

# FIVE ESTUARIES OFFSHORE WIND FARM STATEMENT OF COMMON GROUND MARINE MANAGEMENT ORGANISATION

Application Reference
Application Document Number
Revision
Pursuant to
Ecodoc Number
Date

EN010115 10.10.14 A Deadline 5 005557417-01 January 2025



# COPYRIGHT © Five Estuaries Wind Farm Ltd

All pre-existing rights reserved.

In preparation of this document Five Estuaries Wind Farm Ltd has made reasonable efforts to ensure that the content is accurate, up to date and complete for the purpose.

Revision	Date	Status/Reason for Issue	Originator	Checked	Approved
A	January 2025	SoCG	VE	VE	VE / MMO



# **SIGNATORIES**

Signed		
Name	Kieran Somers	
Position	Senior Consents Manager	
For	Five Estuaries Offshore Wind Farm Limited	
Signed		
Name	Nicola Wilkinson	
Position	Marine Licensing Case Manager	
For	Marine Management Organisation	



# **CONTENTS**

1 Introduction		5
1.1 Background		5
1.2 Approach to S	8oCG	5
	Development	
	ent Organisations Remit	
2.1 Introduction		6
2.2 Consultation S	Summary	7
3 Agreements Log		8
TABLES		
Table 3.1: Position Sta	atus key	8
	scussions	



# **DEFINITION OF ACRONYMS**

Term	Definition	
DCO	Development Consent Order	
ETGs	Expert Topic Groups	
NSIP	National Significant Infrastructure Project	
SoCG	Statement of Common Ground	
VEOWF	Five Estuaries Offshore Wind Farm	
ММО	Marine Management Organisation	
MW	Megawatts	



#### 1 INTRODUCTION

#### 1.1 BACKGROUND

- 1.1.1 This Statement of Common Ground (SoCG) has been prepared between Five Estuaries Offshore Wind Farm Limited (hereafter referred to as 'the Applicant') and the Marine Management Organisation (MMO) to set out the areas of agreement and disagreement between the two parties in relation to the proposed Development Consent Order (DCO) application for the Five Estuaries Offshore Wind Farm (hereafter referred to as "VEOWF").
- 1.1.2 Following detailed discussions undertaken between the parties, the Applicant and the MMO have sought to progress a SoCG. It is the intention that this document provides the Planning Inspectorate with a clear overview of the level of common ground between both parties. This document will be updated if any additional points are identified or any positions change during the Examination.

#### 1.2 APPROACH TO SOCG

- 1.2.1 This SoCGs sets out the topic, a brief summary of the issue or matter subject to disagreement or agreement, the position of the Applicant and that of the MMO, and a colour coding to illustrate the level of agreement and/or materiality.
- 1.2.2 A full description of the approach adopted is set out in 9.33 Approach to Statements of Common Ground [APP-266] submitted as part of the Development Consent Order (DCO) application.

#### 1.3 THE PROPOSED DEVELOPMENT

- 1.3.1 The Five Estuaries Offshore Wind Farm (hereafter referred to as VE) is the proposed extension to the operational Galloper Offshore Wind Farm. The project includes provision for the construction, operation, maintenance and decommissioning of an offshore wind farm located approximately 37 kilometres off the coast of Suffolk at its closest point in the southern North Sea; including up to 79 wind turbine generators and associated infrastructure making landfall at Sandy Point between Frinton-on-Sea and Holland-on-Sea, the installation of underground cables, and the construction of an electrical substation and associated infrastructure near to the existing Lawford Substation to the west of Little Bromley in order to connect the development to National Grid's proposed East Anglia Connection Node substation, which would be located nearby.
- 1.3.2 All onshore connection infrastructure would be located in the administrative area of Tendring District Council, within Essex County Council. VE will have an overall capacity of greater than 100 Megawatts (MW) and therefore constitutes a Nationally Significant Infrastructure Project (NSIP) under the Section 15 (3) of the Planning Act 2008.
- 1.3.3 A full Project description is included in the Environmental Statement, in particular 6.2.1 Offshore Project Description (APP-069) and 6.3.1 Onshore Project Description [APP-083].



