



Hearing Transcript

Project:	Morgan Offshore Wind Project Generation Assets
Hearing:	Issue Specific Hearing 2 (ISH2)
Date:	27 November 2024

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Morgan Offshore_Liverpool_27 NOV_ISH2_PT6

Created on: 2024-11-27 11:50:59

Project Length: 00:24:24

File Name: Morgan Offshore_Liverpool_27 NOV_ISH2_PT6

File Length: 00:24:24

FULL TRANSCRIPT (with timecode)

00:00:04:15 - 00:00:09:18

Okay times now 1115. And welcome back. This hearing is now resumed.

00:00:13:00 - 00:00:17:06

All right. So once for agenda item eight draft development consent order.

00:00:20:08 - 00:00:49:11

So the the version we've got in front of us is the one that says submitted at deadline three rep three zero 13. So essentially you just want the applicant to briefly summarize the updates. So to the draft DCO as submitted at deadline three. And um and we'll we might have some questions on that. And we'll also on the draft marine licenses.

00:00:50:28 - 00:00:52:06

Uh, over to you.

00:00:52:27 - 00:01:06:13

Patrick, for the applicant, madam, would it be easier to go through the track change version and look at specific changes or, um, or just a very general overview really in your hands, how much detail you want to go into?

00:01:08:27 - 00:01:13:06

Yeah, a general overview I've got, I've got the track change version in front of me as well.

00:01:13:13 - 00:01:44:05

314 absolutely. Front of the applicant. Um, so the the approach that has been taken to updates that were submitted at deadline three was really to align some of the drafting with previous precedent that had been referred to by the examining authority in your written questions. Um, and also to address some comments that were outstanding from the Marine Management Organisation and Natural England on some points of drafting some of the changes. That is probably worth, um, commenting on.

00:01:44:07 - 00:01:57:21

In particular, without going through all of them, the applicant has changed the definition of maintain. That was a point of concern for the MMO and Natural England to specifically relate that definition to what was assessed in the environmental statement.

00:02:00:14 - 00:02:14:23

Um, within schedule two requirement to, the applicant has added a specific provision that makes clear that no part of the wind turbine generators will be constructed beyond the order limits. That was a point of clarification that the examining authority had requested.

00:02:17:21 - 00:02:54:06

The applicant has also added a number of um new parameters into the development consent order. Schedule two requirement to the applicant has added in the maximum hammer energies, which is a key aspect for the environmental statement and the assessment of impacts, and that has now been put on the face of the DCO, which was a request of the Marine Management Organization and others. And then a number of other parameters have been added to the tables that sit within schedule two of the Development Consent order and the requirements section, and also set within the conditions of the marine licenses.

00:02:54:08 - 00:03:26:15

The parameters that have been added include minimum distance from highest astronomical tied to the lowest point of the turbine blades. Maximum number of wind turbines with jacket pin power foundations. Maximum total volume of extracted seabed material that will be used in gravity based foundations. Maximum volume of cable protection and maximum total seabed footprint area for cable protection. Again, these were parameters that were the environmental assessments were based on. And so they've been added as parameters into the development consent order.

00:03:28:23 - 00:04:02:06

In the deep marine licence is probably a few points that are worth flagging in both schedule fee and schedule for a new definition has been added in paragraph one for UX all. And the reason that that has been added is it relates to a change that's been made to schedule three and schedule for paragraph two, which is to separate out UX or clearance works as a specific activity authorized under the marine licence previously had been bundled with other pre-construction activities, but the Marine Management Organization had asked that it was separated out as a standalone activity, which has now been done.

00:04:05:17 - 00:04:38:02

And one other provision it's probably worth noting schedule three, condition 20, subparagraph 1A2 is that there's been a change to the micro siting, uh, figure there from 125m to 55m. And that reflects a addressing comments that had been raised by various parties that the micro siting tolerance for other windfarms had been 50m plus a five meter tolerance. The applicant reconsidered that and agrees with that position so that change has been made.

