns raised about the impact of that project on sensitive habitats and species. The Environmental Statement has not identified any likely significant environmental effects that would require ecological post-construction monitoring or need for potential adaptive management beyond that already included in condition 29. The Applicant does not consider any amendment to this condition to be necessary.	higher than predicted within the Environmental statement the MMO may require additional monitoring or mitigation at the post consent stage. The MMO will review the monitoring requirements and condition and provide further updates in due course.	

	requires a separate consent, the Applicant shall apply for such consent." The conditions ensure that all parties are clear what is required if the monitoring shows higher impacts than predicted during the assessment stage.			
RR-020.32	**Provisions on Variations and Approvals** With respect to any condition which requires the licensed activities to be carried out in accordance with the plans, protocols or statements approved under this licence, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO. Subsequent to the first approval of those plans, protocols or statements provided, it has been demonstrated to the satisfaction of the MMO that the subject matter of the relevant amendments does not give rise to any materially new or materially different environmental effects to those assessed in the environmental information.	The Applicant considers that this is secured by paragraph 9 of each of deemed marine licence within schedules 3 and 4 of the draft DCO (AS-003)	The MMO notes this and will review and provide any additional comments in due course.	Once the final condition wording has been updated the MMO will provide confirmation of agreement.
RR-020.33	**Conditions to Remove Force Majeure** The MMO does not consider that this provision is necessary as section 86 of the 2009 Act provides a defence for action taken in an emergency in breach of any licence conditions. The MMO requires justification or rationale	This condition and section 86 of the Marine and Coastal Access Act 2009 serve slightly different purposes. This condition imposes a duty on the undertaker to notify the MMO of the circumstances of such a deposit. This ensures that the MMO is provided with that	The MMO has previously requested the removal of this clause. That is because it unnecessarily duplicates the effect of s.86 of the 2009 Act. The MMO welcomes the applicant's comments regarding Force Majeure in	The MMO is still reviewing this point and will provide further comments on this at Deadline 4.

	as to why this provision is considered necessary.	information. Section 86 of the 2009 Act does not contain any such duty. It simply acts as a defence in the event a person is charged with an offence.	point RR-020.33 of document PD1-017 regarding the Applicant's response to Relevant Representations. The MMO is currently reviewing the Applicant's comment and will provide a response in due course.	

3. Comments on the progress tracker or Statement of Commonality (REP2-008)

3.1. The MMO attended a meeting with the Applicant on 24 October 2024 and 5 November 2024 in which the categorisation of issues listed in the Statement of Common Ground (SoCG) were discussed. There was no disagreement between the MMO and the Applicant as to the status of any listed issues.

3.2. The MMO agrees with the statement in Table 1.3 of the document regarding the SoCG with the MMO in that the Applicant is making positive progress to resolve matters. Ongoing issues relate mainly to fish and shellfish, as discussed in sections 4 and 5 respectively, along with ongoing issues relating to marine mammals, coastal processes, and the draft DCO/DML.

3.3. The MMO is aware that the Applicant is actioning comments raised with reference to fish and shellfish. The MMO awaits the provision of the requested information from the Applicant scheduled for Deadline 3. The MMO will review the provided information and will work with the Applicant on the remaining 'ongoing points of discussion' points in the SoCG.

3.4. There are several points which are an ongoing point of discussion regarding Marine Policy, draft DCO, and the draft DML. These have been discussed in more detail in Table 1 of the MMO's Deadline 2 Submission. The MMO awaits the Applicant's Deadline 3 submission to see if any of these requests have been actioned. The MMO has provided a review of the updated draft DCO/DML in section 2 of this submission.

3.5. The MMO welcomes future engagement with the Applicant and hopes to resolve the remaining points on our SoCG in a timely manner.

4. Comments on Applicant's DL1 Submissions with Regards to Fish Species, Seasonal Piling Restrictions and Underwater Sound Management Strategy

4.1. For the benefit of the ExA, the MMO has provided the below comments to the Applicant on 28 October 2024. The Applicant has thanked the MMO for the provision of the detailed comments and has informed the MMO in a meeting dated 5 November 2024 that the requested information will be provided during the examination process. The MMO will review the response and provide comment following this.

