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**(By email only)**

MMO Reference: DCO/2021/00004  
Planning Inspectorate Reference: TR030007

11 December 2023

Dear Mr Gould,

**Planning Act 2008, Immingham Eastern Ro-Ro Terminal**

On 09 March 2023, the Marine Management Organisation (the “MMO”) received notice under Section 56 of the Planning Act 2008 (the “PA 2008”) that the Planning Inspectorate (“PINS”) had accepted an application made by Associated British Ports (the “Applicant”) for the determination of a development consent order (DCO) for the construction, maintenance and operation of the Immingham Eastern Ro-Ro Terminal (the “DCO Application”) (MMO ref: DCO/2021/00004; PINS ref: TR030007).

The DCO Application seeks authorisation for the construction, of a new 3-berth Roll-On/Roll-Off (Ro-Ro) terminal facility within the Port of Immingham (“the “Project”). This includes one Deemed Marine Licence (DML) under Schedule 3.

This document comprises the MMO comments in respect of the DCO Application submitted in response to Deadline 7.

The MMO submits the following:

- 1. MMO Responses to ExQ3**
- 2. MMO Comments on Deadline 6 Submissions**
- 3. MMO Post Hearing submissions**
- 4. MMO Comments on Draft DCO**
- 5. MMO Update on Marine Ecology**

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

Yours sincerely,



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Jack Coe  
Marine Licensing Case Officer

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## **Contents**

1.	MMO Responses to ExQ3 .....	1
2.	MMO Comments on Deadline 6 Submissions .....	1
3.	MMO Post Hearing submissions .....	2
4.	MMO Comments on Draft DCO .....	2
5.	MMO Updates on Marine Ecology .....	3



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## 1. MMO Responses to ExQ3

The MMO notes point DCO.3.07 which is addressed to the Applicant and the MMO:

*With respect to sub-paragraph (5), should the wording be revised so that it is less discursive and more prescriptive?*

*With respect to sub-paragraph (8)(a) is there any missing text or a need for a sense check?*

1.1. The MMO concurs with the ExA that sub-paragraph (8)(a) should be updated with regards to the missing text. Please see additional comments regarding Condition 12 under Section 5 of the this response below.

## 2. MMO Comments on Deadline 6 Submissions

The MMO is aware that several documents have been submitted into this Examination at Deadline 6 by various Interested Parties. The MMO has reviewed a number of these documents and has provided comment on the following documents below:

- **REP6-005-** Statement of Common Ground between Associated British Ports and the Maritime and Coastguard Agency
- **REP6-006-** Statement of Common Ground between Associated British Ports and Historic England
- **REP6-010-** Statement of Common Ground between Associated British Ports and Natural England

### 2.1 REP6-005- Statement of Common Ground between Associated British Ports and the Maritime and Coastguard Agency (MCA)

2.1.1 The MMO notes that the Applicant and MCA have reached an agreement on both the suitability of the Navigational Risk Assessment and the Safety Mitigation proposed by the Applicant. The MMO welcomes this confirmation and has no comments to add.

### 2.2 REP6-006- Statement of Common Ground between Associated British Ports and Historic England

2.2.1 The MMO notes that the Applicant and Historic England have reached an agreement on the adequacy of requirements/conditions to protect Marine Archaeology, the acceptability of the Draft Written Scheme of Investigation and the adequacy of Assessment of Cultural Heritage. The MMO welcomes this confirmation and has no comments to add.

### 2.3 REP6-010- Statement of Common Ground between Associated British Ports and Natural England



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- 2.3.1 The MMO is aware that there are several matters that remain unresolved between Natural England (NE) and the Applicant. The MMO defers to NE on all of these matters and are hopeful that any issues can be resolved prior to the conclusion of this Examination.

