

# **Application by Mona Offshore Wind Limited for an Order Granting Development Consent for the Mona Offshore Wind Farm (Ref. EN01037)**

## **Submission for Examination**

**Deadline 5**

**3 December 2024**

**Joint Nature Conservation Committee  
(JNCC):**

# **Response to Applicants UXO clearance position statement**

## **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 license 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 deemed marine licence, 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 licenses 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 license 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 Statutory Nature Conservation Bodies (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 licenses for clearance under the Marine and Coastal Access Act 2009. 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 licenses 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.