



Triton Knoll Offshore Wind Farm Limited Triton Knoll Electrical System

**Appendix 32: Statement of
Common Ground between Triton
Knoll Offshore Wind Farm
Limited and the Marine
Management Organisation**

Date: February 2016

**Appendix 32 of the Applicant's
response to Deadline 5**

Triton Knoll Offshore Wind Farm Limited

Triton Knoll Electrical System

Appendix 32: Statement of Common Ground between Triton Knoll Offshore Wind Farm Limited and the Marine Management Organisation

Appendix 32 of the Applicants response to Deadline 5

Date: February 2016

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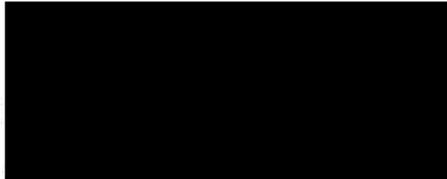
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1. CONFIRMATION OF AGREEMENT

Confirmation of Agreement with the Marine Management Organisation

Signed:



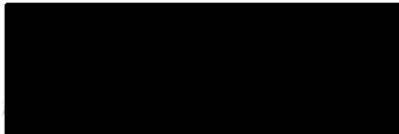
For: Triton Knoll Offshore Wind Farm Limited

Name: Paul Carter

Title: Offshore Consents Manager

Date: 01 February 2016

Signed:



For: Marine Management Organisation

Name: Ross Hodson

Title: Senior Licensing Manager

Date: 01 Feb 2016

2. INTRODUCTION

Reason for this Statement of Common Ground

- 2.1 This Statement of Common Ground (SoCG) has been prepared in respect of Triton Knoll Offshore Wind Farm Ltd's (TKOWFL or the Applicant) application for a development consent order (DCO) to the Planning Inspectorate (PINS) under the Planning Act 2008 (the Application).
- 2.2 This SoCG with the Marine Management Organisation (MMO) is a means of clearly recording any areas of agreement and disagreement between the two parties in relation to the Application. The SoCG has been structured to reflect topics of relevance to the MMO as a statutory consultee in relation to the Application.
- 2.3 The structure of the SoCG is as follows:
- Section 1: Confirmation of Agreement
 - Section 2: Introduction;
 - Section 3: Consultation;
 - Section 4: Matters agreed;
 - Section 5: Matters Not Agreed; and
 - Section 6: Appendices
- 2.4 Throughout this SoCG the phrase "It is agreed..." is used as a precursor to any point of agreement that has been specifically agreed between the Applicant and the MMO. The phrase "It is not agreed..." is used as a precursor to any point that the Applicant and the MMO wish to clearly identify as not agreed.
- 2.5 It is the intention that this document will help facilitate further discussions between both parties following on from the relevant representation submitted by the MMO (PINS reference RR-188) and also give the Examining Authority (ExA) an understanding of the level of common ground between both parties from the outset of the examination process.

The proposed development

- 2.6 The Application is for development consent to construct and operate the Triton Knoll Electrical System (the proposed development) under the Planning Act 2008. The Triton Knoll Electrical System (TKES) would connect
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the consented Triton Knoll Offshore Wind Farm (TKOWF) offshore array to the existing National Grid substation at Bicker Fen, Boston.

- 2.7 The TKOWF is located approximately 33km (20.5 miles) east of the Lincolnshire coast. The Secretary of State granted a DCO for the TKOWF on 12 July 2013. The Application was submitted to the Planning Inspectorate on the 24 April 2015 and accepted for examination on 21 May 2015.
- 2.8 The proposed development will comprise the project elements as described in Volume 2 Chapter 1 and Volume 3 Chapter 1 of the Environmental Statement (ES), briefly comprising:
- Up to six offshore export cable circuits – to transmit the high voltage alternating current (HVAC) electricity from the offshore substations to the transition joint bays at the landfall;
 - Landfall infrastructure just north of Anderby Creek, Lincolnshire – including transition joint bays which house the connection between the offshore cables and the onshore cables;
 - Up to six onshore export cable circuits to transmit the HVAC electricity from the transition joint bays at the landfall to the Triton Knoll Offshore Wind Farm Ltd Triton Knoll Electrical System proposed Triton Knoll Substation via the Intermediate Electrical Compound;
 - An Intermediate Electrical Compound near to Orby Marsh – to provide compensation for reactive power to allow more efficient transmission and minimise losses;
 - A substation near the existing Bicker Fen National Grid Substation – to step-up to the electricity to the voltage used by the National Grid and provide additional compensation for reactive power;
 - Up to four onshore export cable circuits (400 kV) – to transmit the electricity from the proposed Triton Knoll Substation to the existing National Grid substation at Bicker Fen, Boston; and
 - Unlicensed Works within the existing National Grid Bicker Fen substation compound comprising up to two new ‘bays’ of electrical equipment required to connect the Electrical System to the National Grid.

Application elements under the Marine Management Organisation's remit

2.9 The MMO is a prescribed consultee for the proposed development under section 42 of the Planning Act 2008 and Regulation 9 (1)(a) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

2.10 The MMO's key responsibilities comprise:

- ensuring compliance with UK fisheries regulations and the management and monitoring of the UK fishing fleet and associated funding programmes;
- working with other regulators and government bodies to coordinate marine and coastal development, including planning and licensing where this development may have an environmental, economic or social impact;
- production and publication of marine plans and guidance relating to all marine activities which can be used as a basis for development decisions;
- responding to marine pollution emergencies; and
- ensuring that the network of MPAs is well managed by bringing together conservation authorities and other regulatory bodies, enforcing wildlife legislation, issuing wildlife licenses and the introduction of marine nature conservation byelaws.

2.11 The Application elements under the MMO's remit and that have been agreed to include within this SoCG are:

- Marine Physical Environment;
- Marine and Intertidal Ornithology;
- Intertidal and Subtidal Ecology;
- Fish and Shellfish Ecology;
- Marine Mammals;
- Offshore Nature Conservation;
- Commercial Fisheries;
- Shipping and Navigation;
- Other Marine Users;
- Marine Historic Environment and Historic Seascape Categorisation (HSC); and
- Draft DCO and deemed Marine License (DML).

3. CONSULTATION

Summary

- 3.1 The Applicant engaged with the MMO on the proposed development during the pre-application process both in terms of informal non-statutory engagement, and formal consultation carried out pursuant to section 42 of the Planning Act 2008 (the 2008 Act). A summary of consultation undertaken, specific to an environmental topic, is presented in each of the chapters of the ES, with detail on all the consultation undertaken by the Applicant during the pre-application process presented in the Consultation Report (document reference 5.1). The Consultation Report demonstrates how the Applicant has complied with its duties under the relevant sections of the 2008 Act.

EIA Evidence Plan

- 3.2 The MMO participated in the pre-application EIA Evidence Plan process which commenced in May 2014. The primary aim of the EIA Evidence Plan was to ensure that the Applicant, by agreement with the key statutory and non-statutory bodies, provided sufficient and proportionate information and applied appropriate and proportionate methods in the assessment of the TKES works and Application documentation. The EIA Evidence Plan (document reference 8.16) was submitted with the Application for development consent and provides detail of the discussions and agreements undertaken and made as part of that process.
- 3.3 As part of the process the MMO was represented in both the topic-specific Offshore Review Panel, and was a member of the Evidence Plan Steering Group.
- 3.4 Agreements reached during the EIA Evidence Plan process are set out in this SoCG in order to provide the ExA with a clear understanding of the status of these matters.

Pre-application Consultation

- 3.5 Consultation on the TKES commenced with discussions with the MMO in 2008. At that time the discussions related to the entire project, both the offshore array and the TKES.
- 3.6 In its response to the statutory consultation in November 2014 the MMO provided comments on the following topics of the preliminary environmental
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information (PEI) – Marine Physical Environment, Marine and Intertidal Ornithology, Intertidal and Subtidal Ecology, Fish and Shellfish Ecology, Marine Mammals, Offshore Nature Conservation, Commercial Fisheries, Shipping and Navigation, Other Marine Users and Marine Historic Environment and Historic Seascape Categorisation (HSC).

- 3.7 The MMO provided comments on the areas of the draft Environmental Statement (ES) relevant to their remit as a statutory consultee.
- 3.8 The meetings detailed in Table 1 were held with the MMO and other relevant stakeholders to discuss outstanding issues.
- 3.9 It is agreed that Table 1 presents an accurate chronological overview of the key meetings in relation to the Application which were undertaken with the MMO prior to the submission of the Application.
- 3.10 It is agreed that the Consultation Report (document reference 5.1) submitted with the application provides accurate record of the statutory consultation which the MMO was involved in.
- 3.11 It is agreed that additional topic-specific consultation with the MMO, outside of the EIA Evidence Plan process, is captured within the consultation sections of each of the relevant ES chapters, listed in paragraph 2.11.

Table 1: Consultation meetings undertaken with the Marine Management Organisation pre-application

Date	Form of consultation	Activity/Summary
13 Aug 2013	Meeting	Meeting to agree on the most time and cost effective approach to progressing a compliant electrical system consent application
13 Aug 2013	Meeting	Meeting to discuss HRA requirements through Inner Dowsing SAC
14 April 2014	Meeting	Meeting to review draft HRA report
15 May 2014	Meeting	EIA Evidence Plan kick off Meeting to provide overview of process with offshore ecology breakout to identify areas of agreement and areas requiring further discussion.

Date	Form of consultation	Activity/Summary
22 May 2014	Teleconference	EIA Evidence Plan Offshore Ecology review panel teleconference follow up to Offshore Ecological Review Panel Meeting: Marine Physical Environment discussion regarding methodology, baseline, modelling notes, and advisory team members.
20 June 2014	Teleconference	EIA Evidence Plan Offshore Ecology review panel
20 June 2015	Teleconference	EIA Evidence Plan Offshore Ecology review panel teleconference
18 July 2014	Teleconference	EIA Evidence Plan Offshore Ecology review panel teleconference
18 Aug 2014	Teleconference	EIA Evidence Plan Offshore Ecology review panel teleconference
21 Aug 2014	Meeting	Meeting to present PEI assessments for all offshore ecology topics
04 Nov 2014	Meeting	EIA Evidence Plan Offshore Ecology review panel meeting
15 Jan 2015	Meeting	EIA Evidence Plan Offshore Ecology review panel meeting to discuss s42 comments, DCO/dML comments and introduce draft v5 NLSER
9 Feb 2015	Teleconference	Teleconference to discuss approach to intertidal area
23 Feb 2015	Teleconference	Teleconference to discuss approach to intertidal area
25 Feb 2015	Meeting	EIA Evidence Plan Steering Group

Post-application Consultation

- 3.12 The Applicant made initial contact with the MMO in relation to the preparation of a SoCG in late May 2015, following the Secretary of State's acceptance of the application. It was agreed that drafting a SoCG would be appropriate as a means of making a clear statement to the ExA appointed for the Application on the key issues during the early stages of the examination.
- 3.13 A meeting was held on 20 August 2015 to discuss the outstanding issues from the MMOs relevant representation and agree the scope and format of this SoCG.
- 3.14 The Applicant has continued to engage with the MMO during the examination period, including a further teleconference on 09 December 2015 to discuss matters arising from the hearings and issues highlighted in submissions made at Deadlines 2 and 3.

4. MATTERS AGREED

The Application

- 4.1 The following sections of this SoCG set out the areas of agreement by the parties in respect of the Application.
- 4.2 Where the agreements set out in the following sections refer to sections of the ES, it is agreed that those statements apply equally to the equivalent data, descriptions or analyses set out in any relevant technical reports, survey reports or any other application documents, unless otherwise stated.

Policy Context

- 4.3 It is agreed that the National Policy Statements (NPS) for Overarching Energy (EN-1), Renewable Energy (EN-3) and Electricity Networks Infrastructure (EN-5), are the overriding policy documents in relation to the Project.
- 4.4 It is agreed that NPS EN-1, EN-3 and EN-5 provide for flexibility in the project design at the point of consent.
- 4.5 It is agreed that NPS EN-1 and EN-3 advocate the use of the ‘Rochdale Envelope’ approach to allow the assessment of effects in relation to the scope of the project design by reference to the maximum extents or dimensions, subject to the imposition of relevant controls in the draft DCO and DML (paragraphs 4.2.7 to 4.2.8 of EN-1 and paragraphs 2.6.42 to 2.6.43 of EN-3).
- 4.6 It is agreed that the relevant Marine Policy Statements have been considered within each of the relevant ES chapters, as listed in paragraph 2.10 and in the Planning Statement (document reference 8.4).
- 4.7 It is agreed that Policy Context sections of each of the relevant ES chapters, as listed in paragraph 2.10, have considered and referred to all relevant specific policy and guidance documents and all relevant national and international legislation in relation to the potential impacts identified.
- 4.8 It is agreed that each of the relevant ES chapters, as listed in paragraph 2.10 of this statement, contains a complete assessment of all the potential direct and indirect impacts that ought to be included for this type of development within the project area, and as defined by the relevant NPS(s) and other relevant policy and guidance.