### 3. MMO Post-Hearing Submissions

The MMO did not attend either Issue Specific Hearing (ISH) 5 or 6 that were conducted on 21-23 November 2023. The MMO has reviewed the recordings of the proceedings available on the PINS website and offers the following comments in respect of ISH6:

- 3.1.1 The MMO concurs with the Applicant that the remaining outstanding issues regarding the draft Marine Licence are in respect of piling being undertaken by the project and the 'Notice of Determination' provision within the DML. The MMO would also concur with the point that positive discussions have been ongoing with the Applicant, and we are hopeful that all outstanding matters will be addressed by the conclusion of this Examination.
- 3.1.2 The MMO notes that the ExA are aware that we have not accepted a 6-week period on any recent DCOs. However, during ISH 6 the Applicant stated that they have dealt with timeframes of less than 6 weeks. The MMO requests clarifications on these instances and would like to note that we do not work to precedence and therefore request that this is updates as per point 4.1.8 below.

### 4. MMO comments on Draft DCO

The MMO has reviewed the most recent iteration of the DML provided by the Applicant, the MMO is pleased that several of our concerns have been addressed by the Applicant since the previous draft had been issued. The MMO has provided some minor, additional points for the Applicants awareness, these include points related to the wider DCO document, as opposed to our previous comments which have focused on the DML exclusively.

#### **Part 2- Principal Powers**

- 4.1.1 Regarding the transfer of the Benefit of Order, the MMO cannot accept any restrictions of the operation of our statutory powers. Section 72(7)(a) of the Marine and Coastal Access Act already permits a licence holder to make an application for a marine licence to be transferred, and where such an application is approved for the MMO to then vary the licence accordingly (s. 72(7)(b)). This power should be retained and used in relation to the DML granted under the DCO. Any attempt to create a parallel or hybrid transfer regime in its place should be strongly resisted as it creates legal uncertainty and undermines the MMO's statutory powers.

For this reason, the following additional wording should be added to this provision: *9 (4) For the avoidance of doubt sections 72(7) and (8) of the 2009 Act shall continue to apply to all parts of the Deemed Marine Licence*

- 4.1.2 Regarding Arbitration, the MMO considers that an exclusion should be provided in this provision to ensure that the MMO is not bound by arbitration provisions. The MMO offers the following wording for the Applicants consideration: *35. (2) For the avoidance of doubt, any matter for*



which the consent or approval of the Secretary of State or the MMO is required under any provision of this Order is not to be subject to arbitration.

### **Schedule 3- Deemed Marine Licence- Definitions**

- 4.1.3 The MMO considers that the definition of 'Maintenance Dredge' should be amended to the following wording: *"maintenance dredge" means a dredge undertaken to keep channels, berths and other areas at their designed depths, involving removing recently accumulated sediments such as mud, sand and gravel to a level that is not lower than it has been at any time during the past 10 years;*".
- 4.1.4 The MMO has also noted that 'Natural England' has not been defined in this document. The MMO considers that a definition should be offered in the interest of clarity, for example, *"Natural England" means the advisor to the Government for the natural environment in England.*
- 4.1.5 The MMO further notes that 'Port of Immingham' has not been defined. The MMO considers that a definition of the Port would be useful for this DCO.
- 4.1.6 Furthermore, the 'Port of Humber' should be defined as you have made reference to the 'River Humber' in the document.
- 4.1.7 Regarding the definition of 'Undertaker' the MMO recommends that the reference to agents, contractors and subcontracts is removed from this definition to avoid confusion in these later clauses e.g. *"undertaker" means Associated British Ports with company number ZC000195 and registered at 25 Bedford Street, London, WC2E 9ES".*

### **Part 3 Procedure for the discharge of conditions**

- 4.1.8 Regarding the Notice of Determination, the MMO requests once again that the Applicants amend the wording to the following:

*"27. (1) Subject to sub-paragraph (2) or (3), the MMO must give notice to the undertaker of the determination of the application as soon as reasonably practicable after the application is received by the MMO*

*(2) Where the MMO has made a request under paragraph 26, the MMO must give notice to the undertaker of the determination of the application as soon as reasonably practicable once the further information is received. (3) Where the MMO refuses the application the refusal notice must state the reasons for the refusal."*