#### 2 MARINE MANAGEMENT ORGANISATIONS REMIT

#### 2.1 INTRODUCTION

- 2.1.1 The MMO is an executive non-departmental public body whose purpose is to protect and enhance the marine environment in English waters and support economic growth by enabling sustainable marine development.
- 2.1.2 The MMO's role in relation to the Planning Act 2008 are as follows:
  - > As a statutory consultee at the pre-application stage under section 42(1)(aa) of the 2008 Act and as an interested party during the examination stage; and
  - > As a licensing and consenting body.
- 2.1.3 The following application documents have informed the discussions with the MMO and address the elements of VE that may affect the interests of the interested party:
  - > 3.1 Draft Development Consent Order [APP-024]
  - > 6.2.1 Offshore Project Description [APP-069]
  - > 6.2.5 Benthic and Intertidal Ecology [APP-074]
  - > 6.2.6 Fish and Shellfish Ecology
  - > 6.2.8 Commercial Fisheries [APP-077]
  - > 6.2.9 Shipping and Navigation [APP-078]
  - > 6.2.10 Seascape, Landscape and Visual [APP-079]
  - > 6.2.11 Offshore Archaeology and Cultural Heritage [APP-080]
  - > 6.2.13 Military and Civil Aviation [APP-082]
  - > 6.5.6.2 Underwater Noise Technical Report [APP-122]
  - > 6.5.6.3 Spawning Herring Heatmaps International Herring Larval Survey Data [APP-124]
  - > 6.5.6.4 Herring Seasonal Restriction Note [APP-125]
- 2.1.4 The main areas of interest raised by the MMO were the following:
  - > The MMO requires the Applicant to detail how the proposed project is compliant with the relevant marine plans by producing a marine plan policy assessment;
  - > A number of comments on the Draft DCO and DML:
  - > Dredge and disposal;
  - > Benthic Ecology;
  - > Fish Ecology and associated impacts to herring; and
  - > Underwater noise and potential impacts to marine mammals and fish.
- 2.1.5 The MMO has confirmed that for the following topics they will defer to relevant statutory authority:
  - > Commercial fisheries
  - > Shipping and Navigation
  - Civil and Military Aviation
  - > Seascape, Landscape and Visual



### > Marine Archaeology

#### 2.2 CONSULTATION SUMMARY

2.2.1 Since 2019, the project has been engaging with relevant stakeholders through different levels of activity. The project has undertaken the necessary consultations before submitting the application and has held Expert Topic Groups (ETGs) on a number of specific topics, as well as bilateral meetings with key stakeholders. The MMO has regularly attended ETG meetings, and attends monthly project update meetings. The MMO has taken part in and submitted comments during the scoping and Section 42 consultation as well as submitting Relevant Representations. The comments received and the meetings between the project and the MMO have informed the basis for this SoCG.



#### 3 AGREEMENTS LOG

- 3.1.1 The following sections of this SoCG set out the level of agreement between the Applicant and the MMO for each relevant component of the Application identified in paragraph 2.1.3. The tables below detail the positions of the Applicant alongside those of the MMO and whether the matter is agreed or not agreed. The Applicant has focussed on key areas of contention or agreement.
- 3.1.2 In order to easily identify whether a matter is 'agreed', 'not agreed' or an 'ongoing point of discussion, the agreements logs in the tables below are colour coded to represent the status of the position according to the criteria in Table 3.1 below. Colours were chosen in order to ensure inclusivity for the visibility of data.