4.2. <u>Underwater Sound Management Strategy (UWSMS)</u>

4.2.1. The MMO notes that the UWSMS represents a live document which will evolve and be updated as more information is assembled on the project design post-consent. As highlighted in the MMO's Deadline 2, the MMO requests that NAS (bubble curtain) is required for ALL high order clearance, and it is in the interest of the Applicant to plan for this at the earliest opportunity.

4.2.2. Regarding Table 1.4 of the UWSMS, the MMO disagrees that with the statement "*there were no significant effects on cod due to piling activities for the Project alone*". There is evidence missing in the assessment of impacts from piling on cod and the risks to cod from underwater noise (UWN) from piling as presented in the ES were not considered to be within acceptable limits, hence the recommendation of a piling restriction during the cod spawning season. The MMO requests that this table is amended to highlight that there is potential for adult spawning cod to be disturbed by UWN from piling activities at the Morgan OWF alone and cumulatively with other projects piling at the same time.

4.2.3. The UWSMS includes the use of noise abatement systems (NAS) as mitigation measures to reduce the range of impact from piling UWN for sensitive receptors. The Applicant's statement that "in the UK thus far, offshore wind developers have not been required to employ such systems" and that "NAS have not been used specifically for mitigation of sound impacts on fish species" is incorrect. Whilst there is currently no legal requirement for the use of NAS, bubble curtains and other noise abatement technologies are widely used within marine and offshore industries, and their use is often required by stakeholders and regulators, as a mechanism through which UWN disturbances in relation to sensitive receptors including fish can be mitigated. The MMO reminds the Applicant that procurement of these technologies is typically required years in advance of works commencing, and the Applicant should be considering at this stage what NAS will be required to reduce the UWN disturbance to fish species to within acceptable levels. The MMO highlights this now as it is the Applicant's risk if noise abatement strategies are required and there is a delay in construction due to lack of availability at the time these requirements are identified.

4.2.4. The MMO supports the commitment to develop the UWSMS and is content for this to be developed post-consent, however, a specific strategy, technology or approach for reducing the range of impact from UWN on cod and herring has not been outlined, and therefore the MMO does not consider that the commitment to develop the UWSMS alone is sufficient to remove the need for seasonal piling restrictions during the cod and herring spawning seasons.

4.3. <u>Applicant's Response to Seasonal Piling Restrictions</u>

4.3.1. The MMO notes that the information contained within the Annex 4.4. does not appear to provide any substantive evidence supporting a potential refinement of the seasonal piling restrictions for either cod or herring but appears to be more of a general position statement that the Applicant considers seasonal piling restrictions disproportionate to the risk of disturbance and harm to fisheries receptors during their sensitive spawning seasons.

4.3.2. The MMO recognises the implications to the piling programme and construction schedule which may result from the implementation of seasonal piling restrictions during the cod and herring spawning seasons.

4.3.3. The MMO highlights that if the Applicant chooses to deploy gravity base foundations instead of piled multileg foundations, as outlined in the ES, then ground-strengthening of multiple locations using approximately 15 piles per location will still be required. It therefore seems likely that piling in some form will be required for the Morgan OWF project, but there are no defined noise reduction commitments within the UWSMS for cod and herring specifically.

4.3.4. Whilst piling is being considered as an option for foundation installation, the MMO requests the development of an appropriate noise abatement strategy, so that if piling is the chosen installation methodology, or is necessary to support other foundation types, then the appropriate UWN modelling will have been undertaken, and the necessary noise reduction required to reduce noise disturbance to acceptable levels (which will inform the NAS technologies the project will need to acquire) will have been fully assessed and understood.

4.3.5. As stated in point 1.2. there is potential for adult spawning cod to be disturbed by UWN from piling activities at the Morgan OWF alone and cumulatively with other projects piling at the same time. The MMO therefore disagrees with the Applicant's statement in this document that there will be no significant effects on cod from UWN due to piling activities form the Morgan OWF, alone. There is evidence missing in the Applicant's assessment of impacts from piling on cod, and the risks to cod from underwater noise (UWN) from piling as presented in the ES were not considered to be within acceptable limits.

4.4. <u>Response to Applicant's Query Regarding Differences Between Natural Resources Wales (NRW) Advice and MMO Advice Relating to Seasonal Piling Restrictions</u>

4.4.1. The MMO had a question posed by the Applicant regarding the recommended seasonal restriction for cod, based on information provided by NRW for the Mona OWF. NRW had advised that piling activities at the Mona OWF should be restricted to outside the peak spawning activity period (February and March) for cod in order to mitigate the impact of the proposed development on cod species.

