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MMO Reference: DCO/2021/00002
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03 March 2025

Dear Wendy McKay,

Planning Act 2008, Proposed North Falls Offshore Wind Farm Project Order Deadline 2 Submission

On 22 August 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 North Falls Offshore Wind Farm Ltd, (the “Applicant”) for determination of a development consent order for the construction, maintenance and operation of the proposed North Falls Offshore Wind Farm Project (the “DCO Application”) (MMO ref: DCO/2021/00002; PINS ref: EN010119).

The DCO Application seeks authorisation for the construction, operation and maintenance of North Falls Offshore Wind Farm (the ‘Project’ or ‘North Falls’): an offshore generation station with a capacity exceeding 100 megawatts (MW) comprising up to 57 wind turbine generators together with associated onshore and offshore infrastructure and all associated development.

Three Deemed Marine Licences (DML) are included in the draft DCO. One in relation to generation assets and two in relation to transmission assets. One in relation to Wind Turbine Generators (WTG) and Associated Infrastructure, and one for Offshore Substation Platforms and Interconnector Cables.

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 are drafted in a DML that enable the MMO to fulfil these obligations.

This document comprises the MMO’s submission for Deadline 2.



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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,

[Redacted Signature]

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1. Comments on Pre-Examination Procedural Deadline Submissions

1.1 REP1-045: 9.2 Applicant's Response to Relevant Representations from Local Authorities and Parish Councils (Rev 0)

- 1.1.1. The MMO welcomes the submission of this response, specifically Table 2.1 which refers to the Applicant's response to MMO comments raised in the MMO's Relevant Representation (RR-067). The MMO provided initial comments regarding the DCO DML within the Deadline 1 submission. Further responses to the Applicant's comments can be found in Table 1 below. The MMO defers several comments to Deadline 3 following consultation with our technical advisors.

1.2 REP1-057: 9.14 Further Information Regarding Marine Mammals

- 1.2.1. The MMO acknowledges the submission of this response and will provide further comments at Deadline 3 following consultation with our technical advisors.

Table 1. MMO Responses to Applicant's pre-examination Procedural Deadline Submission.

Applicant's Reference	Relevant Representation Comment	Applicant's Response	MMO's Deadline 2 Response
MMO-01	<p>This document comprises the Marine Management Organisation's ("MMO") initial comments in respect of the above Development Consent Order application ("DCO Application") in the form of a relevant representation. This is without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This is also 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.</p>	Noted.	No further comment.
MMO-02	<p>The MMO was established by the Marine and Coastal Access Act 2009 (the "2009 Act") to make a contribution to sustainable development in the marine area and to promote clean, healthy, safe, productive and biologically diverse oceans and seas. The responsibilities of the MMO include the licensing of construction works, deposits and removals in English inshore and offshore waters and for Northern Ireland offshore waters by way of a marine licence. Inshore waters include any area which is submerged at mean high water spring ("MHWS") tide. They also include the waters of every estuary, river or channel where the tide flows at MHWS tide. Waters in areas which are closed permanently or intermittently by a lock or other artificial means against the regular action of the tide are included, where seawater flows into or out from the area. In the case of NSIPs, the</p>	Noted.	No further comment.

	<p>Planning Act 2008 (the “2008 Act”) enables DCO’s for projects which affect the marine environment to include provisions which deem marine licences. As a prescribed consultee under the 2008 Act, the MMO advises developers during pre-application on those aspects of a project that may have an impact on the marine area or those who use it. In addition to considering the impacts of any construction, deposit or removal within the marine area, this also includes assessing any risks to human health, other legitimate uses of the sea and any potential impacts on the marine environment from terrestrial works. Where a marine licence is deemed within a 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 a keen interest in ensuring that provisions drafted in a deemed marine licence (“DML”) enable the MMO to fulfil these obligations.</p>		
MMO-03	<p>On the 22 August 2024 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 North Falls Offshore Wind Farm Ltd (the “Applicant”) for a DCO Application (MMO ref: DCO/2021/00002; PINS ref: EN010119). The DCO Application includes a draft development consent order (the “DCO”) and an Environmental Statement (the “ES”). The draft DCO includes Marine Licence 1 – Generation Assets (Schedule 8), Marine Licence 2 – Transmission Assets (Schedule 9) and Marine Licence 3 – Transmission Assets (Offshore Converter Platform) (Schedule 10) which are draft Deemed Consent under Part 4 (Marine Licensing) of the Marine and</p>	Noted.	No further comment.

	Coastal Access Act 2009 (the “Deemed Marine Licence”)(DML). The DCO Application seeks authorisation for the construction, operation and maintenance of North Falls Offshore Wind Farm (the ‘Project’ or ‘North Falls’): an offshore generation station with a capacity exceeding 100 megawatts (MW) comprising up to 57 wind turbine generators together with associated onshore and offshore infrastructure and all associated development (“the “Project”). Please find the MMO comments below.		
MMO-04	1.1.1 The North Falls Offshore Wind Farm (the ‘Project’ or ‘North Falls’) will comprise an offshore generating station with a capacity exceeding 100 megawatts (MW).	Noted.	No further comment.
MMO-05	1.1.2 The Project is located approximately 40 kilometres (km) off the coast of East Anglia at its closest point in the Southern North Sea and comprises: a single offshore array area covering an area of 95 square kilometres (km ²) with up to 57 wind turbine generators; the installation of underground cables and associated infrastructure; construction of up to two offshore substation platforms, or, up to one offshore substation platform and up to one offshore converter platform; the construction of up to two cable circuits and associated ducting with the onshore landfall taking place between Clacton-on-Sea and Frinton-on-Sea; the construction of an electrical substation between Little Bromley and Ardleigh to connect to National Grid’s proposed East Anglia Connection Node (EACN) substation; and all associated development and ancillary works. All of the onshore Noted. Page 85 of 175 infrastructure works would be within the	Noted.	No further comment.

	administrative area of Essex County Council and Tendring District Council.		
MMO-06	1.1.3 The following three grid connection options are included in the Project design envelope. Option 1: Onshore electrical connection at a national grid connection point within the Tendring peninsula of Essex, with a project alone onshore cable route and onshore substation infrastructure; Option 2: Onshore electrical connection at a national grid connection point within the Tendring peninsula of Essex, sharing an onshore cable route and onshore duct installation (but with separate onshore export cables) and collocating separate project onshore substation infrastructure with Five Estuaries; or Option 3: Offshore electrical connection, supplied by a third party.	Noted.	No further comment.
MMO-07	1.1.4 The North Falls project area comprises: The offshore project area: The offshore wind farm area (hereafter the 'array area') - within which the wind turbine generators, offshore substation platform(s), offshore converter platform (if required), platform interconnector cable, and array cables will be located; Offshore cable corridor - the corridor of seabed from array area to the landfall within which the offshore export cables will be located; and The onshore project area.	Noted.	No further comment.
MMO-08	2.1.1 The Applicant has provided a compliance assessment table within 3.1.5 Environmental Statement Chapter 3 Policy and Legislative Context (AP -017), which shows that they have had a regard to the relevant marine policies and plans. This includes consideration of the National Policy Statement (NPS) for Energy (EN-1), NPS for Renewable Energy Infrastructure (EN-3), NPS for	Noted.	No further comment.