**Table 3.1: Position Status key** 

POSITION STATUS	COLOUR CODE
The matter is considered to be agreed between the parties.	Agreed
The matter is neither 'agreed' or 'not agreed' and is a matter where further discussion is required between the parties, for example where relevant documents are being prepared or reviewed.	Ongoing point of discussion
The matter is not agreed between the parties and the outcome of the approach taken by either the Applicant or the MMO is considered to result in a materially different impact to the assessment conclusions.  Discussions on these matters have concluded.	Not agreed – material impact
The matter is not agreed between the parties.	Not agreed – no material impact



Table 3.2: Status of discussions

Reference number	Topic	Applicant's Position	MMO's Position	Position Status				
Major Com	Major Comments							
MMO1	Marine Plans – The MMO requires the applicant to demonstrate that they have considered the marine plans and policies in the area. This should be demonstrated by producing a marine plan policy assessment in one document.	The Applicant has produced 10.12 Marine Plan Policy Assessment [REP1-055] to address this issue, which was submitted at Deadline 1 and updated addressing MMO comments at Deadline 3 and 5.	The MMO had comments at Deadline 4 that need addressing, but are hopeful that once these changes are made then this can be agreed.	Ongoing point of discussion				
Developme	ent Consent Order (DCO) and Deemed Marine Licences							
MMO2	Benefit of the Order - The MMO have concerns with the inclusion of this provision (Part 2, Article 7 of DCO and Paragraph 7 of the DMLs.  It is the MMO's stated position that the DML granted under a DCO's should be regulated by the provisions of the Marine and Coastal Access Act 2009 (MCAA 2009), and in respect of this DCO application, specifically by all provisions of section 72 MCAA 2009.	The Applicant notes the MMO's position but does not agree. The drafting in the dDCO reflects a long established precedent regarding the transfer of DCO powers and deemed marine licences that has been considered acceptable by the Secretary of State many times, including most recently in the Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024.  Where a transfer of a DML is sought under Article 7(2), the Secretary of State (SoS) would consider the context of all the provisions of the DCO being transferred. That process would be robust in ensuring a suitable approach is being taken.  There is a legal point to note that some Articles and Requirements relating to offshore matters within the DCO overlap with the DML and it would not be appropriate for those to be transferred separately. In that context, it is appropriate that the SoS has the ability to approve the transfer or grant of a DML such that the transfer or grant can fully reflect the relevant DCO and DML powers. It is undesirable to separate the transfer of the benefit of the order generally and the transfer of the benefit of the DML as doing so could result in transfers occurring at different times and inconsistency in position. Having deemed the marine licence in the Order it is also appropriate that any transfer under that order include the deemed marine licence as part of the wider transfer – it is one element of the wider order powers and should not be separated out from the authority to	As a matter of public law, the MMO does not think the Order can contain a provision transfer of Benefit of the DML as is being proposed. PA 2008 Section 120(3) should read against Section 120(4) and Part 1 of Schedule 5, which the MMO believes limits what the Order can contain to provisions which deem a marine licence to be granted under the order and to the conditions that should be deemed attached to that licence. The MMO does not consider this to be sufficiently wide as to allow the inclusion of provisions which transfer the Benefit of the Order.  If the Order cannot contain a DML transfer provision for the reasons set out, then it cannot exclude Section 72 of Marine and Coastal Access Act 2009 (MCAA 2009) in the way proposed as Section 120(5) is limited to applying/modifying/excluding only those statutory provisions which relate to any matter for which a provision may be made in the order.	Ongoing point of discussion				