4.4.2. The MMO stated at the Preliminary Environmental Information Report (PEIR) and Section 56 stages that that a temporal restriction on piling activities during the cod spawning season (January to April inclusive) will be necessary for the Morgan OWF.

4.4.3. NRW has framed its restriction to cover what NRW determines to be the peak spawning activity period (February and March) for cod in the Irish Sea. The MMO's decision for the Morgan OWF covered the whole of the cod spawning season

(January to April inclusive) in line with the spawning seasons outlined in Ellis et al., (2012) and Coull et al., (1998).

4.4.4. The MMO notes that although the Morgan and Mona OWFs are both located in the Irish Sea region, they are different projects, with differing piling schedules, piling parameters and worst-case scenarios for piling, and, additionally, are to be located in different areas of the Irish Sea, meaning that the relative overlap of each project with the cod high intensity spawning ground will be different. This means that decisions provided on one project is not directly transferable to another.

4.4.5. The MMO further notes that the Applicant has not yet presented a compelling evidence-based assessment of cod spawning activity to support a potential refinement of the seasonal piling restriction.

4.5. Evidence Necessary for Refining the Recommended Piling Restriction During the Cod Spawning Season

4.5.1. The MMO states that it might be possible to refine decisions of a piling restriction covering the whole of the cod spawning season, provided that the correct evidence is supplied to support refinement.

4.5.2. The MMO requests that adequate modelling of the range of impact for physiological effects (mortality and potential mortal injury, recoverable injury, and temporary threshold shift (TTS), as per the pile driving threshold guidelines described by Popper et al. (2014)) with regard to cod, must be provided. Cod are broadcast spawners with pelagic larvae so are not reliant on spatially confined areas of particular seabed habitat for reproduction in the same way that herring are. This means that cod have the ability to move throughout their spawning grounds and undertake spawning, without their ability to spawn being impaired if they cannot reach a specific area or habitat due to excessive noise disturbances.

The high and low intensity cod spawning grounds are quite extensive in the region, and therefore behavioural responses to UWN in cod are less of a concern than they are for herring, as in theory, cod could move away from the affected area and spawn elsewhere within their spawning ground. In this sense, the risks of physiological effects in cod from UWN are of greater concern and it is very important that the range of impact from UWN based on the thresholds for Group 3 fish with high hearing sensitivity for mortality and potential mortal injury (207 cumulative sound exposure level (SELcum)), recoverable injury (203 SELcum), and TTS (186 SELcum), as per the pile driving threshold guidelines described by Popper et al. (2014), are presented so that the physiological risks to cod can be properly assessed. The MMO notes that at the ES, and in the subsequent post-ES response document, the Applicant presented thresholds for mortality and potential mortal injury, recoverable injury, and

TTS which were not consistent with the pile driving threshold guidelines described by Popper et al. (2014) and were therefore not acceptable for this purpose.

4.5.3. Secondly, Ellis et al., (2012) denotes the cod spawning season as taking place from January to April inclusive, with peak spawning taking place in February and March. This is potentially what NRW has referenced regarding to the risks to cod from the Mona development. NRW interpretation, however, differs from the MMO's relating to Morgan OWF. In addition to the modelling requested in point 4.2, the MMO requests that a discussion which draws upon suitable peer-reviewed sources and data which provides supporting evidence that cod spawning activity peaks in February and March be provided.

4.5.4. The MMO directs the Applicant to Maxwell et al., (2012) and Armstrong et al., (2012) to support their discussion of peak months for cod spawning in the Irish Sea. Maxwell et al., (2012) used ichthyoplankton survey data from 2008 for Irish Sea plaice, cod and haddock to estimate annual egg production during the 2008 spawning season using advanced generalized additive models (GAM). As part of this study, spatial patterns of modelled and observed egg production for cod were included. For cod, there were clear hot spots for egg production in the east and west Irish Sea. The authors also correlated spatial patterns of modelled and observed egg production with the timing of the ichthyoplankton surveys to examine when cod egg production for the 2008 spawning season peaked.

4.5.5. Armstrong et al., (2012) then summarised the results of applications of annual egg production methodologies (including those used by Maxwell et al.,) to estimate the spawning stock biomass of cod and other species in the Irish Sea in 1995, 2000, 2006, 2008, and 2010. Armstrong et al., (2012) expanded the GAM analyses to present the spatial patterns of daily egg production of cod for the years 2006 to 2010. Armstrong et al., (2012) also examines the seasonal patterns in egg production fitted by the GAM for spawning in the East and West of the Irish Sea.