	Electricity Networks Infrastructure (EN-5), and the East Inshore and East Offshore Marine Plans. The Applicant has also provided a Marine Plan Assessment document (APP-240) which provides an assessment of compliance with the South East Inshore Marine Plan, and East Inshore and East Offshore Marine Plans.		
MMO-09	3.1.1 The MMO has reviewed the draft DCO and provided detailed comments below. The MMO is currently undertaking a detailed review and will provide further comments on the DCO during the course of the examination.	Noted.	No further comment.
MMO-10	3.2.1 The MMO welcomes the Applicant's commitment in 'Chapter 5 – Project Description' to apply for a marine licence post-consent for UXO investigation and clearance. This will ensure appropriate mitigation is in place. The MMO would highlight that there is a requirement for the investigation marine licence to be applied for separately to ensure this information from the investigation is included within the clearance licence.	Noted.	No further comment.
MMO-11	3.2.2 Currently the Applicant expects 40 UXO clearances to be determined; 15 in the array area (required for all grid connection options); and 25 in the offshore cable corridor (Options 1 and 2 only). The Applicant has assessed the impacts of UXO detonation within the ES – 'Environmental Statement Appendix 12.5 Unexploded Ordnance Clearance Information and Assessment'.	Noted.	No further comment.
MMO-12	3.2.3 The MMO notes that in Table 1.2 of Appendix 12.5 Unexploded Ordnance Clearance Information and Assessment, it is stated that "Underwater noise monitoring would be undertaken for all UXO clearances following the Protocol for InSitu	As noted in MMO-10, any offshore UXO clearance required for North Falls will be subject to a separate Marine Licence application at the pre-construction stage. This will include information on monitoring and further consultation	The MMO welcomes this point and awaits further information and consultation from the Applicant. For awareness

	Underwater Measurement of Explosive Ordnance Disposal for UXO (National Physical Laboratory, 2020)". The MMO welcomes the proposal to undertake noise monitoring for all UXO clearance operations, although no further details are provided at this stage. We expect that this will be further discussed in due course.	with the MMO will be undertaken as part of this process.	inspection and UXO clearance are two separate marine licences
MMO-13	3.3.1 Transfer of Benefit of the Order: The MMO understands that Article 6 – Transfer of Benefit is drafted in a similar way to previous consents granted by the Secretary of State (SoS), however the MMO has major concerns over the wording. Article 6(1)-(2) gives the right to permanently transfer the benefits of the DCO including the deemed marine licences (DML) in Schedule 8, 9 and 10 to a third party with the consent of the SoS. Part 2: Article 6(1)-(2) "6.— (1) Subject to this article, the provisions of this Order have effect solely for the benefit of the undertaker.	The Applicant notes that the wording quoted by the MMO in this response and in MMO-13 to MMO-29 below (inclusive) refer to drafting which is not found within the North Falls draft DCO, which appears to be an error. Notwithstanding, the principle of transfer and grant of the benefit of the deemed marine licence has been included in article 5 of the draft DCO and so we have responded on that basis. In any case, the Applicant's position is that the scope and drafting in article 5 (Benefit of the Order) of the draft DCO is appropriate. As noted by the MMO, this provision permitting the transfer of DCO powers and deemed marine licences has been considered acceptable by the Secretary of State on multiple offshore wind DCOs to date, including most recently in the Hornsea Four Offshore Wind Farm Order 2023, the Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024. Various 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. In that context, it is appropriate that the Secretary of State has the ability to approve the transfer or grant of a deemed marine licence such that the transfer or grant can fully reflect the relevant DCO	Please see MMO comments within section 2 of this document regarding Article 5.

		and deemed marine licence powers. It is undesirable to separate the transfer of the benefit of the order generally and the transfer of the benefit of Page 87 of 175 the deemed marine licence as doing so could result in transfers occurring at different times and inconsistency in position. This is a well-established position in offshore wind DCOs and there is no reason the draft DCO for the Project should be expressed any differently. It is noted that the Secretary of State is required to consult with the MMO under article 5(6) prior to approving any such transfer or grant.	
MMO-14	3.3.2 (2) Subject to paragraph (3), the undertaker may with the written consent of the Secretary of State— (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including the deemed marine licences) and such related statutory rights as may be agreed between the undertaker and the transferee”.	Please see response to MMO-13.	Please see MMO comments within section 2 of this document regarding Article 5.
MMO-15	3.3.3 The MMO considers that this is a clear departure from the 2009 Act, which would normally require the licence holder (here ‘the undertaker’) to make an application to the MMO for a licence to be transferred. Instead, this provision operates to make the decision that of the undertaker, with the SoS providing consent to the transfer, rather than the MMO as the regulatory authority for marine licences considering the merits of any application for a transfer.	Please see response to MMO-13.	Please see MMO comments within section 2 of this document regarding Article 5.
MMO-16	3.3.4 Parliament has already created a statutory regime for such a process, and it is unclear what purpose the written consent of the SoS actually serves. If the intention is for the undertaker to be	Please see response to MMO-13.	Please see MMO comments within section 2 of this document regarding Article 5.

	able to transfer the benefits under the terms of the DCO outside the established procedures under 2009 Act, the MMO queries why it is considered necessary or appropriate for the SoS to 'approve' the transfer of the DML.		
MMO-17	3.3.5 It is also unclear what criteria the SoS would be taking in determining whether to approve any transfer, and how this would differ from a consent granted by the MMO under the existing 2009 Act regime.	Please see response to MMO-13.	Please see MMO comments within section 2 of this document regarding Article 5.
MMO-18	3.3.6 Because of this confusion and potential duplication, it is the position of the MMO that these provisions are removed and that any transfer should be subject to the existing regime under the 2009 Act, with the decision maker remaining the MMO.	Please see response to MMO-13.	Please see MMO comments within section 2 of this document regarding Article 5.
MMO-19	3.3.7 This Article 6(2)(b) gives the right to temporarily transfer the benefits of the DCO (including DML) to a third party.	Please see response to MMO-13.	Please see MMO comments within section 2 of this document regarding Article 5.
MMO-20	3.3.8 Article 6(2)(b) "6(2)(b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including the deemed marine licences) and such related statutory rights as may be so agreed, except where paragraph (6) applies, in which case the consent of the Secretary of State is not required."	Please see response to MMO-13.	Please see MMO comments within section 2 of this document regarding Article 5.
MMO-21	3.3.9 The MMO resists the inclusion of this article. Here the written consent of the SoS is not required. The MMO does not recognise that this would create a more streamlined system. Rather it simply operates to create an additional administrative procedure for marine licences (and one not	Article 5(3) of the draft DCO requires Secretary of State consent to the transfer/grant of the benefit of the deemed marine licence(s), subject to the very limited exceptions in sub-paragraph (8).	Please see MMO comments within section 2 of this document regarding Article 5.

	envisaged by Parliament) and with no clarity in how it will operate.		
MMO-22	3.3.10 Article 5(6) “5(6) The Secretary of State must consult the MMO before giving consent to the transfer or grant to another person of the benefit of any or all of the provisions of any of the deemed marine licences.”	This drafting follows precedent including the recently made Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024. In the Examination of that Order, a submission was made by the MMO on the same terms and the wording of the equivalent article was specifically nevertheless included by the Secretary of State. The Applicant accordingly submits that this issue has been considered by the Secretary of State whose position is clear. This drafting is well precedented and cannot reasonably be described as ‘highly irregular’ (MMO-24) in the context of offshore wind DCOs. In addition to Sheringham as quoted above, this wording was also included in (as examples and not an exhaustive list) the Hornsea Four Offshore Wind Farm Order 2023 (article 5(6)), Hornsea Three OWF 2020 (article 5(6)), East Anglia Three Offshore Wind Farm Order 2017 (article 5(3)) and the Galloper Wind Farm Order 2013 (article 7(2)).	Please see MMO comments within section 2 of this document regarding Article 5.
MMO-23	3.3.11 The MMO notes that there is no obligation for the SoS to take into account the views of the MMO when providing its consent. Furthermore, there is no obligation for the MMO to be informed of the decision of the SoS, notwithstanding its impact on the MMO as the licencing authority.	Please see response to MMO-22.	Please see MMO comments within section 2 of this document regarding Article 5.
MMO-24	3.3.12 From a regulatory perspective it is highly irregular that a decision to transfer a licence should not be the decision of the regulatory authority in that area (the MMO) but instead should be subject to such a cursory process as is set out in Article 5(1)-	Please see response to MMO-22.	Please see MMO comments within section 2 of this document regarding Article 5.

