



Five Estuaries Offshore Wind Farm Case
Team
Planning Inspectorate
FiveEstuaries@planninginspectorate.gov.uk
(By Email only)

MMO Reference: DCO/2019/00008
Planning Inspectorate Reference: EN010115
Identification Number: 20049306

10 January 2025

Dear Sir or Madam,

Planning Act 2008, Five Estuaries Offshore Wind Farm Ltd, Proposed Five Estuaries Offshore Wind Farm Order

Deadline 5 Submission

On 23 April 2024, 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 Five Estuaries Offshore Wind Farm Ltd (the “Applicant”) for determination of a development consent order for the construction, maintenance and operation of the proposed Five Estuaries Offshore Wind Farm (the “DCO Application”) (MMO ref: DCO/2019/00008; PINS ref: EN010115).

The Applicant seeks authorisation for the construction, operation and maintenance of DCO Application, comprising of up to 79 wind turbine generators together with associated onshore and offshore infrastructure and all associated development (“the “Project”).

As a marine licence has been deemed within the draft DCO, the MMO is the delivery body responsible for post-consent monitoring, variation, enforcement, and revocation of provisions relating to the marine environment. As such, the MMO has an interest in ensuring that provisions drafted in a deemed marine licence (DML) enable the MMO to fulfil these obligations.

This document comprises the MMO comments in respect of the DCO Application submitted in response to Deadline 5.

This written representation is submitted without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This representation is also submitted without prejudice to any decision the MMO may make on any associated application for consent, permission, approval or any other type of



authorisation submitted to the MMO either for the works in the marine area or for any other authorisation relevant to the proposed development.

Yours sincerely,



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1 MMO Comments on Draft Development Consent Order – Revision D – REP4-004/REP4-005

1.1. Schedule 10 Part 2, Condition 11/Schedule 11, Part 2, Condition 12 - Force Majeure

- 1.1.1 The MMO maintains its position regarding Force Majeure, as it is not necessary to be included within the DMLs. It is not something that the MMO would include in standalone marine licences. PINS own guidance note 11 says that DMLs should be broadly consistent with standalone marine licences.
- 1.1.2 The MMO understands that Force Majeure is about events, situations and circumstances that arise which are outside of a person's control.
- 1.1.3 Currently the condition wording used is drafted to apply for stress of weather or any other cause which is very broad. It could cover anything, including causes which are entirely within the master's control such as negligence matters. Currently the MMO believes Conditions 11 in Schedule 10 and 12 in Schedule 11 do not meet the five tests as set out in the National Planning Policy Framework for a number of reasons:
- necessary;
 - relevant to planning;
 - relevant to the development to be permitted;
 - enforceable;
 - precise; and
 - reasonable in all other respects.

1.2 Necessary

- 1.2.1 The MMO does not agree with the Applicant's reasoning in PD4-006 and REP1-050:
- 1.2.2 'The Applicant does not agree that this wording is not necessary because Section 86 provides a defence for actions taken in an emergency – this condition is about notifying of a deposit in those circumstances. It does not overlap with s86 which will still apply. No change to the dDCO is proposed.'
- 1.2.3 If you read Section 86(1)(b) and 86(2) of Marine and Coastal Access Act 2009 (MCAA), for the defence to be relied on the person relying on it must inform the MMO that the act was carried out, tell it where it was carried out, the circumstances in which it was carried out, and what articles/objects were concerned. The inclusion of Conditions 11 in Schedule 10 and 12 in Schedule 11 removes this defence and replaces it with a wider and less stringently controlled authorisation to deposit articles/substances and the MMO does not believe this is necessary.

1.3 Enforceable

- 1.3.1 The condition as it stands is too subjective and therefore unenforceable and this due to the fact that it is down to the master to determine whether it is necessary to make the deposit and there are no defined criteria.