Project Description

- 4.9 It is agreed that the project details described in Volume 2, Chapter 1, *Offshore Project Description* (document reference 6.2.2.1) and Volume 3, Chapter 1, *Onshore Project Description* (document reference 6.2.3.1) of the ES, provide clear and thorough descriptions of the proposed development suitable as a basis for the detailed EIA of potential impacts on the terrestrial and marine environments.
- 4.10 It is agreed that the proposed development details are appropriately reflected in the parameters as set out in the draft DCO (document reference 3.1).

Key Parameters for the Assessment

- 4.11 It is agreed that a realistic maximum adverse scenario has been established according to the Rochdale Envelope approach, using project specification details given in Volume 2, Chapter 1 and Volume 3, Chapter 1 of the ES.

Approach to EIA

- 4.12 It is agreed that the EIA process, as set out in paragraphs 3.16- 3.20 of Volume 1, Chapter 3, *Approach to EIA* (document reference 6.2.1.3), is an appropriate approach for the identification and assessment of the potential impacts and effects of the proposed development.

Cumulative Assessment

- 4.13 It is agreed that the cumulative assessment appropriately considers all other projects with the potential to interact with the proposed development.

Marine Physical Environment

4.14 This section of the SoCG sets out those aspects of the Application that are agreed in relation to the Marine Physical Environment.

Scope and Methodology

4.15 It is agreed that the Marine Physical Environment study area defined in paragraphs 2.16 – 2.18 of Volume 2 Chapter 2 *Marine Physical Environment* (document reference 6.2.2.2) of the ES is appropriate for the purposes of describing the baseline environment and understanding the potential impacts upon the Marine Physical Environment from the proposed development.

4.16 It is agreed that the impact assessment approach presented in paragraphs 2.19 – 2.40 of Volume 2, Chapter 2 of the ES is based on appropriate methodologies for the assessment of Marine Physical Environment impacts and that it is fit for purpose for use in the assessment process.

4.17 It is agreed that characterisation of the existing environment in the study area was accurate and appropriate and was informed by available project specific data and other publicly available information. An overview of Project specific data and reports is provided in paragraphs 2.41 – 2.69 of Volume 2, Chapter 2 of the ES.

4.18 It is agreed that relevant guidance (detailed in paragraph 2.11 of Volume 2, Chapter 2 of the ES) has been used to inform the assessment approach.

Existing Environment

4.19 It is agreed that the methodology undertaken to characterise the existing environment around the proposed development with respect to the Marine Physical Environment, as set out in paragraphs 2.41 – 2.69 of Volume 2, Chapter 2 of the ES, is appropriate to identify and describe the baseline environment.

4.20 It is agreed that the descriptions given in paragraphs 2.41 – 2.69 of Volume 2, Chapter 2 of the ES provide an accurate and appropriate characterisation of the Marine Physical Environment based on the existing data available from literature and site specific surveys.

Key Parameters for Assessment and Embedded Mitigation

4.21 It is agreed that a maximum adverse scenario has been established according to the Design Envelope principles, using project specific details given in Volume 2, Chapter 1 *Offshore Project Description* (document reference 6.2.2.1) of the ES.

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- 4.22 It is agreed that the realistic maximum adverse scenarios relating to each of the potential impacts on the Marine Physical Environment during all phases of development, as defined in Table 2-10 of Volume 2, Chapter 2 of the ES, are appropriate for assessing the maximum likely impacts on the Marine Physical Environment.
- 4.23 It is agreed that there are no other scheme permutations, when considering the project details set out in Volume 2, Chapter 1 of the ES, which could lead to any greater effect on the Marine Physical Environment than the realistic maximum adverse scenarios set out in Table 2-10.
- 4.24 It is agreed that the scenarios identified are clearly described and sufficiently justified.
- 4.25 It is agreed that Table 2-11 of Volume 2, Chapter 2 of the ES describes the mitigation measures that have been embedded into the project design and demonstrate how the design has minimised harm to the environment.

Assessment of Impacts

- 4.26 It is agreed that paragraphs 2.74 – 2.179 of Volume 2, Chapter 2 of the ES present an assessment of the potential impacts on the Marine Physical Environment arising from all stages of development, in accordance with the requirements detailed in the relevant policy and legislation.
- 4.27 It is agreed that there are no significant effects on the Marine Physical Environment receptors arising from the construction, operation and decommissioning phases of the proposed development, as defined in Volume 2, Chapter 2 and summarised in Table 2-15 of the ES.

Cumulative Impacts

- 4.28 It is agreed that the projects scoped into the cumulative impact assessment, as detailed in Table 2-13 of Volume 2, Chapter 2 of the ES are appropriate and reasonable in order to undertake the cumulative assessment for the Marine Physical Environment.
- 4.29 It is agreed that the Design Envelope scenario considered within the assessment of potential cumulative impacts on the Marine Physical Environment, as presented in Table 2-14 of Volume 2, Chapter 2 of the ES, is appropriate for assessing the maximum likely cumulative impacts on the Marine Physical Environment.
- 4.30 It is agreed that the project has sufficiently considered all of the potential cumulative impacts to inform the assessment. In addition, the outcome of the cumulative assessment presented in paragraphs 2.180 – 2.228 of Volume 2,
-

Chapter 2 of the ES which concludes that there are unlikely to be any significant effects, is accurate.

Inter-related Effects

- 4.31 It is agreed that the assessment undertaken and detailed in Table 12-2 of Volume 2, Chapter 12, *Inter-related Effects (offshore)* (document reference 6.2.2.12) of the ES is appropriate, accurate, and no significant effects on the Marine Physical Environment are predicted from the project with respect to inter-related impacts.

Mitigation and Monitoring

- 4.32 With respect to mitigation measures, it is agreed that given the generally low level of significance likely to be experienced by the Marine Physical Environment receptors during the construction, operation and decommissioning of the project, no specific applied mitigation or monitoring is required.

Marine and Intertidal Ornithology

4.33 It is agreed that the MMO would defer comments on any requirements to Natural England.

Subtidal and Intertidal Ecology

4.34 This section of the SoCG sets out those aspects of the Application that are agreed in relation to Subtidal and Intertidal Ecology.

Scope and Methodology

4.35 It is agreed that the Subtidal and Intertidal Ecology study area defined in paragraphs 4.23 – 4.24 of Volume 2 Chapter 4 *Subtidal and Intertidal Ecology* (document reference 6.2.2.4) of the ES is appropriate for the purposes of describing the baseline environment and understanding the potential impacts upon Subtidal and Intertidal Ecology from the proposed development.

4.36 It is agreed that the impact assessment approach presented in paragraphs 4.31 – 4.40 of Volume 2, Chapter 4 of the ES is based on appropriate methodologies for the assessment of Subtidal and Intertidal Ecology impacts and that it is fit for purpose for use in the assessment process.

4.37 It is agreed that characterisation of the existing environment in the study area was accurate and appropriate and was informed by available project specific data and other publically available information. An overview of Project specific data and reports is provided in paragraphs 4.25 – 4.29 of Volume 2, Chapter 4 of the ES.

4.38 It is agreed that relevant guidance (detailed in paragraph 4.11 of Volume 2, Chapter 4 of the ES) has been used to inform the assessment approach.

Existing Environment

4.39 It is agreed that the methodology undertaken to characterise the existing environment around the proposed development with respect to Subtidal and Intertidal Ecology, as set out in paragraphs 4.41 – 4.73 of Volume 2 Chapter 4 *Subtidal and Intertidal Ecology* (document reference 6.2.2.4) of the ES, is appropriate to identify and describe the baseline environment.

4.40 It is agreed that the descriptions given in paragraphs 4.41 – 4.73 of Volume 2, Chapter 4 of the ES provide an accurate and appropriate characterisation of Subtidal and Intertidal Ecology based on the existing data available from literature and site specific surveys.

Key Parameters for Assessment and Embedded Mitigation

4.41 It is agreed that a maximum adverse scenario has been established according to the Design Envelope principles, using project specification details given in Volume 2, Chapter 1 *Project Description* (document reference 6.2.2.1) of the ES.

- 4.42 It is agreed that the realistic maximum adverse scenarios relating to each of the potential impacts on Subtidal and Intertidal Ecology during all phases of development, as defined in Table 4-7 of Volume 2, Chapter 4 of the ES, are appropriate for assessing the maximum likely impacts on Subtidal and Intertidal Ecology.
- 4.43 It is agreed that there are no other scheme permutations, when considering the project details set out in Volume 2, Chapter 1 of the ES, which could lead to any greater effect on Subtidal and Intertidal Ecology than the realistic maximum adverse scenarios set out in Table 4-7.
- 4.44 It is agreed that the scenarios identified are clearly described and sufficiently justified.
- 4.45 It is agreed that Table 4-8 of Volume 2, Chapter 4 of the ES describes the mitigation measures that have been embedded into the project design and demonstrate how the design has minimised harm to the environment.

Assessment of Impacts

- 4.46 It is agreed that paragraphs 4.90 – 4.182 of Volume 2, Chapter 4 of the ES present an assessment of the potential impacts on Subtidal and Intertidal Ecology arising from all stages of development, in accordance with the requirements detailed in the relevant policy and legislation.
- 4.47 It is agreed that there are no significant effects on Subtidal and Intertidal Ecology receptors arising from the construction, operation and decommissioning phases of the proposed development, as defined in Volume 2, Chapter 4 and summarised in Table 4-15 of the ES.

Cumulative Impacts

- 4.48 It is agreed that the projects scoped into the cumulative impact assessment, as detailed in Table 4-9 of Volume 2, Chapter 4 of the ES are appropriate and reasonable in order to undertake the cumulative assessment for Subtidal and Intertidal Ecology.
- 4.49 It is agreed that the Design Envelope scenario considered within the assessment of potential cumulative impacts on Subtidal and Intertidal Ecology, as presented in Table 4-10 Volume 2, Chapter 4 of the ES, is appropriate for assessing the maximum likely cumulative impacts on Subtidal and Intertidal Ecology.
- 4.50 It is agreed that the project has sufficiently considered all of the potential cumulative impacts to inform the assessment. In addition, the outcome of the cumulative assessment presented in paragraphs 4.183 – 4.265 of Volume 2,

Chapter 4 of the ES which concludes that there are unlikely to be any significant effects, is accurate.

Inter-related Effects

4.51 It is agreed that the assessment undertaken and detailed in Table 12-3 of Volume 2, Chapter 12, *Inter-related Effects (offshore)* (document reference 6.2.2.12) of the ES is appropriate, accurate, and no significant effects on Subtidal and Intertidal Ecology are predicted from the project with respect to inter-related impacts.

Mitigation and Monitoring

4.52 With respect to mitigation measures, it is agreed that given the generally low level of significance likely to be experienced by Subtidal and Intertidal Ecology receptors during the construction, operation and decommissioning of the project, no specific applied mitigation or monitoring is required beyond that secured by production of those plans listed in **Condition 7** of the draft DCO.

Fish and Shellfish Ecology

4.53 This section of the SoCG sets out those aspects of the Application that are agreed in relation to Fish and Shellfish Ecology.

Scope and Methodology

4.54 It is agreed that the Fish and Shellfish Ecology study area defined in paragraphs 5.17 – 5.18 of Volume 2, Chapter 5 *Fish and Shellfish Ecology* (document reference 6.2.2.5) of the ES is appropriate for the purposes of describing the baseline environment and understanding the potential impacts upon Fish and Shellfish Ecology from the proposed development.

4.55 It is agreed that the impact assessment approach presented in paragraphs 5.32 – 5.45 of Volume 2, Chapter 5 of the ES is based on appropriate methodologies for the assessment of Fish and Shellfish Ecology impacts and that it is fit for purpose for use in the assessment process.

4.56 It is agreed that characterisation of the existing environment in the study area was accurate and appropriate and was informed by available project specific data and other publically available information. An overview of Project specific data and reports is provided in paragraphs 5.21 – 5.31 of Volume 2, Chapter 5 of the ES.

4.57 It is agreed that relevant guidance (detailed in paragraphs 5.12 – 5.14 of Volume 2, Chapter 5) has been used to inform the assessment approach.

Existing Environment

4.58 It is agreed that the methodology undertaken to characterise the existing environment around the proposed development with respect to Fish and Shellfish Ecology, as set out in paragraph 5.20 of Volume 2, Chapter 5 of the ES, is appropriate to identify and describe the baseline environment.

4.59 It is agreed that the descriptions given in paragraphs 5.46 – 5.98 of Volume 2, Chapter 5 of the ES provide an accurate and appropriate characterisation of Fish and Shellfish Ecology based on the existing data available from literature and site specific surveys.

Key Parameters for Assessment and Embedded Mitigation

4.60 It is agreed that a maximum adverse scenario has been established according to the Design Envelope principles, using project specification details given in Volume 2, Chapter 1 *Offshore Project Description* (document reference 6.2.2.1) of the ES.

