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**Subject:** EN020022-ExA-WQs-DL5-MMO-Response  
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[20201124 Copy of 7.5.16 Statement of Common Ground with the Marine Management Organisation \(REPORT - 1205302 - 1 - E\) - 1 \(002\).docx](#)

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Dear Sir or Madam,

The MMO received the Issue Specific Hearing (ISH) 1 Agenda on 6 November 2020 and the ISH 3 Agenda on 9 November 2020 containing the Examining Authority's (ExA's) questions for the proposed DCO. Please find attached our written response to the Agendas including the transcripts of our oral submissions which are based upon our responses to these questions.

The MMO has included the Statement of Common Ground (SoCG). Please note that MMO's comments resulting from the Applicant's feedback on 9th November have not been reviewed by the Applicant and this SoCG reflects only the MMO's current understanding of status of matters.

Yours faithfully,

Dan Walker

Daniel Walker | Marine Licensing Case Officer | Coastal Development | Her Majesty's Government – Marine Management Organisation.

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Want to tell us what you think of the South, North East, North West, South East and/or South West Marine Plans? Then we'd appreciate your views through our voluntary [South](#), [North East](#), [North West](#), [South East](#) and [South West](#) surveys.

Please provide your views in our [call for evidence](#) on the assessment of five marine protected areas in England – open until 15 December  
*From 1 January 2021 the rules for trading with the EU will change. Find out how you can prepare your business on [GOV.UK/Transition](#)*

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**AQUIND Limited**

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## **AQUIND INTERCONNECTOR**

Statement of Common Ground Between  
AQUIND Limited and the Marine Management  
Organisation

The Planning Act 2008

Document Ref: 7.5.16

PINS Ref.: EN020022

**AQUIND Limited**

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# **AQUIND INTERCONNECTOR**

**PINS REF.: EN020022**

**DOCUMENT: STATEMENT OF COMMON GROUND**

**DATE: NOVEMBER 2020**

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## DOCUMENT

<b>Document</b>	<b>Statement of Common Ground</b>
<b>Revision</b>	002
<b>Document Owner</b>	Natural Power Consultants Ltd
<b>Prepared By</b>	Sarah Lister
<b>Date</b>	24/10/2020
<b>Approved By</b>	Ross Hodson
<b>Date</b>	01/11/2020

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# 1. INTRODUCTION

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## 1.1. PURPOSE OF THIS DOCUMENT

- 1.1.1.1. This Statement of Common Ground ('SoCG') has been prepared with the Marine Management Organisation ('MMO') to show where agreement has been reached with AQUIND Limited ('the Applicant') during the pre and post Development Consent Order ('DCO') application consultation and in the course of the DCO Examination.
- 1.1.1.2. This SoCG has been prepared by the Applicant and the MMO in respect of the marine aspects of the Proposed Development, collectively referred to in this SoCG as 'the parties'.
- 1.1.1.3. The purpose and possible content of SoCGs is set out in paragraphs 58-65 of the Department for Communities and Local Government's guidance entitled "Planning Act 2008: examination of applications for development consent" (26 March 2015). Paragraph 58 of that guidance explains the basic function of SoCGs:
- "A statement of common ground is a written statement prepared jointly by the applicant and another party or parties, setting out any matters on which they agree. As well as identifying matters which are not in real dispute, it is also useful if a statement identifies those areas where agreement has not been reached. The statement should include references to show where those matters are dealt with in the written representations or other documentary evidence."*
- 1.1.1.4. This SoCG comprises a record of agreement which has been structured to reflect topics of interest to the MMO on the AQUIND Interconnector DCO Application ('the Application'). Topic specific matters agreed, not agreed and actions to resolve matters between the MMO and the Applicant are included.
- 1.1.1.5. The position with respect to each topic of interest is presented in a tabular form.
- 1.1.1.6. Throughout this document points of agreement and disagreement between the parties are clearly indicated. Points that are not agreed will be the subject of ongoing discussion wherever possible to resolve, or refine, the extent of disagreement between the parties.
- 1.1.1.7. This revision of the SoCG is not mutually agreed as the Applicant's further comments resulting from the MMO's feedback provided in October (see Table 2.1) have not been reviewed by the MMO. However, it is considered that this document, submitted at Deadline 1, reflects the Applicant's current understanding of the status of matters subject to receiving further feedback from the MMO in due course.

## 1.2. THE DEVELOPMENT

- 1.2.1.1. This SoCG relates to an application made by the Applicant to the Planning Inspectorate ('PINS') under the Planning Act 2008 ("Act"). The application was made on 14 November 2019.

1.2.1.2. The draft DCO is referred to as the AQUIND Interconnector DCO. The DCO, if granted, would authorise the Applicant to construct, operate and maintain infrastructure and associated development (the 'Proposed Development') including:

- High Voltage Direct Current ('HVDC') marine cables;
- HVDC underground cables;
- Converter station;
- High Voltage Alternate Current ('HVAC') cables; and
- Fibre optic data transmission cables and associated infrastructure.

1.2.1.3. This SoCG is only relevant to the marine aspects of the Proposed Development which comprise of activities including the installation of marine cables that run from Mean High Water Springs ('MHWS') to the UK/France European Economic Zone ('EEZ') Boundary Line.

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## 2. CONSULTATION

- 2.1.1.1. The parties have been engaged in consultation since the inception of the Proposed Development.
- 2.1.1.2. This section briefly summarises the consultation that the Applicant has had with the MMO. As the MMO’s advisor, the Centre for Environmental, Fisheries and Aquaculture Science (‘Cefas’), has also been involved in consultation with the Applicant. The position taken by the MMO in agreement logs reflects this advice where appropriate.
- 2.1.1.3. A summary of key meetings and correspondence between the parties can be found in Table 2.1:

**Table 2.1: Consultation with the MMO**

<b>Date</b>	<b>Form of Contact</b>	<b>Summary</b>
<b>February 2018</b>	Scoping Opinion Request to the MMO	Scoping Opinion received from the MMO in June 2018 under Marine and Coastal Access Act 2009.
<b>July 2018</b>	Emails	Discussion on whether the marine cables will be exempt and which activities will be licensable in which locations. Also, discussion on the MMO’s current position on Habitat Regulations Assessment (‘HRA’) case law.
<b>6 September 2018</b>	Meeting	Meeting to discuss update on the Proposed Development. Topics covered included Horizontal Directional Drilling (‘HDD’) activities, dredge and disposal activities, electro-magnetic field (‘EMF’) impacts, pollution prevention, cable protection, decommissioning, deemed Marine Licence (‘DML’) drafting, DCO fees and charges.
<b>25 September 2018</b>	Email	Informal consultation on the Statement of Community Consultation (‘SoCC’).
<b>October 2018</b>	Scoping Opinion Request to the Planning Inspectorate (PINS)	Scoping Opinion received from PINS in December 2018.

Date	Form of Contact	Summary
9 January 2019	Meeting	Meeting to provide update on the Proposed Development and discussion around the following topics: dredge and disposal activities, licensable activities, floatation pits, contaminated sediments, DML drafting and DCO fees and charges.
March 2019	Section 42 Consultation	Consultation with the MMO on Preliminary Environmental Information Report ('PEIR').
03 April 2019	Email	Dredge and Disposal Summary note circulated to MMO for comment
26 April 2019	Email	Feedback on the PIER received from the MMO.
07 May 2019	Teleconference	Discussions on approach to dredge and disposal and the approach to sediment plume modelling. Written comments received from the MMO on 17 May 2019.
04 June 2019	Emails	Emails providing information on changes to MMO charging structure and providing clarification around exemption notification process.
1 July 2019	Email	Draft DML shared with MMO for review / comment.
09 July 2019	Email	PEIR Briefing Note with the Applicant's responses to MMO PEIR comments.
18 July 2019	Teleconference	Discussion on MMO PEIR comments, and the Applicant's responses.
19 July 2019	Email	Query on comments on herring assessment methods sent to MMO.
23 July 2019	Email	Updated briefing note outlining discussion points on PEIR as per teleconference held on 18 July 2019 (see Appendix 1).
31 July 2019	Email	MMO comments on draft DML received.