Reference number	Topic	Applicant's Position	MMO's Position	Position Status
		construct, operate and maintain the NSIP granted by the order. In addition, it is common practice for an application to be made to MMO at the same time as to the SoS in order to vary the terms of the marine licence to reflect the transfer or grant requested under Article 7.		
MMO3	Transfer of 'any or all of the benefit' - The MMO objects to the provisions relating to the process of transferring and/or granting the deemed marine licences set out in the draft DCO at Part 2, Article 7 insofar as these are intended to apply to the MMO and requests paragraphs 7(6) and 7(9) be removed in their entirety, with a clarification added to specifically exclude these provisions from applying to the MMO (with corresponding wording amended in the Deemed Marine Licences).	The Applicant notes that there is precedent for excluding deemed marine licences from this sub-paragraph and is considering the wording used.	The MMO objects to the provisions relating to the process of transferring and/or granting the deemed marine licences set out in the draft DCO at Article 5. As there is potential for the MMO not to be consulted, this will impact our duty as the regulatory authority of the DMLs. Even where the MMO must be consulted, there is no provision for the MMO's comments to be adhered to, therefore there is no power to the MMO to complete its regulatory duty.	Ongoing point of discussion
MM04	Regulatory Framework - It is the MMOs position that the current regulatory framework should prevail, specifically that only a transfer of the whole of a marine licence should be permitted and not part of it and the transfer should be left entirely to the MMO to process outside of the Nationally Significant Infrastructure Project process. The provisions currently proposed by the applicant raise several significant issues and complicates a what is a straightforward and well-established statutory process and the MMO can see little or no benefit to this.	The Applicant notes that there is precedent for excluding deemed marine licences from this sub-paragraph and is considering the wording used.	The MMO is reviewing response provided by the Applicant at Deadline 2 and has provided an update at Deadline 5.	Ongoing point of discussion
MM05	Materiality - The MMO strongly considers that the activities authorised under the DCO and DML should be limited to those that are assessed within the Environmental Impact Assessment ("EIA"), and so the statement within the DML "Such agreement may only be given where it has been demonstrated to the satisfaction of the MMO that it is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement" should be updated to clarify this. The MMO does not consider that it is appropriate to use the word "material" in these circumstances.	This wording is well precedented and commonly included in DCOs. It is included in the Sheringham and Dudgeon DCO (2024), which provides in it DMLs in Part 1.  It is necessary in DCO projects to allow for a degree of flexibility, importantly to allow the use of new or improved construction methods or emerging technologies.  Allowing actions which can be demonstrated not to have materially new or different environmental effects cannot be contrary to the EIA as that regime is intended to proportionately control likely significant effects, not any effect regardless of how insignificant it may be. If an effect is not materially new or different, it cannot rise	The MMO is reviewing response provided by the Applicant at Deadline 2 and has provided an update at Deadline 5.	Ongoing point of discussion



Reference number	Topic	Applicant's Position	MMO's Position	Position Status
		to the level of there being a risk of a significant effect not assessed in the EIA.		
MMO6	DML Schedules 10-11 Interpretations – The MMO had a number of comments on these DML schedules. Are the MMO content that these comments have been resolved?	The Applicant has responded to MMO comments on these DML schedules and signposted to where conditions are included in Table 4.17 of 10.4 Applicant's Response to Relevant Representations Revision B [REP1-049, REP1-050].	The MMO welcomes the amendments to Schedule 10, Part 2 Condition 19 and Schedule 11, Part 2 Condition 20 from 'relevant body' to the 'MMO'.  There are still a number of outstanding comments in relation to the DMLs which are not captured above. The MMO is working with the Applicant on resolving these but it is likely that some conditions will not be agreed before the end of examination.	Ongoing point of discussions
Environme	ntal Statement – Dredge and Disposal			
MMO7	The MMO have identified a number of information gaps and until these gaps have been filled defers comments on the conclusions relating to likely significant effects until these gaps have been filled, these include:  > Consideration that cable corridor is inconsistently and insufficiently characterised. Further justification is required.  > Further detail on the location of sediment samples within the intertidal area.  > Confirmation of why only three samples were tested for contaminants.  > Confirmation of the laboratory contracted for analyses.	Further justification and reasoning have been provided in the Applicant's response to the relevant representations in 10.4 Applicant's Response to Relevant Representations [PD4-006] and the Applicant considers that these gaps have now been filled. Additional reasoning has also been provided at Deadline 4 in 10.29 Applicant's Comments on Deadline 3 Submissions.	The MMO notes that the Applicant has alleviated some concerns raised in our RR-070, however there are still information gaps in relation to the raw data for sediment quality and the survey strategy which should be addressed.	Ongoing point of discussion
Environme	ntal Statement – Benthic Ecology			
MMO8	Paint Flakes – The MMO believe the monitoring of paint flakes should be considered in pre and post-construction monitoring.	The Applicant maintains that the scale of any materials being released will be extremely small and is unlikely to show any clear trend of any impacts associated with the release of paint flakes compared to background levels.	The MMO has not yet provided further comment on this matter.	Ongoing point of discussion
MMO9	The MMO queries the inclusion of Gravity Base Jacket Foundations as the engineering solution in the assessment and as the worst case scenarios rather than piled foundations at Galloper.	The Applicant has now dropped all Gravity Base Foundation options from the development envelope. GBS has been removed from the draft DCO.	The MMO does not have concerns regarding the changes to the project design including the reduction in turbine height, removal of gravity-based foundations as an option and reduction in the offshore array boundary. These changes are unlikely to alter the likelihood and/or magnitude of the potential impacts to fish receptors.	Agreed
MMO10	The MMO seek clarification from the Applicant what the minimum acceptable cable burial depth would be and if the cable will be removed should the minimum burial depth not be achieved.	As stated within Table 1.23 of 6.2.1 Offshore Project Description [APP-069] the minimum burial depth is stated as 0 m. However, the cables will be buried below	The MMO welcomes the Applicant confirming that they will define the minimum acceptable cable burial depth	Agreed