4.61 It is agreed that the realistic maximum adverse scenarios relating to each of the potential impacts on Fish and Shellfish Ecology during all phases of

development, as defined in Table 5-8 of Volume 2, Chapter 5 of the ES, are appropriate for assessing the maximum likely impacts on Fish and Shellfish Ecology.

- 4.62 It is agreed that there are no other scheme permutations, when considering the project details set out in Volume 2, Chapter 1 of the ES, which could lead to any greater effect on Fish and Shellfish Ecology than the realistic maximum adverse scenarios set out in Table 5-8.
- 4.63 It is agreed that the scenarios identified are clearly described and sufficiently justified.
- 4.64 It is agreed that Table 5-9 of Volume 2, Chapter 5 of the ES describes the mitigation measures that have been embedded into the project design and demonstrate how the design has minimised harm to the environment.

Assessment of Impacts

- 4.65 It is agreed that paragraphs 5.107 – 5.173 of Volume 2, Chapter 5 of the ES present an assessment of the potential impacts on Fish and Shellfish Ecology arising from all stages of development, in accordance with the requirements detailed in the relevant policy and legislation.
- 4.66 It is agreed that there are no significant effects on Fish and Shellfish Ecology receptors arising from the construction, operation and decommissioning phases of the proposed development, as defined in Volume 2, Chapter 5 and summarised in Table 5-15 of the ES.

Cumulative Impacts

- 4.67 It is agreed that the projects scoped into the cumulative impact assessment, as detailed in Table 5-10 of Volume 2, Chapter 5 of the ES are appropriate and reasonable in order to undertake the cumulative assessment for Fish and Shellfish Ecology.
- 4.68 It is agreed that the Design Envelope scenario considered within the assessment of potential cumulative impacts on Fish and Shellfish Ecology, as presented in Table 5-11 of Volume 2, Chapter 5 of the ES, is appropriate for assessing the maximum likely cumulative impacts on Fish and Shellfish Ecology.
- 4.69 It is agreed that the project has sufficiently considered all of the potential cumulative impacts to inform the assessment. In addition, the outcome of the cumulative assessment presented in paragraphs 5.174 – 5.264 of Volume 2 Chapter 5 of the ES which concludes that there are unlikely to be any significant effects, is accurate.

Inter-related Effects

4.70 It is agreed that the assessment undertaken and detailed in Table 12-4 of Volume 2, Chapter 12, *Inter-related Effects (offshore)* (document reference 6.2.2.12) of the ES is appropriate, accurate, and no significant effects on Fish and Shellfish Ecology are predicted from the project with respect to inter-related impacts.

Mitigation and Monitoring

4.71 With respect to mitigation measures, it is agreed that given the generally low level of significance likely to be experienced Fish and Shellfish Ecology receptors during the construction, operation and decommissioning of the project, no specific applied mitigation or monitoring is required.

Marine Mammals

4.72 It is agreed that the MMO would defer comments on any requirements to Natural England.

Offshore Nature Conservation

4.73 This section of the SoCG sets out those aspects of the Application that are agreed in relation to Offshore Nature Conservation.

Scope and Methodology

4.74 It is agreed that the Offshore Nature Conservation study area defined in paragraphs 7.17 – 7.19 of Volume 2, Chapter 7 *Offshore Nature Conservation* (document reference 6.2.2.7) of the ES is appropriate for the purposes of describing the baseline environment and understanding the potential impacts upon Offshore Nature Conservation from the proposed development.

4.75 It is agreed that the impact assessment approach presented in the relevant chapters for each receptor as specified in paragraphs 7.30 – 7.32 of Volume 2, Chapter 7 of the ES is based on appropriate methodologies for the assessment of Offshore Nature Conservation impacts and that it is fit for purpose for use in the assessment process.

4.76 It is agreed that characterisation of the existing environment in the study area was accurate and appropriate and was informed by available project specific data and other publically available information. An overview of Project specific data and reports for each of the designated sites is provided in Table 7-7 of Volume 2, Chapter 7 of the ES.

4.77 It is agreed that relevant guidance (detailed in paragraphs 7.4 – 7.8 of Volume 2, Chapter 7) has been used to inform the assessment approach.

Existing Environment

4.78 It is agreed that the methodology undertaken to characterise the existing environment around the proposed development with respect to Offshore Nature Conservation, as set out in paragraphs 7.20 – 7.33 of Volume 2, Chapter 7 of the ES, is appropriate to identify and describe the baseline environment.

4.79 It is agreed that the descriptions given in paragraphs 7.34 – 7.63 of Volume 2, Chapter 7 of the ES provide an accurate and appropriate characterisation of Offshore Nature Conservation based on the existing data available from literature and site specific surveys.

Key Parameters for Assessment and Embedded Mitigation

4.80 It is agreed that a maximum adverse scenario has been established according to the Design Envelope principles, using project specification

details given in Volume 2, Chapter 1 *Offshore Project Description* (document reference 6.2.2.1) of the ES.

- 4.81 It is agreed that the realistic maximum adverse scenarios relating to each of the potential impacts on Offshore Nature Conservation during all phases of development, as defined in Table 7-8 of Volume 2, Chapter 7 of the ES, are appropriate for assessing the maximum likely impacts on Offshore Nature Conservation.
- 4.82 It is agreed that there are no other scheme permutations, when considering the project details set out in Volume 2, Chapter 1 of the ES, which could lead to any greater effect on Offshore Nature Conservation than the realistic maximum adverse scenarios set out in Table 7-8.
- 4.83 It is agreed that the scenarios identified are clearly described and sufficiently justified.
- 4.84 It is agreed that Table 7-9 of Volume 2, Chapter 7 of the ES describes the mitigation measures that have been embedded into the project design and demonstrate how the design has minimised harm to the environment.

Assessment of Impacts

- 4.85 It is agreed that paragraphs 7-70 – 7-101 of Volume 2, Chapter 7 of the ES present an assessment of the potential impacts on Offshore Nature Conservation arising from all stages of development, in accordance with the requirements detailed in the relevant policy and legislation.
- 4.86 It is agreed that there are no likely significant effects on Offshore Nature Conservation receptors arising from the construction, operation and decommissioning phases of the proposed development, as defined in Volume 2, Chapter 7 and summarised in Table 7-15 of the ES.

Cumulative Impacts

- 4.87 It is agreed that the projects scoped into the cumulative impact assessment, as detailed in Table 2-13 of Volume 2, Chapter 7 of the ES are appropriate and reasonable in order to undertake the cumulative assessment for Offshore Nature Conservation.
- 4.88 It is agreed that the Design Envelope scenario considered within the assessment of potential cumulative impacts on Offshore Nature Conservation, as presented in Table 7-12 (Seabed Habitat Disturbance) and 7-13 (Habitat Change) Volume 2, Chapter 7 of the ES, is appropriate for assessing the maximum likely cumulative impacts on Offshore Nature Conservation.

4.89 It is agreed that the project has sufficiently considered all of the potential cumulative impacts to inform the assessment. In addition, the outcome of the cumulative assessment presented in paragraphs 7.102 – 7.111 of Volume 2, Chapter 7 of the ES which concludes that there are unlikely to be any significant impacts, is accurate.

Inter-related Effects

4.90 It is agreed that the assessment undertaken and detailed in Table 12-2 of Volume 2, Chapter 12, *Inter-related Effects (offshore)* (document reference 6.2.2.12) of the ES is appropriate, accurate, and no significant effects on Offshore Nature Conservation are predicted from the project with respect to inter-related impacts.

Mitigation and Monitoring

4.91 With respect to mitigation measures, it is agreed that given the generally low level of significance likely to be experienced by Offshore Nature Conservation receptors during the construction, operation and decommissioning of the project, no specific applied mitigation or monitoring is required beyond that secured by the production those plans listed in Condition 7 of the draft DCO, with particular reference to (a) (c) and (f).

Commercial Fisheries

4.92 This section of the SoCG sets out those aspects of the Application that are agreed in relation to Commercial Fisheries.

Scope and Methodology

4.93 It is agreed that the Commercial Fisheries study area defined in paragraph 8.20 of Volume 2, Chapter 8 *Commercial Fisheries* (document reference 6.2.2.8) of the ES is appropriate for the purposes of describing the baseline environment and understanding the potential impacts upon Commercial Fisheries from the proposed development.

4.94 It is agreed that the impact assessment approach presented in paragraphs 8.25 – 8.39 of Volume 2, Chapter 8 of the ES is based on appropriate methodologies for the assessment of Commercial Fisheries impacts and that it is fit for purpose for use in the assessment process.

4.95 It is agreed that characterisation of the existing environment in the study area was accurate and appropriate and was informed by available project specific data and other publically available information. An overview of Project specific data and reports is provided in paragraphs 8.21 – 8.24 of Volume 2, Chapter 8 of the ES.

4.96 It is agreed that relevant guidance (detailed in paragraph 8.12 of Volume 2, Chapter 8 of the ES) has been used to inform the assessment approach.

Existing Environment

4.97 It is agreed that the methodology undertaken to characterise the existing environment around the proposed development with respect to Commercial Fisheries, as set out in paragraphs 8.21 – 8.24 of Volume 2 Chapter 8 of the ES, is appropriate to identify and describe the baseline environment.

4.98 It is agreed that the descriptions given in paragraphs 8.40 – 8.96 of Volume 2 Chapter 8 of the ES provide an accurate and appropriate characterisation of Commercial Fisheries based on the existing data available from literature and site specific surveys.

Key Parameters for Assessment and Embedded Mitigation

4.99 It is agreed that a maximum adverse scenario has been established according to the Design Envelope principles, using project specification details given in Volume 2, Chapter 1 *Offshore Project Description* (document reference 6.2.2.1) of the ES.

4.100 It is agreed that the realistic maximum adverse scenarios relating to each of the potential impacts on Commercial Fisheries during all phases of

development, as defined in Table 8-9 of Volume 2, Chapter 8 of the ES, are appropriate for assessing the maximum likely impacts on Commercial Fisheries.

- 4.101 It is agreed that there are no other scheme permutations, when considering the project details set out in Volume 2, Chapter 1 of the ES, which could lead to any greater effect on Commercial Fisheries than the realistic maximum adverse scenarios set out in Table 8-9.
- 4.102 It is agreed that the scenarios identified are clearly described and sufficiently justified.
- 4.103 It is agreed that Table 8-10 of Volume 2, Chapter 8 of the ES describes the mitigation measures that have been embedded into the project design and demonstrate how the design has minimised harm to the environment.

Assessment of Impacts

- 4.104 It is agreed that paragraphs 8.105 – 8.155 of Volume 2, Chapter 8 of the ES present an assessment of the potential impacts on Commercial Fisheries arising from all stages of development, in accordance with the requirements detailed in the relevant policy and legislation.
- 4.105 It is agreed that there are no significant effects on Commercial Fisheries receptors arising from the construction, operation and decommissioning phases of the proposed development, as defined in Volume 2, Chapter 8 and summarised in Table 8-14 of the ES.

Cumulative Impacts

- 4.106 It is agreed that the projects scoped into the cumulative impact assessment, as detailed in Table 8-11 of Volume 2, Chapter 8 of the ES are appropriate and reasonable in order to undertake the cumulative assessment for Commercial Fisheries.
- 4.107 It is agreed that the Design Envelope scenario considered within the assessment of potential cumulative impacts on Commercial Fisheries, as presented in Table 8-12 of Volume 2, Chapter 8 of the ES, is appropriate for assessing the maximum likely cumulative impacts on Commercial Fisheries.
- 4.108 It is agreed that the project has sufficiently considered all of the potential cumulative impacts to inform the assessment. In addition, the outcome of the cumulative assessment presented in paragraphs 8.156 – 8.205 of Volume 2, Chapter 8 of the ES which concludes that there are unlikely to be any significant impacts, is accurate.

Inter-related Effects

4.109 It is agreed that the assessment undertaken and detailed in Table 12-2 of Volume 2, Chapter 12, *Inter-related Effects (offshore)* (document reference 6.2.2.12) of the ES is appropriate, accurate, and no significant effects on Commercial Fisheries are predicted from the project with respect to inter-related impacts.

Mitigation and Monitoring

4.110 With respect to mitigation measures, it is agreed that given the generally low level of significance likely to be experienced by Commercial Fisheries receptors during the construction, operation and decommissioning of the project, no specific applied mitigation or monitoring is required beyond that secured by:

- The production those plans listed in Condition 7 of the draft DCO, with particular reference to (a) and (f) and the appointment of a Fisheries Liaison officer as in (d);
- The Notices to Mariners in Condition 2;
- The limit of the reduction in water depth stated in Condition 1(4);
- The dropped object notification in Condition 5(13); and
- The cable burial surveys in Condition 13(2)(b).

Shipping and Navigation

It is agreed that the MMO would defer comments on any requirements to Trinity House and the Maritime and Coastguard Agency.

Other Marine Users

4.111 This section of the SoCG sets out those aspects of the Application that are agreed in relation to Other Marine Users.