1.4 Precise

- 1.4.1 The condition is also not restricted to Force Majeure situations or 'no fault situations', due to the inclusion of 'for any other cause'. The MMO questions this wording and why this has been included? The MMO notes the Applicant has provided comments in REP4-039 ExA WQ DCO.2.06:
- 1.4.2 The Applicant understands the question to be "other than weather what else can be considered Force Majeure" in relation to offshore vessels. The test of what is force majeure and what is not may be examined in courts on the specifics of the event. The party claiming force majeure must typically demonstrate the event was beyond their control and unforeseeable. Example of this in the maritime environment include:
- *Unforeseeable pirates / civil unrest*
 - *Governmental interference (e.g. hostile navies)*
 - *Unforeseeable allision / collision with a vessel drifting and uncontrollable ➤ Natural disaster unrelated to weather (i.e. earthquakes or underwater mud volcano causing a tsunami)*
 - *Unforeseeable interaction with a sea creature*
 - *Third party labour disturbance such as blockade of port facilities*
 - *Unforeseeable vessel malfunction that results in dangerous situation. Examples are explosion, cyber security, loss of information or power systems. Issues with regular maintenance and negligence are not allowed.*
 - *Plague / epidemic, biological weapons attack or contamination. Business risks due to market fluctuations are not typically covered.*
- 1.4.3 The MMO notes these are only examples and highlights as worded the MMO does not believe the reliance on examples are precise enough within the condition to meet the test.
- 1.4.4 In addition to this, in effect the only obligation the master would have if Conditions 11 in Schedule 10 and 12 in Schedule 11 are included, is to notify the MMO within 48 hours that the deposits have been made. The MMO questions if this notification would be enough to allow enforceability and part 2 of the condition.

1.5 Reasonable

- 1.5.1 The test set in Conditions 11 in Schedule 10 and 12 in Schedule 11 which must be met to allow these deposits to be made is a much lower threshold test to that set in Section 86 of MCAA. This is because the safety of human life and/or the vessel is threatened is not the same as for the purpose of saving life or securing the safety of the vessel. The MMO questions why these masters and vessels be treated more favourably than others in this situation?
- 1.5.2 The inclusion of '*The unauthorised deposits must be removed at the expense of the undertaker unless written approval is obtained from the MMO*', also goes against the MMO's regulations. This is because the MMO would not be able to give permission for the removal of the deposit without a marine licence and if this incident occurred outside the red line boundary this would not be included within the DML. In addition



to this there would not be an exemption as the deposit would not be classed as accidental.

- 1.5.3 The MMO also notes that in REP2 REP4-040, the Applicant notes that 'any other cause' is the wording used in precedent licences, including the 2024 Sheringham and Dudgeon order and there is precedent set in other licences. The Applicant also states this would create divergence from other licences administered by the MMO creating uncertainty in practice as to what this means and why it is different to other licences.
- 1.5.4 The MMO is reviewing the ExA's Recommendation Report and SoS decision to understand if any reasoning or further information was included on the inclusion of this and may provide an update at Deadline 6.
- 1.5.5 To summarise the MMO does not agree with the Applicant's reasons for including this provision. The condition should be removed, as the defence (Section 86 of MCAA) will apply if the Applicant or vessel masters needs to make a deposit for a Force Majeure reason.

1.6 Transfer of the Benefit

- 1.6.1 The MMO provided comments in Section 6.1 of our response (REP4-052) The MMO will review the Applicant's response submitted to these comments at Deadline 5 and respond in due course.
- 1.6.2 In relation to the comments raised by the Applicant in REP1-050 and in response to ExQ2 DCO.2.03 (REP4-039), the MMO believes a lot of these comments have been explained within our previous response REP1-064 including substantive comments received by the MMO from Counsel as part of the Rampion 2 examination. The MMO does not believe there is any new reasoning why the DML should be included within this Article and requests the DML is updated to remove this provision.
- 1.6.3 Please see comments 1.2.13-1.2.20 of REP1-064 in relation to previous DCOs. The MMO would highlight that even if they have been included in previous DCOs it means that these provisions should continue to be included, the drafting process is iterative, it has to be appropriate both generally and in the particular order in which it is to be included.
- 1.6.4 In addition to this the MMO notes in relation to consultation with the MMO the Applicant states 'The Applicant accordingly submits that this issue has been considered by the SoS, precedent should be followed and that it is not for the Applicant to impose requirements on the SoS as to how they deal with any views expressed by the MMO'. The MMO questions why it is ok to require the SoS to consult with the MMO? If the SoS fails to do this they commit an offence under s161(1)(b) of the Planning Act if the SoS does not have a reasonable excuse. This is another unintended consequence if the inclusion of the DML in this Article.
- 1.6.5 The reason that the DCOs only deem the Marine Licence to be granted, rather than bringing the DML into the DCO as it does for other permissions under s33 of the Planning Act 2008 is because the MMO was considered to be the expert in this area (see PINS note Annex 11 - MMO). The MMO questions why now is the SoS best placed to consider the implications of the marine licence being transferred and what might need to change?