Reference number	Topic	Applicant's Position	MMO's Position	Position Status
		the seabed wherever possible, but where burial cannot be applied, or where the minimum cable burial depth cannot be achieved, it may be necessary to alternative methods such as rock placement or concrete mattresses.	in a pre-construction Cable Burial Risk Assessment (REP1-050).	
Environme	ental Statement – Fish Ecology			
MMO11	Appropriateness of mitigation measures for the seasonal piling restriction and sediment disposal restriction.	The Applicant held a meeting with the MMO's advisors Cefas on the 2 October 2024, where these concerns were discussed in more detail.  The Applicant addresses the MMO's concerns on appropriateness of mitigation measures for the seasonal piling restriction and sediment disposal restriction in 10.4 Applicant's Response to Relevant Representations Revision B [REP1-049, REP1-050], 10.29 the Applicants Comments on Deadline 3 submissions [REP4-040] and in the provision of an updated 6.5.6.4 Herring Seasonal Restriction Note – Revision C [REP4-010] which has been submitted at Deadline 4.	The MMO is reviewing the response provided by the Applicant at Deadline 4.	Ongoing point of discussion
MMO12	The methodology used to calculate "peak" spawning - The MMO consider that the "back calculations" used to determine the period for the seasonal piling restriction requires further refinement before agreement.	The Applicant has updated 6.5.6.4 Herring Seasonal Restriction Note - Revision C [REP4-010] which has been submitted at Deadline 4 to address methodological concern and to consider the larval densities recorded within the individual surveys.	The MMO is reviewing the response provided by the Applicant at Deadline 4.	Ongoing point of discussion
MMO13	Sediment disposal restriction – The MMO consider this mitigation measure is currently not sufficient in isolation to reduce other impacts to herring associated with increased SSC, and therefore have requested a temporal restriction on bed preparation and cable laying works in the southern array area also.	The Applicant maintains that the proposed sediment disposal restriction of returning sediment collected during cable installation and bed preparation works to broadly the same location from where it originated is sufficient mitigation, due to the significantly lower densities of herring eggs and larvae present in the historic spawning ground (as defined by Coull et al., 1998).	The MMO is reviewing response provided by the Applicant at Deadline 2.	Ongoing point of discussion
MMO14	Quantification of area as a percentage - The MMO raised concerns in our Section 42 response regarding quantifying the impacts to spawning grounds and habitat as a percentage of area affected.	The Applicant maintains their position that the habitat disturbance percentages as presented in 6.2.5 Fish and Shellfish Ecology [APP-075] are derived from a worst-case scenario and is considered inherently precautionary. The Applicant confirms that the raw figures (and their appropriate units) are provided in Table	The MMO has not yet provided further comment on this matter	Ongoing point of discussion



