

# Lower Thames Crossing

## 5.4.1.5 Statement of Common Ground between (1) National Highways and (2) the Marine Management Organisation

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#### List of contents

	Page number
<b>1 Introduction .....</b>	<b>1</b>
1.1 Purpose of the Statement of Common Ground.....	1
1.2 Parties to this Statement of Common Ground .....	1
1.3 Terminology .....	1
1.4 Overview of previous engagement .....	2
1.5 Status of the Statement of Common Ground .....	2
<b>2 Matters.....</b>	<b>3</b>
2.1 Matters agreed, not agreed or under discussion.....	3
<b>3 Agreement on this Statement of Common Ground .....</b>	<b>12</b>
<b>Appendix A Documents considered within this Statement of Common Ground.....</b>	<b>13</b>
<b>Appendix B Glossary.....</b>	<b>14</b>
<b>Appendix C List of engagement activities.....</b>	<b>16</b>
<b>Appendix D Detailed Record of Engagement.....</b>	<b>17</b>

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## List of tables

	<b>Page number</b>
Table 2.1 Matters.....	3
Table C.1 Summary of engagement activities between National Highways and the Marine Management Organisation.....	16
Table D.1 Detailed record of engagement activities between National Highways and the Marine Management Organisation.....	17

# 1 Introduction

## 1.1 Purpose of the Statement of Common Ground

- 1.1.1 This Statement of Common Ground (SoCG) has been prepared in respect of the Development Consent Order (DCO) application for the proposed A122 Lower Thames Crossing (the Project) made by National Highways Limited (National Highways) to the Secretary of State for Transport (Secretary of State) under section 37 of the Planning Act 2008.
- 1.1.2 This SoCG does not seek to replicate information which is available elsewhere within the Application Documents. All documents may be available on the Planning Inspectorate website.
- 1.1.3 The SoCG has been produced to confirm to the Examining Authority where agreement has been reached between the parties named below, and where agreement has not (yet) been reached. SoCGs are an established means in the planning process of allowing all parties to identify and so focus on specific matters that may need to be addressed during the examination.

## 1.2 Parties to this Statement of Common Ground

- 1.2.1 This SoCG has been prepared in respect of the Project by (1) National Highways, and (2) the Marine Management Organisation.
- 1.2.2 National Highways became the Government-owned Strategic Highways Company on 1 April 2015. It is the highway authority in England for the strategic road network and has the necessary powers and duties to operate, manage, maintain and enhance the network. Regulatory powers remain with the Secretary of State. The legislation establishing National Highways made provision for all legal rights and obligations of the Highways Agency, including in respect of the Project, to be conferred upon or assumed by National Highways.
- 1.2.3 The MMO was established by the Marine and Coastal Access Act 2009 to make a contribution to sustainable development in the marine area and to promote clean, healthy, safe, productive and biologically diverse oceans and seas. The responsibilities of the MMO include the licensing of construction works, deposits and removals in English inshore and offshore waters and for Northern Ireland offshore waters by way of a marine licence. Inshore waters include any area which is submerged at Mean High Water Spring (MHWS) tide. They also include the waters of every estuary, river or channel where the tide flows at MHWS tide. Waters in areas which are closed permanently or intermittently by a lock or other artificial means against the regular action of the tide are included, where seawater flows into or out from the area.

## 1.3 Terminology

- 1.3.1 In the matters table in section 2 of this SoCG, “Matter not agreed” indicates agreement on the matter could not be reached, and “Matter under discussion” where these points will be the subject of on-going discussion wherever possible to resolve, or refine, the extent of disagreement between the parties. “Matter agreed” indicates where the issue has been resolved.

- 1.3.2 It is agreed that any matters not specifically referred to in Section 2 of this SoCG are not of material interest or relevance to the Marine Management Organisation. As such, those matters can be read as agreed, only to the extent that they are not of material interest or relevance to the Marine Management Organisation. However, if new matters arise the Marine Management Organisation reserves the right to comment on those matters as it considers appropriate.

## **1.4 Overview of previous engagement**

- 1.4.1 A summary of the meetings and correspondence undertaken between the two parties in relation to the Project is outlined in Appendix C.