- 1.6.6 Therefore, the provision in paragraph (4) should not extend to the DML. The Order and the DML are not the same thing and so this provision does not extend to the DML, and references to the undertaker in the DML will stay as is.
- 1.6.7 In addition to comments 6.1.6 and 6.1.7 of REP4-052, Whilst the mechanism is different, what falls out of the DCO process is a marine licence granted under MCAA which is distinct and separate to the DCO itself. The DML falls back to the MMO to further manage/regulate under the provisions of MCAA once the DCO is granted, to be regulated alongside and consistently with all the other marine licences we might issue. This is in part why s149A(4) says a person who fails to comply with a condition of the DML does not commit an offence under the s161 of the Planning 2008 Act and why 149A(5) disapplies the notification of application and representations provisions of MCAA from the DCO process.
- 1.6.8 In relation to 'There is a legal point to note as well that some Articles and Requirements relating to offshore matters within the DCO overlap with the deemed marine licence and it would not be appropriate for those to be transferred separately. The MMO request further rationale in relation to this statement.
- 1.6.9 The MMO notes the Applicant's concern in relation to the undertaker being required by statute to transfer the transmission assets to an OFTO and cannot retain those in the same ownership as the generation assets and that this is done at the earlier stages and any delay in this process. However, even for granted offshore windfarm orders that include a form of the Benefit of the Order Article, the MMO has done multiple variations alongside the transfer of benefit to ensure the DML variation is issued as close to the approval from the SoS to ensure the correct undertaker is on the face of the DML and so that updates to the Marine Case Management system can be completed. The MMO notes the Applicant stated this would be required in REP1-050.
- 1.6.10 With the addition of Article 7 (9) current wording this causes the MMO concern as this is just a notice of the transfer and does not include an official variation request to the MMO as required under Section 72 of the Marine and Coastal Access Act 2009. The MMO does not believe the SoS cannot amend the DML once consented. Therefore, the MMO would have to use their regulatory power to conduct a variation and vary the licence to ensure the correct undertaker is on the schedule, this could cause a potential delay the project as if the transferring of unvaried licence impacted on our ability to enforce during this time, the MMO may have to suspend the licence while the MMO conducted the variation.
- 1.6.11 This process could be delayed without the direct contact to the MMO to vary the DML. In addition to this the MMO has statute to charge for any variations and this is not covered by the current Article. This is an issue for two reasons, the Applicant would be getting work at a different rate as the consultation would be a statutory request from the SoS and this is not aligning with other marine licences as per PINS MMO advice note B and two this puts the emphasise for the MMO to vary the licence once notified so there would still be an additional step for the MMO to take which adds in further timescales.
- 1.6.12 The MMO does not agree with the Applicant's reasoning to include Transfer of the Benefit and believes the inclusion causes more work and does not streamline the process. The Applicant states that precedent should be followed, however the MMO



has pushed back on the inclusion of the provisions for many of the DCOs, therefore precedent should not be reason to keep including it.

1.7 Materiality

- 1.7.1 The MMO is aiming to provide a response directly to the Applicant during the week of 20 January 2025. The MMO will also submit this to the ExA as an additional submission. The MMO notes it is up to the ExA to accept an additional submission and will work with the Applicant if this is not accepted and provide all the information to the ExA in our Deadline 6 response..

