



Five Estuaries Offshore Wind Farm Case Team  
Planning Inspectorate  
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**(By Email only)**

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

14 March 2025

Dear Sir or Madam,

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

**Deadline 8a 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 the 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 8a.

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 Applicant's Deadline 8 Submissions

## 1.1. General Comments

1.1.1. The MMO notes the Applicant submitted the following documents in Deadline 8:

- a. REP8-004/005 – 5.4 Report to Inform Appropriate Assessment - Revision D (Tracked)
- b. REP8-008/009 – 5.5.1 Benthic Compensation Strategy Roadmap - Revision C (Clean/Tracked)
- c. REP8-022/023 – 9.13 Margate and Long Sands Special Area of Conservation - Benthic Mitigation Plan - Revision F (Clean/Tracked)
- d. REP8-031/032 – 9.32 Offshore In-Principle Monitoring Plan Revision F (Clean/Tracked)
- e. REP8-035 – 10.59 Applicant's Comments on Deadline 7 Submissions

1.1.2. The MMO has reviewed the documents above and has provided any comments below where necessary.

## 1.2. REP8-008/009 – 5.5.1 Benthic Compensation Strategy Roadmap - Revision C (Clean/Tracked)

1.2.1. The MMO notes the addition of 'Monitoring Plan' in Section 6.4 of REP8-009 and defers to Natural England in relation to the compensation detail.

## 1.3. REP8-022/023 – 9.13 Margate and Long Sands Special Area of Conservation (SAC) - Benthic Mitigation Plan - Revision F (Clean/Tracked)

1.3.1. The MMO notes the changes made to Section 5 and 7 of REP8-023 and defers to Natural England in relation to the mitigation detail.

## 1.4. REP8-031/032 - 9.32 Offshore In-Principle Monitoring Plan - Revision F (Clean/Tracked)

1.4.1. The MMO welcomes the update to the Offshore In-Principle Monitoring Plan (IPMP) to include that the piling locations, that will be monitored prior to construction, will be agreed with the MMO.

## 1.5. REP8-035 – 10.63 Applicant's Comments on Deadline 7 Submissions

1.5.1. The MMO notes comment MMO-02 where the Applicant proposes to agree with the MMO the piling locations that will be monitored prior to construction. The MMO is content with this approach.

1.5.2. MMO-03 – the MMO notes the comments raised by the Applicant and notes the Port of London Authority (PLA) is still requesting these updates and supports this request.

1.5.3. MMO-04 - The MMO welcomes that the PLA will be added to the list of organisations in the DML at Deadline 8a.



- 1.5.4. The MMO notes comment MMO-05, where the Applicant does not agree with the additional suggested wording to Condition 3(3). The MMO provided further comments in REP8-046. However, as the plan is referenced within the Condition 3 it should be clear where this plan sits or will be discharged. The MMO requests that at minimum an interpretation should be included to link this reference to the SIP. Once consented the DML is a standalone document, and conditions should be clear for all to understand the requirements post consent.
- 1.5.5. The MMO provided further clarifications in regard to MMO-07 in our REP8-046. The MMO is content to add consultees where required or requested by a consultee for the conditions. It is important to note that the MMO will consult with who we deem is necessary, so is content with the inclusion of specified interested parties. The positive to consultees being named is that it is clear as to who will be consulted on documents. The MMO is therefore not opposed when a consultee requests to be consulted.
- 1.5.6. The MMO notes that the Applicant does not agree to the requested changes to Schedule 11 Condition 13 (1), (1)(a) and (g) and provided further comments in discussion with the PLA in REP8-046.
- 1.5.7. MMO-10 – the MMO does not understand what the Applicant is referring to in relation to this response. The MMO did not request an update to the O&M plan condition but rather offshore monitoring plan, navigation and installation plan, fisheries liaison and co-existence plan and sediment disposal management plan in condition 12(1)/13(1) the MMO believes that the wording should be in accordance with the outline plan not in accordance with the principles of the outline plan as set out in REP8-046.
- 1.5.8. The MMO notes the Applicant's response to comment MMO-11 regarding decommissioning. The MMO would request that a commitment is made to consult the MMO on the decommissioning programme at the earliest opportunity prior to the submission to the Secretary of State (SoS), this would enable any discussions/updates on the information to be completed prior to statutory consultation.
- 1.5.9. MMO-13 – the MMO would highlight that as changes have taken place in the relation to how the information within the marine noise registry is being utilised to manage noise, especially within the Southern North Sea Special Area of Conservation (SNS SAC) and the information needs to be up to date as possible. The previous condition is not fit for purpose and the MMO maintains the position that the condition should be updated.

