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JNCC Reference: OIA-10583
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By email: morganoffshorewindproject@planninginspectorate.gov.uk

To whom it may concern,

Morgan Offshore Wind Project: Generation Assets – EN010136 – Response to the Examining Authority's Actions Points from Issue Specific Hearing 2

Thank you for consulting JNCC on the Morgan Offshore Wind Project Examining Authority's action points from issue specific hearing 2.

The advice contained within this minute is provided by JNCC as part of our statutory advisory role to the UK Government and devolved administrations on issues relating to nature conservation in UK offshore waters (beyond the territorial limit).

In response to Examining Authority's action point 21, can the JNCC confirm whether an Adverse Effect on Integrity on all European sites from the project alone or in-combination with other plans or projects can be excluded, please see ornithology and marine mammals comments below.

Ornithology

JNCC are pleased to provide our advice on the implications of the Morgan Offshore Wind Farm (OWF) project for Special Protected Areas (SPAs) for which we have joint or sole responsibility, as requested in action point 21. These sites are:

- Skomer, Skokholm and the Seas off Pembrokeshire/Sgomer, Sgogwm a moroedd Benfro SPA
- Irish Sea Front SPA
- Seas off St Kilda SPA
- Liverpool Bay/Bae Lerpwl SPA

In providing our advice, we have reviewed the following documents:

- Review of Cumulative Effects Assessment and In-Combination Assessment: Offshore ornithology (REP3-019)
- Kittiwake apportioning clarification note (REP3-020)

Skomer, Skokholm and the Seas off Pembrokeshire/Sgomer, Sgogwm a moroedd Benfro SPA

JNCC remain in disagreement with several elements of the assessment to offshore ornithology within the Environmental Statement (ES) and the Habitats Regulations Assessment (HRA), as previously advised in our Response to the Examining Authority's written questions and requests for information (ExQ1) submitted at Deadline 3 (REP3-035). We note that the Applicant's submissions at Deadline 3 did not alleviate all of these concerns, therefore we remain unable to agree with the conclusions of the alone and in-combination assessment for Skomer, Skokholm and the Seas off Pembrokeshire/Sgomer, Sgogwm a moroedd Benfro SPA.

There are two areas where we agree with the change made at Deadline 3, but these changes need to be combined with other changes:

1. We note that the Kittiwake apportioning clarification note (REP3-020) submitted at Deadline 3 analyses the difference of using the Statutory Nature Conservation Body (SNCB)-advised breeding season age class value on the alone and in-combination impact assessment. We thank the Applicant for providing this information.
2. We also note that the Review of Cumulative Effects Assessment and In-Combination Assessment: Offshore ornithology (REP3-019) analyses the difference between the Morecambe OWF impact totals previously used (from Morecambe OWF Preliminary Environmental Information Report documentation) and most recent information (from Morecambe OWF application documentation) in terms of the cumulative and in-combination assessment. We thank the Applicant for providing this information.

There are three outstanding issues, which again should be combined with other changes:

1. The Review of Cumulative Effects Assessment and In-Combination Assessment: Offshore ornithology (REP3-019) relies on a qualitative assessment of other plans and projects, which in essence took the conclusions of the assessments of each of those projects, rather than a quantitative assessment. The solely qualitative assessment of Llŷr OWF is of particular concern given its proximity to Skomer, Skokholm and the Seas off Pembrokeshire/Sgomer, Sgogwm a moroedd Benfro SPA. We recommend that up to date quantified impacts from Llŷr Offshore Wind Farm should be provided and used within the cumulative and in-combination assessments.
2. The seasonal definition used for black-legged kittiwake (see REP3-035 for details)
3. The use of only specific displacement rates and mortality rates, rather than a range of rates, in the HRA displacement assessment (see REP3-035 for details)

We strongly advise that, where there are multiple changes made to assessments, these are dealt with together, and revised assessment implementing all changes are presented, as opposed to assessing the implication of changes being made individually.

We note the Applicant's oral representation in Issue Specific Hearing 2 describing the way forward to address remaining issues. However, it is unclear from this whether all remaining issues which we highlight above would be addressed.

Should a revised assessment using our advised approaches be submitted into the examination to address the issues we outline above, we should be in a position to come to a conclusion regarding Adverse Effect on Integrity, subject to a full and comprehensive review of submissions made by the Applicant at subsequent deadlines.