Date	Form of Contact	Summary
1 August 2019	Meeting and teleconference	Meeting to discuss MMO comments on draft DML.
2 August 2019	Email	The Applicant outlines approach to sandeel and herring assessments following teleconference with Cefas discussing PEIR feedback and comments on previous proposals.
19 August 2019	Email	Consultation on approach to Cumulative Effects Assessment (see Appendix 2).
09 September 2019	Email	Rational for cable protection contingency provided to MMO for comment.
20 September 2019	Email	Issued disposal site characterisation report to MMO for review.
23 September 2019	Email	MMO feedback on approach to sandeel and herring assessments.
11 October 2019	Email	MMO feedback on the rationale for additional cable protection allowance for post construction works.
22 October 2019	Email	Review and feedback from MMO on the disposal site characterisation report.
27 January 2020	s. 56 consultation	Cefas comments to MMO on DCO Application received from MMO
17 February 2020	s. 56 consultation	Natural Power response to Cefas s.56 comments shared with the MMO.
20 February 2020	s. 56 consultation	Relevant Representation (RR) received from the MMO.
21 February 2020	Underwater Noise	Query sent to MMO regarding Cefas comments on underwater noise.
16 March 2020	Underwater Noise	Feedback from MMO on underwater noise query.
23 March 2020	s.56 MMO feedback	Issue register providing the Applicant's preliminary responses to MMO's RR and draft SoCG shared with the MMO.

Date	Form of Contact	Summary
24 March 2020	Teleconference	Discussions with MMO and Cefas on MMO RR and draft SoCG.
25 March 2020	Emails	Discussions regarding wording for standard OSPAR condition.
26 March 2020	Teleconference	Discussions on MMO RR comments relating specifically to the draft DML.
27 March 2020	Email	Email request sent to the MMO for feedback on Applicant's responses to underwater noise comments in RR.
03 April 2020	Email	Request from the Applicant to confirm requirements for the additional herring information requested by Cefas.
08 April 2020	Email	Cefas updated their additional herring information requirements.
28 April 2020	Email	Updated draft SoCG shared with MMO for review, along with meeting note of teleconferences (24/03/2020).
28 April 2020	Email	Applicant sends the .kml file of the proposed disposal site/s to the MMO.
30 April 2020	Email	Email sent by the Applicant to the MMO to correct item 4.1.7 in the draft SoCG.
29 May 2020	Email	MMO response to Applicant's query and MMO feedback on underwater noise register (sent on 17 March 2020).
05 June 2020	Email	MMO provide the codes for the AQUIND disposal sites.
08 June 2020	Email	Applicant makes further comment to the MMO on the request for further assessment on cumulative sound exposure.
24 June 2020	Email	The Applicant provides a Cable Protection Technical Note to the MMO (and Natural England) to address cable protection queries.
02 July 2020	Email	MMO provides reviewed meeting note of teleconference on 24/03/2020 and MMO

Date	Form of Contact	Summary
		response on the requirement for assessment of cumulative sound exposure.
<b>16 July 2020</b>	Email	The Applicant provides an interactive PDF map to the MMO and Cefas that illustrates the additional information on herring spawning requested by Cefas.
<b>04 August 2020</b>	Email	The MMO provides feedback on the draft SoCG sent by the Applicant in April 2020.
<b>27 August 2020</b>	Email	<p>Feedback from the MMO on the Applicant's response to comments from the Relevant Representations in regard to the DCO and DML.</p> <p>Feedback from the MMO on the Cable Protection Technical Note.</p> <p>Feedback from the MMO on the additional information on herring spawning and potential timing restrictions.</p>
<b>23 September 2020</b>	Email	Applicant sends new iteration of the draft SoCG to the MMO for review.
<b>22 October 2020</b>	Email	The MMO provides feedback on the draft SoCG sent by the Applicant in September 2020.
<b>09 November 2020</b>	Email	Applicant sends new iteration of the draft SoCG to the MMO for review.

## 2.2. SUMMARY OF TOPICS COVERED BY THE SOCG

2.2.1.1. The following topics discussed between the parties are commented on further in this SoCG.

- Environmental Impact Assessment ('EIA') (including cumulative effects);
- Physical Processes including dredge and disposal activities;
- Marine Water and Sediment Quality
- Intertidal and Benthic Ecology;
- Fish and Shellfish;
- Recreational Angling and Commercial Fisheries;

- Marine Mammals and Basking Sharks (including Underwater Noise); and
- DCO and the Deemed Marine Licence ('DML').

2.2.1.2.

For the avoidance of doubt, matters not covered in this SoCG have not been discussed between the parties as they have not been raised by the MMO in their capacity as the regulatory body for licensable activities in English waters under the Marine and Coastal Access Act 2009.

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## 3. MATTERS WHICH ARE AGREED

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- 3.1.1.1. This section of the SoCG describes the ‘matters agreed’ in detail between the parties.
- 3.1.1.2. The following subsections provide the details of the matters where agreement has been reached between the parties for each technical discipline.
- 3.1.1.3. Each table identifies those matters relevant to individual topics that have been agreed and by whom.
- 3.1.1.4. The Proposed Development has the potential to impact on the following areas which are relevant to the MMO;
- physical processes. Chapter 6 (Physical Processes) of the Environmental Statement (‘ES’) (Ref: APP-121);
  - marine water and sediment quality. Chapter 7 (Marine Water and Sediment Quality) of the ES (Ref: APP-122);
  - intertidal and benthic habitats. Chapter 8 (Intertidal and Benthic Habitats) of the ES (Ref: APP-123);
  - fish and shellfish. Chapter 9 (Fish and Shellfish) of the ES (Ref: APP-124);
  - marine mammals and basking sharks. Chapter 10 (Marine Mammals and Basking Sharks) of the ES (Ref: APP-125);
  - commercial fisheries. Chapter 12 (Commercial Fisheries) of the ES (Ref: APP-127);
  - recreational angling. Chapter 13 (Shipping, Navigation and Other Marine Users of the ES (Ref: APP-128); and
  - cumulative effects. Chapter 29 (Cumulative Effects) of the ES (Ref: APP-144).
- 3.1.1.5. Tables 3.1 and 3.6 outline the areas of common ground that have been reached in relation to the approach to assessments and the findings of the chapters above as well as the;
- Disposal Site Characterisation Report (Ref: APP-371);
  - Marine Conservation Zone (‘MCZ’) Assessment (Ref: APP-381).
- 3.1.1.6. On matters regarding the HRA Report (document reference 6.8.1), it is assumed that as the MMO is neither the competent authority nor the Statutory Nature Conservation Body (SNCB) for this Application, the MMO will defer to the opinion of the relevant Statutory Nature Conservation Body (‘SNCB’), namely Natural England, or Joint Nature Conservation Committee (‘JNCC’).
- 3.1.1.7. On matters regarding the Water Framework Directive (‘WFD’) Assessment (APP-372), it is assumed that as the MMO is not the competent authority nor the decision

maker under this Application, the MMO will defer to the opinion of the Environment Agency.

- 3.1.1.8. Table 3.7 outlines the areas of common ground that have been reached in relation to the DML.
- 3.1.1.9. The Relevant Representation (RR) on the application from the MMO was received on 20 February 2020 (Appendix 3).
- 3.1.1.10. Further engagement was undertaken with the MMO through the development and iterative reviews of a draft SoCG and teleconferences held on 24 and 26 March 2020 to discuss their RR, the draft SoCG and Examination process. The agreed positions recorded in Section 3 of this SoCG are based on the above consultations and information in the MMO's RR.

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**Table 3.1: Matters Agreed: Physical Processes**

Ref	Description of Matter	AQUIND's Position	MMO's Position	Final Position
<b>EIA</b>				
<b>MMO 3.1.1</b>	Existing Environment	The sources of information within the ES adequately characterises the baseline in terms of Physical Processes (Ref: APP-121, Section 6.5).	Agreed in PEIR Response (see Appendix 1) and s.56 Representation (see Appendix 3).	Both parties agreed.
<b>MMO 3.1.2</b>	Assessment Methodology	The list of potential physical process impacts assessed in the ES is appropriate (Ref: APP-121, Sections 6.3.5 and 6.6).	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.
<b>MMO 3.1.3</b>		The methodology used for the EIA represents an appropriate approach to assessing potential impacts of the Proposed Development (Ref: APP-121, Section 6.4). This includes: <ul style="list-style-type: none"> <li>• Assessment which is based on expert judgement using knowledge of other sites and available project specific contextual information (e.g. particle size and core data);</li> <li>• The plume modelling undertaken to characterise the extent and duration of the sediment plume as a result of disposal activities;</li> <li>• The approach to cumulative effects assessment is appropriate which is based upon PINS Advice Note Seventeen.</li> </ul>	Agreed in PEIR Response (see Appendix 1) and via email (see Appendix 3).	Both parties agreed.
<b>MMO 3.1.4</b>		The worst case scenarios for impacts presented in the ES, are appropriate for the Proposed Development (Refs: APP-356; APP-121, Section 6.6.3, Table 6.15).	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.
<b>MMO 3.1.5</b>		Appropriate legislation, planning policy and guidance relevant to Physical Processes has been used to inform the assessment (Refs: APP-121, Section 6.2; APP-113).	The MMO are in agreement.	Both parties agreed.
<b>MMO 3.1.6</b>	Assessment Conclusions	The assessment of impacts for construction, operation and decommissioning presented in the ES is appropriate and effects on Physical Processes as a result of the Proposed are considered to be not significant (Ref: APP-121, Section 6.6).	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.