#### **MMO-15 Transfer of Benefit (and MMO-19)**

- 1.5.10. The MMO disagrees with the purpose of the inclusion of the DML as set out in previous representations. The creation of a new route to transfer the DML is unnecessary as there is already an established route to transfer and vary a marine licence and the Article will not work in practice.
- 1.5.11. Even if the SoS approves a transfer of benefit for the DML the SoS has no power under the Planning Act 2008 to change the DML once consented. As set out in Schedule 6 Paragraph 2 (13) and Paragraph 5 (6):



*“The power may not be exercised in relation to provision included in an order granting development consent by virtue of paragraph 30A or 30B of Schedule 5 (deemed marine licence under Marine and Coastal Access Act 2009).”*

1.5.12. Therefore, the transfer and variation completed by the MMO is the right and proper way to amend the DML.

1.5.13. As per Section 72 (7) & (8) of the Marine and Coastal Access Act 2009 (MCAA 2009):

*Variation, suspension, revocation and transfer*

*...(7)On an application made by a licensee, the licensing authority which granted the licence—*

*(a)may transfer the licence from the licensee to another person, and*

*(b)if it does so, must vary the licence accordingly.*

*(8)A licence may not be transferred except in accordance with subsection (7).*

1.5.14. The reason MCAA 2009 says if we transfer we must vary is because it recognises that it is necessary to vary on transfer to maintain the enforceability of the licence.

1.5.15. If DMLs are transferred under Article 5, but cannot be varied by the SoS, the MMO would have to review and then vary under its powers under s72(3)(d) should a variation be required and it may well have to consider suspending the licence whilst that variation takes place, depending on what the nature of the required variation would be.

1.5.16. There is no good reason to move away from the process already set out in MCAA 2009, save for operator convenience, and our strongest preference remains for the DMLs not to be made subject to the Transfer of Benefit provisions in the main body of the order, in full or in part.

1.5.17. The MMO is not trying to be unduly difficult over the issue, and has not yet been in a position to use this route as for all other consented offshore wind farms, even those with the more recent proposed wording, the undertakers have provided a request to the MMO for a variation alongside the Transfer of Benefit request to the SoS, therefore the MMO is not entirely sure what the consequences will be.

1.5.18. The MMO believes there is more risk including the DML with the inclusion of Article 5, than managing it under the current process.

### **MMO-16 Chemicals**

1.5.19. The MMO notes the Applicant's response to comment MMO-16 regarding Condition 10 (1) on Chemicals, drilling and debris, where they reject the MMO's requested change to the condition. The MMO maintains its position which was explained in REP7-097.



1.5.20. The MMO apologises for the multiple changes to this condition and understands this does not ensure a smooth discussion, however there are wider discussions not in the MMO's control that are impacting these updates.

1.5.21. The MMO has since had additional clarification in relation to 'Pose Little or No Risk to the Environment (PLONOR)' and requests that the Condition is further updated slightly:

*(ii) a chemical risk assessment, including information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance and standards;*

*(X) a site specific chemical risk assessment for all chemicals that have a pathway to the marine environment used for the marine licensed activities, outside the course of normal navigation, to include;*

*(i) the function of the chemical,*

*(ii) the quantities being used and the frequency of use,*

*(iii) the physical, chemical, and ecotoxicological properties of the chemical. Chemicals present on the OSPAR List of Substances Used and Discharged Offshore which Are Considered to Pose Little or No Risk to the Environment (PLONOR) are exempt from this requirement*

Submissions for approval must take place no later than ten weeks prior to use.

The following interpretations should also be added:

*"pathway to the marine environment" open systems or closed systems that require top up.*

*"chemicals" comprise both substances and preparations.*

*"preparation" means a mixture or solution composed of two or more substances*

*"substance" means a chemical element and its compounds in the natural state or obtained by any manufacturing process, including*

1.5.22. The MMO also notes this is an 'Not Agreed' position at the end of Examination.

1.5.23. The MMO notes the Applicant's response to comment MMO-17 regarding Condition 10(10) for Dropped Objects. The MMO would like to highlight that the initial requested change was requested by Maritime and Coastguard Agency (MCA) in REP1-067. This has since been discussed between MCA and the MMO, which the MMO highlighted, and it has now been agreed on. The MMO is therefore requesting that this change is made for the reasons set out in REP7-097.

1.5.24. The MMO notes that in REP8-046 we stated that we were reviewing the information regarding the disposal sites. The disposal sites are now designated, and the Array area disposal sites are TH017 (Northern Array disposal site) and TH018 (Southern



Array disposal site) and the Export Cable Corridor disposal site reference is TH019. Two disposal sites are included for the array area due to the separate areas and the MMO notes REP7-038 has one disposal site for the array area. The MMO has assessed the maximum parameters of disposal within the array area but can only provide reference numbers for specific coordinates and since the array area is in two separate areas, two reference numbers are provided.