## **1.5 Status of the Statement of Common Ground**

- 1.5.1 It is agreed that this statement is an accurate description of the matters raised by the Marine Management Organisation, and the current status of each matter.
- 1.5.2 It is agreed that Appendix C is an accurate record of the key meetings and consultation undertaken between (1) National Highways and (2) the Marine Management Organisation in relation to the matters addressed in this Statement of Common Ground.

## 2 Matters

### 2.1 Matters agreed, not agreed or under discussion

2.1.1 Table 2.1 details the matters which have been agreed, not agreed, or are under discussion between (1) National Highways and (2) the Marine Management Organisation.

2.1.2 It is acknowledged there are some matters where further discussion may take place during the detailed design stage of the Project to finalise detail, but the matter is agreed in principle. Matters to which this applies have an asterisk (\*) next to them.

**Table 2.1 Matters**

Topic	Item number	Marine Management Organisation comment	National Highways comment	Document Reference	Status
<b>DCO and Consents</b>					
Deemed Marine Licence					
Further information regarding return and deemed consent – Para 20 (2)	2.1.1	Restricting and/or preventing the flow of information after six weeks would slow the process and/or prevent the MMO from making a determination. Due to lack of information, the return would be rejected.	National Highways wishes to retain deemed consent. The MMO have 30 business days to request further information. This is the standard position across other Deemed Marine Licences (DMLs), for example as with The Great Yarmouth Third River Crossing DCO 2020.	Draft DCO (Application Document 3.1), Schedule 15 (DML)	Matter Not Agreed
Time limit for approval and notice of determination – Para 22	2.1.2	MMO require 13 weeks to approve the Deemed Marine Licence (DML) and the marine pollution contingency plan, allowing time to fully consult with the Project and review works prior to works commencing, and undertake	National Highways would advise against 13 weeks (which is equivalent to 65 business days) due to impact on its programme and given that the Project's works are not as invasive as other schemes that the MMO is regulating. NH has asked the MMO to consider 30 business days as a	Draft DCO (Application Document 3.1), Schedule 15 (DML)	Matter Not Agreed

		consultation with Environment Agency, Natural England and Historic England.	timeframe, as per The Silvertown Tunnel Order 2018 DML. NH requests that responses received from stakeholders need to be processed quicker than usual given the scale and complexity of this Nationally Significant Infrastructure Project (NSIP). NH would be open to considering other timeframes shorter than 13 weeks.		
Arbitration – Para 23	2.1.3	Preference is to remove arbitration completely. The MMO should be considered to be the overall decision-maker in disputes regarding licensable activities in the Marine area. Please note that if an arbitration clause is included within the DCO, the MMO request the following paragraph is added: Paragraph (1) [the arbitration clause] does not apply to any decision, difference, determination, approval or permission required by or under any provision of the deemed marine licence in Schedule.	NH is prepared to agree to the deletion of the arbitration provision, subject to the remainder of the DML being agreed.	Draft DCO (Application Document 3.1), Schedule 15 (DML)	Matter Agreed
Changes to the Deemed Marine Licence Para 24 (3)	2.1.4	MMO suggest removing Para 24 (3) as it restricts MMO's ability to make updates to the DML, and also makes an assumption that any variation will be granted.	NH's view is that Para 24(3) should be retained as: - It does not assume that a variation will be granted since it states that "the MMO must give notice to the undertaker of the determination" (this is not approval).	Draft DCO (Application Document 3.1), Schedule 15 (DML)	Matter Under Discussion