## **5. MMO Updates on Marine Ecology**

In REP5-044, the MMO outlined the Marine Ecology matters that remained outstanding with regards to this project. The Applicant has engaged with the MMO and its scientific advisors on these matters by means of a meeting held 07/11/2023, where outstanding matters were discussed, as well as submitting signposting documents that detail the updates made by the Applicant. The MMO has reviewed these



signposting documents in conjunction with our scientific advisors and has the following comments to provide:

### **Underwater Noise**

- 5.1.1 One of the MMO's previous concerns was in relation to the Applicant's proposal to cap the amount of piling in any four-week period to no more than 140 hours where a single piling rig is in operation, or a total of 196 hours where two or more rigs are in operation. The relevant condition is proposed in the draft DCO – please see Annex I of this response for reference.
- 5.1.2 The MMO considers that it was unclear as to why the Applicant was seeking permission to undertake 140 hours (single rig) and 196 hours (two or more rigs) of percussive piling over a 4-week period. There were additional concerns that if piling noise was not limited in terms of a daily cap, then the Applicant could effectively pile for prolonged periods throughout hours of daylight, for several days at a time, during sensitive migratory periods.
- 5.1.3 The Applicants clarified during the meeting held 07/11/2023 that the underwater noise assessment was based on a realistic worst-case scenario of four piles a day (equating to approximately 180 minutes of percussive piling and 20 minutes of vibro-piling). There is high confidence that this will be the case. However, there is potential for abnormal or exceptional circumstances to occur which may delay or prolong piling activities. Examples of this may include:
- Presence of marine mammals and the requirement to restart soft-start procedures;
  - Unexpected ground conditions causing the driving of piles to take longer than expected; and; Breakdown of piling equipment.
- 5.1.4 On this basis, the Applicants consider that imposing a daily (piling) limit does not allow flexibility to accommodate unforeseen circumstances and is not considered reasonable to apply given the level of impact that is predicted. It was also highlighted that the Applicant is not aware of any other precedents for a requirement or condition to impose a daily limit on piling duration to mitigate impacts to migratory fish. To provide reassurance, the Applicant suggested that a monitoring/reporting protocol could be employed during the piling phase of the construction programme. This will give the MMO visibility of the duration of piling in sensitive months for migratory fish.
- 5.1.5 In light of the above, the following wording is suggested for the DML:

#### ***Monitoring of piling***

- (1) The undertaker must submit monthly reports to the MMO of the duration of piling that is undertaken on any given day on which piling takes place during the construction of the authorised development.*
- (2) The reports submitted to the MMO pursuant to sub-paragraph (1) must include a log of the number and approximate location of piling rigs which are in operation on any given day, along with the number of piles driven.*





- 5.1.6 The MMO understands the need for flexibility in the event of abnormal or exceptional circumstances which may prolong piling activities. However, in terms of precedents, please note that each case is considered on a case-by-case basis. Furthermore, in response to the statement that it is not considered reasonable to apply a daily limit given the level of impact that is predicted, the underwater noise assessment concluded that there is a risk of a behavioural response or acoustic barrier potentially across all or part of the estuary width during piling operations, especially percussive piling. Therefore, it is necessary to put appropriate measures in place to reduce the risk of potential impact.
- 5.1.7 Finally, a key issue that has not been addressed within the Applicants response is the question of what action will be taken in the event that the Applicant has needed to carry out prolonged periods of piling over multiple days during these months? Will piling operations be ceased, and if so, for how long? This is an important factor which must be considered before a reporting protocol can be agreed.