1.8 Schedule 10/Schedule 11 Comments

- 1.8.1 The MMO welcomes the addition of the interpretation for an 'outline sediment disposal management plan' in Schedule 10, Part 1, Paragraph 1.
- 1.8.2 The MMO notes the change to Schedule 10, Part 2, Condition 12. The MMO does question the use of '*the relevant stage*' through the DML – could the Applicant provide clarity and relevance on this inclusion.
- 1.8.3 The MMO notes and welcomes the addition of Schedule 10, Part 2, Condition 14 for a Site Integrity Plan.
- 1.8.4 The MMO welcomes the addition of Schedule 10, Part 2, Condition 19, and Schedule 11, Part 2, Condition 20 for a marine mammal condition. The MMO notes that Part 1 says the first 4 piles will be monitored but part 2 states that it would be the first 4 of the first 12 – can this be clarified by the Applicant. In addition to this any agreement should be clearly stated who by and this would be in writing.
- 1.8.5 The MMO requests the Applicant if a commitment can be included to the condition that at least 2 of the piles monitored would be worst case scenario to ensure the predictions of the ES can be validated. The MMO would highlight there is currently ongoing discussions on the wording of this condition with Statutory Nature Conservation Bodies as the information being received is not always providing the validations requested with the inclusion of this condition. The MMO will provide an update on these discussions as soon as possible.
- 1.8.6 The MMO welcomes the addition of the interpretations for an 'outline sediment disposal management plan' and 'outline southern north sea special area of conservation site integrity plan' within Schedule 11, Part 1, paragraph 1.
- 1.8.7 The MMO welcomes the addition of the 'sediment disposal management plan' as part of Schedule 11, Part 2, condition 13 (1)(I).
- 1.8.8 The MMO notes and welcomes the addition of Schedule 11, Part 2, condition 15 for a Site Integrity Plan.
- 1.8.9 The MMO welcomes the addition of Schedule 11, Part 2, condition 20 for a marine mammal condition. The MMO notes that Part 1 says the first 4 piles will be monitored but part 2 states that it would be the first 4 of the first 12 – can this be clarified by the Applicant. In addition to this any agreement should be clearly stated who by and this would be in writing.



- 1.8.10 The MMO requests the Applicant if a commitment can be included to the condition that at least 2 of the piles monitored would be worst case scenario to ensure the predictions of the ES can be validated. The MMO would highlight there is currently ongoing discussions on the wording of this condition with Statutory Nature Conservation Bodies as the information being received is not always providing the validations requested with the inclusion of this condition. The MMO will provide an update on these discussions as soon as possible.
- 1.8.11 The MMO welcomes the change made to Schedule 15, Table 1 to include the Outline Sediment Disposal Management Plan.

1.9 Additional DCO/DML Comments

- 1.9.1 The MMO notes the Applicant has included Part 9 in Schedule 9 for PLA protection (onshore). The MMO is still in discussion with the PLA on whether their concerns have been resolved in relation to offshore matters and is maintaining a watching brief of how the Applicant and PLA are resolving any issues.
- 1.9.2 The MMO still notes the suggestion of the inclusion of a timeframe for Schedule 10, Part 2, Condition 18(5) has not yet been included and will maintain a watching brief for its inclusion in the next revision.
- 1.9.3 The MMO provided further information in our deadline 4 response regarding our request for Schedule 10, Part 2, Condition 20(5) in REP4-005 to be amended to state 'sub-paragraphs (1-4)'. This has not been updated within the recent DCO submission. The MMO will maintain a watching brief for this amendment.
- 1.9.4 The MMO is maintaining a watching brief for the contact details within Schedules 10 and 11 (Part 1 4(d)) to be updated to include telephone numbers.
- 1.9.5 The MMO noted in our deadline 4 response that there were a number of Conditions in addition to those mentioned that are being reviewed and updates would be provided to the Applicant and the ExA in due course. All conditions that are in both Schedule 10 and 11 should be updated accordingly. These included:
- Chemicals, drilling and debris 10(1)
- 1.9.6 The MMO requests that this condition is updated to the following wording:
- Unless otherwise agreed in writing by the MMO, all chemicals and substances, including paints and coatings, used below MHWS for the undertaking of the licensed activities must be approved in writing by the MMO prior to use. Submission for approval to the MMO must take place no later than ten weeks prior to use, unless otherwise agreed by the MMO in writing.*
- 1.9.7 This is because the offshore chemical regulations 2002(a) (as amended) do not apply to chemicals used by the offshore wind industry, and the regulations only pertain to chemicals used in the oil and gas industry.
- 1.9.8 For all chemicals that do not fall under the explicit remit of other regulations for their function, use, and discharge in the marine environment (under MARPOL written approval from the MMO must be obtained before their use regardless of the risk of entering the marine environment.