			- The wording is in line with other DMLs and is similar to the process in which the MMO approve licensable activities.		
<b>Marine biodiversity</b>					
Methodology and baseline data					
Biodiversity – Designated Sites	2.1.5	National Highways has correctly identified designated sites with marine components that have the potential to be affected by the Project.	No further action required.	ES Chapter 9: Marine Biodiversity (Application Document 6.1)	Matter Agreed
Biodiversity – Fish Ecology	2.1.6	Data sources are to be investigated further and supplemented by additional data sources, including “The Fish Atlas” by Heesen et al. (2015)	Noted. The most relevant data sources have been used to develop the Environmental Statement (ES) baseline.	ES Chapter 9: Marine Biodiversity (Application Document 6.1)	Matter Agreed
Biodiversity – Survey Methodology	2.1.7	MMO requires details of survey methodology to be presented in the ES.	National Highways utilised existing baseline noise data sources and completed bespoke underwater noise modelling to inform the marine biodiversity assessment.	ES Chapter 9: Marine Biodiversity (Application Document 6.1)	Matter Agreed
Coastal Processes	2.1.8	MMO supports the Project’s monitoring and modelling proposals.	The extent of the monitoring programme has been agreed with MMO. Subsequent to monitoring programme agreement, the Project conducted in-river benthic surveys which have informed the ES baseline.	ES Chapter 9: Marine Biodiversity (Application Document 6.1)	Matter Agreed
Assessment of potential effects					



Designated Sites	2.1.9	<p>The status of the two recommended Marine Conservation Zones (MCZ) should be reviewed before the ES is finalised to ensure the presented information and associated assessment is up to date.</p> <p>MMO defer to Natural England's advice regarding potential impacts on designated sites.</p>	<p>Agreement reached that MCZ assessment was required (03/10/19).</p> <p>Candidate MCZ in Upper Thames no longer being considered as was withdrawn from Tranche 3 review.</p> <p>Status of Swanscombe MCZ is included in the ES.</p>	ES Chapter 9: Marine Biodiversity (Application Document 6.1)	Matter Agreed
Fish Ecology	2.1.10	<p>Direct/indirect effects to fisheries and shellfisheries as a result of all phases of the Project must be considered throughout the EIA process and presented in the ES.</p> <p>The passage of the European eel "<i>Anguilla Anguilla</i>" and other migratory species must be considered and assessed.</p>	<p>Noted. Direct and indirect effects on fisheries and shellfisheries, and the passage of eel and other migratory species have been considered and included in the ES.</p>	ES Chapter 9: Marine Biodiversity (Application Document 6.1)	Matter Agreed
Underwater Noise	2.1.11	<p>A thorough assessment of the cumulative impacts and in-combination underwater noise and vibration effects on fish must be completed, which includes the effects of the multiple proposed and current developments along the Thames.</p>	<p>National Highways has undertaken underwater noise and vibration modelling.</p> <p>Cumulative effects have been considered in the ES.</p>	ES Chapter 9: Marine Biodiversity (Application Document 6.1)	Matter Agreed

Benthic Ecology	2.1.12	Consideration should be given to allocating sampling stations according to visual changes in sediment types or obvious habitat differences, as opposed to following a strategic grid of stations. Information on the design of any benthic ecology sampling should be presented in the ES.	Scope and extent of marine survey agreed with MMO.	ES Chapter 9: Marine Biodiversity (Application Document 6.1)	Matter Agreed
	2.1.13	MMO consider all construction removal, dredging and maintenance activities associated with the proposed scheme that are in or above the jurisdiction of the MMO are to be licensable.	The Project proposes to deal with alternation, operation and decommissioning of jetty and water management pipeline and outfall structures via a Deemed Marine Licence (DML), and tunnel operation via the bored tunnels exemption detailed at Article 35 of Marine Licencing (Exempted Activities) Order 2011.	ES Chapter 9: Marine Biodiversity (Application Document 6.1)	Matter Agreed
	2.1.14	The ES must specify how indirect impacts on intertidal benthic ecology with respect to bird feeding via alterations in benthic feeding assemblages will be addressed.	The ES assesses the potential indirect impacts on bird feeding. This topic is also covered in the Habitats Regulations Assessment (HRA).	ES Chapter 9: Marine Biodiversity (Application Document 6.1) HRA (Application Document 6.5)	Matter Agreed
Coastal Processes	2.1.15	Potential impacts to physical and coastal processes associated with the works have been identified and the scope of the ES will allow the potential	Scour protection to the tunnel has been removed from the Project design. The extent and approach with regard to any requirement for hydrodynamic and sediment modelling has subsequently been agreed with MMO.	ES Chapter 9: Marine Biodiversity (Application Document 6.1)	Matter Agreed