Scope and Methodology

4.112 It is agreed that the Other Marine Users study area defined in paragraphs 10.20 – 10.22 of Volume 2, Chapter 10 *Other Marine Users* (document reference 6.2.2.10) of the ES is appropriate for the purposes of describing the baseline environment and understanding the potential impacts upon Other Marine Users from the proposed development.

4.113 It is agreed that the impact assessment approach presented in paragraphs 10.24 – 10.31 of Volume 2, Chapter 10 of the ES is based on appropriate methodologies for the assessment of Other Marine Users impacts and that it is fit for purpose for use in the assessment process.

4.114 It is agreed that characterisation of the existing environment in the study area was accurate and appropriate and was informed by available project specific data and other publically available information. An overview of Project specific data and reports is provided in paragraph 10.23 of Volume 2, Chapter 10 of the ES.

4.115 It is agreed that relevant guidance (detailed in paragraphs 10.11 -10.12 of Volume 2, Chapter 10 of the ES) has been used to inform the assessment approach.

Existing Environment

4.116 It is agreed that the methodology undertaken to characterise the existing environment around the proposed development with respect to Other Marine Users, as set out in paragraphs 10.22 – 10.23 of Volume 2 Chapter 10 of the ES, is appropriate to identify and describe the baseline environment.

4.117 It is agreed that the descriptions given in paragraphs 10.33 – 10.49 of Volume 2 Chapter 10 of the ES provide an accurate and appropriate characterisation of Other Marine Users based on the existing data available from literature and site specific surveys.

Key Parameters for Assessment and Embedded Mitigation

4.118 It is agreed that a maximum adverse scenario has been established according to the Design Envelope principles, using project specification details given in Volume 2, Chapter 1 *Offshore Project Description* (document reference 6.2.2.1) of the ES.

- 4.119 It is agreed that the realistic maximum adverse scenarios relating to each of the potential impacts on Other Marine Users during all phases of development, as defined in Table 10-10 of Volume 2, Chapter 10 of the ES, are appropriate for assessing the maximum likely impacts on Other Marine Users.
- 4.120 It is agreed that there are no other scheme permutations, when considering the project details set out in Volume 2, Chapter 1 of the ES, which could lead to any greater effect on Other Marine Users than the realistic maximum adverse scenarios set out in Table 10-10.
- 4.121 It is agreed that the scenarios identified are clearly described and sufficiently justified.
- 4.122 It is agreed that Table 10-11 of Volume 2, Chapter 10 of the ES describes the mitigation measures that have been embedded into the project design and demonstrate how the design has minimised harm to the environment.

Assessment of Impacts

- 4.123 It is agreed that paragraphs 10.55 – 10.74 of Volume 2, Chapter 10 of the ES present an assessment of the potential impacts on Other Marine Users arising from all stages of development, in accordance with the requirements detailed in the relevant policy and legislation.
- 4.124 It is agreed that there are no significant effects on Other Marine Users receptors arising from the construction, operation and decommissioning phases of the proposed development, as defined in Volume 2, Chapter 10 and summarised in Table 10-12 of the ES.

Cumulative Impacts

- 4.125 It is agreed that a cumulative impact assessment on linear infrastructure or on impacts on sea defences is not required, as detailed in paragraphs 10.75 – 10.76 of Volume 2, Chapter 10 of the ES.
- 4.126 It is agreed any cumulative impact from the aggregate extraction licence area 515 has been assessed appropriately in paragraph 10.77 of Volume 2, Chapter 10 of the ES.
- 4.127 It is agreed that the project has sufficiently considered all of the potential cumulative impacts to inform the assessment. In addition, the outcome of the cumulative assessment presented in paragraphs 10.75 – 10.77 of Volume 2, Chapter 10 of the ES which concludes that there are unlikely to be any significant impacts, is accurate.

Inter-related Effects

4.128 It is agreed that the assessment undertaken and detailed in Table 12-2 of Volume 2, Chapter 12, *Inter-related Effects (offshore)* (document reference 6.2.2.12) of the ES is appropriate, accurate, and no significant effects on Other Marine Users are predicted from the project with respect to inter-related impacts.

Mitigation and Monitoring

4.129 With respect to mitigation measures, it is agreed that given the generally low level of significance likely to be experienced Other Marine Users receptors during the construction, operation and decommissioning of the project, no specific applied mitigation or monitoring is required beyond that secured by the dropped object notification in Condition 5(13) and the cable burial surveys in Condition 13(2)(b).

Marine Historic Environment and Historic Seascape Categorisation (HSC)

4.130 It is agreed that the MMO would defer comments on any requirements to Historic England, Natural England, the Ministry of Defence and the Maritime and Coastguard Agency.

Mitigation and Monitoring

4.131 With respect to mitigation measures, it is agreed that given the generally low level of significance likely to be experienced by Marine Historic Environment and HSC receptors during the construction, operation and decommissioning of the project, no specific applied mitigation or monitoring is required beyond that secured by the production of a Written Scheme of Investigation in Condition 7(g).

Other Documents

Report to Inform Appropriate Assessment

4.132 It is agreed that the MMO would defer comments on the Report to Inform Appropriate Assessment to Natural England.

Offshore Operations and Maintenance Plan

4.133 It is agreed that the Outline Operations and Maintenance Plan (O&MP) (document reference 8.14) is appropriate and reasonable to inform the final O&MP.

Draft Development Consent Order (DCO) and deemed Marine Licence (DML)

- 4.134 This section of the SoCG sets out those aspects of the Application that have been agreed following discussions on the MMO's relevant representation (RR), advice at hearings and responses to Deadline 3 and Deadline 4 in relation to draft DCO and draft Marine Licence (DML) (document reference 3.1).
- 4.135 It is agreed that, in relation to the agreed scope of this SoCG, the articles of the draft DCO and the requirements set out in **Schedule 1 Part 3** of the draft DCO are appropriate and reasonable for the proposed development.
- 4.136 In addition, it is agreed that the conditions set out in the draft DML contained in **Schedule 9 Part 2** of the draft DCO are appropriate and reasonable.
- 4.137 It is agreed that the following articles and conditions, highlighted in the MMO's relevant representation, advice at hearings and response to Deadline 3 have been clarified, amended or inserted following discussions. Where amended wording is agreed this is set out in Appendix A.

Draft DCO Requirements

- 4.138 In response to paragraph 2.1 of the MMO's RR it is agreed that the definition of 'maintain' contained within **Article 2 Interpretation of the draft DCO** is appropriate and reasonable for the proposed development in order to ensure that there is no uncertainty regarding the ability of the undertaker to maintain the onshore works (which include the transition joint bays, link boxes, cables, substation and IEC and related work and equipment) as set out in Row 5 of Appendix A.
- 4.139 In response to point 1 of the MMO's response to Deadline 3 it is agreed that the proposed revision to the definition of 'commence' contained within **Article 2 Interpretation of the draft DCO** is appropriate and reasonable for the proposed development in order to ensure that HDD works are covered in the definition of 'commence' but do not require all of the pre-construction documents to be discharged under the DML prior to commencement as set out in Row 41 of Appendix A.
- 4.140 In response to paragraph 2.4 of the MMO's RR it is agreed that the amendments to **Article 13(2) Authority to investigate and survey the land** of the draft DCO set out in Row 14 of Appendix A are appropriate and reasonable to demark the boundaries of the access limits as requested by the MMO.

- 4.141 In response to paragraph 2.3 of the MMO's RR it is agreed that Crown Land has been included in **Article 20 Application of Compulsory Purchase (Vesting Declarations) Act 1981** of the draft DCO for completeness only and that no compulsory rights or powers are being sought over it as set out in Row 13 of Appendix A. Any rights required over Crown Land in the intertidal area will be secured by agreement with The Crown Estate.
- 4.142 In response to paragraph 3.4 of the MMO's RR it is agreed that the amendments to **Requirement 4 Offshore Decommissioning** are appropriate and reasonable on the basis that a decommissioning scheme approved by the Secretary of State is a legal requirement under the Energy Act 2004. In addition it is agreed that it is not necessary to include a condition in the dML requiring a decommissioning scheme to be approved by the MMO as a separate marine licence is likely to be required for decommissioning of the offshore electrical system works as set out in Row 34 of Appendix A.
- 4.143 In response to paragraph 2.6 of the MMO's RR it is agreed that the Outline Traffic Management Plan (document reference 8.9) referred to in **Requirement 18 Construction Traffic** of the Draft DCO only applies to onshore traffic and is therefore appropriate and reasonable as set out in Row 18 of Appendix A.

Draft DML Conditions

- 4.144 In response to paragraph 2.1 of the MMO's RR it is agreed that the proposed amended wording of 'maintain' contained within **Schedule 9 Deemed Licence** under the Marine and Coastal Access Act 2009 of the draft DCO clearly secures that maintenance can only take place to the extent that it has been assessed in the environmental statement, and is therefore appropriate and reasonable as set out in Row 5 of Appendix A.
- 4.145 In response to paragraph 2.5 of the MMO's RR it is agreed that the wording of paragraph 2(3) of **Schedule 9 Part 1 Details of licensed marine activities** of the draft DML clearly links the ancillary works within the dML to the assessments undertaken in the submitted ES, on this basis no further changes to the drafting are required as set out in Row 17 of Appendix A.
- 4.146 In response to paragraph 2.8 of the MMO's RR the name of The Historic Buildings and Monuments Commission for England has been amended in **Article 1(4)(h) Details of licensed marine activities** of the draft as set out in Row 20 of Appendix A.
- 4.147 In response to paragraph 2.5 of the MMO's RR it is agreed that the amendments to paragraph 2(3)(d) of Schedule 9 Part 1 Details of licensed marine activities of the draft DML clearly links the "removal, reconstruction or

alteration of the position of subsea cables” to existing offshore cables that may need works doing to them as a result of the installation of the TKES cables and is therefore appropriate and reasonable as set out in Row 17 of Appendix A.

- 4.148 In response to paragraph 2.10 of the MMO’s RR it is agreed that the amendments to **Condition 2(8) Notifications and inspections** of the draft DML adequately secures the notification of expected vessel routes to the MMO at least 10 working days prior to the commencement of the licensed activities for both Works Nos 1 and 2 as set out in Row 22 of Appendix A.
- 4.149 In response to paragraph 2.11 of the MMO’s RR and point 2 of the MMO’s response to Deadline 3 it is agreed that the MMO have deferred any amendments to **Condition 3 Offshore Safety Management** of the draft DML for agreement between the Applicant and the Maritime Coastguard Agency (MCA) as set out in Row 42 of Appendix A. The Applicant and the MCA have agreed that the drafting of Condition 3 will be retained and is appropriate and reasonable.
- 4.150 In response to paragraph 2.12 of the MMO’s RR it is agreed that the amendments to **Condition 5(6) Chemicals, Drilling and debris** of the draft DML are appropriate and reasonable as set out in Row 24 of Appendix A.
- 4.151 In response to paragraph 2.13 of the MMO’s RR and point 3 of the MMO’s response to Deadline 3 it is agreed that the proposed revisions to **Condition 5 Chemicals, Drilling and debris** of the draft DML are appropriate and reasonable in order to maintain the alternative dropped objects procedure to ensure the most appropriate method is used as set out in Row 43 of Appendix A. The Applicant acknowledges the MMOs preference for the dropped objects procedure to be used.
- 4.152 In response to point 3 of the MMO’s response to Deadline 3 it is agreed that the proposed revisions to **Condition 5(13) Chemicals, Drilling and debris** of the draft DML will include the additional bodies referenced as set out in Row 43 of Appendix A.
- 4.153 In response to the MMO’s response to ExA question DCO 2.29 It is agreed that the wording of **Condition 5(13) Chemicals, Drilling and debris** of the draft DML will be amended to specify ‘as soon as possible an in any event within 6 hours instead of 48 hours.
- 4.154 In response to point 1 of the MMO's response to Deadline 3 it is agreed that the proposed revisions to **Condition 7(a) Pre-construction plans and documentation** is appropriate and reasonable for the proposed development

in order to ensure that HDD works are covered in the definition of 'commence' but do not require all of the pre-construction documents to be discharged under the DML prior to commencement as set out in Row 41 of Appendix A.