Ref	Description of Matter	AQUIND's Position	MMO's Position	Final Position
MMO 3.1.7		The cumulative effects assessment is appropriate and cumulative effects on Physical Processes as a result of the Proposed Development and other relevant plans and projects are concluded to be not significant (Refs: APP-121, Section 6.7; APP-370; APP-144).	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.
MMO 3.1.8		Assessment of transboundary effects is considered to be appropriate and such effects on Physical Processes as a result of the Proposed Development are considered to be not significant (Refs: APP-121, Section 6.7.3; APP-144).	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.
MMO 3.1.9	Mitigation	It is agreed that given the effects of the Proposed Development, the mitigation measures proposed are considered appropriate and are adequately captured within the DML (Refs: APP-121, Section 6.8; APP-489; APP-019, Schedule 15).	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.
<b>Dredge and Disposal Activities</b>				
MMO 3.1.10	Methods	The approach used to define the disposal area and undertake sediment plume modelling along the Marine Cable Corridor is appropriate (Ref: APP-371, Section 6.2).	Agreed (see Appendix 4).	Both parties agreed,
MMO 3.1.11	Sediment plume modelling	The approach to plume dispersal modelling provided in the ES is appropriate and clearly demonstrates the spatial and temporal extent of the potential sediment plumes generated from disposal activities (Ref: APP-368).	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed,
MMO 3.1.12	Benthic survey samples and PSD data	Further to a meeting held with the MMO and Cefas on 24 March 2020, Cefas advised that the number of samples for contaminated sediments was proportionate and were a good representation of the area.	Agreed during teleconference 24 March 2020.	Both parties agreed.
MMO 3.1.13	PCBs analysis	Further to a meeting held with the MMO and Cefas on 24 March 2020, the matters relating to contaminated sediments and PCB analysis have been resolved subject to minor updates to Chapter 7 and the contaminated sediment survey report (Appendix 7.3; APP-374).	Agreed during teleconference 24 March 2020.	Both parties agreed.

Ref	Description of Matter	AQUIND's Position	MMO's Position	Final Position
<b>MMO 3.1.14</b>	Additional information requested for disposal site and DML condition.	During the meeting held with the MMO and Cefas on 24 March 2020, the Applicant provided further clarification that a Trailer Suction Hopper Dredger (TSHD) may be used for dredging and that the disposal site has been identified as the bedform features are mobile and could move from previously surveyed location. As a result, the Cefas advisor and the MMO agreed that we do need a designated disposal site and these matters are resolved. Unique reference codes have been provided to the Applicant and the DML now includes those codes.	Agreed during teleconference 24 March 2020.	Both parties agreed.

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**Table 3.2: Matters Agreed: Marine Water and Sediment Quality**

Ref	Description of Matter	AQUIND's Position	MMO's Position	Final Position
<b>EIA</b>				
<b>MMO 3.2.1</b>	Existing Environment	The sources of information within the ES adequately characterises the baseline environment in terms of Marine Water and Sediment Quality (Refs: APP-122, Section 7.5; APP-372).	Agreed in PEIR Response (see Appendix 1).	Both parties agreed.
<b>MMO 3.2.2</b>		The offshore region of the marine cable corridor (beyond 50 km from shore) is sufficiently coarse such that additional contaminant sampling or analysis is not required.	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.
<b>MMO 3.2.3</b>		Adequate information has been presented to characterise the contaminated sediment levels in the area of the Proposed Development (Refs: APP-122, Section 7.6, Table 7.3; APP-374).	Agreed as a result of teleconference held on 24/03/2020.	Both parties agreed.
<b>MMO 3.2.4</b>	Assessment Methodology	The worst case scenarios for impacts presented in the ES, are appropriate for the Proposed Development (Refs: APP-122, Section 7.6.1; APP-356).	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.
<b>MMO 3.2.5</b>		The list of potential impacts on Marine Water and Sediment Quality presented in the ES is appropriate (Refs: APP-122, Sections 7.3.5 and 7.6; APP-372).	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.
<b>MMO 3.2.6</b>		The methodology used for the EIA based on Chartered Institute of Ecology and Environmental Management ('CIEEM') represents an appropriate approach to assessing potential impacts of the Proposed Development on Marine Water and Sediment Quality (Ref: APP-122, Section 7.4). This includes:	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.
		<ul style="list-style-type: none"> <li>Assessment is based on expert judgement using knowledge of other sites and available project specific contextual information (e.g. particle size, sediment samples, sediment plume modelling and core data);</li> <li>The plume modelling undertaken to characterise the extent and duration of the sediment plume as a result of disposal activities</li> <li>The approach to cumulative effects assessment is appropriate which is based upon PINS Advice Note Seventeen.</li> </ul>		

Ref	Description of Matter	AQUIND's Position	MMO's Position	Final Position
MMO 3.2.7		<p>Maintenance activities exempt from requiring a marine licence include:</p> <ul style="list-style-type: none"> <li>removal and replacement of defective cable sections;</li> <li>removal of sediment to undertake repairs; and</li> <li>removal/replacement of cable protection to assess the cable.</li> </ul> <p>These activities have been assessed as part of the application and the information provided in the EIA shown below is considered appropriate (Ref: APP-118; APP-356; APP-123, Section 8.6);</p> <ul style="list-style-type: none"> <li>estimated number of repairs;</li> <li>estimated length of cable de-buried;</li> <li>estimated duration of a repair; and</li> <li>additional cable protection contingency for post construction works.</li> </ul>	Agreed in PEIR Response (see Appendix 1).	Both parties agreed.
MMO 3.2.8		Appropriate legislation, planning policy and guidance relevant to Marine Water and Sediment Quality has been used to inform the assessment (Refs: APP-122, Section 7.2; APP-113).	The MMO are in agreement	Both parties agreed.
MMO 3.2.9	Assessment Conclusions	The assessment of impacts for construction, operation (maintenance and repair) and decommissioning presented in the ES is appropriate and effects on Marine Water and Sediment Quality as a result of the Proposed Development are considered to be not significant (Ref: APP-122, Section 7.6).	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.
MMO 3.2.10		The cumulative effects assessment undertaken is appropriate and cumulative effects on Marine Water and Sediment Quality as a result of the Proposed Development and other relevant plans and projects are considered to be not significant (Refs: APP-122, Section 7.7; APP-375; APP-144).	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.
MMO 3.2.11		Assessment of transboundary effects is considered to be appropriate and such effects on Marine Water and Sediment Quality as a result of the Proposed Development are considered to be not significant (Refs: APP-122, Section 7.7.3; APP-144).	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.
MMO 3.2.12	Mitigation	It is agreed that given the effects of the Proposed Development, the mitigation measures proposed are considered appropriate and	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.

Ref	Description of Matter	AQUIND's Position	MMO's Position	Final Position
		are adequately captured within the DML (Refs: APP-122, Section 7.8; APP-489; APP-019, Schedule 15).		

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**Table 3.3: Matters Agreed: Intertidal and Benthic Habitats**

Ref	Description of Matter	AQUIND's Position	MMO's Position	Final Position
<b>EIA</b>				
<b>MMO 3.3.1</b>	Existing Environment	Sufficient survey data (extent/duration) has been collected to undertake the assessment (Ref: APP-377; APP-379).	Agreed in PEIR Response (see Appendix 1) and s.56 Representation (see Appendix 3).	Both parties agreed.
<b>MMO 3.3.2</b>		The sources of information within the ES adequately characterises the baseline in terms of Intertidal and Benthic Habitats (Ref: APP-123, Section 8.5).	Agreed in PEIR Response (see Appendix 1) and s.56 Representation (see Appendix 3).	Both parties agreed.
<b>MMO 3.3.3</b>	Assessment Methodology	The use of the CIEEM guidelines to inform the assessment methodology is appropriate (Ref: APP-123, Section 8.4).	Agreed in PEIR Response (see Appendix 1).	Both parties agreed.
<b>MMO 3.3.4</b>		The list of potential impacts presented in the ES is appropriate (Ref: APP-123, Section 8.6).	Agreed in PEIR Response (see Appendix 1) and s.56 Representation (see Appendix 3).	Both parties agreed.
<b>MMO 3.3.5</b>		The worst case scenarios for impacts presented in the ES, are appropriate for the Proposed Development (Refs: APP-123, Section 8.6.2; APP-356).	Agreed in PEIR Response (see Appendix 1).	Both parties agreed.
<b>MMO 3.3.6</b>		The methodology used for the EIA represent an appropriate approach to assessing the potential impacts of the Proposed Development on Intertidal and Benthic Habitats (Ref: APP-123, Section 8.4). This includes: <ul style="list-style-type: none"> <li>• An assessment based on expert judgement using knowledge of other sites and available project specific survey data, modelling data and contextual information;</li> <li>• The approach to the cumulative effects assessment which is based upon PINS Advice Note Seventeen.</li> </ul>	Agreed in PEIR Response (see Appendix 1).	Both parties agreed.
<b>MMO 3.3.7</b>		Maintenance activities exempt from requiring a marine licence include: <ul style="list-style-type: none"> <li>• removal and replacement of defective cable sections;</li> <li>• removal of sediment to undertake repairs; and</li> <li>• removal/replacement of cable protection to assess the cable.</li> </ul>	Agreed in PEIR Response (see Appendix 1).	Both parties agreed.