Irish Sea Front SPA, Seas off St Kilda SPA, and Liverpool Bay/Bae Lerpwl SPA

As per our Response to the Examining Authority's written questions and requests for information (ExQ1) submitted at Deadline 3 (REP3-035), JNCC agrees with the conclusions of the HRA that an Adverse Effect on Integrity can be ruled out, both from the Project alone, and in-combination with other Plans and Projects for Irish Sea Front SPA, Seas off St Kilda SPA, and Liverpool Bay/Bae Lerpwl SPA.

Marine Mammals

The offshore Special Areas of Conservation (SAC) relevant to this review are designated for harbour porpoise. The closest of these to the Morgan array area is the North Anglesey Marine SAC, located approx. 28km away in Welsh waters. The next closest site is the North Channel SAC, 64km away in Northern Irish waters. While other harbour porpoise sites have been identified in the HRA screening process, these are all further away from the array location than these two. As with our previous response, we have focussed our review on the North Anglesey Marine SAC, as this will be the site at greatest risk from activities associated with the Morgan development.

As per our previous response (REP3-035), we advise there should not be an adverse effect on this site's integrity from the proposed development, provided appropriate mitigation measures are secured as conditions in the Development Consent Order (DCO)/deemed marine licence (dML). This conclusion assumes that measures contained within the outline Marine Mammal Mitigation Plan (MMMP) (APP-072) and outline Underwater Sound Management Strategy (APP-068) are sufficient to enable conclusions to be drawn regarding potential impacts to SACs (i.e. potential impacts can be mitigated); and that agreeing the final versions of these plans with the relevant regulator and SNCBs post-consent will be secured as a condition of consent.

With regard the wording in the DCO, Schedule 3 (the dML) includes the following requirement for a marine mammal mitigation plan (MMMP):

> **Pre-construction plans and documentation**
>
> **20.**—(1) The licensed activities or any phase of those activities must not commence until the following (insofar as relevant to that activity or phase of activity) have been submitted to and approved in writing by the MMO, in consultation with Trinity House, the MCA and UKHO as appropriate
>
> — (h) in the event that driven or part-driven pile foundations are proposed to be used or in the event that unexploded ordnance clearance is required, a

marine mammal mitigation protocol (in accordance with the outline marine mammal mitigation protocol), the intention of which is to prevent injury to marine mammals, following current best practice as advised by the relevant statutory nature conservation body;

While we advise that, provided the change we referred to in our previous advice that noise abatement should be referred to as primary or secondary mitigation is adhered to, the current outline MMMP is sufficient and can be finalised post-consent, we strongly recommend the wording in the DCO is amended to ensure the final MMMP will consider best practices at the time of construction. The outline MMMP considers current best practice, and this will ensure any new methods introduced in the period between awarding the DCO and construction are considered and employed. There should also be a commitment in the consent to comply with any new policy released in the interim period.

We also note Schedule 3, Part 1 (licensed marine activities), still includes Unexploded Ordnance (UXO) clearance works as a licensed marine activity although this has now been separated out into two sections:

Details of licensed marine activities

2e: clearance and preparation works including clearance of unexploded ordnance, debris, boulder clearance and the removal of out of service cables and static fishing equipment; and

2f: UXO clearance works.

We previously highlighted that JNCC are providing advice for the Mona OWF examination and for this we have advised that UXO clearance should not be included in the DCO/dML as a licensed activity. We are also aware the Marine Management Organisation have expressed an opinion that UXO activities are sought within a separate marine licence due to the nature of the impacts (RR-020.5).

Since submitting our previous advice to the Morgan Examining Authority, the Mona project have submitted a new document to their Examining Authority in support of UXO clearance remaining in the DCO (REP4-086). We include a copy of our response (REP5-096) to that document below, as we feel it is also of relevance to this application.

JNCC response to Applicant's UXO clearance position statement (REP4-086)

JNCC previously responded to a proposal put forward by the Examining Authority (REP3-084), who suggested two options for including UXO clearance in the Development Consent Order (DCO):

i) That UXO clearance is not included in the DCO.

ii) That UXO clearance could be included within the DCO if high order clearance was removed from the clearance options.

JNCC's preference was for option (i) but conceded that option (ii) would be acceptable.