- 4.155 In response to paragraph 2.14 of the MMO's RR it is agreed that the amendments to **Condition 7(a)** *Pre-construction plans and documentation* of the draft DML adequately secure the provision of a plan which shows the length and arrangement of the cables comprising Works Nos 1 and 2 to and approved by the MMO at least four months prior to the first survey. It is also agreed that the MMO will consult with the relevant statutory body prior to the plan being approved. It is agreed that consideration can be given to naming the relevant statutory bodies (including the statutory nature conservation body) in the condition if requested by the relevant statutory body as set out in Row 26 of Appendix A.
- 4.156 In response to point 4 of the MMO's response to Deadline 3 regarding reference to Condition 12 and Condition 13, it is agreed that the current drafting of **Condition 7(b)(iii)** *Pre-construction plans and documentation* of the draft DML is correct as set out in Row 44 of Appendix A.
- 4.157 In response to point 6 of the MMO's response to Deadline 3 regarding the timeframes for submission of a pre-construction survey and monitoring timetable, it is agreed that the current drafting of **Condition 7(b)(iii)** *Pre-construction plans and documentation* of the draft DML is correct as set out in Row 47 of Appendix A.
- 4.158 In response to paragraph 2.16 of the MMO's RR it is agreed that the amendments to **Condition 7(c)** *Pre-construction plans and documentation* of the draft DML are appropriate and reasonable in order to ensure the proposed methods are appropriate, have been provided and assessed within the ES, and include appropriate mitigation as set out in Row 28 of Appendix A.
- 4.159 In response to paragraph 2.17 of the MMO's RR it is agreed that the amendments to **Condition 7(d)** *Pre-construction plans and documentation* of the draft DML are appropriate and reasonable on the basis that guidance may change and the MMO is able to determine which recognised best practice guidance should be adhered to as set out in Row 29 of Appendix A.
- 4.160 In response to paragraph 2.15 of the MMO's RR it is agreed that the wording of **Condition 7(f)** *Pre-construction plans and documentation* of the draft DML adequately secures the provision of a cable specification and installation plan to be submitted to and approved by the MMO, in

consultation with Trinity House and the Maritime and Coastguard Agency (MCA) at least four months prior to the first survey. It is also agreed that the MMO will consult with the relevant statutory bodies (including the statutory nature conservation body) prior to the plan being approved. It is agreed that consideration can be given to naming the relevant statutory body in the condition if requested by the relevant statutory body as set out in Row 27 of Appendix A.

- 4.161 In response to paragraph 2.15 of the MMO's RR it is agreed that the wording of **Condition 7(h)** *Pre-construction plans and documentation* of the draft DML adequately secures the provision of a mitigation scheme for Annex I biogenic reef features in the Inner Dowsing, Race Bank and North Ridge Site of Conservation Importance identified by the survey referred to in Condition 12(2)(a), which be submitted to and approved by the MMO at least four months prior to the first survey. It is also agreed that the MMO will consult with the relevant statutory bodies (including the statutory nature conservation body) prior to the plan being approved. It is agreed that consideration can be given to naming the relevant statutory body in the condition if requested by the relevant statutory body as set out in Row 27 of Appendix A.
- 4.162 In response to paragraph 2.1 of the MMO's RR it is agreed that the wording of **Condition 7(i)** *Pre-construction plans and documentation* of the draft DML adequately secures the provision of an Offshore Operations and Maintenance Plan which accords with the Outline Offshore Operations and Maintenance Plan (Document Reference 8.14) and must be submitted to and approved by the MMO at least four months prior to the commencement of operation of licenced activities as set out in Row 5 of Appendix A.
- 4.163 In response to paragraph 2.1 of the MMO's RR it is agreed that the Outline Offshore Operations and Maintenance Plan (Document Reference 8.14) is adequate for securing the offshore maintenance activities which are included in the application for a DCO and which have been assessed within the Environmental Impact Assessment (EIA) and adequately identifies maintenance activities that are likely to fall outside of the application and for which further relevant consents and licenses would need to be obtained should the need for these activities arise during the operation of the TKES as set out in Row 5 of Appendix A.
- 4.164 In response to paragraph 2.1 of the MMO's RR it is agreed that approach set out in Outline Offshore Operations and Maintenance Plan (Document Reference 8.14) is adequate to manage the potential impacts of operation and maintenance activities as set out in Row 5 of Appendix A.

- 4.165 In response to paragraph 3.2 of the MMO's RR it is agreed that **Condition 7** *Pre-construction plans and documentation* of the draft DML does not include a Marine Mammal Monitoring Plan as the low level of impact means one is not required as set out in Row 32 of Appendix A.
- 4.166 As set out in the MMO's response to ExA question DCO 2.30 it is agreed that **Condition 9** *Pre-construction plans and documentation* of the draft DML adequately secures the documents required prior to the commencement of HDD works and enables the applicant to proceed with the HDD works without requiring approval of pre-construction documents detailed in DML condition 7.
- 4.167 In response to point 5 of the MMO's response to Deadline 3 it is agreed that **Condition 9(1)(c)** *Pre-construction plans and documentation* of the draft DML has been amended to state 'a marine **pollution** contingency plan' as set out in Row 46 of Appendix A.
- 4.168 In response to point 4 of the MMO's response to Deadline 3 it is agreed that the old **Condition 12** *Equipment and operation of vessels engaged in licensed activities* of the draft DML has been removed as the topics detailed are covered in other legislation as set out in Row 45 of Appendix A.
- 4.169 In response to paragraph 2.18 of the MMO's RR it is agreed that the amendments to **Condition 12(1)** *Pre-construction monitoring and surveys* of the draft DML adequately secures the requirement for written approval of the proposed pre-construction surveys from the MMO, in consultation with the statutory nature conservation body as set out in Row 30 of Appendix A.
- 4.170 In response to paragraph 3.3 of the MMO's RR it is agreed that the amendments to **Condition 13(1)** *Post construction* of the draft DML adequately secures the requirement for the applicant to provide evidence that the cables have been buried and located within the order limits as set out in Row 33 of Appendix A.
- 4.171 In response to point 7 of the MMO's response to Deadline 3, it is agreed that the proposed revisions to **Condition 13(2)(b)** and **13(2)(c)** *Post construction* of the draft DML adequately secures the requirement for the ongoing monitoring to ensure that the offshore cables remain buried during the operational phase of the project as set out in Row 48 of Appendix A.
- 4.172 It is agreed that **Condition 14** *Bathing Water Quality* adequately secures the requirement to ensure works No 2 are not carried out between 15th May and 30th September unless a scheme to protect the Bathing Water Quality

Directive status is submitted to and approved in writing by the MMO in consultation with the Environment Agency.

Other Consents and Licenses

- 4.173 In response to paragraph 4.1 of the MMO's RR it is agreed that given the type of activities being undertaken, it is not expected that a wildlife license will be required as set out in Row 36 of Appendix A.
- 4.174 In response to paragraph 2.5 2.9 and 3.1 of the MMO's RR it is agreed that as dredging will not be used to move boulders or sediment for the export cable route, a disposal license is not required as set out in Row 16 of Appendix A.

5. MATTERS NOT AGREED

- 5.1 This section of the SoCG sets out those aspects of the Application that have not been agreed following discussions on the MMO's relevant representation (RR), advice at hearings and responses to Deadline 3 and Deadline 4. The parties do not expect their position to change during the examination.
- 5.2 The Applicant and the MMO have included a joint position statement regarding the drafting of **Article 5** *Transfer of benefit of Order* of the DCO as Appendix B.

6. APPENDICES

Appendix A, Audit Tracker

Row Number	Rep Number	Para number	Issue Raised	Applicant comments	Consultee Response	Closed Open
		Relevant Representation				
1	189	Int	<p>The Marine Management Organisation (MMO) is an interested party for the examination of Development Consent Order (DCO) applications for Nationally Significant Infrastructure Projects (NSIP) in the marine area. The MMO received a notification dated 8 June 2015 stating that The Planning Inspectorate (PINS) (on behalf of the Secretary of State (SoS) for Energy and Climate Change) has accepted an application from RWE (the Applicant) for a DCO relating to the Triton Knoll Offshore Wind Farm Electrical System (TKES).</p> <p>The MMO's comments on this application are presented below. Please note these are our initial comments, and that the MMO reserves the right to make further comments on this application throughout the examination process and to modify its present advice or opinion in view of any additional information that may come to our attention.</p> <p>The MMO has an interest in this project because it comprises the works required to connect the consented Triton Knoll Offshore Wind Farm (TKOWF) to the national electricity network (the Project).</p> <p>The DCO application includes a deemed marine licence (DML) pursuant to section 149A of the Planning Act 2008 (PA 2008) for licensable marine activities under the Marine and Coastal Access Act 2009 (MCAA 2009). Should consent be granted for the project, the MMO will be responsible for the monitoring, compliance and enforcement of DML conditions.</p>	Noted		Closed
2	189	Int	The MMO has had regular correspondence with the Applicant and will shortly commence the development of a Statement of Common Ground (SoCG).	Noted		Closed
3	189	Int	<p>We have reviewed the Consultation Report (Document 5.1), submitted as part of the application, and conclude that this contains an accurate representation of the consultation we have undertaken with the Applicant during the pre-application stage of this scheme. The following documents have been reviewed alongside the application and are referenced in our comments below:</p> <ul style="list-style-type: none"> - MMO response to Section 42 Consultation. Letter to Gill Moore dated 22 December 2014; and - RWE Point by Point Response to MMO Section 42 Comments dated 12 January 2015 <p>We have reviewed the Environmental Statement (ES), and relevant supporting appendices, along with the draft DCO/DML, and have received advice from our scientific advisors at the Centre for Environment, Fisheries and Aquaculture Science (Cefas). We set out our initial comments below.</p>	Noted		Closed
4	189	1.1	In general the ES is appropriate with potential impacts identified and accurate. The applicant appears to have engaged fully with the local authorities, the Eastern Inshore Fisheries and Conservation Authority (EIFCA) and the local and wider fishing industries seem to have been engaged from an early stage of the process. The MMO would advise that engagement with these industries continues.	Noted, engagement will continue		Closed
5	189	2.1	<p>Part 1 – Preliminary - In our response to the applicant Section 42 consultation dated 22 December 2014 we stated: Article 2, (page 6 of April 2015 DCO/DML). Interpretation, definition of “maintain”. We do not agree that the definition for “maintain” should include the words “maintain”, “alter”, “remove”, “reconstruct” or “adjust”. Alterations are not necessarily maintenance and reference to this should therefore be excluded from the definition to ensure that only the works assessed in the ES are licensed. This should also be carried forward to the DML definition (schedule 8, page 42). The MMO would suggest the applicant produces a Schedule of Maintenance to allow for maintenance works and to define the activities assessed by the Environmental Statement (ES) and permitted by the DCO / DML.</p> <p>The applicant has indicated that the wording is similar to that submitted to PINS for the Rampion, Hornsea and Creyke Beck projects. It should be noted that for these projects, to deal differing views on the definition of maintenance, it was agreed that only operational and maintenance activities adequately considered within their ES were permitted. Where possible these were agreed in the form of Schedule of Maintenance (or similar) during the examination of the applicant.</p> <p>As advised the applicant has submitted the Outline Offshore Operations and Maintenance Plan (Doc Ref 8.14), in which they commit to the submission of a detailed offshore operations and maintenance plan (OMP), in which the applicant should set out what activities they anticipate to be required, and detail where this has been assessed within the ES. The MMO are currently undertaking a review of this outline plan (8.14) and we are therefore currently unable to agree with the applicant's current interpretation of “maintain” at this stage.</p>	<p>We understand that the MMO is currently reviewing the Outline Operations and Maintenance Plan (OOMP) submitted with the TKES application. The initial review indicates that the document is satisfactory, but the MMO's position will be confirmed shortly.</p> <p>As we discussed, the definition of “maintain” set out in Article 2 of the DCO needs to remain as drafted to ensure that there is no uncertainty regarding the ability of the undertaker to maintain the onshore works (which include the transition joint bays, link boxes, cables, substation and IEC and related work and equipment).</p> <p>In respect of the definition of “maintain” in the dML (Schedule 9 page 42), the current wording is set out below which clearly secures that maintenance can only take place to the extent that it has been assessed in the environmental statement (a point specifically raised in your relevant representation).</p> <p>In addition TKOWFL is happy to include the new wording on bold set out below:</p> <p><i>“maintain” includes inspect, upkeep, repair, adjust and later and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of Schedule 1 (authorised project) to the extent assessed in the environmental statement and ‘maintenance’ shall be construed accordingly.</i></p>	<p>Andrew Souter's (AS) email of 25/08/2015</p> <p>MMO are content that the level of detail within the OOMP are appropriate for this stage of the application process.</p> <p>MMO are content with amended wording.</p>	Closed