		scour protection works to be adequately assessed.			
	2.1.16	MMO welcomes any ongoing consultation and the use of trigger levels as a monitoring and implementation strategy with regards to scour protection.	Vertical tunnel alignment avoids the need for scour protection to the tunnel.	N/A	Matter Agreed
Monitoring	2.1.17	To satisfy condition 2 of Article 35 of the Marine Licensing (Exempted Activities) Order 2011, the underwater noise modelling for the Tunnel Boring Machine (TBM) and operational traffic modelling will be required as part of the DCO application. The MMO has advised that the Article 35 exemption is applicable if condition 2 can be satisfied.	MMO and National Highways have discussed and agreed that the construction and operation of the tunnel is covered by the Exemption, hence these phases will not be included in the DML. It has also been agreed that the Exemption would be supported by the ES assessments, which addresses the underwater noise impacts associated with the TBM and road traffic.	ES Chapter 9: Marine Biodiversity (Application Document 6.1)	Matter Agreed
	2.1.18	Table 10.7 in the Preliminary Environmental Information Report (PEIR) states an underwater noise survey will be undertaken. The MMO require details of the survey methodology to be presented in the ES.	It has been agreed that no survey would be undertaken, but that modelling would use available documented baseline levels.	ES Chapter 9: Marine Biodiversity (Application Document 6.1) ES Appendix 9.1 Noise Modelling Report (Application Document 6.3)	Matter Agreed

Dredging and scour	2.1.19	Potential impacts on marine receptors of dredging and other sediment re-mobilisation mechanisms should be assessed and presented in the Environmental Statement.	No dredging is proposed. Other mechanisms of sediment mobilisation are assessed in ES.	ES Chapter 9: Marine Biodiversity (Application Document 6.1)	Matter Agreed
	2.1.20	MMO consider all construction, removal, dredging and maintenance activities associated with the proposed scheme that are in or above the jurisdiction of the MMO are to be licensable.	The DML covers relevant works to be undertaken in the River Thames except for tunnel works, which will be covered by an exemption. The East Tilbury Jetty has been removed from design.	ES Chapter 9: Marine Biodiversity (Application Document 6.1)	Matter Agreed
	2.1.21	MMO require precise details of the proposed jetty and any scour protection works to confirm whether the approach fully identifies and assesses the potential impacts.	The East Tilbury Jetty has been removed from the design. Details of the construction and decommissioning of the construction phase discharge is provided in DML and assessed in the ES.	ES Chapter 9: Marine Biodiversity (Application Document 6.1)	Matter Agreed
Monitoring and modelling programme	2.1.22	MMO acknowledge that the scope of the monitoring / modelling programme is in the process of being revised following the submission of comments on 22 Nov 2018. MMO support the proposals in the reviewed document subject to the changes identified.	Monitoring and modelling proposal now agreed.	ES Chapter 9: Marine Biodiversity (Application Document 6.1)	Matter Agreed
Marine Strategy Framework Directive	2.1.23	The Project has discussed Marine Strategy Framework Directive (MSFD) considerations with the MMO and stated their opinion that	It has been agreed with MMO and the EA that the MSFD does not apply, and a Water Framework Directive (WFD)	ES Chapter 9: Marine Biodiversity (Application Document 6.1)	Matter Agreed

		potential impacts do not need to be assessed as the boundary of the nearest MSFD region is over 30km from the Order Limits. The MMO agreed in principle with their opinion, however would require advice from the Environment Agency (EA). The MMO advised that MSFD assessments should be discussed with the EA.	compliance assessment will be completed.	WFD Assessment (ES Appendix 14.7, Application Document 6.3)  EA SoCG (Application Document 5.4.1.2)	
Coalhouse Fort water inlet with self regulating valve	2.1.24	MMO requested details of the proposed water inlet with self-regulating valve, to confirm whether the Project's approach fully identifies and assesses the potential impacts.	National Highways provided a technical presentation to MMO on 27.07.2022, to explain how the DML has been updated to reflect the inclusion of a water inlet with self-regulating valve (or equivalent) to allow water to flow from the Thames, ensuring a water supply for functionally linked land mitigation, adjacent to Coalhouse Fort.  LTC shared the latest draft of the DML on 28.07.2022 and are awaiting MMO's comments.	N/A	Matter Under Discussion
<b>Mitigation</b>					
Biodiversity – Underwater Noise	2.1.25	MMO agree that soft start and vibro-piling will reduce impact.	Where piling activities take place, best practice relating to soft start and vibro-piling will be applied to minimise underwater noise (commitment included in the Register of Environmental Actions and Commitments (REAC).	ES Chapter 9: Marine Biodiversity (Application Document 6.1)	Matter Agreed