	(3). The MMO thus resists this change as unworkable.		
MMO-25	3.3.13 As explained above, Articles 5 (1)-(3) sets out what is effectively a new nonlegislative regime for the variation and transfers of marine licences. In support of these provisions, Article 5(9) explicitly disapplies sections 72(7) and (8) of the 2009 Act, which would otherwise govern these procedures.	Please see response to MMO-13 and MMO-22.	Please see MMO comments within section 2 of this document regarding Article 5.
MMO-26	3.3.14 Article 5(9) “(9) Section 72(7) and (8) of the 2009 Act do not apply to a transfer or grant of the whole or part of the benefit of the provisions of any of the deemed marine licences to another person by the undertaker pursuant to an agreement under this article 6 (benefit of the Order) save that the MMO may amend any deemed marine licence granted under Schedule 10 or Schedule 11 of the Order to correct the name of the undertaker to the name of a transferee or lessee under this article 6 (benefit of the Order).”	Please see response to MMO-13 and MMO-29.	Please see MMO comments within section 2 of this document regarding Article 5.
MMO-27	3.3.15 This conflicts with the MMO’s stated position that the DML granted under a DCO should be regulated by the provisions of 2009 Act, and specifically by all provisions of section 72.	Please see response to MMO-13 and MMO-29.	Please see MMO comments within section 2 of this document regarding Article 5.
MMO-28	3.3.16 Section 72(7)(a) of 2009 Act 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 that should be retained and used in relation to the DML granted under the DCO and the MMO therefore resists the inclusion of this article 6(9) to disapply these provisions.	Please see response to MMO-13 and MMO-29.	Please see MMO comments within section 2 of this document regarding Article 5.
MMO-29	3.3.17 The key concern held by the MMO is that Article 5 operates to override and/or unsatisfactorily	The Applicant notes the MMO’s position, but does not agree with it. The position put forward by the	Please see MMO comments within section

	<p>duplicate provisions that already exist within MCAA 2009 for dealing with variations to marine licences. Such provisions are also inconsistent with the PINS Guidance on how DMLs should operate within a DCO. Advice Note Eleven, Annex B – Marine Management Organisation National Infrastructure Planning (https://infrastructure.planninginspectorate.gov.uk/legislation and advice/advice-notes/an11-annex-b/) provides that where the undertaker chooses to have a marine licence deemed by a DCO, the MMO, “will seek to ensure wherever possible that any deemed licence is generally consistent with those issued independently by the MMO.” Article 5 as drafted is not in compliance with this guidance.</p>	<p>MMO is not in keeping with precedent and recent decision-making by the Secretary of State, as referred to in MMO13 and MMO-22. Furthermore, the Applicant does not agree with the premise of the MMO’s approach, which is that the MCAA should prevail. This is contrary to the intention and drafting of the Planning Act 2008. If the MCAA was to prevail in all circumstances, the Planning Act 2008 would not provide for the grant of deemed consent under a marine licence as per section 149A, in line with Parliament’s intention to streamline the consenting process in passing that Act.</p>	<p>2 of this document regarding Article 5.</p>
MMO-30	<p>3.4.1 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 the statement that the activities authorised under the DCO and DML should be limited to those that are assessed within the EIA, and the statement that activities will be limited to those that ‘do not give rise to any materially new or materially different environmental effects’ should be updated to clarify this.</p>	<p>The MMO’s comments in respect of the intention of the EIA process and related legislation are noted. However, it is an essential component of EIA that the assessment is proportionate, allowing for knowledge of likely significant effects and for their control as appropriate. The EIA regime does not exist to elucidate on and control every effect, regardless of its level of significance, and nor is that the intention of the EIA legislation. On that basis, allowing actions which can be demonstrated not to have materially new or different environmental effects cannot be contrary to the EIA regime or the purpose of legislation underpinning it. If an effect is not materially new or different, it cannot rise to the level of there being a risk of a significant effect not assessed in the EIA. This drafting is well-precedented and has been recently deemed to be acceptable by the Secretary of State. It is included in the</p>	<p>Please see MMO comments within section 2 of this document regarding the use of “materially”.</p>

		<p>Sheringham Shoal and Dudgeon Extension Projects Offshore Wind Farm Order 2024, where it is included in Part 1 of the DMLs for that Order: “8(2) Any amendments to or variations from the approved details, plans or schemes must be in accordance with the principles and assessments set out in the environmental statement and approval of an amendment or variation 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.”</p>	
MMO-31	<p>3.4.2 The MMO considers that wording should be updated to ‘do not give rise to any new or different environmental effects to those assessed in the environmental information’. This also applies to the definition of “maintain”.</p>	<p>Please see response to MMO-30.</p>	<p>Please see response to MMO-30.</p>
MMO-32	<p>3.4.3 The intention behind EIA is to protect the environment by ensuring that in deciding whether to grant a development consent for a project, and in deciding what conditions to attach to that consent, the decision has full knowledge of what the likely significant environmental effects of the project/development will be. That knowledge then guides the consent process and what conditions, if any, to attach to the consent. Additionally, there is considerable public consultation under the EIA process because the process recognises the importance of local knowledge in environmental decision making.</p>	<p>Please see response to MMO-30.</p>	<p>Please see response to MMO-30.</p>
MMO-33	<p>3.4.4 The EIA legislation was designed to apply to those plans/projects which could be sufficiently detailed and particularised at the application stage,</p>	<p>Please see response to MMO-30.</p>	<p>Please see response to MMO-30.</p>

	to allow the consenting decision to be taken in the full knowledge of what the likely significant effects of that plan or project would be. In such circumstances, it would be unnecessary to create a legal obligation under the order which requires the activities to remain within what was assessed under the EIA, because the consent authorises the detailed and well particularised project, assessed in the EIA to be carried out, and therefore, providing the development is constructed as per the consent, those works would, by default, remain within the parameters of the EIA.		
MMO-34	3.4.5 The difficulty identified with EIA, as was discussed in the Rochdale Envelope case, is that to deal with an outline planning case, where the project will flex over time, the EIA must be undertaken at the outline permission stage when there is not enough detail to properly identify what the final design of the project will be. In the case of Rochdale, the court decided the project details could remain flexible providing the EIA took account of the need for evolution of the project over time and assessed the likely significant effects within clearly defined parameters, and then the consent granted imposed conditions to ensure that the process of evolution kept within the parameters of the EIA. Whilst there might not be an express provision that can be identified in the legislation that says that a project cannot exceed the effects assessed in the EIA, it is implied (or the purpose of EIA would be undermined) and the Rochdale case discusses this.	Please see response to MMO-30.	Please see response to MMO-30.
MMO-35	3.4.6 The MMO does not consider that it is appropriate to use the word material in these circumstances. If the Applicant wants the flexibility of	Please see response to MMO-30.	Please see response to MMO-30.