## **Fisheries**

- 5.1.8 In our advice submitted at Deadline 5, the MMO suggested that we would like clarification as to whether the percussive piling restriction will be applied between 1 April and 31 May and if not, why was this the case.
- 5.1.9 The MMO notes that the following condition is now included in paragraph 10 of Section 12 of the Applicant's draft DCO; *'(10) The undertaker must ensure that no percussive piling of marine piles within the waterbody shall take place between 1 April and 31 May inclusive in any one calendar year, save for any percussive piling of marine piles undertaken on exposed mudflat outside the water column at periods of low water.'* This addresses our concern raised above.
- 5.1.10 A key concern raised by the MMO was in relation to the Applicants proposal to allow limited percussive piling to take place during the migratory seasons of fishes, between 1 June to 30 June inclusive and 1 August to 31 October. The Applicant's proposal was to cap the amount of piling in any four-week period to no more than 140 hours where a single piling rig is in operation, or a total of 196 hours where two or more rigs are in operation. The Applicant has included their proposal in paragraph 11 of Section 12 of the Draft DCO as follows;

*'(11) Percussive piling of marine piles is to be restricted at other times as follows—*

*(a) from 1 June to 30 June inclusive in any year, the maximum amount of percussive piling permitted within any four-week period must not exceed—*

*(i) 140 hours where a single piling rig is in operation; or*

*(ii) a total of 196 hours where two or more rigs are in operation; and*

*(b) from 1 August to 31 October inclusive in any year, the maximum amount of percussive piling permitted within any four-week period must not exceed—*

*(i) 140 hours where a single piling rig is in operation; or*

*(ii) a total of 196 hours where two or more rigs are in operation,*





*save for any percussive piling of marine piles undertaken on exposed mudflat outside the water column at periods of low water and save for percussive piling operations that have been initiated where an immediate cessation of the activity would form an unsafe working practice.'*

5.1.11 The MMO's concern with this approach was that under the 'worst-case' scenario for 180 minutes of percussive piling per day, over a 4-week period this equated to 84 hours of percussive piling. So, it was unclear why the Applicant was seeking permission to undertake 196 hours of percussive piling over a 4-week period as this was over double the piling time they would require under their worse-case scenario. To add to this, we had concerns that if piling noise was not limited in terms of a daily cap then the Applicant could effectively pile for prolonged periods throughout hours of daylight for several days at a time, during sensitive migratory periods. During the meeting on 7<sup>th</sup> November 2023, the Applicant provided clarification to address these concerns. It was explained that allowances are needed for abnormal or exceptional circumstances to occur which may delay or prolong piling activities. Examples of this included: the presence of marine mammals and the associated requirement to restart soft-start procedures, unexpected ground conditions causing the driving of piles to take longer than expected, and breakdown of piling equipment. We were advised that imposing a daily cap on piling such circumstances would not allow sufficient flexibility to accommodate unforeseen circumstances. To provide reassurance to the MMO, the Applicant has proposed that a reporting protocol be employed during the piling phase of the construction programme in which the Applicant will report on the piling activity/durations to the MMO during the sensitive migratory periods of fishes. In follow up to this, as mentioned in point 5.1.5 above, the Applicant has provided the following, suggested wording for inclusion in the DML;

*'Monitoring of piling (1) The undertaker must submit monthly reports to the MMO of the duration of piling that is undertaken on any given day on which piling takes place during the construction of the authorised development.*

*(2) The reports submitted to the MMO pursuant to sub-paragraph (1) must include a log of the number and approximate location of piling rigs which are in operation on any given day, along with the number of piles driven.'*

5.1.12 It is the MMO's view that reporting on a monthly basis is too long a timeframe in which to react in the event that the MMO find that piling during the months of 1 June to 30 June (inclusive) and 1 August to 31 October has been carried out over prolonged periods especially given that a monthly period covers the entire period of 1<sup>st</sup> June to 30<sup>th</sup> June and 50% of the restricted period between August and October. The MMO recommends that reporting is done weekly. Or at worst, fortnightly and that the reports are sent to the MMO for consideration.

5.1.13 Additionally, as previously mentioned in point 5.1.7, a key issue that has not been addressed within the Applicant's response is the question of what action will be taken in the event that the Applicant has needed to carry out prolonged periods of piling over multiple days during these months? Will piling operations be ceased, and if so, for how long? The MMO believes this is an important factor which must be considered before a reporting protocol can be agreed.