However, the applicant did not agree with either of these approaches and submitted the above document in defence of their approach at Deadline 4. Since submission of our previous advice, and following a review of the statement provided by the applicant at

Deadline 4, JNCC has considered this matter further and held discussions with other signatories of the Government's Joint Position Statement on UXO clearance. We maintain our opinion that UXO clearance should not be included in the DCO/dML as a licensed activity. Further information supporting this is provided below.

We would be accepting of including the investigative surveys to confirm UXOs in the DCO (but not the clearance itself). Including these would enable the surveys to be conducted before applying for any subsequent marine licence, thus maximising the available information to support that application and help avoid delays in the determination process. This will also support European Protected Species (EPS) licence applications, which are likely to be required given the injury ranges for high order clearance provided in the impact assessment.

We highlight that while we view this as a material matter, we do not see this as a derogation issue. We agree with the applicant regarding the appropriateness of undertaking the surveys required to obtain the necessary information to understand the requirements for UXO clearance at this stage of the development. We advise UXO clearance should be removed from the DCO/dML and a separate marine licence application should be submitted at the appropriate stage once these surveys have been completed.

Intended purpose of DCO regime

The applicant highlights that measures in the Planning Act 2008 were designed to remove a need for Nationally Significant Infrastructure Projects (NSIPs) to obtain multiple consents from various authorities, and that necessary consents, including a dML, can be included in the DCO. While this is true, the inclusion of UXO clearance in DCOs is not standard practice and is not in line with current policies.

JNCC undertook an internal review of DCOs available from the National Infrastructure Planning portal consented between 2010 and 2022. In total, 17 DCOs were available for review, and of these, only two included UXO clearance in the DCO/dML. In all other cases reviewed, separate marine licences were obtained post-DCO consent if clearance was required. An additional internal review of DCOs issued since 2022 for projects in the Irish Sea, i.e. Awel y Môr Offshore Wind Farm (2023) and the HyNet Carbon Dioxide Pipeline (2024), confirmed that neither of these DCOs included UXO clearance. This demonstrates that while the aim of the DCO regime is to reduce the need for additional licences, it is not standard practice to include UXO clearance in them.

The reason for this is because the UXO clearance activity is high risk and complex; there is not sufficient information at the DCO stage to make a determination.

We also highlight that where UXO clearance was included in the DCO, it was included again in stakeholder advice. Both DCOs were issued in 2022, one for the East Anglia 1 North Wind Farm, and the other for East Anglia 2 Wind Farm. During both examinations, the Marine Management Organisation (MMO), who are responsible for discharging the dMLs for these projects, responded with the following in their written representations on the draft DCO:

> *Section 1.1 DCO major comments*
>
> *Paragraph 1.1.4 Deemed Marine Licences, Schedules 13 and 14, Part 1 – Details of licensed marine activities (Article 2) and Part 2 (Conditions), Article 16 – UXO clearance:*

The MMO does not consider that any Unexploded Ordnance (UXO) campaign should be authorised through conditions on the DMLs. UXO campaigns are high risk activities which require detailed, complex impact assessments, conditions and enforcement. It is the MMO's opinion that this activity should be removed from the DMLs and for the MMO to determine an application for the activities in a separate marine licence post-consent, in consultation with relevant stakeholders.

Paragraph 1.1.5 The Applicant will need to separately apply to the MMO for a separate European Protected Species (EPS) licence in order to authorise any UXO campaign for the project. Mitigation measures captured within an EPS licence and marine licence for UXO campaigns are usually aligned and this would not be possible under the proposed arrangement. A separate conditioned marine licence for this activity would be more easily enforceable. Condition complexity is such that a recent marine licence for the UXO campaign at Hornsea 2 required 19 separate project specific conditions and the draft DMLs do not sufficiently secure the required mitigation for this activity. Separating this out from the DMLs would allow for the UXO campaign to be assessed, conditioned and varied independently without needing to vary the DMLs should a greater number or magnitude of ordnance be discovered in post-consent survey work than has currently been assessed in the ES.

In addition, other consents are routinely determined post-DCO consent. For example, European Protect Species (EPS) licences, which are often required for offshore wind projects undertaking impact piling, are not considered at the DCO stage despite it being known that a requirement for one is likely. Instead, separate licences are applied for in the months preceding construction commencement when information is available to enable regulators to make a robust determination.