Ref	Description of Matter	AQUIND's Position	MMO's Position	Final Position
		<p>These activities have been assessed as part of the ES and the information provided in the EIA shown below is considered appropriate (Refs: APP-118; APP-356; APP-123, Section 8.6);</p> <ul style="list-style-type: none"> <li>• estimated number of repairs;</li> <li>• estimated length of cable de-buried;</li> <li>• estimated duration of a repair; and</li> <li>• an additional cable protection contingency for post construction works.</li> </ul>		
<b>MMO 3.3.8</b>		The approach to and conclusions of the Marine Conservation Zone assessment are appropriate, and the potential effects on MCZs are acceptable (Ref: APP-381).	The MMO defers to Natural England.	Both parties agree that the Applicant will seek agreement with Natural England.
<b>MMO 3.3.9</b>		Appropriate legislation, planning policy and guidance relevant to Intertidal and Benthic Habitats has been used to inform the assessment (Ref: APP-123, Section 8.2; APP-113).	Agreed in PEIR Response (see Appendix 1).	Both parties agreed.
<b>MMO 3.3.10</b>	Assessment Conclusions	The assessment of impacts for construction, operation (maintenance and repair) and decommissioning presented in the ES is appropriate and effects on Intertidal and Benthic Habitats as a result of the Proposed Development are considered to be not significant (Ref: APP-123, Section 8.6.).	Agreed in PEIR Response (see Appendix 1) and s.56 Representation (see Appendix 3).	Both parties agreed.
<b>MMO 3.3.11</b>		The cumulative effects assessment undertaken is appropriate and cumulative effects on Intertidal and Benthic Habitats as a result of the Proposed Development and other relevant plans and projects are considered to be not significant (Refs: APP-123, Section 8.7; APP-380; APP-144).	Agreed in PEIR Response (see Appendix 1) and s.56 Representation (see Appendix 3).	Both parties agreed.
<b>MMO 3.3.12</b>		Assessment of transboundary effects is considered to be appropriate and such effects on Intertidal and Benthic Habitats as a result of the Proposed Development are considered to be not significant (Refs: APP-123, Section 8.7.3; APP-144).	Agreed in PEIR Response (see Appendix 1) and s.56 Representation (see Appendix 3).	Both parties agreed.

Ref	Description of Matter	AQUIND's Position	MMO's Position	Final Position
<b>MMO 3.3.13</b>	Mitigation	It is agreed that given the effects of the Proposed Development, the mitigation measures proposed are considered appropriate and are adequately captured within the DML (Ref: APP-123, Section 8.8; APP-489; APP-019, Schedule 15).	Agreed in PEIR Response (see Appendix 1) and s.56 Representation (see Appendix 3) although there are exceptions itemised in Table 4.1 that are subject to further discussion.	Both parties agreed.

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**Table 3.4: Matters Agreed: Fish and Shellfish**

Ref	Description of Matter	AQUIND's Position	MMO's Position	Final Position
<b>EIA</b>				
<b>MMO 3.4.1</b>	Existing Environment	The sources of information within the ES adequately characterises the Fish and Shellfish baseline (Ref: APP-124, Section 9.5).	Agreed in PEIR Response (see Appendix 1) and s.56 Representation (see Appendix 3)	Both parties agreed.
<b>MMO 3.4.2</b>	Assessment Methodology	The worst case scenarios for impacts presented in the ES, are appropriate for the Proposed Development (Refs: APP-124, Section 9.6.3; APP-356).	Agreed in PEIR Response (see Appendix 1).	Both parties agreed.
<b>MMO 3.4.3</b>		The use of the Chartered Institute of Ecology and Environmental Management ('CIEEM') guidelines to inform the assessment methodology is appropriate (Ref: APP-124, Section 9.2.4).	Agreed in PEIR Response (see Appendix 1).	Both parties agreed.
<b>MMO 3.4.4</b>		The list of potential impacts presented in the ES is appropriate (Ref: APP-124, Sections 9.3.6 and 9.6).	Agreed in PEIR Response (see Appendix 1) and s.56 Representation (see Appendix 3).	Both parties agreed.
<b>MMO 3.4.5</b>		The methodology used represents an appropriate approach to assessing potential impacts of the Proposed Development on Fish and Shellfish (Ref: APP-124, Section 9.4). This includes: <ul style="list-style-type: none"> <li>An assessment based on expert judgement using knowledge of other sites and available project specific survey data, modelling data and contextual information;</li> <li>The approach to the cumulative effects assessment which is based upon PINS Advice Note Seventeen.</li> </ul>	Agreed in PEIR Response (see Appendix 1).	Both parties agreed.
<b>MMO 3.4.6</b>		Maintenance activities exempt from requiring a marine licence include; <ul style="list-style-type: none"> <li>removal and replacement of defective cable sections;</li> <li>removal of sediment to undertake repairs; and</li> </ul>	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.

Ref	Description of Matter	AQUIND's Position	MMO's Position	Final Position
		<ul style="list-style-type: none"> <li>removal/replacement of cable protection to assess the cable.</li> </ul> <p>These activities have been assessed as part of the ES and the information provided in the EIA shown below is considered appropriate (Ref: APP-118; APP-356; APP-124, Section 9.6.3, Table 9.9);</p> <ul style="list-style-type: none"> <li>estimated numbers of repairs;</li> <li>estimated length of cable de-buried;</li> <li>estimated duration of a repair; and</li> <li>additional cable protection for post construction works.</li> </ul>		
<b>MMO 3.4.7</b>		The approach to and conclusions of the Marine Conservation Zone assessment are appropriate, and the potential effects on MCZs are acceptable (Ref: APP-381).	The MMO will defer to Natural England	Both parties agree that the Applicant will seek agreement with Natural England.
<b>MMO 3.4.8</b>		Appropriate legislation, planning policy and guidance relevant to Fish and Shellfish has been used to inform the assessment (Refs: APP-124, Section 9.2; APP-113).	The MMO is content that the correct marine plan has been used, however defers to other stakeholders in relation to shellfish matters including EA and IFCA.	The Applicant is content that appropriate legislation, policy and guidance has been used, and no additional requirements have been raised by other stakeholders.
<b>MMO 3.4.9</b>	Assessment Conclusions	The assessment of impacts for construction, operation and decommissioning presented in the ES is appropriate and effects on Fish and Shellfish as a result of the Proposed Development are considered to be not significant (Ref: APP-124, Section 9.6).	Agreed subject to further discussion on herring as outlined in s.56 representation in Appendix 3 and itemised in Table 4.1.	Both parties agreed.
<b>MMO 3.4.10</b>		The cumulative effects assessment undertaken is appropriate and effects on Fish and Shellfish as a result of the Proposed Development and other relevant plans and projects are considered to be not significant (Refs: APP-124, Section 9.7; APP-383; APP-144).	Agreed in s.56 Representation (see Appendix 3) subject to further discussion on herring spawning as itemised in Table 4.1.	Both parties agreed.

Ref	Description of Matter	AQUIND's Position	MMO's Position	Final Position
<b>MMO 3.4.11</b>		Assessment of transboundary effects is considered to be appropriate and such effects on Fish and Shellfish as a result of the Proposed Development are considered to be not significant (Refs: APP-124, Section 9.7.5; APP-144).	Agreed.	Both parties agreed.
<b>MMO 3.4.12</b>	Minor revisions to text.	The minor comments made by the Cefas advisor in Comments 8.77 to 8.81 of the MMO RR (RR-179) do not add to the robustness of the assessment already undertaken and do not change the outcomes of the assessments either. Accordingly, the Applicant does not anticipate providing any updates to Chapter 9 Fish and Shellfish in relation to these comments.	Whilst MMO agree with the presentational and text comments, MMO agree that changing of these will not impact on the overall outcomes of the assessment.	Both parties agreed.
<b>MMO 3.4.13</b>	Mitigation	It is agreed that given the effects of the Proposed Development, the mitigation measures proposed are considered appropriate and are adequately captured within the DML (Refs: APP-124, Section 9.8; APP-489; APP-019, Schedule 15).	Agreed in s.56 Representation (see Appendix 3) subject to further discussion on herring spawning as itemised in Table 4.1.	Both parties agreed.