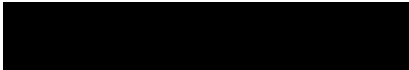
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### 3 Agreement on this Statement of Common Ground

#### STATEMENT OF COMMON GROUND

**This Statement of Common Ground has been prepared and agreed by (1) National Highways Limited and (2) the Marine Management Organisation.**

Name	Charlie Waller
Position	Environment & Industry Stakeholder Engagement Coordinator
Organisation	National Highways
Signature	

Name	Fern Skeldon
Position	Senior Marine Licensing Case Manager
Organisation	Marine Management Organisation (MMO)
Signature	

## Appendix A Documents considered within this Statement of Common Ground

- A.1.1 A summary of the documents which have been considered in the development on this SoCG outside of the DCO application documents are provided below, such as emails, meeting notes, etc.
- a. MMO Statutory Consultation Response Dec 2018
  - b. MMO Supplementary Consultation Response March 2020



## Appendix B Glossary

Term	Abbreviation	Explanation
Development Consent Order	DCO	Means of obtaining permission for developments categorised as Nationally Significant Infrastructure Projects (NSIP) under the Planning Act 2008.
Deemed Marine Licence	DML	The licence required under the Marine and Coastal Access Act 2009 to undertake marine licensable activities, e.g. construction, dredging and deposit, removal or incineration of substances and objects.
Environmental Statement	ES	A document produced to support an application for development consent that is subject to Environmental Impact Assessment (EIA), which sets out the likely impacts on the environment arising from the proposed development.
Habitat Regulations Assessment	HRA	A tool developed by the European Commission to help competent authorities (as defined in the Habitats Regulations) to carry out assessment to ensure that a project, plan or policy will not have an adverse effect on the integrity of any Natura 2000 or European sites (Special Areas of Conservation, Special Protection Areas and Ramsar sites), either in isolation or in combination with other plans and projects, and to begin to identify appropriate mitigation strategies where such effects were identified.
Marine Conservation Zone	MCZ	A type of marine protected area that can be designated in English, Welsh and Northern Irish territorial and offshore waters. MCZs protect a range of nationally important habitats and species.
Marine Management Organisation	MMO	An executive non-departmental public body in the UK established under the Marine and Coastal Access Act 2009. The MMO exists to make a significant contribution to sustainable development in the marine area, and to promote the UK Government's vision for clean, healthy, safe, productive and biologically diverse oceans and seas.
Marine Strategy Framework Directive	MSFD	European maritime policy designed to create a framework for the sustainable use of marine waters.
Register of Environmental Actions and Commitments	REAC	The REAC identifies the environmental commitments that would be implemented during the construction and operational phases of the Project if the Development Consent Order is

		granted, and forms part of the Code of Construction Practice (Application Document 6.3, ES Appendix 2.2).
Water Framework Directive	WFD	Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy. The Directive establishes a framework for the protection of inland surface waters, estuaries, coastal waters and groundwater. The framework for delivering the WFD is through river basin management planning. The UK has been split into several river basin districts. Each river basin district has been characterised into smaller management units known as water bodies. The surface water bodies may be rivers, lakes, estuary or coastal.
Water inlet with self-regulating valve		

## Appendix C List of engagement activities

- C.1.1 A summary of the meetings and correspondence undertaken between the two parties in relation to the Project is outlined in Table C.1 below.
- C.1.2 It is agreed that this is an accurate record of the key meetings and consultation undertaken between (1) National Highways and (2) the Marine Management Organisation in relation to the issues addressed in this SoCG.
- C.1.3 A detailed record of all engagement between (1) National Highways and (2) the Marine Management Organisation in relation to the issues addressed in this SoCG is outlined in Appendix D.