- 1.9.9 The submission should include methodological information including chemical function (meaning what the chemical will be used for, e.g., use within engines, paint, degreaser), methodology, quantity, and frequency of use.
- 1.9.10 The MMO would highlight as part of the submission of chemicals a Chemical risk assessment could be used to provide further information.
- Construction monitoring 17(1)(b) now Condition 19 in REP4-004
- 1.9.11 This has been updated in the Draft DCO (REP4-004) as per comments in Section 1.4.4 and further updates may be requested by the MMO.
- Reporting of impact pile driving 20(1)(b) & (c) now Condition 22(1)(b) and (c) in REP4-004
- 1.9.12 The MMO requests that this condition is updated to the following wording:
- 23.—(1) In the event that driven or part-driven pile foundations are proposed to be used as part of the foundation installation the undertaker must provide the following information to the Marine Noise Registry—*
- 1.9.13 (a) *no less than six months* prior to the commencement of each stage of construction of the licensed activities, information on the expected location, start and end dates of impact pile driving to satisfy the Marine Noise Registry's Forward Look requirements,
- (b) within two weeks after commencement of each stage of construction of the licensed activities, information on the expected location, start and end dates of impact pile driving to satisfy the Marine Noise Registry's Forward Look requirements;*
- 1.9.14 (c) ~~at six month intervals~~ following the commencement of pile driving, information on the locations and dates of impact pile driving to satisfy the Marine Noise Registry's Close Out requirements *by 7 April for winter season October – March inclusive and 7 October for summer season April – September inclusive or*
- 1.9.15 ~~(e)~~ *within 12 weeks of completion of impact pile driving whichever is earlier...*
- Maintenance reporting 21(3) now Condition 23 in REP4-004
- 1.9.16 The MMO is still reviewing if any changes are required to this condition.
- Completion of construction (26) & (27)
- 1.9.17 The MMO is still reviewing if any changes are required to this condition.
- Decommissioning (new condition)
- 1.9.18 The MMO is still reviewing if any additions to the DML are required.
- 1.9.19 In addition to this the MMO questions why Aviation safety is within the DML and the DCO. The MMO believes that this would be best placed and reduce duplication on the face of the DCO not the DML and would request that any updates can be added to Schedule 2, Requirement 3 within the DCO and deleted from the DML.



1.9.20 The MMO is aiming to provide a response in relation to the MCA conditions directly to the Applicant during the week of 20 January 2025. The MMO will also submit this to the ExA as an additional submission. The MMO notes it is up to the ExA to accept an additional submission and will work with the Applicant if this is not accepted and provide all the information to the ExA in our Deadline 6 response.

2 MMO Comments on Applicant's Deadline 1 Submissions

2.1 General Comments

2.1.1. The MMO noted in our Deadline 4 Response (REP4-052) that the Applicant submitted the following documents in Deadline 1 to address some of our concerns raised in our Relevant Representation (RR-070):

2.2 REP1-049 – 10.4 Applicant's response to Relevant Representations (Clean)

2.2.1 The MMO is still reviewing some of the comments regarding outstanding fish ecology and benthic concerns, for instance regarding the peak herring spawning calculations, sediment disposal restriction and suggested paint flake abundance monitoring. The MMO is aiming to provide a response directly to the Applicant during the week of 20 January 2025. The MMO will also submit this to the ExA as an additional submission. The MMO notes it is up to the ExA to accept an additional submission and will work with the Applicant if this is not accepted and provide all the information to the ExA in our Deadline 6 response.

3 MMO Comments on Applicant's Deadline 4 Submissions

3.1. General Comments

3.1.1. The MMO notes the Applicant submitted the following documents in Deadline 4:

- a. REP4-010– 6.5.6.4 Herring Seasonal Restriction Note - Revision C (Clean)
- b. REP4-011– 6.5.6.4 Herring Seasonal Restriction Note - Revision C (Tracked)
- c. REP4-017 – 9.8 Dredge Disposal Site Characterisation Report - Revision B (Clean)
- d. REP4-017 – 9.8 Dredge Disposal Site Characterisation Report - Revision B (Tracked)
- e. REP4-019 – 9.12 Outline Cable Specification and Installation Plan - Revision B (Clean)
- f. REP4-020 – 9.12 Outline Cable Specification and Installation Plan - Revision B (Tracked)
- g. REP4-021 – 9.13 Margate and Long Sands Special Area of Conservation Benthic Mitigation Plan - Revision C (Clean)
- h. REP4-022 – 9.13 Margate and Long Sands Special Area of Conservation Benthic Mitigation Plan - Revision C (Tracked)
- i. REP4-023 – 9.14.1 Outline Marine Mammal Mitigation Protocol - Piling - Revision C (Clean)
- j. REP4-024 – 9.14.1 Outline Marine Mammal Mitigation Protocol - Piling - Revision C (Tracked)
- k. REP4-032 – 10.15 Revised International Herring Larval Survey Heat Map Figures - Revision B (Clean)