	not being prescriptive about the design from the start, the Order and the DML granted through it should restrict works which can be carried out to those which do not give rise to any new or different environmental effects to those assessed in the EIA.		
MMO-36	3.5.1 Under the DCO legislative regime, it remains possible for developers (undertakers) to seek consent for a marine licence directly with the MMO (rather than having a DML integrated into the DCO). This flexibility underlines the fact that the DCO process simply integrates the existing mechanism for granting a marine licence. It should not therefore be used as a vehicle to alter or distort established processes and procedures, such as those for the transfer of a marine licence.	Please see response to MMO-13.	Please see response to MMO-13.
MMO-37	3.6.1 Piecemeal changes to aspects of the marine licence regime by way of the DCO can undermine the ability to enforce the marine licence. Under the DCO, it remains the MMO who will be responsible for enforcing marine licences (both deemed or granted independently). It is therefore vital that all marine licences are clear and enforceable. Consistency is a key element in achieving this, and this is best achieved by ensuring that the MMO has full responsibility for the marine licence process.	The Applicant notes the MMO's concern and refers the MMO to the provisions of the dDCO, which do not seek to deprive the MMO of its enforcement capabilities. In respect of the transfer of DMLs, please see responses to MMO-13.	Noted. Please see MMO comments within section 2 of this document regarding Article 5.
MMO-38	3.7.1 Not only is this unnecessary (given that Parliament has already created a statutory regime for such a process), but it is also unclear what purpose the written consent of the SoS serves here. For example: If the intention is for the undertaker to be able to transfer the benefits under the terms of the DCO outside the established procedures under MCAA 2009 (which the MMO opposes), why is it considered necessary or appropriate for the SoS to	The drafting provided in the dDCO is well-precedented and has been deemed to be acceptable by the Secretary of State, as set out in the response to MMO-13.	Please see MMO comments within section 2 of this document regarding Article 5.

	'approve' the transfer of the DML (even going so far as to include an obligation to consult the MMO)? It is also unclear what criteria the SoS would be taking in determining whether to approve any transfer, and how this would differ from a consent granted by MMO under MCAA 2009.		
MMO-39	3.8.1 It is unclear how the wording would work in practice. It would be necessary to vary the licence to change the details of the licence holder.	Please see response to MMO-13.	Please see MMO comments within section 2 of this document regarding Article 5.
MMO-40	3.8.2 The transfer of the licence would happen first, and then the licence would still need to be varied. After the transfer of the licence, the new licensee would have a marine licence which would still be in the name of the licensee who had transferred the licence. The new licensee would have no authorisation to carry out any acts until the variation had taken place and until the variation had been affected, the old licence holder would remain liable for any actions undertaken.	Please see response to MMO-13.	Please see MMO comments within section 2 of this document regarding Article 5.
MMO-41	3.8.3 Once again this creates additional confusion and administrative layers in lieu of relying on the existing legislative provisions. The procedure under s. 72 MCAA avoids this issue, which is an additional reason why it is preferred.	Please see response to MMO-13.	Please see MMO comments within section 2 of this document regarding Article 5.
MMO-42	3.8.4 Because of this confusion and potential duplication, it is the position of the MMO that these provisions should be removed, and that any transfer should be subject to the existing regime under the MCAA 2009, with the decision maker remaining the MMO.	Please see response to MMO-13.	Please see MMO comments within section 2 of this document regarding Article 5.
MMO-43	3.9.1 The MMO has provided a detailed comments in Table 1 below. Please find a summary of the main concerns below.	Noted.	No further comment.

Draft DCO/DML			
MMO-44	<p>Part 1 – Preliminary Interpretation (2)(1) “Five Estuaries” means the nationally significant infrastructure project known as Five Estuaries Offshore Wind Farm, being an offshore electricity generating station approximately 37km from the coast of Suffolk, and being the authorised development consented by the Five Estuaries Offshore Wind Farm Order 202[];</p> <p>Please write kilometres in full on first use, and follow with the acronym in brackets.</p>	The Applicant has updated this in the dDCO [6.1.1, Rev 2] at Deadline 1.	The MMO welcomes this update.
MMO-45	<p>Part 1 – Preliminary Interpretation (2)(1) “Jacket Foundation” means a lattice type structure constructed of steel and additional equipment such as, J-tubes, corrosion protection systems and access platforms attached to the seabed;</p> <p>The MMO advises the text is updated to align with the East Anglia 2 definition of jacket foundation (adapted accordingly for the North Falls Project): “Jacket foundation” means a lattice type structure constructed of steel which is fixed to the seabed at 3 or more points with steel pin piles or steel suction buckets and associated equipment including scour protection, J-tubes, corrosion protection systems and access platforms.</p>	The Applicant considers its definition of “jacket foundation” to be appropriate and notes this aligns with the wording in the Hornsea Four Offshore Wind Farm Order 2023 and Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024.	The MMO does not agree that the reasoning that this definition ‘aligns with the wording in the Hornsea Four Offshore Wind Farm Order 2023 and Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024’ provides enough justification for not updating the definition. The MMO notes that previous DCOs may have similar definitions, however upon review, the definition has been expanded to provide clarity of the jacket foundation structure. The updated

			definition allows all parties to be clear what jacket foundation is and this is reflected. The MMO maintains the position that the definition of jacket foundation should be updated.
MMO-46	<p>Part 1 – Preliminary Interpretation (2)(1) “mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;</p> <p>The MMO requests the definition is updated to: ‘The height of Mean High-Water Springs (MHWS) is the average throughout the year, of two successive high waters, during a 24- hour period in each month when the range of the tide is at its greatest (Spring tides).</p>	The Applicant considers its definition of “mean high water springs” to be appropriate and notes this aligns with the wording in the Hornsea Four Offshore Wind Farm Order 2023 and Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024.	The MMO does not agree that the reasoning that this definition ‘aligns with the wording in the Hornsea Four Offshore Wind Farm Order 2023 and Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024’ provides enough justification for not updating the definition. The MMO notes that previous DCOs may have similar definitions, however upon review, the definition has been expanded to provide further clarity as MHWS does change over time. The updated definition allows all parties to be clear what MHWS is and this is reflected. The MMO’s

			maintains the position that there should be clarity on the 'period of time'.
MMO-47	<p>Part 1 – Preliminary Interpretation (2)(1) “undertaker” means, subject to article 5 (benefit of the Order), North Falls Offshore Wind Farm Limited (company number 12435947).</p> <p>The undertaken definition must be updated. The Applicant should remove ‘subject to article 5’ (benefit of the Order).</p>	The definition of “undertaker” in the draft DCO is correct and appropriate. The inclusion of “subject to article 5 (benefit of the Order)” provides for the benefit of the Order to be transferred and for the transferee to benefit from the provisions of the Order insofar as transferred and also importantly to be subject to the other obligations and limitations on the “undertaker”.	The MMO maintains the position that the Applicant should remove ‘Subject to article 5’ (benefit of the order). Please see section 2 for further detail on benefit of the order.
MMO-48	<p>Part 2 – Principal powers Benefit of the order Please see section 3.3.1 in this document for further information.</p> <p>Please see section 3.3.1 in this document for further information.</p>	Please see responses to MMO-13 and following.	Please see response to MMO-13.
MMO-49	<p>Part 4 – Interpretation 30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 18 (protective works to buildings), article 19 (authority to survey and investigate the land onshore), article 31 (temporary use of land for carrying out the authorised development) or article 32 (temporary use of land for maintaining the authorised development) of the North Falls Offshore Wind Farm Order 202[].”</p> <p>The Applicant has mislabelled the section. There is already a part 4. Please confirm that this schedule interpretation is for the onshore works only.</p>	The Article referred to in this representation, Article 29, modifies the Compulsory Purchase Act 1965. The “Part 4” referred to in the MMO’s representation is a new Part 4 to be read as added to Schedule 2A of the 1965 Act by operation of the dDCO. No amendment is necessary.	Noted. MMO welcomes this clarification.
MMO-50	. Part 7 - Miscellaneous and general Application of landlord and tenant law 37.—(1) This article applies to— (a) any agreement for leasing to any person the	This article applies to regulate the relationship between the undertaker and any lessee under article 5 of the draft DCO to ensure that the	Noted. MMO welcomes the clarification.

