



National Infrastructure Planning,  
Temple Quay House,  
2 The Square Bristol,  
BS1 6PN

[aquind@planninginspectorate.gov.uk](mailto:aquind@planninginspectorate.gov.uk)  
**[by Email only]**

MMO Reference: DCO/2018/00016  
Planning Inspectorate Reference: EN020022

6 October 2020

Dear Mr Mahon,

**The Planning Act 2008, AQUIND Limited, proposed AQUIND Interconnector Project  
Responses to the Examining Authority's (ExA) First Round of Written Questions**

On 6 January 2020, the Marine Management Organisation (the "MMO") received notice under section 56 of the Planning Act 2008 (the "2008 Act") that the Planning Inspectorate ("PINS") had accepted an application made by AQUIND Limited (the "Applicant") for a development consent order (the "DCO Application") (MMO ref: DCO/2018/00016; PINS ref: EN020022).

The DCO Application seeks authorisation to construct and operate an electricity interconnector with a net transmission capacity of 2000 megawatts between France and the UK (the "Project").

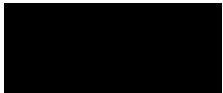
The MMO is an interested party for the examination of the DCO Applications for Nationally Significant Infrastructure Projects (NSIPs) in the marine area. Should consent be granted for the Project, the MMO will be responsible for monitoring, compliance and enforcement of Deemed Marine Licence (DML).

The MMO received Rule 8, 9 and 13 letters on 15 September 2020 containing the Examining Authority's (ExA's) written questions for the proposed DCO. Please find the MMO's response to the ExA's first round of questions below for your consideration.

In order to ensure clarity, details of respondents and questions have been included.

This written representation is submitted without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This representation is also submitted without prejudice to any decision the MMO may make on any associated application for consent, permission, approval or any other type of authorisation submitted to the MMO either for the works in the marine area or for any other authorisation relevant to the proposed development.

Yours sincerely,



Jennifer Ford  
Marine Licensing Case Manager

D 020822 57691

E [Jennifer.ford@marinemanagement.org.uk](mailto:Jennifer.ford@marinemanagement.org.uk)



# Marine Management Organisation

EN020022 – AQUIND – The Examining Authority’s first written questions and requests for information (ExQ1)

Ref	Question to:	Question:	MMOs position
<b>5</b>	<b>Draft Development Consent Order</b>		
<b>DCO1.5.3</b>	The Applicant, MMO	Given that there is some uncertainty about whether the surplus capacity in the proposed fibre-optic cable that would be used for commercial telecommunications purposes can constitute Associated Development, would the Secretary of State be able lawfully to include the fibre-optic cable or this surplus capacity in a Deemed Marine Licence in this DCO?	The MMO distinguish a number of licensable marine activities as outlined within s.66 of Marine and Coastal Access Act 2009. These include deposits, removals and construction works. In the context of the DML, it is the MMO’s view that the surplus capacity should only be a consideration if it leads to additional activities or impacts within the UK marine area, as the MMO does not view the capacity itself as a licensable matter.
<b>DCO1.5.16</b>	The Applicant, Environment Agency, MMO	With reference to draft Requirement 13 in the dDCO [APP-019], should works halt in the circumstances where contamination is discovered pending the approval and implementation of the remediation scheme? Should this be written into the Requirement?	Requirement 13 is referencing contaminated land and groundwater, which does not appear to be within the MMO’s remit.  The MMO defer to the Environment Agency on this matter.
<b>DCO1.5.18</b>	The Applicant MMO Natural England	In dDCO [APP-019] Schedule 15, the Deemed Marine Licence: • Is the definition of cable protection acceptable, especially the reference to 'unlikely'?	The MMO agree that 'unlikely' is not a clear term. The MMO are also concerned that the list of materials that can be used for cable protection is not exhaustive as the definition simply states that it 'includes' certain examples of cable protection. The