**Table 3.5: Matters Agreed: Commercial Fisheries**

Ref	Description of Matter	AQUIND's Position	MMO's Position	Final Position
<b>EIA</b>				
<b>MMO 3.5.1</b>	Existing Environment	The sources of information within the ES adequately characterises the Commercial Fisheries baseline (Refs: APP-127, Section 12.5; APP-388).	Agreed in PEIR Response (see Appendix 1) and s.56 Representation (see Appendix 3).	Both parties agreed.
<b>MMO 3.5.2</b>	Assessment Methodology	The worst case scenarios for impacts presented in the ES, are appropriate for the Proposed Development (Refs: APP-127, Section 12.6.3, Table 12.7; APP-356).	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.
<b>MMO 3.5.3</b>		The list of potential impacts presented in the ES is appropriate (Ref: APP-127, Sections 12.3.6 and 12.6).	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.
<b>MMO 3.5.4</b>		The methodology used represents an appropriate approach to assessing potential impacts of the Proposed Development on Commercial Fisheries (Ref: APP-127, Section 12.4). This includes: <ul style="list-style-type: none"> <li>Assessment is based on expert judgement, extensive consultation with commercial fisheries stakeholders, using knowledge of other sites and available project specific survey data and contextual information;</li> <li>The approach to the cumulative effects assessment which is based upon PINS advice note Seventeen.</li> </ul>	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.
<b>MMO 3.5.5</b>		Maintenance activities which are exempt from requiring a marine licence include; <ul style="list-style-type: none"> <li>removal and replacement of defective cable sections;</li> <li>removal of sediment to undertake repairs; and</li> <li>removal/replacement of cable protection to assess the cable.</li> </ul> These activities have been assessed as part of the Application and the information provided in the EIA shown below is considered appropriate (Refs: APP-127, Section 12.6.3, Table 12.7; APP-356); <ul style="list-style-type: none"> <li>estimated number of repairs;</li> </ul>	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.

Ref	Description of Matter	AQUIND's Position	MMO's Position	Final Position
		<ul style="list-style-type: none"> <li>• estimated lengths of cable de-buried;</li> <li>• estimated duration of a repair; and</li> <li>• additional rock placement contingency for post construction works.</li> </ul>		
<b>MMO 3.5.6</b>		Appropriate legislation, planning policy and guidance relevant to Commercial Fisheries has been used to inform the assessment (Ref: APP-127, Section 12.2).	MMO is content that the correct marine plan has been used however defers to NFFO and IFCA regarding Commercial Fisheries	The Applicant is content that appropriate legislation, policy and guidance has been used, and no additional requirements have been raised by other stakeholders.
<b>MMO 3.5.7</b>		The assessment of impacts for construction, operation and decommissioning presented in the ES is appropriate and effects on Commercial Fisheries as a result of the Proposed Development are considered to be not significant (Ref: APP-127, Section 12.6).	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.
<b>MMO 3.5.8</b>	Assessment Conclusions	The cumulative effects assessment undertaken is appropriate and effects on Commercial Fisheries as a result of the Proposed Development and other relevant plans and policies are considered to be not significant (Refs: APP-127, Section 12.7; APP-392; APP-144).	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.
<b>MMO 3.5.9</b>		Assessment of transboundary effects is considered to be appropriate and transboundary effects on Commercial Fisheries as a result of the Proposed Development are considered to be not significant (Refs: APP-127, Section 12.7.8; APP-144).	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.
<b>MMO 3.5.10</b>	Mitigation	It is agreed that given the potential impacts of the Proposed Development, the mitigation measures proposed are considered appropriate and are adequately captured within the DML (Refs: APP-127, Section 12.8; APP-489; APP-019, Schedule 15).	Agreed in s.56 Representation (see Appendix 3).	Both parties agreed.



**Table 3.6: Matters Agreed: Marine Mammals and Basking Sharks (including Underwater Noise)**

Ref	Description of Matter	AQUIND's Position	MMO's Position	Final Position
<b>EIA</b>				
<b>MMO 3.6.1</b>	Existing Environment	The sources of information within the ES adequately characterises the baseline for assessment of the Proposed Development (Ref: APP-125, Section 10.5).	The MMO defers to Natural England on this matter (see Appendix 3).	Both parties agreed.
<b>MMO 3.6.2</b>	Assessment Methodology	The worst case scenarios for impacts presented in the ES, are appropriate for the Proposed Development (Ref: APP-125, Section 10.6).	Subject to further discussion regarding underwater noise – see Table 4.1.	
<b>MMO 3.6.5</b>		The methodology based on CIEEM represents an appropriate approach to assessing potential impacts of the Proposed Development on Marine Mammals and Basking Sharks (Ref: APP-125, Section 10.4). This includes: <ul style="list-style-type: none"> <li>Assessment is based on expert judgement using knowledge from other sites and project specific contextual information;</li> <li>The approach to cumulative effects assessment that is based upon PINS Advice Note Seventeen.</li> </ul>	The MMO defers to Natural England on this matter (see Appendix 3).	Both parties agreed.
<b>MMO 3.6.6</b>		The list of potential impacts presented in the ES is appropriate (Ref: APP-125, Sections 10.3.5 and 10.6) and sufficient evidence within the ES has been provided regarding why impacts such as vessel noise, collision risk with vessels, noise from construction works and EMF (during operation) have been scoped out of the assessment (Refs: APP-125, paragraph 10.3.1.1; APP-384).	The MMO defers to Natural England on this matter (see Appendix 3).	Both parties agreed.
<b>MMO 3.6.7</b>		A European Protected Species (EPS) Risk Assessment will be undertaken to determine if an EPS licence will be required for geophysical/geotechnical works. As a minimum, a voluntary notification for geophysical/geotechnical works will be completed and submitted to the MMO (Ref: APP-106).	Please contact the Marine Conservation Team when in a position to submit and EPS RA.	Both parties agreed.
<b>MMO 3.6.8</b>		A separate marine licence will be sought for UXO detonation activities. Further assessment and an updated cumulative assessment will be provided in the separate marine licence application when further details on	Agreed. See Appendix 7.	Both parties agreed.

Ref	Description of Matter	AQUIND's Position	MMO's Position	Final Position
		the number of UXO present along the cable route are known, and whether any UXO detonations are required (Refs: APP-384; APP-106).		
<b>MMO 3.6.9</b>		Appropriate legislation, planning policy and guidance relevant to Marine Mammals and Basking Sharks has been used to inform the assessment (Refs: APP-125, Section 10.2; APP-113).	MMO defers to Natural England on this matter.	The Applicant is content that appropriate legislation, policy and guidance has been used, and no additional requirements have been raised by Natural England.
<b>MMO 3.6.10</b>		The assessment of impacts for construction, operation (maintenance and repair) and decommissioning presented in the ES is appropriate and effects on Marine Mammals and Basking Sharks as a result of the Proposed Development are considered to be not significant (Ref: APP-125, Section 10.6).	The MMO defers to Natural England on this matter (see Appendix 3) although a query relating to underwater noise is subject to further discussion as itemised in Table 4.1.	
<b>MMO 3.6.11</b>	Assessment Conclusions	The Applicant provided responses to MMO comments (RR-179 Paragraphs 8.83 and 8.94) in regard to underwater noise on 27 March 2020. The MMO responded to the Applicant on 29 May 2020 and it is agreed that comments to paragraphs 8.83 to 8.94 of RR-179 are resolved.	Agreed.	Both parties agreed.
<b>MMO 3.6.12</b>		The cumulative effects assessment undertaken is appropriate and cumulative effects on Marine Mammals and Basking Sharks as a result of the Proposed Development and other relevant plans and projects are considered to be not significant (Refs: APP-125, Section 10.7; APP-385; APP-144).	The MMO defers to Natural England on this matter (see Appendix 3).	Both parties agreed.
<b>MMO 3.6.13</b>		Assessment of transboundary effects is considered to be appropriate and such effects on Marine Mammals and Basking Sharks as a result of the Proposed Development are considered to be not significant (Refs: APP-125, Section 10.7.3; APP-144).	The MMO defers to Natural England on this matter (see Appendix 3).	Both parties agreed.

Ref	Description of Matter	AQUIND's Position	MMO's Position	Final Position
<b>MMO 3.6.14</b>	Mitigation	It is agreed that given the effects of the Proposed Development, the mitigation measures proposed are considered appropriate and are adequately captured within the DML (Refs: APP-125, Section 10.8; APP-489; APP-019, Schedule 15).	The MMO defers to Natural England on this matter (see Appendix 3).	Both parties agreed.