00:04:42:23 - 00:05:23:04

Um, there's probably two more points I think are worth noting in the marine licenses, and one is in condition 20, subparagraph one, a five. And that relates to make reciting requirements also being in respect of any benthic habitats that are identified as annex one reef habitats. That was a request of Natural England to align it with what is standard drafting and development consent orders and marine licences for offshore wind farms. But it is worth noting that no one reef habitats have been identified

in the baseline studies for this project, but for completeness and to address that point of concern for Natural England, the standard wording has been added in.

00:05:24:14 - 00:05:46:04

And then the last point that's probably worth noting is schedule, fee and schedule for condition 23, subparagraph six. A new subparagraph has been added that limits the number of UX, or that can be cleared as part of the windfarm development, and that number must not exceed 13. And that's across both the marine licences cumulatively.

00:05:49:00 - 00:05:58:09

Again, that was a comment from the Marine Management An organization that they wanted to see a clear express limit on how many were authorized to be cleared under these marine licenses.

00:06:02:16 - 00:06:10:14

Madam, I think that's probably the ones points that are worth flagging from. From my perspective, unless you've got any questions or there's anything you'd like me to expand on.

00:06:13:17 - 00:06:16:26

Um, I think my slave has got a question. Okay.

00:06:17:23 - 00:06:56:08

Yeah, I've got a question in relation to the UX o clearance, um, and its inclusion in the deemed marine licenses. Obviously, the MMO and any Natural England, um, have been suggesting in their reps that it should be a separate marine licence. Um, and yet it isn't. It's in the deemed marine licenses. I understand from the Moana examination, the JNC there have also taken the same position and have Suggested they don't support the inclusion of high order clearance in the marine licence.

00:06:56:23 - 00:07:04:04

Um, and I'm just really wanting to understand what discussions are happening with the applicant and those statutory parties on this matter.

00:07:06:11 - 00:07:43:09

With the applicant. Um, the applicant is is actively engaged. I don't think, in this the concern has been raised by the MMO at this point that they've got a fundamental issue with the inclusion. They had commented earlier that it is common practice that the UX or clearance is done by a separate marine licence. Um, the reason it's been included in this, uh, the marine licence for this application is to allow the discharge of those conditions and allow those activities to commence promptly after post or post consent, rather than having to go through a separate licensing process.

00:07:43:19 - 00:08:18:16

Um, various conditions have been imposed to secure that. Um, and those are in line with other DC shows that have had UX clearance included within them. So it's not unprecedented. Um, and I do not believe in the deadline, three submissions from the marine management organization that there's been any concern raised about the UX or clearance not controlling higher order activities. I'd have to check that point. Um, but certainly the applicant has put forward mitigation measures to the Underwater

Sound Management Strategy and the Marine Mammal Mitigation Protocol to mitigate any impacts of UX or clearance.

00:08:18:18 - 00:08:38:15

And there are conditions within the DCO and the D marine license that require those mitigations to be approved by the MMO prior to the UX clearance works commencing. So the applicant has put in place measures to control what is assessed in the environmental statement. And at this at this point, I do not understand to be a fundamental concern for the MMO on the inclusion of the clearance works.

00:08:39:05 - 00:09:23:18

I can appreciate the logic of including it in the deemed marine licences, as you said, to try and almost get a head start on, you know, getting all the mitigations and and processes in place. As soon as consent is granted. Should consent be granted? But they haven't seemed to have lifted their objection on that point yet. Um and Natural England are the same. It's still showing as a flag, not necessarily a red flag, but it's still showing as an amber flag in their log. So, you know, is it something that is going to be resolved and those parties are going to say, okay, we'll leave it in the marine licenses, or is it going to persist right through to the end? I just wondering if there's any feelings from your discussions with those parties that you can shed light on?

00:09:23:25 - 00:09:57:04

Yeah. Sorry. Big issues on behalf of the applicant. Um, I just go back. I really I'm a bit struggling with this one, if I'm honest, because I've again, I keep probably saying things like this, but I've sat in these forums and had debates about whether to assess UXO in applications or not. And I can see you're nodding your head. You're familiar, perhaps with some of those. So this industry has moved forward, perhaps in terms of, you know, applicants become okay. It is it is a reasonably foreseeable activity. So we will include it in the assessments. The logical next step, therefore, is to start including it in the licenses.