In this instance, the applicant proposes that the measures included in the DCO are sufficient to reduce significant effects from UXO clearance. However, as no confirmed information is available regarding what is to be cleared or how, the worst-case scenario must be assumed. That is, all devices to be cleared will be the largest possible and all will require clearing using a high order method. The marine mammal injury ranges predicted within the impact assessment for high order clearance are so great they cannot be mitigated. As a result, we advise this activity should not go ahead unless in conjunction with an EPS licence for injury. Applications for these licenses are usually submitted in the months prior to construction commencing, once the design envelope is finalised. This is in recognition of the need to have more detailed and confirmed information of what will be required. Without this level of detail, applicants run the risk of failing the three tests that regulators must consider before issuing the licence. The EPS licence is usually applied for at the same time as a marine licence when this activity is not included in the DCO, with the same information supporting both applications. Including UXO clearance in the DCO does not remove the need to go through this process and insufficient information is available to pass the required tests for an EPS licence.

Securing appropriate controls and mitigation measures

The applicants UXO position statement (REP4-086) states they are providing the same information at this DCO stage as they would for a stand-alone marine licence. However, this draws attention to issues at the marine license application stage rather than supporting the inclusion of UXO clearance in the DCO.

A marine licence is required for two stages of the UXO clearance process: 1) the investigation of potential UXOs identified during geophysical surveys as this can require excavation of buried targets, and 2) the clearance by detonation itself. Typically, developments submit a single marine licence application to cover both activities. This does mean they submit a similar level of detail as is currently provided in this DCO application. However, this lack of information on exactly what will occur has contributed to lengthy determination times, particularly if clearance is required within or close to protected features.

This lack of information resulted in Defra, the MMO, and the Offshore Wind Industry Councils' Pathways 2 Growth holding a workshop in January 2023 to discuss short-term noise management measures for projects in the southern North Sea. Like the Irish Sea, this is an area where multiple developments will be constructing in the coming years. In recognition of the importance for marine licence applications to specify as accurately as possible how many UXOs will be realistically dealt with and their locations, the MMO proposed a two-licence approach. This separates the investigative surveys from clearance activities, and crucially, means confirmed information of what is required to be cleared and how it can be cleared, can be included in the second application. While the proposed development is not located within marine protected areas, the same principles apply here due to the number of activities planned for this part of the Irish Sea. This includes but is not limited to the Morgan and Morecombe Wind Farm developments currently going through examination (both proposed by BP), and the HyNet carbon capture and storage development.

We also note that paragraph 1.3.3.4 of REP4-086 states:

> '*Once cUXO targets requiring clearance have been confirmed through UXO ground-truthing and as required under Condition 21 of the dDCO (and set out in section 1.3.2) the Applicant is required to submit a UXO method statement'*.

And

> *'No clearance of cUXO can commence until this method statement is approved by the licensing authority in consultation with the statutory nature conservation body'*.

However, Condition 21 of the draft DCO (dDCO, REP4-005) states:

> *21(2): The method statement and the marine mammal mitigation protocol must be submitted to the licensing authority for approval at least four months prior to the date on which unexploded ordnance clearance activities are intended to begin.*

The applicants' statement in REP4-086 refers to confirmed UXOs (cUXOs), but this is not specified in the dDCO (REP4-005). This is an important clarification when securing commitments in any consent and this information is only available once the investigative surveys have been undertaken.

In addition, clearance of UXOs is a multi-step process, and it is not specified which stage of the process or activity is being referred to in REP4-005. The dDCO wording above allows the applicant to submit their method statement ahead of confirming whether UXOs are required to be cleared, and if clearance is required, ahead of knowing how many need to be cleared, what type they are, where they are or how they will be cleared. There is no commitment in the dDCO/dML to submit the clearance method statement or marine mammal mitigation methods once the investigative surveys have been completed and this level of information is available.

We also note the dDCO states:

> *21(3): The licensing authority must determine an application for approval made under this condition within a period of four months commencing on the date the application is receive'*.

If insufficient information is provided in the method statement and mitigation plan, as is possible given the current wording in the dDCO and using the information provided to support the DCO application as a guide, we question whether determination can be achieved within such a timeframe.

Information available at the DCO stage and compliance with the Government Joint Position Statement on UXO clearance.