6	189	2.2	Part 2 – Principle powers - Article 5 (page 9 of April 2015 DCO/DML). Transfer of Benefit of Order – Please refer to Appendix 1.	<p>We understand the MMO's position to be that it does not agree with the current wording of article 5(5) which provides for the circumstances in which the consent of the Secretary of State is not required for a transfer or grant of the benefit of the Order.</p> <p>The transfer without consent to bodies licenced under Section 6 of the Electricity Act 1989 is something that has been authorised by the Secretary of State on a number of DCOs, including most recently the Dogger Bank Teesside DCO (see article 8(4)). In response to the MMO's concerns regarding regulatory oversight, it is considered that such bodies by virtue of being licence holders have been subject to both scrutiny and authorisation by the Secretary of State to determine their fitness to supply or distribute electricity. It is also likely that any body to whom a transfer of the TKES was made, would be a body specifically authorised by the Secretary of State as the offshore transmission operator (OFTO) for the project. In such circumstances further approval from the SoS would be unnecessary.</p> <p>It should also be noted that the provisions of article 5(6) apply notwithstanding whether the SoS's approval is required. These provisions ensure that both the SoS and the MMO are notified of the relevant details relating to any transfer including the powers to be transferred or granted (iii), any restrictions, liabilities or obligations that will apply (iv) and, in the event of a partial transfer or grant a plan showing the area to which it relates (v).</p> <p>On this basis TKOWFL does not propose to amend the wording of Article 5(5), and notes the MMO's position. It is therefore suggested that the following wording is included within the SoCG:</p> <p><i>The Applicant and the MMO have discussed the drafting of article 5(5) of</i></p>	<p>AS email of 26/08/2015</p> <p>Please note that our main concern is not in relation to the suitability of the new consent holder but the operational and enforcement issues of having a licence split without the input of the enforcing body or decision maker. The MMO would not agree with the current wording proposed for the SoCG and would require our reasoning explained to support why we are in disagreement – this would evidence that both parties are aware of the others concerns and that both parties are unlikely to agree with the splitting of a licence for the reasons that we both agree in any SoCG that may be required.</p> <p>An joint position statement has been agreed between the MMO and the Applicant and is submitted as Appendix B.</p>	Closed
7	189	Ap 1.1,1 2	<p>Appendix 1 – MMO Position on transfer of benefit</p> <p>In formulating this position the MMO has considered the relevant provisions of the Planning Act 2008 ("the 2008 Act") and the Marine and Coastal Access Act 2009 ("the 2009 Act") as well as the provisions of made DCOs for other offshore developments.</p> <p>The MMO is content that the default effect of section 156 of the 2008 Act, in the absence of a contrary provision as envisaged in section 156(2), is that more than one person can have the benefit of a DCO. Furthermore, as section 149A of the 2008 Act does not make any further contrary provision which would affect or otherwise limit the scope of section 156(1) it follows that a DML as part of a DCO can legally benefit more than one person at the same time.</p>	See above	See above	
8	189	Ap 1 3	<p>However, while it may be legally possible to partially transfer or lease the benefit of a DML it is not necessarily desirable and the MMO retains serious operational concerns regarding the adequate monitoring of compliance with, and any subsequent enforcement of, a DML, and any conditions of a DML where the benefits of a DML have been transferred partially under the provisions as drafted within Article 5 (page 6), rather than whole as permitted by section 72(7) and (8) of the 2009 Act.</p>	See above	See above	
9	189	Ap 1.4,1 5	<p>There is no express provision within Part 4 of the 2009 Act that is on a par to section 156 of the 2008 Act. The only similar provision is contained within section 71(5) of the 2009 Act. This subsection states that conditions can be attached to a licence in order "to bind any person who for the time being owns, occupies or enjoys any use of the works in questions (whether or not the licence is transferred to that other person)." The existence of this provision requiring such an express step to be taken in order for the conditions to bind any such persons allows the MMO to draw the conclusion that, unlike the situation created by section 156(1) of the 2008 Act, the benefit of a marine licence does not automatically lie with such persons because if it did the conditions would already apply without requiring section 71(5).</p> <p>Moreover, while the provisions of Part 4 of the 2009 Act are drafted in a very general way, section 72(7) can be said to envisage the transfer of a licence from one single legal entity to another only. The Explanatory Note on this part of the 2009 Act states: On receipt of an application from the licensee, the licensing authority may transfer a licence from one named person to another. Licensees themselves cannot transfer their licences.</p>	See above	See above	
10	189	App 1.6	<p>1.6 It is of utmost importance that there is a clear identification of areas of responsibility and a mechanism allowing appropriate enforcement action to be taken as necessary. For this purpose the MMO's preferred position, reflecting and deriving from the consistent approach taken in relation to marine licences issued by the MMO in accordance with Part 4 of the 2009 Act, continues to be that:</p> <ul style="list-style-type: none"> • There is a single identified licence holder for a DML; • Any transfer of a DML for the licence holder to another single identifiable legal entity should be undertaken either by the MMO under section 72(7) of the 2009 Act or; where the transfer of benefit of the DML is to be undertaken in accordance with the transfer of benefit provisions in the main body of the DCO, as a single transfer of the whole benefit of the DML only from the licence holder (undertaker) to another single identified legal entity only on application to the Secretary of State, who will then consult the MMO prior to making a final determination. 	See above	See above	
11	189	App 1.7	<p>1.7 However, in consideration of the above and upon review of the current wording of Article 5 of the DCO, we are content with the wording of 5(1) and (2) as it ensures that partial transfers will be approved by the Secretary of State in consultation with the MMO.</p>	See above	See above	

12	189	1.8,1.9,1.10	<p>However, we do not support the current drafting of Article 5(5) which permits the partial transfer of benefits without an approval process. It is not clear why specific provisions relating to bodies holding section 6 licences can circumvent the process outlined in 5(1)?</p> <p>We have operational concerns that such an approach allows partial transfer of benefits and associated liabilities to other parties without regulatory oversight. In operational practice, under the currently proposed wording, there is a risk that where the benefit of a DML lies with more than one legal entity the responsibility for complying with any particular condition or part of a DML would be significantly more problematic to determine. This consequently may limit the ability of the MMO to fulfil its statutory obligation to protect the environment, protect human health and protect other legitimate users of the sea.</p> <p>We do not currently support the drafting of Article 5 as proposed by the applicant. We are of the opinion that Article 5(5) should be deleted and that all grants / transfers should be carried out in accordance with Article 5 (1). This would help alleviate operational concerns that in relation to partial transfer of DMLs.</p>	See above	See above	
13	189	2.3	<p>In our response to the applicant Section 42 consultation dated 22 December 2014 we stated: Article 20, (page 17 of April 2015 DCO/DML). The MMO require clarification that the land in question does not include any part of the intertidal area. The applicant has indicated that the land details are as confirmed in Schedule 7. However the MMO require confirmation that the land in question does not include any intertidal areas.</p>	The intertidal area is part of plot 01a/01 which is Crown Land. Although we have included it within the Book of Reference this has been done for completeness and no compulsory rights or powers are being sought over it. Any rights required over Crown Land in the intertidal area will be secured by agreement with The Crown Estate.	AS email of 26/08/2015 MMO are content with this	Closed
14	189	2.4	<p>Part 4 - Supplemental powers (page 13, Article 13). The applicant states that they may enter any land for survey and investigation purposes as set out in the Order limits. The MMO would like to point out that activities detailed within 13 (a) to (d) carried out below MHWS may require a marine licence and should not be included, unless it has been assessed within the ES and included within the DML. The MMO request that this statement be redrafted to clearly demark the boundaries of the access limits. The MMO advise that the wording used in Article 26 (2)(c) could be adopted for this purpose.</p>	In response to the MMO's concerns the following will be inserted as a new article 13 (2): <i>(2) Paragraph (1) shall not authorise the undertaker to carry out any of the actions listed in sub-paragraphs (a) to (d) above on any land seaward of MHWS</i>	AS email of 26/08/2015 MMO are content with this	Closed
15	189	2.5	<p>Schedule 1 – Authorised Project – Part 2- Ancillary Works (page 32 of April 2015 DCO/DML). In our response to the applicant Section 42 consultation dated 22 December 2014 we stated: Activities such as boulder removal and sandwave preparation may involve disposal and this should be characterised and assessed within the ES. It should also be identified as a licensable activity and included within the DML along with the appropriate disposal conditions. The MMO can advise the applicant further on applying for a disposal site allocation, should they feel it may be required as part of the construction / installation activities.</p>	The Applicant confirms that sediment is only being moved to one side, not lifted and moved.	At meeting on 20/08/15 Alan Gibson (AG) confirmed that if the applicant is only moving sediment and boulders to one side, not lifting and moving then this is classed as dredging and not disposal and a disposal license is not required. AG also advised that if boulders create berms then the Applicant will need to ensure that there is no impact on navigable water depth or fishing. PC confirmed only small boulders on areas of rough bed so the applicant is not changing the nature of the ground. This has been assessed in the ES as having no impact.	Closed
16	189	2.5	<p>The applicant has stated that no boulder or sandwave preparation will be involved and that no disposal will be necessary as the area will be prepared using grapnel runs and/or pre-lay jetting. The use of grapnel runs will potentially move rock or debris into piles and the applicant must consider the potential environmental and navigational risks associated with these activities.</p>	See above		Closed

17	189	2.5	<p>The potential scope of “ancillary works” is very broad and we advise that the DCO should be amended that ancillary works should clearly be linked to the extent that have been considered in the ES.</p> <p>In addition the applicant has included the wording removal, reconstruction or alteration of the subsea cables. The MMO do not believe removal or reconstruction to be “ancillary works” but an integral part of the scheme and the MMO request that this wording be removed.</p>	<p>As discussed, the wording set out in paragraph 2(3) of the dML at Schedule 9 of the DCO states:</p> <p><i>(3) and in connection with Work Nos 1 and 2, ancillary works within the offshore Order limits and up to mean high water springs which have been subject to an environmental impact assessment recorded in the environmental statement comprising –</i></p> <p>This wording clearly links the ancillary works within the dML to the assessments undertaken in the submitted ES, on this basis it is not considered that any further changes to the drafting are required.</p> <p>In terms of the “removal, reconstruction or alteration of the position of subsea cables”, these are not an integral part of the scheme as they do not relate to the TKES cables, but to existing offshore cables that may need works doing to them as a result of the installation of the TKES cables. In order to ensure that this is clear we suggest that paragraph 2(3)(d) is amended as follows:</p> <p><i>the removal, reconstruction or alteration of the position of subsea cables existing at the date of commencement of the licenced activities;</i></p>	<p>AS email of 26/08/2015</p> <p>MMO are content with this, however, the works proposed will need to be covered in any method statements that are to be provided for approval prior to construction. Is it possible to make this clear in the drafting?</p>	Closed
18	189	2.6	<p>Schedule 1 – Part 3 - Requirements – Construction Traffic 18, page 38. The MMO request clarification as to whether the “construction traffic management plan” includes offshore vessel traffic, as if it does then we would advise that this activity would be considered under the remit of the MMO and not the Local Planning Authority.</p>	<p>At present, as set out in the outline traffic management plan (document 8.9), requirement 18 only relates to onshore traffic. This is why it is only necessary, as set out in draft requirement 18, for the local planning authority to approve the final construction traffic management plan.</p> <p>It should also be noted that dML condition 2(8) requires the undertaker to notify the MMO of the expected vessel routes from the local constructions ports to the relevant locations.</p>	<p>At meeting on 20/08/15</p> <p>AS and AG agreed they are content with this.</p>	Closed
19	189	2.7	<p>Schedule 9 – Part 1 – Licensed Marine Activities. In our response to the applicant Section 42 consultation dated 22 December 2014 we stated:</p> <p>Article 1, (page 105 of April 2015 DCO/DML). Interpretation, definition of “commencement”. We recommend that this definition be reworded as follows:</p> <p>“commence” means beginning to carry out the activities authorised by the deemed marine licences at Schedule 9 (deemed licences under the Marine and Coastal Access Act 2009) other than pre-construction surveys or monitoring.</p> <p>This definition ensures that no marine activities are started prior to the completion of pre-construction surveys or monitoring requirements.”</p> <p>The applicant has amended the drafting as follows:</p> <p>“commence” means beginning to carry out the activities authorised by the deemed marine licence (deemed licence under the Marine and Coastal Access Act 2009) other than pre construction surveys or monitoring, and exit for HDD and related works.</p> <p>The MMO do not support the inclusion of “HDD and related works”. The MMO believe that HDD exit works would be considered as commencement of offshore works.</p> <p>In addition, it is not clear what is intended by related works. It is important that any related works, such as the use of temporary cable protection, must be clearly considered in the ES and may also be considered as the start of the offshore construction.</p>	<p>HDD exit and related works refers to works to install the HDD cable ducting along with associated fencing, and on-site vehicle movements etc. This work may occur above MHWS, as noted in Chapter 5 Offshore Project Description, but may also occur below MHWS, hence the need to remove from commencement activities. The installation of HDD cable ducting will be driven by the programme for onshore works, which may occur some time ahead of offshore works. There is potential for separation of months (or potentially a year) between installation of the HDD ducts and the reopening of those ducts and associated beach trenching for cable installation. The full details of this activity, including temporary capping of the ducts prior to cable pulling, have been included in the ES and appropriately assessed.</p>	<p>AS email of 26/08/2015</p> <p>HDD - the MMO believe that the HDD works (and boundary fencing installation etc.) should be covered /addressed within the Pre-con Plans & Docs (page 105) to be submitted to the MMO for approval, in particular under Article 7 (iv) “associated and ancillary works”.</p> <p>They should also be given consideration within the WSI and the Marine Pollution Contingency Plan, Notices to Mariners, Local Authority Planning Consents, Contractor/Vessel details to be provided</p> <p>To expand on this, the digging/drilling could potentially place at risk unknown archaeological artefacts, the use of machinery/plant within the area of the works could result in an accidental spillage of fuel/lubricants etc.</p> <p>To confirm, we are content that you do not wish to include HDD in the definition of “commence”, however we would be comfortable if the HDD was referenced in (iv).</p>	Closed - See row 43
20	189	2.8	<p>Schedule 9 - Part 1, Article 4 (i), Page 105. Please note English Heritage have been renamed as Historic England.</p>	<p>Noted. Will be amended on next DCO/DML</p>	<p>At meeting on 20/08/15</p> <p>MMO are content with this</p>	Closed
21	189	2.9	<p>In our response to the applicant Section 42 consultation dated 22 December 2014 we stated:</p> <p>Schedule 9 – Part 1- Details of licensed activities - Article 2 (3)(page 108 of April 2015 DCO/DML). The works are defined as follows:</p> <p>(c) cable route preparation works;</p> <p>In our response to the applicant Section 42 consultation dated 22 December 2014 we stated:</p> <p>Activities such as boulder removal and sandwave preparation may involve disposal and this should be characterised and assessed within the ES. It should also be identified as a licensable activity and included within the DML along with the appropriate disposal conditions.</p> <p>We wish to re-iterate our comments made in point 2.5 (above).</p> <p>The MMO can advise the applicant further on applying for a disposal site allocation, should they feel it may be required as part of the construction / installation activities.</p>	<p>See the response to 2 5 above.</p>		Closed