		<ul style="list-style-type: none"> <li>• 4(a) should be MMO Head Office not 'Local Office'?</li> <li>• 4(f) is the contact address for Natural England in Exeter correct?</li> </ul>	<p>MMO is also not content with the use of the word 'materially' as this could allow for further materials to be used that have not been assessed in the Environmental Impact Assessment (EIA). In addition, the MMO, in consultation with Natural England, is not content with grout bags being used within designated sites due to issues with removal following decommissioning.</p> <p>In relation to 4(a): Yes, this should be MMO Head Office. The address should also just read "Marine Licensing" rather than "Offshore Marine Licensing".</p>
<b>DCO1.5.19</b>	The Applicant MMO	<p>In the Deemed Marine Licence in the dDCO [APP-019], at Part 1, 10 'Details of Licensed Marine Activities', does the inclusion of the modifier 'likely' add a subjective test and room for argument? Should it be deleted, or the wording changed to make it more precise? The corresponding paragraphs for the authorised development section of the dDCO [APP-019] at Schedule 1 (2) (e) says 'such other works as may be necessary or expedient for the purpose of or in connection with the construction or use of the authorised development and which do not give rise to any materially new or materially different environmental effects from those assessed as set out in the environmental statement. ' Would this</p>	<p>The MMO agrees that 'likely' adds a subjective test and room for argument and therefore ambiguity. The MMO is not content with the use of 'materially' in the proposed wording as this means "new or different in a significant way". Therefore, the MMO proposes the following wording: "Any amendments to or variations from the approved details must demonstrate that the subject matter of the approval sought will not give rise to any new or different environmental effects from those assessed in the environmental statement".</p>

		wording be preferable in the Deemed Marine Licence?	
<b>DCO1.5.20</b>	The Applicant MMO	With reference to the Deemed Marine Licence Part 2 conditions in the dDCO [APP-019]: 2(b) this is usually 28 days rather than the 20 days included here – what is the justification and is MMO content? 5(2) Is this wording acceptable to the MMO? Could it permit damaging works not in accordance with the EIA? 8. Is the MMO happy with the extent of Construction Monitoring proposals and the ability to secure them?	<p>In relation to: 2(b) This condition requires those who are agents or contractors in accordance with condition 4(e)(vi) to confirm to the MMO that they have been provided with a copy of the DML by the undertaker in accordance with condition 2(1)(a)(i) of the DML. The MMO is content with the proposed timeframe of 20 working days as it does not affect the MMO. However, this obligation would apply to those who are required to be provided with the copy of the licence by the undertaker in accordance with condition 4(e)(vi). However, it is noted that condition 4(e)(vi) does not appear to be in the DML. The MMO believe this may refer to condition 4(1)(c)(vi). If so, this may need changing in condition 6 too.</p> <p>In relation to: 5(2) The MMO is not content with this wording, the MMO will not be held to such deadlines within the DML. The MMO do not agree with any plan to be deemed to be approved if we do not determine the application for approval in a specific timescale. In addition, what is set out in 5(2) contradicts subsection (4) which introduces an appeal route in the event the MMO are minded to refuse the application or fail to determine the application. That brings in a conflict, if the MMO fail to determine an application for approval is it</p>

			<p>deemed approved or would the appeal route set out in Part 3 of the DML be used? Further, the MMO is not content with the appeal route in Part 3, as per Table 4.1 of the Statement of Common Ground (SoCG). It is inconsistent with other marine licences the MMO grant outside of DCOs to have an appeal route for approvals with plans. There is already an appeal mechanism via the established process of JR.</p> <p>In relation to: 8. Can the ExA please clarify this point, as 8 appears to relate to chemicals, drilling and debris rather than Construction Monitoring proposals.</p>
<b>DCO1.5.21</b>	The Applicant MMO	The location of the HDD exit (marine) (Work 7b) is shown as parameter box on Figure 3.3 of the ES [APP-148], and some aspects of the EIA and HRA were carried out on this basis, including those in respect of the interest features of the Solent Maritime SAC (for example, on Table 7.1, HRA Report [APP-491]). Where and how are this location and these parameters secured? Does the MMO believe that the reference in dDCO [APP-019] draft condition 4(1)(a) is sufficient to ensure that the detailed design falls within the assessed scheme? The Deemed Marine Licence at paragraph 6 suggests that the extent of Works 6 and 7 are shown on the Land Plans [APP-008]. This does not appear to be	<p>It is the MMO's view that the onus rests on the applicant to ensure the accuracy of the coordinates provided. The applicant should confirm how they would like the co-ordinates to be shown: either as specific co-ordinates for discrete activities at their exact locations, or a set of co-ordinates covering a larger area where the worst-case scenario has been assessed anywhere within the boundary.</p> <p>The MMO is content with draft condition 4(1)(a) as this can be used to ensure that the plan is in line with what was assessed in the EIA.</p>