- 1.5.25. These should be included in Schedules 10 and 11. The MMO therefore proposes that Paragraph 2a and Condition 10(5) of Schedule 10 should be updated to the following:

*Subject to the licence conditions at Part 2, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act—*

*the deposit at sea within the Order limits seaward of MHWS of the substances and articles specified in paragraph 4 below and within Work No. 1 when combined with the disposal authorised within the cable corridor disposal site by the deemed marine licence granted under Schedule 11 of the Order, of up to 22,374,371 cubic metres (being a maximum, not an approximate upper figure) of inert material of natural origin produced during construction drilling or seabed preparation for foundation works and cable installation preparation works within the array area disposal sites [TH017 and TH018];*

- 1.5.26. The MMO proposes that Schedule 11 is updated to the following:

*the array area disposal sites [TH017 and TH018], when combined with the disposal authorised by the deemed marine licence granted under Schedule 10 of the Order, of up to 22, 374,371 cubic metres (being a maximum, not an approximate upper figure) of inert material of natural origin produced during construction drilling or seabed preparation for foundation works and cable installation preparation and excavation of horizontal directional drilling pits works within the parts of Work No. 2 that lie within the array area; and*

*the cable corridor disposal site [TH019] of up to 9,214,386 cubic metres (being a maximum, not an approximate upper figure) of inert material of natural origin produced during construction drilling or seabed preparation for foundation works and cable installation preparation and excavation of horizontal directional drilling pits works within Work Nos. 2, 2A and 3;*

The MMO understands the Applicant has made the updates for Deadline 8a.

- 1.5.27. The MMO notes the Applicant's response to comment MMO-21 regarding Condition 13(3) on Determination dates. The MMO disagrees with the Applicant's position and no response was provided to the MMO's question on what would happen should the MMO not make the approval within the six months approval period. The MMO maintains its position that it is inappropriate to put timeframes on complex technical decisions of this nature. As set out previously the MMO has evidence that the 4 months is not enough time for the larger more complex projects and deems six months more appropriate and welcomes the update by the Applicant. The MMO is not duly trying to delay post consent discharges but needs to ensure there is enough



time to resolve the multiple issues that occur post consent without delaying programming and therefore believes the determination requirement should be removed.

- 1.5.28. The MMO notes the Applicant's response to comment MMO-22 regarding Schedule 2 Requirement 1. The MMO's comment was to highlight our view on time limits/lifespan for the Examining Authority and Secretary of State.

## **2. MMO Comments on Interested Parties' (IP) Deadline 8 Submissions**

### **2.1. Natural England (NE)**

- 2.1.1. The MMO notes NE submitted the following documents in Deadline 8:

- a. REP8-050 – Cover Letter
- b. REP8-051 – Appendix D8 to Natural England's Deadline 8 Submission
- c. REP8-052 – Appendix E8 to Natural England's Deadline 8 Submission
- d. REP8-053 – Appendix J8 to Natural England's Deadline 8 Submission
- e. REP8-054 – Appendix N8 to Natural England's Deadline 8 Submission

- 2.1.2. The MMO notes Natural England's comments regarding the Outline Cable Specification and Installation Plan Revision D, that clarification should be sought from the MMO in relation how this proposal is assessed and enforced. The MMO asked the Applicant for clarification on REP6-020/021 regarding whether the 22m minimum burial depth would be reflected in the total volumes of sediment to be dredged in our REP8-046. The MMO would highlight we are unable to review this information by the end of examination.

### **2.2. Port of London Authority (PLA)**

- 2.2.1. The MMO notes the PLA submitted the following documents in Deadline 8:

- a. REP8-055 – Comments in Submissions Received at Deadline 7
- b. REP8-056 – Response to the Applicant's Document 10.62 "Note on dDCO Drafting – Applicant's Position on Protective Provisions"

- 2.2.2. The MMO has reviewed the above documents submitted by the PLA. The MMO provided its position regarding PLA matters in our Deadline 8 response (REP8-046).

### **2.3. London Gateway Port Limited (LGPL) – REP8-045 – Comments on any submissions received at Deadline 7**

- 2.3.1. The MMO notes comment 7.11, where LGPL does not agree with the Applicant stating that the outline Operations and Maintenance (O&M) plan does not assess cable replacement within the export cable corridor, but a new marine licence would be required for cable replacement. The MMO acknowledges that Table 2.1 Maximum Assessment assumption for operational and maintenance activities of APP-248 sets



out that the number of array cable **repairs/ replacements** over project lifetime is 8 and states the number of offshore export cable **repairs** over project lifetime is 9.

- 2.3.2. The MMO does believe this does show no cable replacement will take place within the export cable corridor however does note that this is not clear within Appendix A. If there was sufficient time remaining in the examination, the MMO would request updates to the O&M to make it clear when a new licence would be required.
- 2.3.3. The MMO would highlight that no O&M activities can take place until the MMO has approved the O&M plan in consultation with interested parties.

Yours sincerely,

[Redacted Signature]

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