22	189	2.10	Schedule 9 – Part 2 – Conditions – Notifications and Inspections 2(8), page 108. The applicant advises that start of works notices will only be issued for Work No 1. The MMO request that notifications are also issued for Work No 2.	DML draft condition 2(8) will be amended to include Work No 2.	At meeting on 20/08/15 MMO are content with this	Closed
23	189	2.11	Schedule 9 – Part 2 – Conditions – Offshore Safety Management 3(1) and (3), page 108. Condition 3(1) and (3) appear to be identical, the MMO would be content for (3) to be removed.	The duplicate paragraph 3(3) will be deleted	At meeting on 20/08/15 MMO are content with this	Closed - see row 42
24	189	2.12	Schedule 9 – Part 2 – Conditions – Chemicals, drilling and debris 5(6), page 109. The applicant has included a condition for removing waste material from below MHWS within 4 weeks of completion of the authorised scheme. The MMO request clarification as to what constitutes “waste” and whether the applicant has given consideration to the Waste Framework Directive. No waste should be left below MHWS, especially through 1 tidal cycle as it is likely to have been washed away and potentially contaminated the environment.	DML condition 5(6) will be amended as follows to remove reference to waste: <i>The undertaker must ensure that any debris arising from the construction of the authorised scheme or from equipment or temporary works placed below MHWS are removed within 4 weeks of completion of the authorised scheme unless otherwise agreed with the MMO.</i>	AS email of 26/08/2015 MMO are content with this	Closed
25	189	2.13	Schedule 9 – Part 2 – Conditions – Chemicals, drilling and debris 5(7), page 109. The applicant has committed to supplying the MMO with audit sheets, whilst this approach has been adopted on previous projects, we believe the condition may result in an administrative burden on the applicant and we suggest the applicant only reports those items that become “lost”. Appendix 2 to this response includes a “dropped object” reporting mechanism for consideration by the applicant.	TKOWFL is considering whether it needs to retain the ability to follow the audit sheet procedure and will confirm. In the event that this needs to be retained dML condition 5(7) will be amended to follow the approach taken in Dogger Bank Teesside, namely: <i>(7) Subject to sub-paragraph (10), at least 10 days before commencement of the licensed activities, the undertaker must submit to the MMO an audit sheet covering all aspects of the construction of the licensed activities or any phase of them. The audit sheet must include details of— (a) loading facilities; (b) vessels; (c) equipment; (d) shipment routes; (e) transport; (f) working schedules; and (g) all components and materials to be used in the construction of the authorised scheme. (8) The audit sheet must be maintained throughout the construction of the authorised scheme (or relevant phase) and must be submitted to the MMO for review at fortnightly intervals during periods of active offshore construction. (9) In the event that the MMO becomes aware that any of the materials on the audit sheet cannot be accounted for, it must require the undertaker to carry out a side-scan sonar survey to plot all obstructions across a reasonable area of search agreed by the MMO where construction works and related activities have been carried out. Local commercial fishing groups must be invited to send a representative to be present during the survey. Any obstructions that the MMO believes to be associated with the authorised scheme must be removed at the undertaker's expense. (10) As an alternative to the completion of an audit sheet, with written</i>	AS email of 26/08/2015 The MMO re-iterate that the “audit sheet” approach is overburdensome. The implementation of the dropped objects procedure has been agreed between TH, MCA, IFCA, UK Hydrographic Office and the MMO. The MMO are satisfied that applicants will maintain a full audit sheet for all transiting vessels and we do not need to review these for outgoing and incoming vessels and trying to identify where audit sheets do not “match” between sailings – indeed please be aware that the MMO will charge for this review of the audit sheets and over the lifetime of the project this may result significant costs. The reporting of objects lost overboard is an obligation which would continue throughout the operation and maintenance of the development and not just the construction phase as stated in the current wording. The dropped object procedure is simply a standardised reporting mechanism for items lost which can be sent to all the relevant stakeholders at the same time, the 1 sheet of paper takes minimal time to process for all parties and again I would re-iterate the time and subsequent cost savings over the “audit sheet” proposals	Closed - see row 43
26	189	2.14	Schedule 9- Part 2- Conditions – Pre-construction plans and documentation 7(1)(a), page 110. The applicant states that the licensed activities or any part.... approved by the MMO, Natural England should also be included as a consultee in this condition to ensure no Annex 1 habitat is placed at risk.	All agreed that this could be included in NE request but that it should be left to NE to raise. Agreed that a statement should be included in SoCG that the relevant statutory body would be consulted and could be added if requested.	At meeting on 20/08/15 AS and AG confirmed that NE would be consulted anyway but that NE requested this amendment in Dogger Bank hearing. AS email of 26/08/2015 MMO are content with this	Closed
27	189	2.15	Schedule 9- Part 2- Conditions – Pre-construction plans and documentation 7(f) and (h). The MMO advise that these two conditions are linked, Natural England will need to be consulted on the specification and installation plans mentioned in (f) as mitigation for the conditioning described in (h) to ensure that impacts to Annex 1 habitat is minimised through any proposed mitigation.	All agreed that this could be included in NE request but that it should be left to NE to raise. Agreed that a statement should be included in SoCG that the relevant statutory body would be consulted and could be added if requested.	At meeting on 20/08/15 AS and AG confirmed that NE would be consulted anyway but that NE requested this amendment in Dogger Bank hearing. AS email of 26/08/2015 MMO are content with this	Closed
28	189	2.16	Schedule 9- Part 2- Conditions – Pre-construction plans and documentation 7(1)(c)(i). The MMO request that the HDD works are added to this condition in order to ensure the proposed methods are appropriate, have been provided and assessed within the ES, and include appropriate mitigation.	In accordance with the MMO's request, dML condition 7(1)(c)(i) will be amended as follows: <i>(i) cable installation, including cable landfall, HDD, cable protection and pipeline crossings;</i>	AS email of 26/08/2015 MMO are content with this	Closed

29	189	2.17	Schedule 9 – Part 2 – Conditions 7(d)(ii), (page 112 of April 2015 DCO/DML). The applicant states: a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance. The reference to best practice guidelines is quite vague and the MMO request that the actual guidance document is named.	It is noted that the present wording of dML condition 7(d)(ii) has just been approved by the Secretary of State in the Dogger Bank Teesside DCO. On the basis that guidance may change, it is considered that the present wording is appropriate. In addition as the body with responsibility for discharging this condition the MMO is able to determine which recognised best practice guidance should be adhered to.	AS email of 26/08/2015 MMO are content with this	Closed
30	189	2.18	Schedule 9 – Part 2 – Conditions 12(1) (page 115 of April DCO/DML). The applicant states: The undertaker must submit details for approval by the MMO in..... The MMO request the wording is amended to read details for written approval by the MMO..... This brings the condition in line with other conditions within the DML.	In accordance with the MMO's request, it is proposed that draft dML condition 12(1) is amended as follows: <i>The undertaker must submit details for written approval by the MMO in consultation with the statutory nature conservation body of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report;</i>	AS email of 26/08/2015 MMO are content with this	Closed
31	189	3.1	In our response to the applicant Section 42 consultation dated 22 December 2014 we stated: The MMO require the ancillary works (such as grapnel runs, dredge works etc.) to be recorded in the DML as licensable activities and clarification that these works have been assessed within the ES. The applicant has stated that no boulder or sandwave preparation will be involved and that no disposal will be necessary as the area will be prepared using grapnel runs and/or pre-lay jetting. Please see our comments at point 2.5 and 2.9 above.	See the response to 2 5 above.		Closed
32	189	3.2	The DCO/DML do not make any reference to the approval of a Marine Mammal Mitigation Plan (MMMP). The ES refers to the fact that one will be produced and submitted to the MMO for approval (ES Chapter 6 (6.90)). To secure this commitment by the applicant it should be conditioned within the DML. However the MMO are happy to discuss further the requirement for a MMMP with both the applicant and Natural England.	This paragraph in the ES refers to other projects (Docking Shoal, Race Bank and Dudgeon) which all will have MMMPs. The electrical system does not have a requirement for an MMMP as the sole risk associated is related to potential cork screw injuries, which will be discussed in terms of a potential for mitigation based on updated information (TBC with NE). Additionally, the MMMP for the Array will provide for the whole project.	At meeting on 20/08/15 AS confirmed that a MMMP is unlikely to be needed for the TKES consent as there is no piling and the MMO will defer to NE on this issue.	Closed
33	189	3.3	Schedule 9- Part 2- Conditions, page 113. The MMO request that a condition be included within the DML to submit an "as constructed" plan. This will allow the MMO to verify that the project has been constructed in accordance with approved preconstruction plans and documents.	in accordance with our discussions regarding the inclusion within the dML of a requirement to submit an "as built" plan to the MMO, the following wording is proposed to condition 13: <i>13 –(1) The undertaker must submit details for approval by the MMO in consultation with the statutory nature conservation body of proposed post-construction surveys, including methodologies and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement.</i> <i>The post-construction surveys referred to in sub-paragraph (1) must, unless otherwise agreed with the MMO, have due regard to, but not be limited to, the need to undertake– dependent on the outcome of the survey undertaken in condition 12(2)(a) above, a survey to determine the effects of construction activity on the location, extent and composition of Annex I or Potential Annex I qualifying biogenic features in whole or in part inside the area(s) within the offshore Order limits in which construction works were carried out; and a swath bathymetric survey to IHO Order 1a across the area(s) within the offshore Order limits ensure the cables have been buried and located within the Order limits and provide the data and survey report(s) to the UKHO.</i> <i>The undertaker must carry out the surveys agreed under sub-paragraph (1) and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the statutory nature conservation body.</i>	At meeting on 20/08/15 MMO are content with this	Closed