4.5.6. Maxwell et al., (2012) and Armstrong et al., (2012) are appropriate sources for informing discussions on temporal refinement of the recommended piling restriction but, given the age of these publications, it would strengthen the Applicant's position for a refinement if updated data were presented in a similar format. This data may take the form of ichthyoplankton data for the Irish Sea to indicate areas of higher or lower cod larval abundance, or Northern Irish Ground Fish data (NIGFS) which could be filtered to separate out female cod caught within each trawl per year and the maturity classes of interest (spawning and spent fish) taken as a subset to characterize where spawning-ready and post-spawning adult female cod are located. The MMO directs the Applicant to the Agri-Food and BioSciences Institute (AFBI) in Northern Ireland to find out what survey data is available for this purpose.

5. MMO Response to Applicant's Statement of Common Ground (SoCG) and Pre-Examination Submissions Regarding Shellfish

5.1. For the benefit of the ExA, the MMO has provided the below comments to the Applicant on 31 October 2024. The Applicant has thanked the MMO for the provision of the detailed comments and has informed the MMO in a meeting dated 05 November 2024 that the requested information will be provided during the examination process. The MMO will review the response and provide comment following this.

5.2. The documents listed below have been reviewed in order to provide a response to issues surrounding shellfish biology.

- Applicant's Response to Relevant Representations, RPS Consultants, August 2024, Version No. F01.
- Annex 3.1 Applicant's response to Relevant Representation from Marine Management Organisation: Fish and Shellfish 4.6.5, RPS Consultants, August 2024, Version No. F01.
- Annex 3.3 Applicant's response to Relevant Representation from Marine Management Organisation: Fish and Shellfish 4.6.12, RPS Consultants, August 2024, Version No. F01.
- Annex 3.2 to the Applicant's response to Relevant Representations from Marine Management Organisation (RR-020): Underwater Sound [Marine mammals], RPS Consultants, August 2024, Version No. F01.
- Statement of Common Ground between Morgan Offshore Wind Limited and the Marine Management Organisation, Morgan Offshore Wind Limited, 2024, Version 1.

5.3. <u>Response to Annex 3.3.</u>

5.3.1. The MMO notes that shellfish were not previously highlighted in Marine noise concerns however there is some evidence in literature that seismic pulses (sound exposure level (SEL) of 161 to 165 dB RMS re 1 mPa2) can cause damage to veliger stages of Scallop larvae within close proximity (i.e. Aguilar de Soto et al., (2013).

5.3.2. King and Queen scallops represent an abundant shellfish species in the area and the MMO requests that the potential impacts on larval stages be considered when reviewing data or in timings of works to mitigate around times when larvae are likely to be in the water column. Currently these timings in the Irish sea are generally around April to May and then August to September, but it is also reported throughout the summer (Close et al., 2024). Consultation with the local fisheries and management organisations is requested to ensure the season is current and reflective.

5.3.3. The MMO notes that the Applicant has committed to the development of an Underwater Sound Management Strategy (UWSMS), and the MMO requests that shellfish larval stages (especially King and Queen scallop (*Pecten maximus* and *Aequipecten opercularis*) is considered in this.

5.3.4. The spawning and nursery grounds maps, presented in Annex 3.3) from Coull et al. (1998) and Ellis et al. (2012) are predominantly finfish species and consider *Nephrops*, however the dominant shellfish species in the area King and Queen scallop (*Pecten maximus* and *Aequipecten opercularis*) are not mapped. For these species, locations of fished stocks or fishery footprint may serve as a useful proxy for spawning areas for more sedentary shellfish species therefore the MMO requests that the potential spawning areas for these shellfish species (alongside *Nephrops*) are included in the maps.

5.4. Response to Statement of Common Ground Regarding Shellfish

5.4.1. Referencing the MMO's comments above, the MMO does not agree with the agreed comment in Table 1.7 of section 1.4.4. that "*The fish and shellfish ecology study area that was defined in the PEIR is appropriate for the baseline characterisation".* This is due to the concerns raised in section 5.3 regarding the lack of mapped scallop grounds. The MMO requests that shellfish species are included in spawning maps for the characterisation of the baseline environment.