	<p>whole or any part of the authorised development or the right to operate the same; and (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use. (2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies. (3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by and under any such agreement so as to — (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter; (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the least of any obligation of any other party under the lease.</p> <p>Please confirm this is for onshore works only.</p>	<p>agreement between those parties takes precedence over any potentially applicable landlord and tenant law. It is not specific to onshore or offshore although given the jurisdictional nature of landlord and tenant law in the UK, it is likely only to apply onshore.</p>	
MMO-51	<p>Part 7 - Miscellaneous and General Operational land for the purposes of the 1990 Act 38. Development consent granted by this Order is treated as specific planning permission for the purposes of section</p>	<p>References to the Town and Country Planning Act 1990 make clear that the planning permission has the same definition as provided for under that act. In any event, no such definition is required here as the Applicant is not applying for planning</p>	<p>The MMO maintains its position requesting that planning permission is defined within the Order.</p>

	<p>264(3)(a) of the 1990 Act (cases in which land is to be treated as not being operational land).</p> <p>There is no definition of planning permission. The MMO requests this is defined within the Order.</p>	<p>permission and the Article is capable of being understood by reference to the relevant section of the 1990 Act provided.</p>	
MMO-52	<p>Part 7 - Miscellaneous and general Arbitration 42. (2) For the avoidance of doubt, any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order will not be subject to arbitration.</p> <p>The MMO supports this condition.</p>	<p>Noted.</p>	<p>No further comment.</p>
MMO-53	<p>Part 7 - Miscellaneous and general Abatement of works abandoned or decayed 44. Where any of the offshore works or all of them or any part of them, is abandoned or allowed to fall into decay the Secretary of State may, following consultation with the undertaker, issue a written notice requiring the undertaker at its own expense either to repair, make safe and restore one or any of those Works, or any relevant part of them, or to remove them or any relevant part and, without prejudice to any notice served under section 105(1) of the 2004 Act restore the site to a safe and proper condition, to such an extent and within such limits as may be specified in the notice.</p> <p>The MMO advises this condition is updated to say the undertaker must ensure they also obtain the necessary consents.</p>	<p>This Article provides for the Secretary of State serving a notice on the undertaker to repair, make safe, or restore works which have been abandoned or have been allowed to fall into decay. The Article of the DCO, once granted, along with the notice provided by the Secretary of State, form the necessary consent to carry out the works. To require a further consenting process misunderstands the purpose of the Article, which is to ensure that works permitted under the DCO are maintained and any state of disrepair which is unacceptable to the Secretary of State is promptly remedied. The drafting provided in the dDCO is well-precedented, and was recently approved by the Secretary of State at article 38 of the Sheringham Shoal and Dudgeon Extension Projects Offshore Wind Farm Order 2024 and at article 41 of the Hornsea Four Offshore Wind Farm Order 2023.</p>	<p>The MMO notes the Applicant's response and will provide an update at Deadline 3.</p>

MMO-54	<p>Schedule 1 – Authorised Project Part 2 – Ancillary works Works within the Order limits which fall within the scope of the work assessed by the environmental statement comprising— (a) intrusive ground investigations including the making of bore holes and trial pits; (b) temporary landing places, moorings or other means of accommodating vessels in the construction, maintenance and/or decommissioning of the authorised development; (c) marking buoys, beacons, fenders and other navigational warning or ship impact protection works; and (d) temporary works for the benefit or protection of land, watercourses or structures affected by the authorised development.</p> <p>The Applicant should clearly identify all marine licensable activities within the DMLs. If there are any ancillary works that will be subject to a separate marine licence application, this should be clearly stated within the documents.</p>	Details of the marine licensable activities are set out in Part 1 of the DMLs in the dDCO. Please refer to Part 1 of Schedules 8 – 10.	No further comment.
MMO-55	<p>Schedule 13 - Arbitration Rules</p> <p>The MMO notes that the MMO and DMLs are not referenced within the Arbitration Rules Schedule. This is appropriate as the MMO has its own mechanisms for appealing decisions.</p>	Noted. Schedule 13 does not apply to decisions where consent of the MMO is required by virtue of Article 42(2).	No further comment.
MMO-56	<p>Schedule 15 - Compensation to protect the coherence of the National Site Network 2.—(1) The undertaker will form and administer the OOEG before carrying out any works to deliver the compensation measure under a LBBG CIMP to be approved under this Schedule. The undertaker will invite representatives from the following organisations to participate in the OOEG— (a)</p>	Noted.	No further comment.

	<p>Marine Management Organisation; (b) Natural England; (c) the relevant planning authority; and (d) the Royal Society for the Protection of Birds. (2) The OOEG must be convened and consulted on the proposed LBBG CIMP before any approval of the LBBG CIMP is sought by the undertaker under paragraph 3.</p> <p>The MMO notes that they will be a core member within the Offshore Ornithology Engagement Group (OOEG). This is appropriate as the compensation measures may require a marine licence consent and therefore the MMO should be aware of the discussions. However, the MMO highlights that the MMO will not act as arbitrator and is in attendance in relation to the marine licensable requirements of such compensation. The MMO defers to the Statutory Nature Conservation Body (SNCB) on the need for, or amount of, compensation. The level of compensation required is not for the MMO to determine.</p>		
MMO-57	<p>Part 1 - Licenced Marine Activities interpretation Titles For DML 1 – DML 3 ‘Marine Licence...’</p> <p>Throughout the DCO and DMLs all the definitions and titles must be updated to state the 3 DMLs are ‘Deemed Marine Licences’. E.g. ‘(Deemed Marine Licence 1: North Falls Offshore Wind Project Generation Assets –)’. This is to ensure accuracy.</p>	<p>The DMLs set out at Schedules 8 – 10 of the dDCO are described as deemed marine licences in the titles of those Schedules and in Article 36 of the dDCO as requested by the MMO. The Applicant considers any further numbering of the DMLs (1 – 3) to be potentially confusing with the scheduling numbers, and not in accordance with drafting precedent for offshore wind farms.</p>	<p>The MMO notes the Applicant’s response and will provide an update at Deadline 3.</p>
MMO-58	<p>Part 1 - Licenced Marine Activities interpretation For DML 1 – DML 3 “authorised deposits” means the substances and articles specified in paragraph 4 of this licence;</p>	<p>The Applicant considers this update to be inappropriate. To require additional approval by the MMO would mean that certain elements of the DMLs are not deemed to be approved by the grant of consent by the Secretary of State. This</p>	<p>The MMO notes the Applicant’s response and will provide an update at Deadline 3.</p>

	<p>The MMO requests this is updated to clarify that the materials need approval by the MMO in order to be deposited.</p>	<p>would run contrary to Parliament’s intention expressed in section 149A of the Planning Act 2008, which allows for marine licences to be deemed to be granted, without the need for a separate licensing process, if included in a development consent order granted by the Secretary of State.</p>	
MMO-59	<p>Part 1 - Licenced Marine Activities interpretation For DML 1 – DML 3 “cable protection” means physical measures for the protection of cables including but not limited to concrete mattresses, split pipe system, and/or rock placement (including material used for cable crossings);</p> <p>The MMO requests the condition wording is updated to the below to ensure that the reason why cable protection is being used is clear. “cable protection” means measures for offshore cable crossings and where cable burial is not possible due to ground conditions or approaching offshore structures, to protect cables forming part of the authorised scheme from physical damage and exposure due to loss of seabed sediment including, but not limited to, rock placement, concrete mattresses with or without frond devices, protective aprons or coverings, bagged solutions filled with sand, rock, grout or other materials and protective shells;”.</p>	<p>The Applicant notes the MMO’s request, but also notes that the reasons why cable protection might be used is described in the DCO application and in the Environmental Statement. From a legal DCO drafting standpoint, the addition requested is unnecessary and would serve no useful purpose. The Applicant is not aware of any such provision in any offshore wind DCO or DML.</p>	<p>The MMO notes the Applicant’s response and will provide an update at Deadline 3.</p>
MMO-60	<p>Part 1 - Licenced Marine Activities interpretation For DML 1 – DML 3 “jacket foundation” means a lattice type structure constructed of steel, and additional equipment such as J-tubes, corrosion protection systems and access platforms attached to the seabed;</p>	<p>The Applicant considers its definition of “jacket foundation” to be appropriate and notes this aligns with the wording in the Hornsea Four Offshore Wind Farm Order 2023 and Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024.</p>	<p>The MMO does not agree that the reasoning that this definition ‘aligns with the wording in the Hornsea Four Offshore Wind Farm Order 2023 and Sheringham Shoal</p>