In 2021, the Government published a Joint Position Statement regarding UXO clearance, which required low noise methods to be prioritised in commercial clearance campaigns. An update to this statement is going through the final stages of sign-off and is anticipated to be published before this examination process is completed. The updated statement sets out the current shared position of all relevant government departments, regulators, and SNCBs regarding UXO clearance. We appreciate the applicant has not had sight of this new statement yet, but given the importance of this topic, we provide details of what is included to support this examination process.

This updated statement, signatories for which include Welsh Government; Department for Energy Security and Net Zero (DESNZ); Department for Environment, Food and Rural Affairs (Defra); NRW (licensing and advisory); and JNCC, strengthens the requirements in the interim statement and provides more information on what is required to support licence applications for UXO clearance. For example, the updated position states that low noise methods of clearance should be the default method. Also, that high order clearance should only be considered in extraordinary circumstances e.g. where it is the only viable option and low noise methods cannot be attempted. The updated statement does not consider it acceptable to expect a high order contingency for every confirmed UXO required to be cleared.

The updated statement goes further to describe information to be provided when requiring marine licences for clearance under the Marine and Coastal Access Act 2009 (MCAA). This includes confirmation of the total number of devices to be cleared and ideally, the location and type of UXOs. The brand of clearance tool to be used and the operator which will conduct the clearance should also be specified.

None of this information is currently available for consideration in this DCO application; nor do we believe the Applicant is in a position to provide it as it is not appropriate to undertake the surveys required to provide the information at this stage of the project. The number of devices to be cleared cannot be confirmed, nor the type or location of devices. Neither can the exact area within which clearances may occur be identified as the final design envelope and layout is still to be determined. No information is provided on the methods of clearance other than a general commitment to prioritise low noise clearance methods to comply with the Government Joint Position Statement. Finally, no consideration is given to when high order clearance would be required, other than a requirement to have the option to do this. As it is the shared position of regulators and SNCBs that high order UXO clearance should only be licensed and undertaken under extraordinary circumstances, there is no information provided to demonstrate that this would be met. The only information provided is an assumption that no more than 22 devices will require clearing, a number which is also based on limited information.

While the updated Joint Position Statement refers to marine licences under MCAA and not NSIPs or DCOs specifically, the principle that DCOs can deem requirements for a marine license mean the guidance provided in it equally apply to NSIPs and the inclusion of UXO clearance in DCOs. Our advice is that the level of information currently available is not sufficient to comply with either the interim or updated Joint Position Statements and the clearance of UXOs by detonation should not be included in the DCO/dML. We would, however, be accepting of including the investigative surveys, to confirm UXOs, in the DCO. This would enable these to be conducted before applying for any subsequent marine licence, thus maximising the available information to support that application and help avoid delays in the determination process. Note, undertaking the investigative surveys before applying for a marine license to clear UXOs could also negate the need to apply for a license should no devices be found or require clearance.

Marine Noise Registry (MNR)

On a related note, the dDCO (Condition 29) commits to the following timeframes when submitting data to the MNR:

> *29(1) Where (a) driven or part driven pile foundations are proposed, or (b) detonation of UXO is to take place, the undertaker must at least 10 days prior to the start of those activities, submit details including the expected location of the activities and the start and end dates of the activities to the Marine Noise Registry to satisfy the Forward Look requirements and update that information as required if the expected location or start and end dates change*.
>
> *29(2) On the six month anniversary following the start of (a) pile driving or (b) detonation of unexploded ordnance, the undertaker must submit information on the locations and dates of those activities to the Marine Noise Registry to satisfy the Close Out requirements until completion of those activities.*
>
> *29(3) Notwithstanding paragraph (2) within 8 weeks of completion of (a) pile driving or (b) detonation of unexploded ordnance, the undertaker must submit information on the locations and dates of those activities to satisfy the Close Out requirements.*

The MNR is an important tool to support managing underwater noise in the marine environment, particularly in areas where multiple projects may be operating and have overlapping or sequential construction periods. For this to be successful, data must be submitted promptly to the MNR. We highlight that the Forward Look data should be submitted as soon as possible once consent is awarded. Also, while the eight-week time frame for the Close Out data may be standard, the MMO and OPRED are currently including conditions within licences with much shorter timeframes (e.g. two to five days) to support noise management within harbour porpoise SACs.

Please contact me with any questions regarding the above comments.

Yours sincerely,

Erin Sherratt

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