00:09:57:06 - 00:10:27:15

So all of what you're assessing is then secured in that way. And it's carried through. So this and I think you mentioned the word logic. It does seem the logical pathway on this. So I I'm I would have thought it's strange. It's this way around if I'm honest. It's strange. It's the applicant that's put something that seems quite pragmatic like this into the. Well we always put pragmatic things into the scope, obviously, but um, and you see what I'm saying. It's normally it would normally be the regulator seeking more things on, on the base of the DCO and, and, and perhaps questioning the merits of that.

00:10:27:17 - 00:10:45:21

So it is odd that it's this way around. We will keep talking to them. Absolutely. Um, and hopefully we'll reach a resolution. But I don't know. It depends on their resourcing and prioritisation of issues, etc. it might be one that they simply, um, don't have the resource to, to engage in in detail on, in which case it might just stay as it is.

00:10:46:17 - 00:10:50:11

Okay. And that's something they will then make a recommendation on. Thank you.

00:10:55:00 - 00:11:12:21

Yeah, sorry. Um, some of the action is, as my colleague mentioned, at the end of the day, it's not a fundamental issue because, you know, if it's not on the table, we will just simply apply for a marine licence for those works. It's not like there's a there's a fundamental problem here. Not not on the licence. Obviously it hasn't been to date anyway. So yeah.

00:11:12:23 - 00:11:43:17

That's fine. Um, the only other points I wanted to raise, um, was in the applicants deadline three response to the Moes and I'll say Rep 2029 points about the draft marine licences. These are items 0.101 to 0.139 in the Moz report. 2029 um response um, they all have the same answer. So the applicant is given the same answer to all of those points.

00:11:44:01 - 00:12:16:02

Um, and the answer is please see response to rep 202 9.100, but Rep 202 9.100 relates to the transfer of the benefit of the order, and all the subsequent points are not necessarily about the transfer of the benefit of the order. So it's not very helpful to the examining authority to have a response from the applicant, which just says see previous response for the subsequent 39 points. So we would just like a deadline for more specific responses to each of those line items.

00:12:16:04 - 00:12:30:21

We'll put it in an action to make it clear. Um, because I realize I've just said a lot of numbers, um, to you. Um, but we, we don't expect a see previous response when the previous response is very unrelated to the subsequent line items.

00:12:31:19 - 00:13:08:01

Match with the applicant. Yeah, we can certainly review that. Um, from recollection, I don't have the response in front of me just now. Um, the all of those items where comments ultimately on the transfer of benefit under article seven. It was a fairly lengthy point that the MMO had made as to why. In their view, transfer benefit of a marine license is not appropriate for inclusion in the Development Consent Order. The applicant has set out its position on this. It fundamentally disagrees, and in response to the action points, we can redirect to that that response.

00:13:08:06 - 00:13:30:18

The reason that the response was quite late is the applicant doesn't have anything further to add on the transfer benefit aspect. It considers it a serious position of which is a well precedented one, and it understands the memos position. It just disagrees with it. But I'll certainly review those paragraphs again, make sure that none of them relate to other matters. And if they do provide a full response, yeah.

00:13:30:20 - 00:13:55:25

That would just be helpful. Thank you. I agree there are some of those subsequent items which still do relate to transfer of benefits. They're part of sort of subsequent paragraphs in the Mo's Um, response, but not all of them. So if there are other points that need to be made against some of those line items, it would be helpful to us as an example. Um, so I don't have any further points to raise at this point on the DMs to my colleagues. Have anything further to add?

00:13:58:18 - 00:13:59:18

No, not from me.

00:14:00:08 - 00:14:17:09

No. Okay. Um, I'll just come to B systems, Mr. Trella, because you said suggested you were interested in item eight. Um, is there anything specific while we're here talking about the DCO and the DMs with the applicant in the room that you wanted to raise?