		the case, so could the Applicant clarify this reference.	
<b>8</b>	<b>Habitats and Ecology (Onshore)</b>		
<b>HAB1.8.10</b>	The Applicant MMO Natural England	A 'worst-case' construction programme has been assumed in the HRA [APP-491] for both the marine and onshore works. Should this be secured through the DML in the dDCO [APP-019]? At present, the DML sets out the need for an agreed programme at condition 4(1)(b) but this is not referenced to the HRA assumption. Could the Applicant provide a parallel response in relation to the onshore works, referring to draft Requirement 3 of the dDCO [APP-019].	The HRA assesses the worst-case scenario. The HRA applies to the project as a whole and not just the licensable marine activities authorised through the DML, so the MMO agree that the Order does need to limit the construction that can take place under it to the worst case that was assessed in the HRA (and the EIA also). The DML as written only authorises the licensable marine activities which are necessary for the construction, maintenance and operation of the works packages set out in the DML (6 and 7). Those packages of Work are set out in Schedule 1, the definition of Work in the DML links back to Schedule 1. However, to ensure the worst-case construction programme is secured, further detail should be added to the design parameters to confirm the maximum amount of cable protection required.
<b>10</b>	<b>Marine Environment</b>		
<b>ME1.10.1</b>	The Applicant MMO	Is there agreement between the Applicant and the MMO that the table in paragraph 6.6 of the MMO Relevant Representation [RR-179] represents an accurate summary of the works sought through the DML? What is the status of the Statement of Common Ground between the Applicant and the MMO?	It is the MMO's view that the onus rests on the Applicant to confirm that the table in paragraph 6.6 represents an accurate summary of the works sought through the DML.  The MMO agreed a version of SoCG dated 4th August 2020 as accurately reflecting the state of discussion with the Applicant.

			<p>The Applicant sent an updated version of SoCG to the MMO on 23rd September which is currently under review. The MMO understands from the applicant that this is the version they will be submitting, however the MMO would like to highlight that this version has not yet been reviewed or agreed upon.</p>
<b>ME1.10.9</b>	The Applicant MMO	<p>In relation to paragraph 7.30 of the MMO Relevant Representation [RR-179], is there adequate assessment of additional cable protection during both laying and operation set out in the ES?</p>	<p>The MMO and the Applicant have been in discussion regarding cable protection. The Applicant drafted a Cable Protection Note which the MMO has commented on. The MMO has confirmed to the applicant that a marine licence is required for cable protection at all times. The MMO have consulted with Cefas and Natural England and are content for a separate marine licence for cable protection to have a length of 15 years provided that all the appropriate controls are in place including the following (as set out in Appendix 1 draft paper on Cable Protection): 'Data less than 5 years old will be required to support laying of additional cable protection along with descriptions of the seabed habitat and information regarding what cable protection has been laid to date. Justification will need to be made as to why cable protection is necessary considering risk and alternatives and every effort made to minimise amounts required to reduce environmental impact'. Additionally, the MMO are content with the applicant's proposal to only undertake surveys in the discrete areas where</p>