- l. REP4-033 – 10.15 Revised International Herring Larval Survey Heat Map Figures - Revision B (Tracked)
- m. REP4-034 – 10.20.1 Technical Note - Methodology for Determining MDS (Offshore) - Revision B (Clean)
- n. REP4-035 – 10.20.1 Technical Note - Methodology for Determining MDS (Offshore) - Revision B (Tracked)
- o. REP4-040 – 10.29 Applicant's Comments on Deadline 3 Submissions
- p. REP4-041 – 10.30 Outline Sediment Disposal Management Plan

3.1.2. The MMO is still reviewing the documents listed above and is aiming to provide a response directly to the Applicant during the week of 20 January 2025. The MMO will also submit this to the ExA as an additional submission. The MMO notes it is up to the ExA to accept an additional submission and will work with the Applicant if this is not accepted and provide all the information to the ExA in our Deadline 6 response. The MMO will split our comments on the above documents and any outstanding concerns into the following topics to cover:

- a. Fish Ecology
- b. Underwater Noise
- c. Dredge and Disposal
- d. Shellfish Ecology
- e. Coastal Processes

3.1.3 In relation to MMO55 of this document please see Section 1.1 of this document for further information.

3.2. 10.28 Applicant's Responses to ExQ2 – REP4-039

- The MMO notes the Applicant's comments to ExQ2 DCO.2.03. The MMO provided comments to the question in our Deadline 4 response in REP4-052 and has provided further comments regarding Article 7 (Benefit of the Order) in Section 1.6 of this response.
- The MMO notes the Applicant's comments to ExQ2 DCO.2.06. The MMO notes the Applicant provided examples of other circumstances that might cause the master of a vessel to deposit authorised deposits within or outside Order Limits. The MMO still maintains its position on the Force Majeure conditions and has provided comments in Section 1.1 of this response.
- The MMO notes the Applicant's comments to ExQ2 DCO.2.08 on Condition 6(16) (Notifications and inspections) of Part 2 of Schedule 10 (Deemed marine licence – Generation Assets), the MMO is reviewing this as part of the materiality discussion mentioned in Section 1.7 of this document.

3.2.1. The MMO notes the Applicant's comments to ExQ2 ME.2.05 that an updated Technical note - Methodology for Determining MDS (Offshore) was submitted at Deadline 4. The MMO is still reviewing this document.

3.2.2. The MMO notes the Applicant's comments to ExQ2 NS.2.03 that the Outline Fisheries Liaison and Coexistence Plan will be updated and provided at a future deadline. The MMO will maintain a watching brief for this and requests that this is submitted as soon as possible to allow concerns to be resolved.



3.2.3. The MMO notes the Applicant's comments to ExQ2 NS.2.04, that a full Cable Burial Risk Assessment (CBRA) will be produced to inform the final CBRA during the pre-construction phase.

3.3. 10.29 Applicant's Comments on Deadline 3 Submissions – REP4-040

3.3.1. The MMO notes the Applicant's comments to MMO01-MMO51 and as these are related to scientific topics, will provide a response directly to the Applicant during the week of 20 January 2025. The MMO will also submit this to the ExA as an additional submission. The MMO notes it is up to the ExA to accept an additional submission and will work with the Applicant if this is not accepted and provide all the information to the ExA in our Deadline 6 response.

3.3.2 The MMO notes the Applicant's comments to comment MMO55. The MMO has provided further comments regarding Force Majeure in Section 1.1 of this response.

3.3.3 The MMO notes the Applicant's response to NE01, where they will provide a without prejudice dDCO schedule for benthic compensation at Deadline 5. The MMO will maintain a watching brief for this.

4 MMO Comments on Interested Parties' Deadline 4 Submissions

4.1. Historic England (HE) – REP4-051 – Comments on any submissions received at Deadline 3

4.1.1 The MMO has no comments to make on this submission.

4.2. Maritime and Coastguard Agency (MCA) – REP4-054 – Responses to the ExA's ExQ2

4.2.1 The MMO notes MCA welcomes the projects use of a Navigation Installation Plan (NIP) for additional management of the installation of the offshore Export Cable Corridor (ECC).