5.1.14 Despite the above comments, the MMO is content with the Applicant's proposal for reporting of piling activity to the MMO. However, it must be understood that this is not an ideal form of mitigation, as it is still permitting piling to be undertaken during the sensitive migratory periods of fishes and therefore, we can expect the physiological impacts, behavioural disturbances and disruption to migration in fishes will still occur. Putting a cap on piling hours, will simply limit the extent of these effects.



5.1.15 Regarding the MMO's concerns relating to the impacts of piling during hours of darkness of fish, particularly those with nocturnal habitat, we note in Paragraph 9 of Section 12 of the Draft DCO that;

*'(9) No percussive piling of marine piles within the waterbody is to take place between 1 March and 31 March, 1 June and 30 June and 1 August and 31 October inclusive in any one calendar year after sunset and before sunrise on any day, save for any-*

*(a) percussive piling of marine piles undertaken on exposed mudflat outside the water column at periods of low water*

*(b) emergency works; and*

*(c) percussive piling operation that have been initiated where an immediate cessation of the activity would form an unsafe working practice.*

5.1.16 Whilst the MMO agrees that no piling should be permitted to take place during the hours of darkness during the sensitive periods for migratory fish (1 March and 31 March, 1 June and 1 August and 31 October) outlined in the Draft DCO, we note that in previous rounds of consultation that the mitigation for nighttime piling was not based on particular months but applicable throughout the term of construction:

*No percussive piling is to take place before 0700 hours or after 1900 hours on any day*

*Reason- This will limit the potential effects of underwater piling noise on the nocturnal movements of migratory fish species, In particular, the upstream migration of River Lamprey takes place almost exclusively at night. There is also evidence of an increase in Glass Eel migratory activity during the nighttime.*

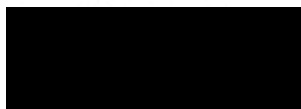
5.1.17 The MMO is content that the Applicant's draft condition in paragraph 9 of Condition 12 will provide adequate mitigation for those species migrating during those periods. However, it should be recognised that for other months there is likely to be continuous disturbance to fish (and other marine mammal and bird) receptors in the vicinity of the site, with no quiet periods of downtime for receptors to transit past the site, and feed or forage for any length of time.

5.1.18 We are content that implementing a nighttime piling restriction based on the hours of sunrise and sunset can be implemented using recognised data sources (e.g., UK Hydrographic Office (HO) tide tables).

5.1.19 In relation to vibro-piling, the MMO is content that temporal piling restrictions do not need to be applied to vibro-piling, although there remains some uncertainty regarding the accuracy of the modelling used to determine the range of effect for vibro-piling, which means that confidence in the predicted range of effect (<1km / < 50% of the estuary at all tidal states) is low. However, as Vibro-piling will be undertaken for limited periods of up to 20 minutes per 24-hour period, in the event that Underwater Noise for vibro-piling did propagate across the full width of the estuary, then it would be for short periods only, so any potential acoustic 'barriers' to fish movement would be short lived. We note that the Applicants have included the following wording in their draft DCO: *'(5) Wherever possible the undertaker will use vibro-piling methodology whilst it is recognised that percussive piling may be required to drive the piles to their ultimately required depth'*. The MMO considers this appropriate.



Yours sincerely,



Jack Coe  
Marine Licensing Case Officer

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## **Annex 1**

### **Piling and marine construction works**

12.—(1) *Subject to sub-paragraph (2) below, the piling of marine piles in connection with the authorised development shall be subject to the following conditions—*

*(a) There shall be at least a 20 minutes “soft start” period prior to the commencement of any piling; and*

*(b) The form of soft start shall be submitted to and agreed in writing by the MMO in consultation with Natural England prior to the commencement of piling.*