	<p>The MMO advise the text is updated to align with the East Anglia 2 definition of jacket foundation (adapted accordingly for the DBS project): “jacket foundation” means a lattice type structure constructed of steel which is fixed to the seabed at [3 or more points with steel pin piles or steel suction buckets] and associated equipment including scour protection, J-tubes, corrosion protection systems and access platforms.</p>		<p>and Dudgeon Extensions Offshore Wind Farm Order 2024’ provides enough justification for not updating the definition. The MMO notes that previous DCOs may have similar definitions, however upon review, the definition has been expanded to provide clarity of the jacket foundation structure. The updates definition allows all parties to be clear what jacket foundation is and this is reflected. The MMO maintains the position that the definition of jacket foundation should be updated.</p>
MMO-61	<p>Part 1 - Licenced Marine Activities interpretation For DML 1 – DML 3 “maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace (including replenishment of cable protection) to the extent assessed in the environmental statement, and “maintenance” must be construed accordingly;</p> <p>The MMO advise the text is updated to: “maintain” includes inspect, upkeep, repair, adjust, alter, and further includes remove, reconstruct and replace (but</p>	<p>The Applicant considers the definition of “maintain” is appropriate and is limited by the assessment accompanying the DCO application.</p>	<p>The MMO maintains its position that the definition of maintain is updated to: “maintain” includes inspect, upkeep, repair, adjust, alter, and further includes remove, reconstruct and replace (but only in relation to any of the ancillary works in Part 2 of Schedule 1</p>

	<p>only in relation to any of the ancillary works in Part 2 of Schedule 1 (ancillary works) to the Order and any component part of any wind turbine generator, offshore electrical platform, construction, operations and maintenance platform or meteorological mast described in Part 1 of Schedule 1 (authorised developed) to the Order not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and “maintenance” must be construed accordingly. The MMO notes that within conditions or within attached/supporting Plans (for example "Offshore Operations and Maintenance Plan") where "replacement" is noted that it references its limitations of the replacement to be in line with "like-for-like" or "as within the project envelope".</p>		<p>(ancillary works) to the Order and any component part of any wind turbine generator, offshore electrical platform, construction, operations and maintenance platform or meteorological mast described in Part 1 of Schedule 1 (authorised developed) to the Order not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and “maintenance” must be construed accordingly. The MMO notes that within conditions or within attached/supporting Plans (for example "Offshore Operations and Maintenance Plan") where "replacement" is noted that it references its limitations of the replacement to be in line with "like-for-like" or "as within the project envelope".</p>
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MMO-62	<p>Part 1 - Licenced Marine Activities interpretation For DML 1 – DML 3 MHWS” or “mean high water springs” means the highest level that spring tides reach on average over a period of time;</p> <p>The MMO request the definition is updated to: ‘The height of Mean High Water Springs (MHWS) is the average throughout the year, of two successive high waters, DML1 - DML 5 during a 24-hour period in each month when the range of the tide is at its greatest (Spring tides).</p>	The Applicant considers its definition of “mean high water springs” to be appropriate and notes this aligns with the wording in the Hornsea Four Offshore Wind Farm Order 2023 and Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024.	The MMO does not agree that the reasoning that this definition ‘aligns with the wording in the Hornsea Four Offshore Wind Farm Order 2023 and Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024’ provides enough justification for not updating the definition. The MMO notes that previous DCOs may have similar definitions, however upon review, the definition has been expanded to provide further clarity as MHWS does change over time. The updated definition allows all parties to be clear what MHWS is and this is reflected. The MMO’s maintains the position that there should be clarity on the ‘period of time’.
MMO-63	Part 1 - Licenced Marine Activities interpretation For DML 1 – DML 3 4(c) Marine Management Organisation (Local Office) Miranda House The Quay Harwich CO12 3HH	The Applicant has amended the address in the draft DCO [6.1.1, Rev 2] at Deadline 1.	The MMO welcomes this update.

	The MMO requests that the local MMO Office address be updated to the following address, including the telephone number: Marine Management Organisation Pakefield Road Lowestoft NR33 0HT Tel: 0208 0260654		
MMO-64	<p>Part 2 – Conditions – Design Parameters DML 1: Design Parameters Condition 10 (5) DML 2: Condition 10 (3) DML 3: Condition 10 (3)</p> <p>The MMO requests the wording of these conditions are updated to ensure they are enforceable by changing ‘may’ to ‘will’ or by stating ‘must not be higher’ etc. for all conditions.</p>	<p>In the DML at Schedule 8 of the dDCO, Condition 10(5) is as follows: No wind turbine generator— (a) jacket foundation employing pin piles forming part of the authorised development may— (i) have a pin pile diameter of greater than six meters; and (ii) employ more than eight pin piles per jacket foundation; and (b) monopile foundation forming part of the authorised development may not have a diameter greater than 17 metres.</p> <p>In the DML at Schedule 9 and DML at Schedule 10, Condition 10(3) is as follows: No offshore converter platform— (a) jacket foundation employing pin piles forming part of the authorised development may— (i) have a pin pile diameter of greater than 3.5 metres; and (ii) employ more than 12 pin piles per jacket foundation; and (b) monopile foundation forming part of the authorised development may not have a diameter greater than 17 metres The word “will” does not appear in either condition.</p>	The MMO request that the wording of these conditions are updated to ensure that they are enforceable by changing ‘may’ to ‘will’ or by stating ‘must not be higher’ etc for all conditions.
MMO-65	<p>Part 2 – Conditions – Maintenance of the authorised development DML 1: Condition 12 (4) DML 2: Condition 13 (4) DML 3: Condition 12 (4)</p> <p>The MMO requests the wording of these conditions are updated to the following wording: (4) XXXX must not commence until an Offshore Operations and</p>	The Applicant notes that the details requested for inclusion in the OOMP in the proposed drafting are already provided for in the Outline OOMP [APP-255]. The current drafting of this condition in the dDCO means that these details would need to be included in the OOMP, which is required to be “substantially in accordance with the outline	The MMO notes the Applicant’s response and will provide an update at Deadline 3.