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**Table 3.7: Matters Agreed: Recreational Angling**

Ref	Description of Matter	AQUIND's Position	MMO's Position	Final Position
<b>EIA</b>				
<b>MMO 3.7.1</b>	Existing Environment	The sources of information within the ES adequately characterises the baseline for assessment of the Proposed Development on Recreational Angling (Ref: APP-128, Section 13.5).	Agreed	Both parties agreed.
<b>MMO 3.7.2</b>	Assessment Methodology	The worst case scenarios for impacts presented in the ES, are appropriate (Refs: APP-128, Section 13.4.3; APP-356).	Agreed	Both parties agreed.
<b>MMO 3.7.4</b>		The methodology based on International Maritime Organisation ('IMO') Formal Safety Assessment ('FSA') process represents an appropriate approach to assessing potential impacts of the Proposed Development on Recreational Angling (Ref: APP-128, Section 13.4). This includes: <ul style="list-style-type: none"> <li>Assessment is based on expert judgement using knowledge from other sites and project specific contextual information;</li> <li>The approach to cumulative effects assessment based upon PINS Advice Note Seventeen.</li> </ul>	Agreed	Both parties agreed.
<b>MMO 3.7.5</b>		Appropriate legislation, planning policy and guidance relevant to Recreational Angling has been used to inform the assessment (Refs: APP-128, Section 13.2; APP-113).	Agreed	Both parties agreed.
<b>MMO 3.7.6</b>	Assessment Conclusions	The assessment of impacts for construction, operation (maintenance and repair) and decommissioning presented in the ES is appropriate and effects on Recreational Angling as a result of the Proposed Development are considered to be not significant (Ref: APP-128, Section 13.6).	Agreed	Both parties agreed.
<b>MMO 3.7.7</b>		The cumulative effects assessment undertaken is appropriate and cumulative effects on Recreational Angling as a result of the Proposed Development and other relevant plans or projects are considered to be not significant (Refs: APP-128, Section 13.7; APP-394; APP-144).	Agreed	Both parties agreed.
<b>MMO 3.7.8</b>		Assessment of transboundary effects is considered to be appropriate and such effects on Recreational Angling as a result of the Proposed Development are considered to be not significant (Refs: APP-128, Section 13.7.3; APP-144).	Agreed	Both parties agreed.

Ref	Description of Matter	AQUIND's Position	MMO's Position	Final Position
MMO 3.7.9	Mitigation	It is agreed that given the effects of the Proposed Development, the mitigation measures proposed are considered appropriate and are adequately captured within the DML (Refs: APP-128, Section 13.8; APP-489; APP-019, Schedule 15).	Agreed	Both parties agreed.

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**Table 3.8: Matters Agreed: Marine Licencing**

Ref	Description of Matter	AQUIND's Position	MMO's Position	Final Position
<b>MMO 3.8.1</b>	Exemption	The AQUIND marine cables are considered as an exempt submarine cable as defined by section 81(5) of MCAA).	Agreed. See Appendix 5 and Appendix 6.	Both parties agreed.
<b>MMO 3.8.2</b>	Maintenance and Repair	Maintenance activities and emergency repairs exempt from requiring a marine licence include: <ul style="list-style-type: none"> <li>• removal and replacement of defective cable sections;</li> <li>• removal of sediment to undertake repairs; and</li> <li>• removal/replacement of cable protection to assess the cable.</li> </ul>	Agreed. See Appendix 5 and Appendix 6.	Both parties agreed.
<b>MMO 3.8.3</b>	HDD Bored Tunnel Exemption	The HDD works proposed underneath Langstone Harbour are considered to be exempt from requiring a marine licence.	Agreed, assuming that the activity meets the conditions listed in Article 35 (bored tunnels) of the Marine Licensing (Exempt Activities) (Amendment) Order 2019. See Appendix 6.	Both parties agreed.
<b>MMO 3.8.4</b>	UXO Detonation/Safe Removal Marine Licence (paragraphs 6.7 and 6.8, and paragraphs 7.40 to 7.43 of MMO RR)	<p>UXO detonation/safe removal works will be covered by a separate marine licence application and have therefore not been assessed within the ES.</p> <p>Further to the meeting held with the MMO and Cefas on 26 March 2020, it was agreed that a separate marine licence will be applied for UXO safe removal/detonation works (initial agreement with the MMO dates back to September 2018). It is considered that this matter is resolved.</p>	Agreed in teleconference on 26 March 2020. Also see Appendix 7 (Item 4(d)).	Both parties agreed.
<b>MMO 3.8.5</b>	Decommissioning Marine Licence	Decommissioning works will be covered by a separate marine licence application.	Agreed. See Appendix 7 (Item 5(f)).	Both parties agreed.
<b>MMO 3.8.6</b>	Other Consents and Licences	The Other Consents and Licences to be obtained (document reference 5.2) relevant to the marine aspects of the Proposed Development are considered to be	Agreed. See Appendix 6 and 7.	Both parties agreed.

Ref	Description of Matter	AQUIND's Position	MMO's Position	Final Position
		appropriate and no likely impediments to the granting of such consents are anticipated at this time.		
<b>MMO 3.8.7</b>	Cable Protection (Construction)	Further information has been shared with the MMO (Appendix 11) in a Cable Protection Technical Note. The assessment of cable protection deployed during construction is considered appropriate and the controls secured through the DML are considered adequate.	Agreed as per MMO advice in Appendix 12.	Both parties agreed.
<b>MMO 3.8.8</b>	Cable Protection (Operation)	Assessments presented within the ES adequately considers an additional 330,000 m <sup>2</sup> of cable protection contingency (over and above what cable protection to be used for construction) to be used during the operational and maintenance phase of the Proposed Development. Approval of cable protection during operation will be facilitated through the Cable Burial Management Plan (Schedule 15, Part 2, 11).	Extended operational licence approach is agreed in principle in Appendix 7 and the controls within the DML for approvals are proposed to be in line with MMO feedback in Appendix 12.	Both parties agreed.

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## 4. MATTERS UNDER DISCUSSION

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- 4.1.1.1. This section of the SoCG describes the ‘matters under discussion’ in detail between the parties.
- 4.1.1.2. Table 4.1 provides the details of the matter still under discussion between the parties.

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**Table 4.1: Table of Matters Under Discussion**



Ref	Description of Matter	AQUIND's Position	MMO's Position
<b>Contaminated Sediments</b>			
<b>MMO</b> <b>4.1.1</b>	<p>The MMO has advised that should dredging not commence within 3 years from the date of sampling, additional contaminant analysis may be required and recommends this as a licence condition (paragraph 7.35 of RR-179)</p>	<p>The Applicant welcomes the additional clarification provided by the MMO in the recent iteration of the draft SoCG (22 October 2020). In considering this information, and as all other dredging activity is much further offshore in coarser sediments, it seems reasonable to assume that the main concern relates to the excavation/dredging activity at the HDD exit/entry location in the nearshore (required in the case of HDD in an offshore to onshore direction), and that these works should be in accordance with the OSPAR guidelines regarding dredging activity. It should be noted that the samples already collected in close proximity to this location (Samples 1 and 2 in Appendix 7.3 of the ES, APP-374) have already demonstrated no contaminant concentrations of concern. The MMO has highlighted that one-off activities can present greater risk than ongoing maintenance, dredging activities. While we do not necessarily consider that this is directly analogous to our activities, when compared for example to 'one-off' activities such as capital dredges occurring in semi closed ports/harbours which have historical industrial contamination etc. we do however take on board your advice and comment. The Applicant also acknowledges</p>	<p>At the time of construction, the assessment will still need to be relevant in terms of the timeliness of any data to ensure the prediction of impacts on which the decision was made remains valid. As the marine environment is not static, and is subject to different stressors, both natural (hydrodynamic) and anthropogenic (vessel movement, pollution incidents etc) there is the potential for the sediment characteristics, depending on their location, to be altered.</p> <p>As such, the OSPAR Guidelines on the Management of Dredged Material (paras 5.5-5.6) recommends that sampling should be repeated every 3-5 years depending on the results of the analyses from the initial first full survey. Point 11 of Appendix 4 states samples <i>may</i> be required after 3 years. It is appropriate to include a condition that the applicant should consult with the MMO should dredging not be completed within a set timeframe to ascertain <i>if</i> samples are required. This allows for changes from e.g. pollution incidents to be assessed. Based on the results (Appendix 7.5 of the Environmental Statement), this can however be extended to 5 years.</p> <p>The condition should read that the applicant should seek the advice of the MMO for further sampling requirements should the dredging not have been completed in that time.</p> <p>When considering the purpose of the time limit, it is reasonable to infer that the timeliness should be applied to the date of samples being recovered, as this would ensure that samples are representative of a specific point</p>