			<p>additional cable protection works are proposed to be undertaken. This is based on a scientific need to ensure that any marine features that are likely to be affected by the proposed cable protection works are surveyed, described and the significance of potential impacts on them subsequently assessed and mitigated.</p> <p>However, the MMO is unclear about the purpose of the DML Part 1, 4(5) permitting any “other works as may be necessary or expedient” and there is some concern that it could introduce scope for additional cable protection to be added without the necessary marine licence being sought. The MMO would like the Applicant to clarify the purpose of this provision.</p>
<b>ME1.10.10</b>	The Applicant MMO	In relation to paragraph 7.33 of the MMO Relevant Representation [RR-179], and the information in the ES about pre-installation surveys and mitigation through micro-siting (8.8.2.2 [APP-123]), the avoidance of a significant effect on the <i>Ophiothrix fragilis</i> and/ or <i>Ophiocomina nigra</i> brittlestar beds on sublittoral mixed sediment community is dependent on the findings of a pre-construction survey. The ES also recognises a high potential for encountering Annex 1 stony reef habitats and recommends a 500m buffer zone. Has adequate	The MMO has requested comments on this from Natural England. Natural England are in a position to advise on what measures are necessary to protect the reef, and whether the mitigation proposed is adequate. The MMO will comment on the wording on receipt of advice from Natural England as the Statutory Nature Conservation Body.

		mitigation against finding and avoiding such habitats and communities been included, and can the ExA and Secretary of State be confident that the findings of a pre-construction survey would guarantee that micro-siting within the Order limits that provides an adequate buffer is possible	
<b>ME1.10.11</b>	The Applicant MMO	Tables 6.13 and 6.14 of the ES [APP-121] refer to 'embedded mitigation'. Where these measures are qualified by terms such as 'only where necessary' or 'minimised', it is unclear how they can be regarded as 'embedded'. Given these unknowns and that the measures are not inherent in the design of the Proposed Development, are they adequately secured through the dDCO?	The MMO acknowledge that there are a certain number of unknowns which cannot be resolved before works begin. The terms the applicant proposes reflect that it is supposed to be the minimum amount used and it is to be avoided if possible. Pre-construction conditions such as 4(b), 4(c) and 4(d) allow the MMO to ensure these unknowns are in line with what has been assessed. Therefore the MMO is content with this wording.
<b>ME1.10.15</b>	The Applicant MMO Natural England	In the Other Consents Report [APP-106], at 17, marine EPS licensing, should Natural England be the authority rather than MMO? Are Natural England and MMO happy that this licensing is deferred until later, or should it be addressed now on a precautionary basis and to demonstrate that such a licence is achievable?	The MMO Marine Conservation Team are the licensing authority for EPS. The MMO recommend that the Applicant discusses the EPS licence with the Marine Conservation Team ( <a href="mailto:conservation@marinemanagement.org.uk">conservation@marinemanagement.org.uk</a> ; 0300 123 1032) and the onus rests on the applicant to ensure all the relevant consents are in place prior to commencement of works. The MMO would request that the Applicant apply no later than 3.5 months before the works are scheduled to commence. This is to account for a minimum of 8 weeks wildlife

			licence determination timescale (which includes 4-week consultation with advisers), and potential delays, which may delay works if the EPS licence is not submitted in good time ahead of works.
<b>ME1.10.18</b>	MMO	In relation to paragraph 6.6.4.10 of the ES [APP-121], Schedule 15 Part 2 of the dDCO (the DML) [APP-019] and the Atlantic cable crossing protection, are the parameters assessed appropriate and can reliance be placed on the Applicant's assessment of significance?	The MMO consulted our scientific advisors at CEFAS on the Environmental Statement and no concerns in this matter have been raised. However, the MMO requested CEFAS to give ExA's question further consideration and the MMO would be happy to provide full response by Deadline 2.
<b>ME1.10.19</b>	MMO	In relation to paragraph 6.6.4.42 of the ES [APP-121], Schedule 15 Part 2 of the dDCO (the DML) [APP-019] and the proposals for HDD, are the parameters assessed appropriate and can reliance be placed on the Applicant's assessment of significance?	The MMO consulted our scientific advisors at CEFAS on the Environmental Statement and no concerns in this matter have been raised. However, the MMO requested CEFAS to give ExA's question further consideration and the MMO would be happy to provide full response by Deadline 2.