00:14:17:16 - 00:14:56:15

Yes. Graham. Three one for PA systems. Um, it's really comes up, I think, in item eight D in terms of further updates that might be expected to to the DCO. Um, I think we identified yesterday that the there's potential for impacts on four key assets that the AI systems rely on for their operations at both Warton and Walney. And we are in discussion with the applicant about possible requirements for each of those items to be included in the next draft of the DCO.

00:14:57:15 - 00:15:24:17

Um, and each of those requirements, I think we'll have to look at the process of assessment, whether the weather mitigations required, how that mitigation will be handled, and how that mitigation and when that mitigation will be implemented. So potentially quite complicated requirements in terms of their structure. Um, but it's a discussion we'll have with the applicant about the wording of those requirements and how that's taken forward into the next drafting of the DCO.

00:15:26:23 - 00:15:29:01

That's a good point to come to you then, Mr. Munroe. Yeah.

00:15:29:03 - 00:15:59:07

Page one of the applicant, Mr. Grant from. Yes, that we are in discussions about requirements for various parties for aviation and radar related requirements. There is fairly standard wording that's been used across a number of development consent orders. I wouldn't expect it to be a complex requirement. I would expect it to be a variation on the on the standard and well, precedented wording. We will, of course, engage with BA systems on what is an appropriate wording for that specific requirement. I think the next update is the deadline to the DC, albeit deadline for.

00:15:59:09 - 00:16:16:05

I think that's probably a little bit ambitious to get a requirement. Agreed. But by deadline five, certainly we will be putting in, um, hopefully an agreed requirement at that point if there's not agreement and in our preferred form, and would obviously provide any comment on an alternative.

00:16:16:07 - 00:16:33:28

Yeah, it would be ideal really to to have that bottomed out with B, um, so that we're not receiving something at D5 and then we're seeking subsequent response, um, right at the last point. So it would be really good to have a very fixed position from, from both parties that they're comfortable with the requirement.

00:16:34:25 - 00:16:47:03

Passion for the applicant. Yes, that would certainly be the intention to have an agreed position. And I think by deadline five, if there's not an agreed position, we'll understand where the differences would be and could provide comment on that. But I certainly hope that that's not the position.

00:16:49:05 - 00:16:50:22

Is there anything further, Mr. Allen?

00:16:50:26 - 00:17:26:17

Yeah. Graham three one half systems. Yes, we we can. As we mentioned, we can learn from other DCS and what's been included in those. Um, there might need to be some um, refinement to the wording, um, to, to, to uh, to meet current requirements. But, um, yes, we'll work together on I would suggest probably a number of requirements, separate requirements that deal with each of the assets that we've identified. Um, and, um, we would do that as quickly as we can and if possible, by the next deadline.

00:17:28:18 - 00:17:55:15

Wonderful. Sounds good. Okay, so the last point, which I almost skipped over, was AC on the agenda. Um, the applicants asked to provide comment on the Moj response to EQC one Gen 1.21 regarding a potential new standard deemed marine licence condition for decommissioning. And we just wonder if we could have an update on any discussions you've been having with the MMO on that.

00:17:56:07 - 00:18:47:26

Action with the applicant. The Marine Management Organisation's response to that question was the first notice that the applicant had had about the potential new marine licence conditions, so the applicant would welcome some engagement on this matter. The applicant's preliminary view is that such a condition would be unnecessary as a condition in the marine licence, and the applicant had set out in its own response to Gen 1.21, why it considered in principle such a requirement was unnecessary. And the key point from the applicant's perspective, is that the decommissioning of offshore wind farms is already governed by separate legislation to section 105 of the Energy Act 2004, and there is well-established legal and policy tests for when conditions should be imposed on a consent, and in a DCO context, they are set out in paragraph 4.1.

00:18:47:28 - 00:19:22:17

16 of NPS in one and in a general planning policy perspective in planning practice guidance, use of planning conditions, and that that sets out the clear tests that the conditions should be necessary. Relevant to planning, relevant to the development, to be permitted, enforceable, precise and reasonable in all other respects and from the applicant's perspective. Although it's not seen the proposed condition, it is quite difficult to see how it could meet those tests of being necessary, relevant to planning or reasonable where it seeks a control over a process that's already provided for in separate legislation.