Ref	Description of Matter	AQUIND's Position	MMO's Position
		<p>the MMO is content to agree to a 5 year limit for repeating sampling requirement.</p> <p>Accordingly, the Applicant has further understood that the MMO is seeking reassurance that any dredging works within the area of risk (the HDD exit/entry location), due to commence or that has not been completed by March 2023 (5 years since when the original samples were collected), then the Applicant should seek advice from the MMO as to whether repeated sampling is required. If the MMO deems that it is required then further clarification can be sought by the Applicant on whether the risk of not repeating sampling is acceptable based on evidence of sediment conditions.</p> <p>The works at the HDD location are indicatively scheduled to commence in Q4 2021 (Table 1 of Appendix 3.8, APP-362) and the excavation/dredging works to produce the entry pits are anticipated to take a matter of days rather than months. Therefore, it is considered that the works would not trigger the current requested requirement for repeated sampling. As such, it is considered that this requirement to seek advice of Cefas/MMO at the earliest, one year before the 5-year time period ends will not be needed.</p> <p>The Applicant does acknowledge however, that unforeseen delays can occur with regard to construction of large scale infrastructure projects and construction programmes may change and therefore, the MMO is seeking assurances in circumstances such as these. As</p>	<p>in time; OSPAR sediment sampling has always been considered to give a “snapshot”. If the date of samples being submitted in an application is used as the basis for repeat testing, there is an outstanding risk that consent is granted to activities that are supported by sediment data which is representative of conditions older than 5 years.</p> <p>If repeat testing is deemed necessary, clarification can be sought with the MMO to determine whether this is necessary, or whether the risk of not taking repeat samples is acceptable. The potential requirement for repeat testing can be mitigated by evidence that sediment conditions are not likely to have changed, or that the physical composition is sufficiently coarse.</p> <p>“One-off” activities as described by the applicant can often present higher risk of contamination to the marine environment than continuous, ongoing activities such as maintenance dredging. The risk for maintenance dredging in particular may decrease over time, as there often comes a point where any sediment being dredged is newly deposited and already mobile. Aggregate dredging generally holds little risk of contamination to the marine environment with respect to disposal at sea, and the nature of the dredging means that only a specific type of sediment is being disturbed and extracted. Therefore, the nature of the works being “one-off” is not sufficient justification in and of itself to make the works exempt from contaminant testing.</p> <p>The question of whether recommended sampling is proportionate or not rests on whether the costs incurred</p>

Ref	Description of Matter	AQUIND's Position	MMO's Position
		<p>such, the Applicant is prepared to consider appropriate wording for a licence condition, drafted by the MMO, which requires the Applicant to seek advice on the need for repeated sampling one year before the 5 year period ends when the validity of current contaminated samples are considered to expire in regard to the dredging/excavation works at the HDD marine location.</p>	<p>by the applicant disproportionately outweigh the risk of contamination to the marine environment. This judgment must be based on sufficient, sound evidence. Where evidence is lacking, certain assumptions can be made, such as assuming a low level of risk for coarse sediments, but these can only be relied on up to a certain point. As the application currently stands, the evidence currently available is not, in the opinion of the MMO, adequate to support the preclusion of repeat analysis after 5 years as per the applicant's assumptions. It would be more appropriate, to make the decision of whether additional sampling is necessary at the earliest one year before the 5-year time period ends. Therefore, the wording of any licence condition should specify that a sample plan should be sought from Cefas (through the MMO) to determine whether repeat analysis is necessary, rather than stipulating that samples must be taken regardless. This is typical of dredging applications, though Cefas can or may advise the MMO that repeat analysis after 2 years is warranted if no works have begun, thus extending this to 5 years is itself pragmatic.</p> <p>Applying such a stipulation allows provision to protect the environment in the event of any acute pollution-input events in or around the dredge area/s, such as oil spills from ships, or port accidents etc.</p> <p>The applicant specifically requests examples of where this requirement has been imposed for operations of a similar nature. Cefas does not document this information in such a way that it can be answered within the scope of this consultation. When pre-application sampling advice is</p>

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Ref	Description of Matter	AQUIND's Position	MMO's Position
			<p>provided by Cefas for marine licence applications, the following caveat is typically included:</p> <p><i>“Cefas will take a pragmatic approach to the requirement of repeat samples in relation to projects where works have not commenced however due to the dynamic nature of the marine environment and the potential for changes in the quantity and quality of sediments, there may be a need for some sediments to be re-sampled and analysed if the project has not commenced within two years of the time of sampling</i></p> <p>The MMO provided the Applicant with confirmation that the MMO agrees with the Applicant's understanding on the 18<sup>th</sup> November. The MMO also provided the Applicant with suggested wording for a condition for sampling. This response can be seen in Appendix XX. During the meeting on the 19<sup>th</sup> November it was agreed that the Applicant may propose alternative wording, however the purpose of the condition was agreed upon by all.</p>
<b>Fish and Shellfish</b>			
			Agreed.
<b>MMO 4.1.4</b>	Mitigation	The Proposed Development does not pass through the key Down's herring spawning grounds depicted by Coull <i>et al.</i> and Ellis <i>et al.</i> (as shown in Appendix 9 and in Figure 9.3 of the ES (APP-169)). It is the Applicant's	It is the MMOs position that a timing restriction to mitigate effects on herring is needed as outlined in recent feedback to the Applicant (Appendix 10). The MMO notes

Ref	Description of Matter	AQUIND's Position	MMO's Position
		<p>position that the assessment included in Chapter 9 of the ES (APP-124) is satisfactory, that the impacts resulting from the Proposed Development on herring are not significant and as such, no additional mitigation is required.</p> <p>MMO / Cefas maintains that as the Proposed Development runs through herring spawning grounds, irrespective of the magnitude and nature of the impact and significance of the effect, then additional mitigation is required.</p> <p>At the request of Cefas, additional information in regard to herring spawning has been shared with the Cefas and the MMO (Appendix 9) in order to facilitate resolution of this matter. The MMO has amended their position proposed in paragraph 7.49 of the MMO RR (RR-179) in terms of the length of the mitigation required. This MMO feedback is presented in further detail in Appendix 10. However, the Applicant considers that the MMO and their advisors have not provided adequate justification or reasoning for the need for this additional mitigation.</p> <p>Please can the MMO provide further written justification that the timing restriction proposed is needed.</p>	<p>that the applicant considers that adequate justification has not been provided. The MMO are willing to arrange a call or provide further written justification at the request of the applicant.</p> <p>The MMO provided further written justification on the 18<sup>th</sup> November which can be seen in Appendix XX. The MMO has not changed it's position.</p> 
<p><b>Underwater Noise MMO RR (RR-179) comment on Underwater Noise in paragraph 8.95</b></p>			
<p><b>MMO 4.1.5</b></p>	<p>Paragraph 8.95</p>	<p>Further information has been submitted by the Applicant to the MMO via email on 27 March and the 08 June 2020 to address this query relating to underwater noise. The Applicant is reviewing the response from the MMO and will respond in due course.</p>	<p>The MMO responded to the applicant on 2 July 2020.</p>

Ref	Description of Matter	AQUIND's Position	MMO's Position
<b>DCO and Deemed Marine Licence - MMO RR (RR-179) feedback on AQUIND's responses to MMO comments on DCO and DML (see most recent Appendix 8 of this SoCG provided by the MMO on 27 August 2020)</b>			
<b>MMO 4.1.6</b>	Paragraphs 7.10 to 7.17 Arbitration and Appeals	<p>Article 45 is not applicable to the DML by virtue of the "<i>Except as otherwise expressly provided</i>" wording used in that Article, as has previously been discussed.</p> <p>With regard to paragraph 7.25 of the relevant representation, it is not correct that the procedure at Part 3 requires all approvals to be made within 40 working days. The timescales are those provided for in the relevant conditions, in some case (conditions 3 and 13) being 8 weeks (or 40 working days), and in others (conditions 4, 10 and 11) being 4 months. These timescales were included following feedback received when consulting the MMO on the draft DML before the submission of the Application.</p> <p>The Applicant has considered the ExA comments in relation to the Norfolk Vanguard Offshore Wind Farm Order 2020 in this regard. Having noted the reasons for not including an appeals process, the Applicant is not agreeable to the removal of an appeals process from the DML. Of particular note, the Applicant takes the view that the proposed use of judicial review as a remedy is not an appropriate manner in which to deal with this issue.</p> <p>Whilst the Applicant notes the comments that the MMO cannot be held to account for delays, it is also not appropriate for the progress of the authorised development to be halted as a consequence of any such delays which are within the control of the MMO. Therefore timescales for the provisions of approvals and provisions for appeals where those timescales are not adhered to are required in the DML so as to ensure the deliverability of the authorised development.</p>	<p>The MMO's position is that any matter in relation to the DMLs should not be subject to arbitration or appeal. The Applicant should rely on judicial review as a means to challenge any decision of the MMO.</p> <p>The MMO requests that Article 45 states that any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration. The MMO requests amendments to the drafting that make it explicit that the MMO is not subject to the provision.</p> <p>In summary, the MMO's concerns relate to the private nature of the arbitration process which does not align with the public functions and duties of the MMO. The MMO consider that the removal of the MMO's decision-making function and its placement into the hands of a private arbitration process is inconsistent with the MMO's legal function, powers and responsibilities, which was never intended by Parliament in enacting the Planning Act 2008 or the Marine and Coastal Access Act 2009. The MMO also consider that arbitration would not be consistent with p.4 of Annex B of the PINS Guidance Note 11, which states that "<i>the MMO will seek to ensure wherever possible that any deemed licence is generally consistent with those issued independently by the MMO</i>". Including a mechanism for determination of disputes in respect of</p>