5.4.2. Referencing point MMO.FSF.16, in Table 17 of section 1.4.4. the MMO does not agree that "*for piling impacts, no significant effects are predicted on fish and shellfish receptors, other than cod and herring during the spawning period*" and agree that this is an ongoing point of discussion. As noted above the MMO request evidence for the consideration of the veliger stage of scallop species (*Pecten maximus* and *Aequipecten opercularis*) in the underwater sound assessment.

5.4.3. The MMO notes that the Applicant has amended the SoCG to reflect the current position of the MMO following the advice detailed above. As mentioned in point 5.1 the MMO awaits the requested information, which the Applicant has committed to providing.

6. Comments on Annex 3.1 to the Applicant's response to Written Representations from the Marine Management Organisation at Deadline 2 (REP2-006)

6.1. The MMO thanks the Applicant for providing the requested documents which shows compliance with the North West Inshore and North West Offshore Marine Plan. The MMO had raised concerns at Deadline 1 that a number of policies had not been assessed and the MMO required the policy assessment to be completed in a

separate document. After reviewing the document (REP2-006), the MMO considers that the Applicant has provided a suitable response and assessed the project against all policies for compliance.

7. Comments on the Offshore in-principle monitoring plan (REP2-013)

7.1. The MMO notes that no further invasive non-native species (INNS) monitoring is proposed, aside from drop down video surveys (DDV) as no significant effect from INNS was predicted within the Environmental Statement (ES), therefore further monitoring is not considered to be required. The conclusion of no significant effect in the ES is due to the Applicants commitment to adopt measures which act to reduce the likelihood of introduction of INNS. However, should INNS be identified during review of the imagery, the MMO requests that the Applicant reconsiders the collection of samples to:

- confirm species identification and;
- understand the fouling assemblage more fully to include cryptic INNS

This should be acknowledged within the outline IPMP as a potential during the surveying stage if anything is identified.

8. Comments on the Mitigation and monitoring schedule (REP2-15)

8.1. The MMO noted at the Section 56 Deadline that a mitigation and monitoring schedule should contain a notification to the regulator where there is potential for chemicals used in the construction operation maintenance and decommissioning of the offshore windfarm to have a pathway to the marine environment. This must include those chemicals used within closed systems that require frequent top up, and full details of the risk and justification for use of chemicals must be provided.

8.2. The Applicant responded to this request by stating "*An Offshore Environmental Management Plan will be developed post-consent, to include details of a chemical risk assessment, that shall include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance."* The MMO is content with this however, the MMO reminds the Applicant that properties of the chemicals paints and coatings used should be notified to the MMO for approval prior to use in line with OSPAR (Oslo and Paris convention for the Protection of the Marine environment of the North-East Atlantic) Guidance.

8.3. The MMO understands there needs to be flexibility at the post consent stage for unexpected activities that may be required and review these on a case by case basis post consent on if they should be a new licence or variation or are within the parameters assessed.

8.4. The MMO always recommends all monitoring to be in the Outline In Principle Monitoring Plan as this makes it clear to all parties what is required post consent. The MMO notes that Condition 20 1(d)(cc) states:

"-details of cable monitoring including details of cable protection until the authorised scheme is decommissioned which includes a risk based approach to the management of unburied or shallow buried cables;"

8.5. As there is no Outline Construction Method Statement (CMS) (as the MMO understands this is based on the final design parameters) it would be beneficial for another document to secure this at this stage but reference the details would be done through the CMS. The MMO notes that this has been updated within Table 1.8 of the Outline IPMP by the Applicant and welcomes this.

8.6. The results of this monitoring will be submitted to the MMO for review and approval and is conditioned under Post construction monitoring -

"29(5) Following the installation of cables, details of cable monitoring required under 20(1)(d)(i) must be updated with the results of the post installation surveys. The statement must be implemented until the authorised scheme is implemented and reviewed as specified within the statement, following cable burial surveys, or as instructed by the MMO."

8.7. The MMO notes that cable monitoring has been included in the Outline In Principle Monitoring Plan and the MMO believes there will be an overview within this document at the post consent/pre-construction stage. Although the CMS is submitted at the pre-construction stage this can approve all monitoring for the project.

8.8. The MMO notes there are alternatives such as standalone cable and scour installation and monitoring plans alongside the CMS and IPMP on other projects that cover the whole timeline in one document, this is usually to cover more specific environmental concerns but could be adapted in this instance if required.