34	189	3.4	The MMO acknowledge that the applicant has committed to producing a decommissioning plan for submission for approval to the Secretary of State. However the MMO would request that a condition is included within the DML requiring the applicant to submit a decommissioning plan to the MMO, for written approval, a minimum of six months prior to any decommissioning activities being undertaken.	The MMO's request for a separate decommissioning plan to be submitted for approval is noted, but not agreed. The Applicant considers that this would be duplication with the obligation to submit such a plan to the Secretary of State under s106 of the Energy Act. On the basis that a separate marine licence is likely to be required for decommissioning of the offshore electrical system works, the following wording is proposed as an alternative to the current drafting of paragraph 4 (page 33) 4 The licence does not permit the decommissioning of the authorised scheme. No decommissioning activity may commence until a decommissioning programme has been approved by the Secretary of State under section 106 of the Energy Act 2004. Furthermore, at least 4 months before carrying out any decommissioning activity, the undertaker must notify the MMO of the proposed activity to establish whether a marine licence is required for the activity.	At meeting on 20/08/15 AS and AG agreed clause could be used and are reviewing wording. AS email of 26/08/2015 MMO are content with this	Closed
35	189	4.1	The ES (nature conservation) states that it is unlikely that a Marine Wildlife Licence will be needed and liaison will continue with NE. It should be noted that the MMO, as the licensing authority for marine wildlife licenses, will determine whether or not a marine wildlife licence is required and that NE will act as a consultant to the MMO on the requirements for a marine wildlife licence.	Noted	At meeting on 20/08/15 AG advised that sometimes a letter of comfort is requested by the ExA on this.	Closed
36	189	5	The MMO considers that the ES submitted in support of the DCO application provides an appropriate description of the existing environment relating to the proposed Triton Knoll Electrical System in relation to the construction, operation and, as far as practicable, decommissioning phases.	Noted		Closed
37	189	5	The draft DCO and DML will require amendment in order to ensure that the conditions in the DML are enforceable and to ensure that the project consented remains within the Rochdale Envelope assessed. We therefore request that our comments above are addressed during the examination phase of this application.	Noted		Closed
38	189	5	We will endeavour to work with the applicant to address as many of the issues raised above as possible prior to examination. We hope that the detail of this response illustrates our commitment to this engagement.	Noted		Closed
39	189	5	Please note that the MMO reserves the right to make further comments on this application throughout the examination process and to modify its present advice or opinion in view of any additional information that may come to our attention. [Two appendices included- 1. Benefit of order, 2. Draft dropped objects Procedure]	Noted		Closed
40		Deadline 3 submission				
41		1	Page 5 and 109 – Interpretation of Commence - The MMO has undergone discussions with the applicant regarding the Horizontal Directional Drilling (HDD) works and the interpretation of “commence” which specifically excludes the HDD. The MMO has asked the applicant to look at the drafting of condition 9 (Page 115) which currently states: <i>Horizontal directional drilling works within Work No 2, including exit for HDD shall not commence until the following has been submitted to and approved in writing by the MMO including as relevant to those works.....</i> Our concern relates to the exclusion of HDD works within the definition and the inclusion of “commence” within condition 9. The MMO consider that the HDD punch out is a licensable activity under Part 4 of The Marine and Coastal Access Act 2009 and should be included within the definition of commence. However, we understand that the applicant does not wish the HDD works to trigger all other “commence” notifications/monitoring requirements within the DML. The MMO have provided the following suggested amendments to the applicant to resolve this matter: <i>“including exit for HDD”</i> to be removed from the definition of commence. While the MMO agrees in principle that the HDD works do not require all of the pre-construction documents to be discharged under the DML prior to commencement, as per the drafting of condition 9, the HDD works are a licensable activity, and the MMO believes should be part of commence. Condition 7 (1) could be amended to state <i>“The licensed activities or any part of those activities (except for HDD works within works No 2) shall not commence....</i> The MMO would note that the current drafting of condition 9 references commence, but the definition of commence excludes the works relevant to condition 9. The amendments suggested above would resolve this issue.	Agreed text has been included in the revised DCO		Closed
42		2	Page 111 Condition 3 (3) The MMO believes that this is a duplication of the requirement of 3 (1) and is unnecessary. In addition, we query the need for an Emergency Response Co-operation Plan (ERCoP)/MGN371 to be included within the DML. Such conditioning is usually applied to the generation assets (e.g. wind turbines) and this application is for an export cable. However the MMO is content to leave this to the applicant and the MCA to determine and if no agreement is reached then the ExA/Secretary of State may need to make the conclusive decision.	The Applicant has retained on the request of the MCA. Agreed with MMO on Teleconference on 09/12/2015		Closed

43		3	Page 113 – Misplaced Rock – The applicant should note that the notifications should also be communicated to Trinity House (TH), Maritime and Coastguard Agency (MCA) and the United Kingdom Hydrographic Office (UKHO). These parties, along with the MMO are all in agreement that the adoption of the Dropped Object Procedure is the correct format for these notifications to be received. We re-iterate our opinion that this would reduce the monitoring and reporting obligations of any developer and the MMO significantly. It is also important that legitimate users of the sea are notified of dropped objects to ensure that navigational safety is not undermined as a result of an object being “lost” within the marine environment.	The additional parties have been added to the condition as requested. The Applicant notes that the MMO would prefer the dropped office procedure was followed. Agreed with MMO on Teleconference on 09/12/2015 that both procedures could be retained as audit sheet procedures to be used on array.		Closed
44		4	Page 113 - Condition 7 (1) (b) (iii) refers to conditions 12 and 13. This should be corrected to 13 and 14 as condition 12 is currently related to equipment of vessels and not monitoring	Condition references in version D of DCO are correct. Agreed with MMO on Teleconference on 09/12/2015		Closed
45		4	Page 115 – Equipment and Operation of Vessels – The MMO are content for this section to be removed. The topics detailed here are covered within other legislation and are no longer necessary. However should the applicant wish to retain this requirement then the MMO has no objection.	Removed as requested by MMO. Agreed with MMO on Teleconference on 09/12/2015		Closed
46		5	Page 115 – Marine Contingency Plan – Should read Marine Pollution Contingency Plan	Amended text has been included in the revised DCO		Closed
47		6	Page 116 – Submission of details of pre and post construction surveys – condition 7 (1) (b) (iii). The MMO have requested the insertion of timeframes for the submission of pre-construction survey methodology and monitoring timetable (i.e. plans for pre-construction monitoring to be submitted 4 months prior to the condition of the first survey). The MMO notes the current linking of this requirement to 4 months prior to construction would mean the plans would have to be reviewed, approved, surveys conducted, results reviewed and approved all in the 4 months prior to construction. This does not seem an appropriate period and would be very restrictive for the undertaker.	The Applicant clarified that the current wording of this condition provides that: “details pursuant to paragraph (iii) to be submitted to the MMO at least four months prior to the first survey unless otherwise agreed in writing with the MMO”, allowing for these details to be approved separately from the four months prior to construction secured by condition 10(1). Agreed with MMO on Teleconference on 09/12/2015		Closed
48		7	Page 116 - Post Construction Bathymetric Surveys – The current drafting reads: a swath bathymetric survey to IHO Order 1a across the area(s) within the offshore Order limits ensure the cables have been buried and located within the Order limits and provide the data and survey report(s) to the UKHO. The MMO have provided an alternative to the current drafting for the applicants consideration as follows: A swath bathymetric survey to IHO Order 1a across the area(s) within the offshore Order limits ensure the cables have been buried and located within the Order limits and provide the data and survey report(s) to the UKHO. The results of the post cable lay surveys must be submitted to the MMO as part of the cable burial risk assessment which shall include detail of cable burial management including surveys and reporting of burial depths over the lifetime of the project. This change to the wording ensures that the burial of the export cable is managed appropriately over the lifetime of the project.	The Applicant considers that existing commitments in the draft DML provide for securing appropriate surveys to ensure that, where no secondary protection is required, the cables are buried within the Order Limits. Furthermore, the Offshore Operations and Maintenance Plan (OO&MP), secured under Condition 7 of the draft DCO, sets out that there will be periodic inspections of the cable to inform maintenance requirements, notably including any need for reburial should any part of the installed export cable become exposed. The Applicant therefore considers that there is no apparent need for additional drafting to effect management of burial of the export cables during the lifetime of the project, since this is already delivered by the draft DCO and associated Plans (notably which are required to be agreed with the MMO in any case).	Teleconference on 28/01/2016 AS and RW agreed that the proposed revisions to Condition 13(2)(b) Post construction of the draft DML adequately secures the requirement for the ongoing monitoring to ensure that the offshore cables remain buried during the operational phase of the project	Closed

Appendix B, Transfer of Benefit Joint Position Statement

Triton Knoll Electrical System Transfer of Benefit of Order

Joint Position Statement between Triton Knoll Offshore Wind Farm Limited and the Marine Management Organisation in relation to the Triton Knoll Electrical System application.

1 INTRODUCTION

- 1.1 Triton Knoll Offshore Wind Farm Limited (TKOWFL, or the Applicant) and the Marine Management Organisation (MMO) make this statement in respect of TKOWFL's application for a development consent order (DCO) under the Planning Act 2008 (the 2008 Act) (the Application) for the Triton Knoll Electrical System (the proposed development).
- 1.2 In particular, this statement is made in relation to Article 5 (transfer of benefit of order) of the draft DCO and Deemed Marine Licence (DML). This statement is prepared in response to a request made by the Examining Authority (ExA) at the issue specific hearing on 12 December 2015.
- 1.3 The MMO initially raised concerns relating to the principle of a partial transfer of the benefit of the order. However, matters have progressed as a result of discussions between the Applicant and the MMO, the drafting of article 5 of the DCO has developed and as a result the position of the MMO has changed.
- 1.4 The Applicant and the MMO now agree that:-
- (a) the default effect of section 156 of the 2008 Act is that more than one person can have the benefit of a DCO and that subject to any contrary provisions under section 149 which would affect or otherwise limit the scope of section 156(1), it follows that a DML as part of a DCO can legally benefit more than one person at the same time; and
 - (b) on the basis that article 5(1) and 5(2) of the TKES draft DCO ensures that partial transfers will be approved by the Secretary of State, in consultation with the MMO, the wording of those paragraphs as drafted is appropriate and satisfactory.

2 OUTSTANDING CONCERNS OF THE MMO

- 2.1 Whilst the MMO accepts that it is legally possible for more than one person to have the benefit of a DCO and thereby a DML which forms part of a DCO, the MMO considers that a partial transfer is not desirable. In particular, the MMO's concerns relate to:-
- (a) article 5(6) which permits the transfer of benefit to another body licenced under Section 6 of the Electricity Act 1989 without the consent of the Secretary of State and without consultation with the MMO; and
 - (b) operational matters including the adequacy of monitoring of compliance with, and subsequent enforcement of a DML and any conditions of a DML where there has been a partial transfer of the benefits of that DML. In particular the MMO has expressed concerns that the current drafting of the DCO and DML

may allow the undertaker to choose what conditions are transferred to a third party.

3 THE OPERATION OF THE TRANSFER OF BENEFIT OF THE ORDER UNDER ARTICLE 5(6)

Consent and Notification

- 3.1 Article 5(6) of the draft DCO permits the transfer or grant to another body licenced under Section 6 of the Electricity Act 1989 (the 1989 Act) without the consent of the Secretary of State or consultation with the MMO.
- 3.2 The MMO's concern is that, in contrast to a grant or transfer under paragraphs (1) and (2) of article 5 of the draft DCO which requires the consent of the Secretary of State in consultation with the MMO, there is no such requirement to consult with the MMO prior to a grant or transfer under article 5(6).
- 3.3 The Applicant considers that whilst there may not be a specific requirement for consent or consultation prior to a grant or transfer under article 5(6), there is a requirement for the undertaker to give written notice of the transfer to the Secretary of State, the MMO and any relevant planning authority (article 5(7)) prior to the transfer taking effect. The notice must be given 10 days prior to the transfer taking effect and must include the following details:-
- (a) the name and contact details of the transferee;
 - (b) the date on which the transfer will take effect;
 - (c) the powers to be transferred or granted;
 - (d) any restrictions, liabilities and obligations that will apply to the transferee;
 - (e) where relevant, a plan showing the works or area to which the transfer or grant relates; and
 - (f) a copy of the document effecting the transfer.

The Secretary of State and the MMO will therefore be provided, in advance, with a full detailed record of any transfer under article 5(6) for consideration. As such, the MMO would, in effect, have 10 days to raise any concerns they may have with regards to the suitability or otherwise of any proposed transferee and the operation of the transfer with regards to the conditions of the DML. MMO retain concerns that there is no requirement for the undertaker to consider or address any matters raised prior to the transfer or grant.

Transferee/Licence Holder

- 3.4 The distinction between the need for consent under article 5(1) and article 5(6) relates to the distinction between the relevant transferees under each article.
- 3.5 Article 5(1) makes provision for the transfer to 'any other person' whereas article 5(6) makes provision for transfers to licence holders under section 6 of the Electricity Act only. Licence holders under the Electricity Act will be otherwise regulated and have been previously approved by the relevant authority thereby removing the need for additional approval in the case of the transfer of benefit of a DCO.
- 3.6 In the case of TKES, the licence holder will almost certainly be an Offshore Transmission Operator (OFTO). It is the Applicant's view that the consent of the Secretary of State or the MMO should not be required for transfers to an OFTO as there is no realistic risk of an OFTO not being able to fulfil its obligations to remediate any breach of conditions. Prior to appointment, each OFTO undergoes a rigorous tendering

process by Ofgem, including appropriate due diligence procedures, to ensure that the successful bidder is of good financial standing and has the means to own and operate the transmission assets. There is also the 'OFTO of last resort' mechanism whereby Ofgem can appoint an OFTO outside the tendering process should there be an event which precludes an OFTO fulfilling its obligations.

- 3.7 The MMO's concern about the proposed approach is whether operationally there is clear apportionment of benefits and associated liabilities and restrictions, given that there is no regulatory approval process (rather than the financial standing of the transferee / grantee).

Compliance with and Enforcement of Conditions

- 3.8 The Applicant also notes the concerns expressed by the MMO in relation to operational issues regarding monitoring compliance with and enforcement of conditions under a DML where there has been such a partial transfer.
- 3.9 The Applicant confirms that all transfers will be carried out in accordance with article 5(4), and as such article 5 will operate to transfer the DML subject to its conditions. Unlike a DML for an offshore array which may consist of many different components, the TKES DML solely relates to Works Nos 1 and 2, which are both sections of cable route. Therefore, save for condition 14 which only applies to Work No 2, all the conditions of the DML will apply, irrespective of any division of the works, to any transfer whether in whole or in part.
- 3.10 The Applicant has amended article 5 of the draft DCO Revision F submitted at Deadline 5 so that it is clear that all transfers, including those without the consent of the Secretary of State under paragraph (6), take place under the powers granted in paragraph (1) and thus are subject to the provisions of paragraph (4).
- 3.11 The Applicant and the MMO note that the wording of the article relating to the transfer of benefit has evolved, and continues to evolve, through a number of offshore wind DCOs and that issues relating to the transfer of benefit of the order have not yet been tested in practice.

Burges Salmon LLP
1 February 2016