**Table C.1 Summary of engagement activities between National Highways and the Marine Management Organisation.**

Date	Form of contact/ correspondence	Key topics discussed and key outcomes
May 2017-July 2022	Teleconference	Regular technical meetings to discuss the programme, SoCG topics, the DML and compensatory enhancements. Held as required, typically quarterly to monthly.
Oct 2018-Sept 2021	Public consultations	The Marine Management Organisation has been consulted on all of LTC's public consultations.
Oct 2017-	Workshops	Technical workshops with EA and Port of London Authority to discuss marine surveys, ground investigations, environmental considerations, consenting and timelines.

## Appendix D Detailed Record of Engagement

**Table D.1 Detailed record of engagement activities between National Highways and the Marine Management Organisation.**

Date	Form of contact/ correspondence	Key topics discussed and key outcomes
8 May 2017	Teleconference	Walkthrough of National Highways preferred route.
9 October 2017	Teleconference	Joint meeting with MMO, Environment Agency (EA) and the Port of London Authority to discuss marine ground investigations including geophysical and bathymetric surveys, in-river ground investigations, key constraints and access, environmental considerations and required consents and timelines
October 2017	Environmental Impact Assessment (EIA) Scoping Report	Response to EIA Scoping Report received from MMO.
18 October 2018	Teleconference	Discussed the propose marine monitoring and modelling programme, and exemption of marine licensing for the tunnel.
October – December 2018	Statutory Consultation	Statutory public consultation on the Project's design in the Preferred Route Announcement. Consultation response received from MMO.
3 October 2019	Teleconference	Briefed on Project's updated Order Limits for dewatering discharge options.
29 January 2020	Teleconference	Discussed proposed construction methodology on drainage and impact, EIA progress and Deemed Marine Licence (DML) submission.
January – March 2020	Supplementary Consultation	Non-statutory public consultation on Project changes and development of the Project. Consultation response received from MMO.
2 April 2020	Teleconference	Briefed on further development on the Project's Order Limits and dewatering discharge proposals.
28 April 2020	Teleconference	Discussion on retaining the existing East Tilbury jetty and sought advice from MMO on approach to DML requirements and securing requirements in DCO.
27 May 2020	Email	National Highways issued draft DML to MMO noting that much of the design detail is still to be provided, although the marine elements of the Project are included and align with calls and discussions to date. National Highways expressed that it was keen to instigate discussions on the draft DML.

29 June 2020	Email	National Highways issued the draft DCO for information and to assist MMO to understand the likely content/provisions. Major or substantive comments were welcomed.
3 July 2020	Teleconference	Call to provide an update and to listen to MMO's comments on the draft DML. MMO agreed to issue a revised draft with further comments following the call.
July – August 2020	Design Refinement Consultation	Non-statutory public consultation on design refinements of the Project. Consultation response received from MMO.
30 July 2020	Teleconference	Call to provide an update on operational discharge from the construction compound at the Northern Portal.
20 August 2020	Document Issue – Draft CoCP and REAC	National Highways issued draft Code of Construction Practice a Register of Environmental Actions and Commitments. Major or substantive comments were welcomed.
2 December 2020	Email	National Highways shared its DCO application documents with MMO.
24 November 2020	Teleconference	National Highways provided an update on its DCO application post withdrawal.
3 February 2021	Teleconference	Call to provide an update and discuss MMO's comments regarding the draft DML. Timescales, jetty licensing and arbitration were the key concerns discussed.
19 February 2021	Email	National Highways shared new DCO documents with MMO. Major or substantive comments were welcomed.
3 November 2021	Teleconference	MMO's comments on the Project updated draft DML.
22 February 2022	Teleconference	MMO's comments on the Project updated draft DML and agree the proposed amendments for inclusion in the DCO.
06 April 2022	Email	Updated DML sent to the MMO.
27 July 2022	Teleconference	National Highways provided an update on the proposed structure and mitigation measures at Coalhouse Point, and presented the new SoCG table structure.
28 July 2022	Email	Updated DML sent to the MMO.

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