9. Comments on the Outline vessel traffic management plan (REP2-017)

9.1. The MMO has reviewed the Outline Vessel Traffic Management Plan and has no comments to make at this deadline. The MMO defers to the Maritime and Coastguard Agency (MCA) and Trinity House (TH) on matters of shipping and navigation and the MMO will keep a watching brief over comments raised on review of the document (REP2-017). The MMO will continue to be part of the discussions relating to securing any mitigation, monitoring or other conditions required within the DMLs.

10. Comments on the Outline fisheries liaison and co-existence plan (REP2-019)

10.1. The MMO has reviewed the Outline Fisheries Liaison and Co-existence Plan (FLCP) and has no additional comments to make at this time. The MMO will however, keep a watching brief over the response from the National Federation of Fisherman's Organisation (NFFO) and provide comment at Deadline 4.

10.2. The MMO stated at the Section 56 Deadline that the MMO will not act as arbitrator in regard to compensation, and will not be involved in discussions on the need for or the amount of compensation being issued. This needs to be made clear within the Outline Fisheries Liaison and Coexistence Plan. The MMO notes that the Applicant has already addressed this concern in their pre-examination procedural deadline submission which states "*The Applicant notes the MMO's response. The Final FLCP will ensure this point is made clear*." The MMO notes that this is not made clear within the document and requests that this is actioned and understands this request has also been made by the ExA.

11. Comments on the Outline Operations and Maintenance (O&M) Plan (APP-079)

11.1. The MMO has no concerns regarding the scoping out of accidental pollution during construction, operations and maintenance and decommissioning due to the Applicants commitment to implement industry good practice standards (International Convention for the Prevention of Pollution from Ships) and adherence to the plans set out in the Environmental Monitoring Plan and Marine Pollution Contingency Plan.

11.2. The MMO requests a table is included within the plan that identifies the worst case scenario for all activities that will take place in the O&M phase, so it is clear at this stage what activities the assessment is for.

11.3. The MMO would request that for Inter-array cables/ Interconnector cables cable protection is split into 2 sections:

- i) Replacement of cable protection in the same area as cable protection installed during construction– covered in the licence
- ii) Placement of cable protection in new areas and it should be clear that this requires a new marine licence.

11.4. In addition to 11.3 the same should be added for scour protection.

11.5. Foundation replacement should also be included with the requirement for a new marine licence would be required.

12. Attendance at Issue Specific Hearing 2 (ISH2)

12.1. The MMO understands the ExA have requested attendance at the ISH on 26 & 27 November, this was dependant on what was submitted at DL3. The MMO will have no additional information on top of what is submitted within this response and therefore will not be attending the ISH. The MMO will keep a watching brief on any issues or action points raised and will continue to work through issues with the Applicant between deadlines.

Yours sincerely

[redacted]

Liam Woods

Marine Licensing Case Officer

D +44 (0)[redacted]

E [redacted]marinemanagement.org.uk

References

Aguilar de Soto, N. et al. (2013) Anthropogenic noise causes body malformations and delays development in marine larvae. Sci. Rep. 3, 2831; DOI:10.1038/srep02831

Armstrong, M., Aldridge, J., Beggs, S., Goodsir, F., Greenwood, L., Maxwell, D., Milligan, S., Praël, A., Roslyn, S., Taylor, N. and Walton, A., 2012. Egg production survey estimates of spawning stock biomass of cod, haddock and plaice in the Irish Sea: 1995, 2000, 2006, 2008 and 2010.Working Document 9, ICES Working Group on the Celtic Seas Ecoregion, May 2011.

Close H, Lambert G, Robins P and Gimenez L (2024) Connectivity between populations of the scallop Pecten maximus in the Irish Sea and the implications for fisheries management. Front. Mar. Sci. 10:1274136. doi: 10.3389/fmars.2023.1274136

Maxwell D. L., Armstrong M. J., Beggs S., and Aldridge J. N. 2012. Annual egg production estimates of cod (Gadus morhua), plaice (Pleuronectes platessa) and haddock (Melanogrammus aeglefinus) in the Irish Sea: the effects of modelling choices and assumptions. Fisheries Research 117-118: 146–155.

ICES. 2024. Cod (Gadus morhua) in Division 7.a (Irish Sea). In Report of the ICES Advisory Committee, 2024. ICES Advice 2024, cod.27.7a. [redacted].2501923