Ref	Description of Matter	AQUIND's Position	MMO's Position
			<p>DMLs would not be consistent with Marine Licences issued independently by the MMO.</p> <p>The inclusion of arbitration/appeals provision as drafted will create inconsistency with decisions made under DMLs and those made in relation to those marine licences issued directly by the MMO. This will create a 2-tier licensing approach. The MMO reiterates in the strongest possible terms that DMLs granted as part of a DCO should not be treated differently to a marine licence granted directly by the MMO under the Marine and Coastal Access Act 2009, as this will lead to disparity between licence holders, and an uneven playing field across a regulatory regime.</p> <p>There is no indication, under either the Planning Act 2008 or the Model Clauses provisions that this is what was intended by Parliament or the Secretary of State: namely, that licences or consents deemed granted by reference to a specific provisions of another enactment, and which required further approvals by a named body, should be subject to a different regime in the event of the applicant being dissatisfied by the outcome of that further approvals than would be the case for a licence expressly granted under the same provisions of the same enactment.</p> <p>The MMO maintains that it is not content with the appeal route in Part 3. 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. Please see further information in 4.1.8.</p>

Ref	Description of Matter	AQUIND's Position	MMO's Position
			<p>The MMO does not believe the reasons for the extension of the appeals process to its decisions and determinations have been properly justified. Since its inception the MMO has undertaken licensing functions on ~130 DCOs comprising some of the largest and most complex operations globally. The MMO is not aware of an occasion whereby any dispute which has arisen in relation to the discharge of a condition under a DML has failed to be resolved satisfactorily between the MMO and the applicant, without any recourse to an 'appeal' mechanism.</p> <p>The MMO is an open and transparent organisation that actively engages with and maintains excellent working relationships with industry and those it regulates. The MMO discharges its statutory responsibilities in a manner which is both timely and robust in order to fulfil the public functions vested in it by Parliament. The scale and complexity of an NSIP creates no exception in this regard and indeed it follows that where decisions are required to be made, or approvals given, in relation to these developments of significant public interest only those bodies appointed by Parliament should carry the weight of that responsibility. There is no compelling evidence as to why the applicant in the case of Aquind should be an exception to the rule and treated differently to any other marine licence holder.</p> <p>The MMO maintains its position.</p>
<b>MMO 4.1.7</b>	Paragraphs 7.25 to 7.27 Arbitration and Appeals	The comments made above in relation to the appeals procedure included at Part 3 of the DML apply equally here.	The MMO is not content with the wording of Part 3. The MMO should not be subject to an appeals process and would request Part 3 and any mention of appeals in the



Ref	Description of Matter	AQUIND's Position	MMO's Position
		<p>The Applicant maintains its position that the alternative remedy of judicial review is wholly inappropriate and provides no genuine remedy to the issue of approvals not being provided in a timely manner so as to ensure the efficient delivery of nationally significant infrastructure.</p>	<p>DML to be removed. The MMO maintains that it is not content with the proposed appeal route. 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. Please see further information in 4.1.6 and 4.1.8.</p> <p>The MMO maintains its position.</p>
<p><b>MMO</b> <b>4.1.8</b></p>	<p>Paragraph 7.32 8 week time limit for determination</p>	<p>It has previously been discussed that timescales would be included for decisions to be taken to ensure that there are timescales for approvals to assist the authorised development being carried out in a timely manner. The timeframes included were discussed when the draft DML was consulted on with the MMO and amended to ensure the MMO have sufficient time to review documentation received and request new information where needed and to consult on this as necessary before providing any approval. It is considered the timescales included in the DML are appropriate for this. It is not understood why the MMO consider the timescales provided do not provide sufficient time for the MMO to review the documentation submitted, request further information where necessary, and to provide approvals.</p> <p>The Applicant notes the further response provided by the MMO, but identifies that this does not address the matter being discussed, which is the timescales for approvals rather than the appeals process that may apply where</p>	<p>The MMO do not agree with being bound to a time limit for making a determination.</p> <p>The applicant proposed that where the MMO “fails to determine the application for approval” within the stipulated timescales, Part 3 Appeals may be triggered.</p> <p>An appeals process already exists in respect of Marine Licences granted under Part 4 of the Marine and Coastal Access Act 2009. The appeals process is set out in the Marine Licensing (Licence Application Appeals) Regulations 2011 (the 2011 Regulations). However, the appeals process does not apply to any non-determination or refusal to approve conditions under a Marine Licence (or DML) and, under Regulation 4 of the 2011 Regulations, is limited to appeals concerning:</p> <ul style="list-style-type: none"> <li>• the grant of a marine licence subject to conditions;</li> <li>• refusal to grant a marine licence;</li> <li>• the time period for which activities are authorised; and/or</li> <li>• the applicability of the licence conditions to transferees.</li> </ul>

Ref	Description of Matter	AQUIND's Position	MMO's Position
		<p>the approvals are not provided within the stated timescales.</p>	<p>Consequently, the MMO maintains that it is not content with the appeal route in Part 3. The 2011 regulations apply a statutory appeal process to the decisions the MMO takes regarding whether to grant or refuse a licence or conditions which are to be applied to the licence. However, they do not include an appeal process to any decisions (or timescales) the MMO is required to give in response to an application to discharge any conditions of a marine licence issued directly by us. Therefore, if the DCO were to be granted with the proposed appeal process included, this would not be an appeal procedure broadly consistent with the existing statutory processes. This amendment would be introducing and making available to this specific Applicant a new and enhanced appeal process which is not available to other marine licence holders. This is problematic because it would lead to a clear disparity between those licence holders who obtained their marine licence directly from the MMO and those who obtained their marine licence via the DCO process. This would lead to an inconsistent playing field across the regulated community. Had parliament intended the appeal process to extend to these decisions, whether in relation to NSIPs or the marine licence granted directly by the MMO, then the wording of the Appeal Regulations would have been drafted differently. This is a fundamental departure from what Parliament intended, and the MMO can see no justification for such a major change particularly where the purpose of the deemed licence regime under the Planning Act 2008 is essentially to remove the need for a separate application for a licence</p>

Ref	Description of Matter	AQUIND's Position	MMO's Position
			<p>alongside or following the making of the Order and not to fundamentally change the regulatory regime that applies. Please see further information in 4.1.6.</p> <p>The MMO maintains its position.</p>

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## 5. MATTERS NOT AGREED

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- 5.1.1.1. Table 5.1 provides the details of the matters where agreement is not reached between the parties.

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**Table 5.1: Table of Matters Not Agreed**

Ref	Description of Matter	Details of Discussion	Applicant's Position	MMO's Position
MMO 5.1.1				
MMO 5.1.2				
MMO 5.1.3				

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## 6. SIGNATURES

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Signed on behalf of the Marine Management Organisation:

Printed name:

Position:

Date:

Signed on behalf of AQUIND Ltd:

Printed name:

Position:

Date

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# APPENDIX 1

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## MMO PEIR BRIEFING NOTE

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## APPENDIX 2

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### CUMULATIVE ASSESSMENT\_MMO EMAIL OCTOBER 2019

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# APPENDIX 3

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## MMO S. 56 REPRESENTATION

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# APPENDIX 4

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## MMO FEEDBACK ON DREDGE AND DISPOSAL ACTIVITIES\_MAY 2019

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# APPENDIX 5

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## MARINE LICENCE REQUIREMENTS\_MMO EMAIL JULY 2018

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# APPENDIX 6

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## BORED TUNNEL EXEMPTION\_MMO EMAIL JUNE 2019

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# APPENDIX 7

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## MINUTES OF MEETING\_SEPTEMBER 2018

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# APPENDIX 8

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## RESPONSE TO DCO/DML MMO COMMENTS

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# APPENDIX 9

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## ADDITIONAL INFORMATION ON HERRING SPAWNING

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# APPENDIX 10

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## MMO RESPONSE TO ADDITIONAL INFORMATION ON HERRING SPAWNING

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# APPENDIX 11

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## AQUIND CABLE PROTECTION TECHNICAL NOTE

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# APPENDIX 12

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## MMO RESPONSE TO CABLE PROTECTON TECHNICAL NOTE

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# APPENDIX 13

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## MINUTES OF MEETING\_24 MARCH 2020

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