Reference number	Topic	Applicant's Position	MMO's Position	Position Status
		6.10 of Fish and Shellfish Ecology [APP-075].		
MMO15	Mitigation measures for UXO - Given the proximity of suitable herring spawning habitat to the Array Area and ECC, the MMO note that suitable mitigation and/or noise abatement measures should be further explored.	The Applicant confirmed in 10.4 Applicant's Response to Relevant Representations [PD4-006] that, as detailed paragraph 4.1.1 et seq. of 9.14.2 Marine Mammal Mitigation Protocol – UXO Revision B [REP1-035, REP1-036] the Applicant has highlighted a suite of mitigation measures that the Applicant could implement for VE UXO clearance. If UXO clearance is required, this will be undertaken subject to a separate Marine Licence.	The MMO notes that the UXO clearance mitigation measures for the Project will be determined in consultation with relevant SNCBs once charge weights, survey data, noise data, and information on maturation of emerging technologies are confirmed. This additional data and information will inform noise modelling to be fed into the Final UXO Clearance MMMP and discussions on suitable mitigation measures.	Agreed
MMO16	The MMO have expressed concern with the inclusion of a fleeing receptor in fish for the UWN modelling.	The Applicant has confirmed that spawning herring, sandeel, and seahorses have all been assessed as stationary receptors when regarding impacts from underwater noise in 10.4 Applicant's Response to Relevant Representations Revision B [REP1-049, REP1-050]	The MMO has not yet provided further comment on this matter.	Ongoing point of discussion
MMO17	The MMO have requested VE to produce Level vs range plots to provide more context for comparing with future monitoring measurements.	The Applicant has included a Level vs range worst case scenario plot in an updated 6.5.6.2 Underwater Nosie Technical Report [APP-122] which was submitted at Deadline 2.	The MMO notes the submission of REP2-019 in Deadline 2, where there is an update with the addition of a new section 'Predicted noise levels against range'.	Agreed
Environme	ental Statement – Marine Mammal Ecology			
MMO18	The MMO defers to Natural England for comments on whether all relevant marine mammal receptors have been scoped in for assessment.	This is noted by the Applicant and we are continuing to engage with Natural England throughout examination.	The MMO defers to Natural England on this matter.	Agreed
MMO19	The MMO have raised a number of points with regards to the underwater noise modelling for VE associated with Marine Mammals. However, overall there seems to be broad agreement following the MMO's sense checking of modelling outputs presented, albeit with a few remaining uncertainties as highlighted in MMO-RR112 of 10.4 Applicant's Response to Relevant Representations [REP1-049].	The Applicant welcomes the MMO's broad agreement with the results of the UWN modelling. The Applicant notes the uncertainties that the MMO raises, and has responded to these points within 10.4 Applicant's Response to Relevant Representations [REP1-049]. Additionally, we have addressed the MMO's point regarding the 'level vs range' plots in an updated 6.5.6.2 Underwater Noise Technical Report submitted at Deadline 2.  Following a meeting with the MMO and Cefas, it is considered the UWN modelling is sufficient and there are no major concerns.	The MMO acknowledges the Applicant's comments for MMO-RR107 in REP1-049 about impulsive sound characteristics and threshold shift recovery. In addition, the MMO have reviewed 10.29 Applicants Comments on Deadline 3 submissions [REP4-040] and overall there are no major concerns with the modelling and consider nothing additional is required.	Agreed



PHONE EMAIL WEBSITE ADDRESS

COMPANY NO

0333 880 5306 fiveestuaries@rwe.com www.fiveestuaries.co.uk

Five Estuaries Offshore Wind Farm Ltd Windmill Hill Business Park Whitehill Way, Swindon, SN5 6PB Registered in England and Wales company number 12292474