	<p>Maintenance Plan (OOMP) has been submitted to and approved by the MMO in accordance with the ‘Outline Offshore Operations and Maintenance Plan’ in writing. The OOMP must include, but is not limited to— (a) a list of maintenance activities within the marine environment that are planned for the lifetime of the licensed activities; (b) details of the typical construction plant, machinery and personnel requirements for each maintenance activity and any requirements for detailed method statements; (c) details of the typical frequency and timing of each maintenance activity; and (d) details of controls and mitigation that will be in place in order to protect the marine environment. (4) The OOMP must be reviewed every three years commencing from the date on which the OOMP was approved, unless otherwise agreed by the MMO, to ensure the details of the maintenance activities remain accurate. The conclusions of that review must be submitted to and approved by the MMO in writing. (5) The OOMP must be implemented as approved by the MMO. (6) Unless otherwise agreed in writing with the MMO, the undertaker must submit— (a) the first OOMP at least 6 months prior to the proposed commencement of the works; (b) the updated OOMPs in paragraph (2), at least 6 months before such revised OOMP is required to be put in place; and (c) any updated OOMP covering additional activities as soon as possible after the need for such additional activities is identified.</p>	<p>offshore operations and maintenance plan”. The drafting provided in the dDCO is well-precedented – see, for example, the Sheringham Shoal and Dudgeon Extension Projects Offshore Wind Farm Order 2024 (Schedule 11, Part 2, Condition 13(1)(f)), the Hornsea Four Offshore Wind Farm Order 2023 (Schedule 11, Part 2, Condition 4(4)), and the East Anglia TWO Offshore Wind Farm Order 2022 (Schedule 13, Part 2, Condition 17(1)(h)). The Applicant therefore does not agree that the MMO’s proposed revision is necessary.</p>	
MMO-66	<p>Extension of time periods DML 1: Condition 14 DML 2: Condition 15 DML 3: Condition 14</p>	<p>The Applicant notes that comments under 3.2.1 – 3.23 relate to Unexploded Ordnance (UXO). Paragraphs 3.2.4 and 3.2.5 are not included in the MMO’s representation. It is the Applicant’s</p>	<p>The MMO notes the Applicant’s response and will provide an update at Deadline 3.</p>

	The MMO requests this condition is removed from all the DMLs. Please see comments under 3.2.1-3.2.5 Determination dates.	position that this condition should be detained in all three DMLs. It is well-precedented and operates to allow extension of timeframes applying to both the undertaker and the MMO with consent of the other party. This therefore avoids arbitrary deadlines when parties are agreed an extension is necessary, and operates to the benefit of both the Applicant and the MMO.	
MMO-67	<p>Notifications and inspections DML 1: Condition 15 (1) (b) DML 2: Condition 16 (1) (b) DML 3: Condition 15 (1) (b)</p> <p>The MMO request this section of the condition is removed. It is the undertaker's responsibility to notify the MMO.</p>	This condition requires the undertaker to provide copies of the marine licences to agents, contractors and vessel masters and offshore operations managers. It is the undertaker's responsibility to provide the MMO with details of these agents, contractors and vessel masters and offshore operations managers. This condition requires those agents, contractors and vessel masters and offshore operations managers to confirm to the MMO that they have received a copy of the marine licence (and any variations). It remains the undertaker's responsibility to ensure that a copy of the marine licence is held on board any vessel being used to carry out the licensed activities, and has been read and understood by the masters of those vessels. The Applicant does not propose to remove this condition. It does not detract from any responsibility of the undertaker. Rather, it provides an added layer of confirmation to reassure the MMO that the undertaker has complied with its obligation to provide copies of the marine licence.	The MMO notes the Applicant's response and will provide an update at Deadline 3.
MMO-68	Notifications and inspections DML 1: Condition 15 (6) DML 2: Condition 16 (6) DML 3: Condition 15 (6)	The Applicant considers these amendments to be unnecessary. The time period of 5 days is standard including in the most recent Sheringham Shoal and Dudgeon Extensions Offshore Wind	The MMO notes the Applicant's response and will provide an update at Deadline 3.

	<p>The MMO should be notified upon commencement and completion of any part of the licensed activities, particularly when works are being undertaken in phases. The MMO requests the condition is updated to: (6) The undertaker must inform the MMO Local Office in writing at least 14 days prior to the commencement of the licensed activities or any part of them including providing a programme of works for future activities and within five days of the completion of the licensed activities or any part of them.</p>	<p>Farm Order 2024 and the Hornsea Four Offshore Wind Farm Order 2023 and there is no valid administrative reason to increase the administrative burden on the Applicant. The Applicant also considers the provision of a programme of works to be unnecessary as this would create additional administrative burden for both the undertaker and the MMO, for little to no benefit, seeing as notification is required before the start of licensed activities in any event. Furthermore, the details of the programme of works will already have been provided to the MMO in the pre-construction plans and documentation conditioned in each of the DMLs (see Schedule 8, Part 2, Condition 21; Schedule 9, Part 2, Condition 22; Schedule 10, Part 2, Condition 22). Adding a requirement for a programme of works for future activities with each notification is unnecessary.</p>	
MMO-69	<p>Notifications and inspections DML 1: Condition 15 (7) (a -b) DML 2: Condition 16 (7) (a -b) DML 3: Condition 15 (7) (a -b)</p> <p>Please update the condition to: 7) The undertaker must inform the Kingfisher Information Service of Seafish by email to kingfisher@seafish.co.uk of details of the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant part — (a) at least 14 days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; (b) on completion of construction of the authorised scheme, and</p>	<p>The Applicant has included “by email to kingfisher@seafish.co.uk” in the draft DCO at Deadline 1. The other changes requested by the MMO are already included in the conditions referred to.</p>	<p>The MMO welcomes this update.</p>

	confirmation of each notification must be provided to the MMO within five days.		
MMO-70	<p>Notifications and inspections DML 1: Condition 15 (10) DML 2: Condition 16 (10) DML 3: Condition 15 (10)</p> <p>This condition states the undertaker must notify the UK Hydrographic Office (UKHO) of the progress of the licensed activities. The Applicant should clarify the reporting timeframe and what progress (stages) will require a notification. If this is agreed in a plan, this plan should be referenced and the condition the plan will be approved under.</p>	The condition provides that the undertaker “must make such notifications to the UK Hydrographic Office of the progress of the licenced activities as are reasonably required in order that all necessary amendments to nautical and aeronautical charts are made”. This requires the exercise of professional judgment in the context of the ongoing works, to ascertain whether amendments are necessary to nautical and aeronautical charts. Replacing this with a specified timeframe would be arbitrary and would not allow for the exercise of professional judgment, which would not serve the ultimate intention of the condition in ensuring that nautical and aeronautical charts are updated and fit for purpose. The Applicant’s position is that the MMO’s proposed revision is not necessary, noting this is in addition to the requirement to notify the commencement and completion of the licensed works.	The MMO notes the Applicant’s response and will provide an update at Deadline 3.
MMO-71	<p>Notifications and inspections DML 1: Condition 15 (11) DML 2: Condition 16 (11) DML 3: Condition 15 (11)</p> <p>The MMO request the condition is updated to clarify the local MMO office and the MMO marine licensing team should be notified of any damage, destruction or decay.</p>	The Applicant has amended the draft DCO at Deadline 1 to ensure that the MMO Local Office and the MMO are referred to.	The MMO welcomes this update.
MMO-72	Notifications and inspections DML 1: Condition 15 (13) DML 2: Condition 16 (13) DML 3: Condition 15 (13) ‘The undertaker must notify the MMO in writing a minimum of five days in advance of the	The Applicant considers its proposed timescales are appropriate, and well precedented e.g. in the Hornsea Four Offshore Wind Farm Order 2023. The other amendments sought are also not	The MMO notes the Applicant’s response and will provide an update at Deadline 3.