*(2) An active and mobile 500 metre marine mammals observation zone, the centre point of which will be the location of the particular marine pile being driven percussively, shall be created, and 30 minutes prior to the commencement of percussive piling a search must be undertaken of the zone, with the purpose of identifying whether any marine mammals enter the zone, and if such mammals are observed within the zone, percussive piling must not be commenced until the mammals have cleared the zone or until 20 minutes after the last visual detection, subject to sub-paragraph (4).*

*(3) An active and mobile 500 metre marine mammals observation zone, the centre point of which will be the location of the particular marine pile being driven percussively, shall be maintained during percussive piling with the purpose of identifying whether any marine mammals enter the zone and if such mammals are observed, percussive piling must cease until the mammals have cleared the zone and there is no further detection after 20 minutes.*

*(4) Where during operations percussive piling is paused for any reason other than the detection of marine mammals, then recommencing of the percussive piling shall be subject to the provisions be paragraph (2) save for where the active and mobile 500 metre marine mammals observation zone has been observed throughout the period of the pause in operations and no such mammals were observed entering the zone, in which case percussive piling may be recommenced immediately.*

*(5) Wherever possible the undertaker will use vibro-piling methodology whilst it is recognised that percussive piling may be required to drive the piles to their ultimately required depth.*

*(6) The undertaker must use a noise suppression system consisting of a piling sleeve with noise insulating properties for percussive piling.*

*(7) Subject to sub-paragraph (8) below, the undertaker must ensure that no marine construction activity for the approach jetty, linkspan, innermost pontoon and the inner finger pier shall take place between 1 October and 31 March inclusive in any year located within 200 metres of the intertidal mudflat.*

*(8) During the restricted period between 1 October and 31 March inclusive in any year, marine construction activity may be undertaken provided that—*





*(a) on the seaward section of the approach jetty, linkspan, innermost pontoon and inner finger pier which is located more than 200 metres from exposed mudflat during the period two hours before and two hours after high water;*

*(b) acoustic barrier/visual screening is installed on both sides of any semi-completed structure and construction activity will then be undertaken on the approach jetty itself, behind the screens, with no use of large heavy plant;*

*(c) on all floating construction barges on the side of the barges closest to the foreshore and construction activity can only be undertaken from the side of the barge facing away from the foreshore; and*

*(d) works are located approximately 200 metres from exposed mudflat.*

*(9) No percussive piling of marine piles within the waterbody is to take place between 1 March and 31 March, 1 June and 30 June and 1 August and 31 October inclusive in any one calendar year after sunset and before sunrise on any day, save for any—*

*(a) percussive piling of marine piles undertaken on exposed mudflat outside the water column at periods of low water;*

*(b) emergency works; and*

*(c) percussive piling operations that have been initiated where an immediate cessation of the activity would form an unsafe working practice.*

*(10) The undertaker must ensure that no percussive piling of marine piles within the waterbody shall take place between 1 April and 31 May inclusive in any one calendar year, save for any percussive piling of marine piles undertaken on exposed mudflat outside the water column at periods of low water.*

*(11) Percussive piling of marine piles is to be restricted at other times as follows—*

*(a) from 1 June to 30 June inclusive in any year, the maximum amount of percussive piling permitted within any four-week period must not exceed—*

*(i) 140 hours where a single piling rig is in operation; or*

*(ii) a total of 196 hours where two or more rigs are in operation; and*

*(b) from 1 August to 31 October inclusive in any year, the maximum amount of percussive piling permitted within any four-week period must not exceed—*

*(i) 140 hours where a single piling rig is in operation; or*

*(ii) a total of 196 hours where two or more rigs are in operation, save for any percussive piling of marine piles undertaken on exposed mudflat outside the water column at periods of low water and save for percussive piling operations that have been initiated where an immediate cessation of the activity would form an unsafe working practice.*



*(12) The measurement of time during each work-block described in paragraph (11) of this licence must begin at the start of each timeframe, roll throughout it, then cease at the end, where measurement will begin again at the start of the next timeframe, such process to be repeated until the end of piling works.*

*(13) Percussive piling must only be carried out in accordance with the cold weather piling restriction strategy.*



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