00:19:23:09 - 00:19:58:05

Um, the final couple of points I'd make is that NPS in three paragraphs, 2.8. 8 to 8 and 2.8.8. Nine provides a bit of commentary on the decommissioning of offshore wind farms, referencing section 105 of the Energy Act, but makes no suggestion that they should be controlled by a condition, and in my submission the reference without that suggestion would suggest the opposite. Um, and the final

point is that subject to the terms of the condition, it could create some difficulty for developers if the MMO and the Secretary of State disagreed on what was acceptable.

00:19:58:07 - 00:20:23:09

The Secretary of State has its legislative role under the Energy Act, and then the MMO would have its separate role under the marine licence conditions, and reconciling those could cause a problem for the applicant when it is not shouldn't be the applicant's issue. In many ways when the Secretary of State already has control of this process. So the applicant is very happy to engage with the MMO on it. But just a word of caution is that they are unlikely to agree that through this process.

00:20:26:04 - 00:20:31:16

Okay. Thank you. I can't ask the MMO memo for response, so we'll just leave that there.

00:20:33:11 - 00:20:34:09

Right I think.

00:20:34:12 - 00:20:34:27

Excuse me.

00:20:35:15 - 00:20:44:14

I think it probably goes without saying, but be very helpful. If we could have that statement in as part of your submission after this hearing.

00:20:44:24 - 00:20:47:24

Yes, absolutely. We'll include full summaries of oral submissions.

00:20:50:10 - 00:21:20:17

Okay. I don't think we've got anything further to discuss on agenda item eight. Um, I'm not seeing any hands raised. I think we've got through the points that we wanted to get through. Um, so we'll go straight to agenda item nine, which is any other matters. Um, are there any parties that want to raise any further issues because there's an ex? A we don't have any points that we want to discuss. No, I'm getting shakes of heads. Okay.

00:21:20:19 - 00:21:55:07

So it just then remains to say that we've obviously got a fairly extensive list of actions, and I think there are a little over 20 actions. They're not all for the applicant. Um, some obviously for the all stripes. Um, there will be some for more than in, um, offshore wind, albeit they weren't here, but we will have some actions. Um, there are some for the Scottish Fishermen's Federation, uh, and a few other parties. So we won't run through them line by line, because there are a lot of them. Um, but we'll publish those as soon as we can, um, hopefully by the end of the week.

00:21:57:04 - 00:22:02:28

So I'll hand over to my colleague Susan to give the final sign out.

00:22:10:03 - 00:22:19:12

Yeah. Just to say that the action points are pretty much ready, so might even be today or tomorrow that we issue them.

00:22:21:24 - 00:22:27:07

Um, just to remind everyone, the next deadline is deadline for which is Tuesday the 10th of December.

00:22:28:24 - 00:22:37:07

And most of the responses to the action points that we're going to issue are expected by this date. And unless otherwise specified,

00:22:38:23 - 00:23:11:17

our further written questions or excuse two will follow quite shortly afterwards, on the first day, the 19th of December, and responses to those are expected Thursday 16th January, which deadline? Five days after we've received those responses and I think deadline five probably quite a big deadline. Um, but we will confirm whether further hearings in the week commencing 10th of February will be necessary. We can't say categorically at this stage whether we'll be holding further hearings.

00:23:14:04 - 00:23:45:14

And again, just to remind, all parties timescales are tight. Um, the expectation from the Secretary of State is that all matters should be resolved within the examination and are not left for the Secretary of State to carry out consultations. So every effort should be made to cooperate and submit information as requested to the relevant deadlines, and it's unlikely that additional time will be granted to any party. And thank you all for contributing both in person and online. Your responses have been very useful.

00:23:45:16 - 00:24:16:01

And thank you to Simon Heywood, case manager and the case team and the production company for their smooth running of the event. A digital recording of the proceedings and a transcript will be made available as soon as possible on the project page of the National Infrastructure website, as will the list of action points. The time now is 1139, and the second issue specific hearing for Morgan Offshore Wind Project generation assets is now closed.

00:24:16:03 - 00:24:16:26

Thank you.