4.2.2 The MMO notes that MCA agrees that the consensus of 22 metres(m) below chart datum is appropriate.

4.3. Natural England (NE)

4.3.1. The MMO notes NE submitted the following documents for Deadline 4:

- a. REP4-058 – Cover Letter
- b. REP4-058 – Appendix C4 – Natural England's Comments on Ornithology [REP2-007, REP2-009, REP2-011, REP2-013, REP2-015, REP2-017]
- c. REP4-059 – Appendix E4 – Natural England's comments on the Margate and Long Sands Special Area of Conservation Benthic Mitigation Plan – Revision B (Tracked) [REP2-024]



- d. REP4-060– Appendix J4 – Natural England’s Comments on the Applicant’s Change Request Documents [AS-040, AS-048, AS-054, and AS-057]
- e. REP4-061 – Appendix L4 – Natural England’s Risk and Issues Log and Updated Principal Areas of Disagreement Summary Statement (PADSS)
- f. REP4-062 – Appendix M3 – Natural England’s comments on Examining Authority’s Written Questions [PD-001] (ExQ1) ME. 1.01 (relating to Fish Ecology and Marine Mammal Ecology)
- g. REP4-063 – Appendix M4 – Natural England’s comments on the Examining Authority’s Written Questions 2 [PD-014]
- h. REP4-064 – Appendix N4 – Natural England’s comments on the Offshore in Principle Monitoring Plan [REP1- 046]
- i. REP4-065 – Appendix O4 – Natural England’s comments on 10.20.2 Technical Note - Offshore Decommissioning [REP2-028]

- 4.3.2 The MMO notes in REP4-057, NE cannot agree with no adverse effects on the integrity of all the marine mammal matrices (REP2-005) without full commitment to noise abatement in the Marine Mammal Mitigation Protocol and Site Integrity Plan.
- 4.3.3 The MMO notes that in REP4-059, NE advises the benthic mitigation plan should commit to using cable protection that is readily removable and to removing cable protection. The MMO notes that NE also suggests that a realistic Maximum Design Scenario (MDS) is presented rather than an over precautionary figure. The MMO aims to provide comments on the updated MDS document (REP4-035) in due course.
- 4.3.4 The MMO notes that NE still has unresolved ornithological concerns. The MMO, as previously stated, defers to NE on ornithological concerns.
- 4.3.5 The MMO notes that in REP4-064, NE requests further information is included in the In Principle Monitoring Plan (IPMP). The MMO would welcome the inclusion of further information as this would assist in the understanding of the requirements post consent and support the discharge of the document.
- 4.3.6 The MMO would also highlight that there is an ongoing project that has industry and SNCB involvement in relation to standardised monitoring reports. The MMO will provide further information and will be requesting some updates to the IPMP to ensure that this is taken into account post consent in due course.
- 4.3.7 The MMO notes that NE has outstanding concerns regarding the piling restriction as do not believe it to be a sufficient period to sufficiently mitigate concerns to herring. The MMO is still reviewing the updated documents in relation to this and aims to provide comments in an additional submission.

4.4. Port of London Authority (PLA)

- 4.4.1. The MMO notes PLA submitted the following documents for Deadline 4:
 - a. REP4-066 – Comments on any submissions received at Deadline 3



b. REP4-067 – Responses to the ExA's EXQ2

4.4.2. The MMO is still in discussions with the PLA regarding their concerns.

4.4.3. The MMO also notes that the PLA is also still in discussion with the Applicant over the mechanism to secure which area the need for a 22-metre depth will apply to, within the DCO.

4.5. Harwich Harbour Fishermens Association – REP4-074 – Deadline 4 Submission

4.5.1 The MMO notes Harwich Harbour Fishermens Association has submitted a report commissioned by the MMO – 'Sensitivity of the under 12m fishing fleet to offshore wind development in the east marine plan areas'. The MMO welcomes this inclusion and requests the Applicant provides a response to this report.

5 Statement of Common Grounds (SoCG)

5.1 The MMO notes that the Examining Authority has requested signed copies of SoCGs at Deadline 5. The MMO believes that this is too early in the Examination to provide a signed final version.

5.2 As agreed with the Applicant the MMO has signed the latest version of the SoCG, however this will be subject to change throughout the remaining deadlines whilst the MMO works with the Applicant to continue discussing outstanding issues and therefore would advise the examiners that the version submitted by the Applicant is not the final position on any outstanding issues.

Yours sincerely,



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