	<p>commencement of each discrete incident of cable repair, replacement, or protection replenishment activity. Such a notification must include proposed timings and a description of proposed methodologies.'</p> <p>The MMO requests this is updated to "at least 14 days prior to the commencement"... In addition, the condition should clearly define repair, replacement, and protection replacement. This should be defined under maintain and linked to the Outline Offshore Operations and Maintenance Plan (OOOMP) or those assessed in the Environmental Statement. We consider that these works should be restricted to those that have been assessed and consented and the definition should clearly demonstrate this.</p>	<p>required as the terms referred to are included in the definition of maintenance works provided at Condition 12(2) (or Condition 13(2) in respect of Schedule 9). Cable repair, replacement, or protection replenishment activity are all assessed in the EIA (see document APP-019 3.1.7 Environmental Statement Chapter 5 Project Description). The operations and maintenance plan will be submitted for approval pursuant to the DMLs and all operation and maintenance activities must be carried out in accordance with the approved plan – providing the MMO with control over the authorised maintenance activities.</p>	
MMO-73	<p>Colouring of Structures DML 1: Condition 17 DML 2: Condition 18 DML 3: Condition 17</p> <p>The MMO recommend the wording is updated to: 'The undertaker must paint all structures forming part of the authorised scheme yellow (colour code RAL 1023) from at least HAT to the height agreed in writing with Trinity House. The undertaker must paint the remainder of the structures grey (colour code RAL 7035). Requests to change the colouring of the structure must be submitted to the MMO in writing and must not be undertaken unless approved in writing by the MMO'.</p>	<p>The Applicant notes that the MMO's proposal is already provided for in the conditions as currently included in the dDCO, which read as follows: Colouring of structures 17.—(1) The undertaker must colour all structures yellow (colour code RAL 1023) from at least highest astronomical tide to a height directed by Trinity House, or must colour the structure as directed by Trinity House from time to time. (2) Subject to paragraph (1) above, unless the MMO otherwise directs, the undertaker must ensure that the wind turbine generators are painted light grey (colour code RAL 7035).</p>	<p>The MMO notes the Applicant's response and will provide an update at Deadline 3.</p>
MMO-74	<p>Aviation Safety DML 1: Condition 18 DML 2: Condition 19 DML 3: Condition 18</p> <p>The MMO requests this condition is removed and included in the DCO as the Defence Infrastructure</p>	<p>The appropriate place for this condition is in the DMLs as it relates to lighting of licensable activities carried out under the DMLs. The condition provides for notification to the Defence</p>	<p>The MMO notes the Applicant's response and will provide an update at Deadline 3.</p>

	Organisation Safeguarding and Civil Aviation Authority can review this through the DCO requirements.	Infrastructure Organisation Safeguarding, the Civil Aviation Authority and the MMO.	
MMO-75	<p>Chemicals, Drilling and Debris DML 1: Condition 19 (2) DML 2: Condition 20 (2) DML 3: Condition 19 (2)</p> <p>It should be noted that any paints coatings and chemicals with a pathway to the marine environment should be approved by the MMO prior to use. Part 2 section 12 also allows the undertaker at any time to maintain the authorised scheme at (b) allows for “Painting and applying other coatings to wind turbine generators or offshore accommodation platforms”, as these may also contain plastics. Coatings and paints under OSPAR guidance should have their properties known and therefore should be notified to the MMO for approval prior to use. Therefore, the condition 13 (2) wording should be amended to reflect OSPAR guidance.</p>	The Applicant is not aware of any precedent for the drafting the MMO is referring to, and no change is proposed to the drafting. If the MMO would like specific guidance referred to then the Applicant welcomes details of that guidance to be provided.	The MMO notes the Applicant’s response and will provide an update at Deadline 3.
MMO-76	<p>Chemicals, Drilling and Debris DML 1: Condition 19 (3) DML 2: Condition 20 (3) DML 3: Condition 19 (3) ‘.... Must be undertaken so as to prevent releases into the marine environment.</p> <p>The MMO recommends the condition wording is updated to increase precision. ‘...must be undertaken to prevent releases into the marine environment...’</p>	There is no practical difference made by this change. It is stylistic and therefore unnecessary.	The MMO notes the Applicant’s response, however maintains its position that the condition wording is updated to increase precision.
MMO-77	Chemicals, Drilling and Debris DML 1: Condition 19 (5) DML 2: Condition 20 (5) DML 3: Condition 19 (5) ‘The undertaker must ensure that only inert material of natural origin, produced during the drilling installation of or seabed preparation for foundations,	The DMLs provide for disposal within the Order limits. Please see Schedule 8, Part 1, Paragraph 2; Schedule 9, Part 1, Paragraph 2; and Schedule 10, Part 1, Paragraph 2.	The MMO notes the Applicant’s response and will provide an update at Deadline 3.

	<p>vessels or cables and drilling mud is disposed of within the Order limits seaward of MHWS.'</p> <p>The Applicant should state the name of the disposal site that the material will be deposited in. The MMO is working to designate the disposal sites and will provide an update in due course. In the event that no activity has taken place during the reporting period the undertaker must provide a null (0) return to the MMO.</p>		
MMO-78	<p>Force Majeure DML 1: Condition 20 DML 2: Condition 21 DML 3: Condition 20 20.—(1) If, due to stress of weather or any other cause, the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the safety of human life and/or of the vessel is threatened (an “unauthorised deposit”), full details of the circumstances of the deposit must be notified to the MMO in the manner provided in condition 19(10) within 48 hours of the deposit. (2) Any unauthorised deposit must be removed at the expense of the undertaker unless written approval is obtained from the MMO.</p> <p>The MMO does not consider provisions on Force Majeure to be necessary as Section 86 MCAA 2009 provides a defence for action taken in an emergency in breach of any licence conditions. The defence under Section 86 of MCAA has two limbs, and in the event that the undertaker fails to notify the appropriate licensing authority, in this case the MMO, within a reasonable time of their actions (Section 86(2) “matters”) the defence cannot be relied upon in the event of any enforcement action.</p>	<p>The Applicant disagrees that this wording is not necessary. Section 86 of the MCAA 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.</p>	<p>The MMO has previously requested the removal of this clause. That is because it unnecessarily duplicates the effect of s.86 of the 2009 Act.</p> <p>The MMO welcomes the Applicant’s comments regarding Force Majeure in point MMO-78 of document REP1-045 regarding the Applicant’s response to Relevant Representations. The MMO is currently reviewing the Applicant’s comment and will provide a response in due course.</p>

MMO-79	<p>Pre-construction plans and documentation DML 1: Condition 21 (1)(d) DML 2: Condition 22 (1)(d) DML 3: Condition 21 (1)(d) Project environmental management plan.</p> <p>Please clarify why the Project Environmental Management Plan only covers the construction period and not the operational period. If it does include the operational period, this condition must be updated.</p>	<p>The Project Environmental Management Plan referred to in Conditions 21(1)(d)/22(1)(d) covers the construction period as this is the period where management measures are required for construction activities. The condition does not require to be updated. Mitigation for the operation and maintenance phase is secured via the Outline Operations and Maintenance Plan.</p>	<p>Noted. The MMO welcomes this clarification.</p>
MMO-80	<p>Pre-construction plans and documentation DML 1: Condition 21 (1)(d)(ii) DML 2: Condition 22 (1)(d) (ii) DML 3: Condition 21 (1)(d) (ii) Chemical risk assessment</p> <p>The Applicant should ensure that there is no contradiction with the chemical, drilling and debris condition (condition 19 (DML 1), condition 20 (DML 2 and condition 19 (DML 3)).</p>	<p>The Applicant has reviewed the provisions and notes that they are identical across the DMLs (as intended).</p>	<p>No further comment.</p>
MMO-81	<p>Pre-construction plans and documentation DML 1: Condition 21 (1)(d)(iv) DML 2: Condition 22 (1)(d) (iv) DML 3: Condition 21 (1)(d) (iv) Waste management and disposal arrangements</p> <p>The Applicant should ensure that there is no contradiction with the chemical, drilling and debris condition (condition 19 (DML 1), condition 20 (DML 2 and condition 19 (DML 3)).</p>	<p>The Applicant has reviewed the provisions and notes that they are identical across the DMLs (as intended).</p>	<p>No further comment.</p>
MMO-82	<p>. Pre-construction plans and documentation DML 1: Condition 22 (3) DML 2: Condition 23 (3) DML 3: Condition 22 (3) The MMO must determine an application for approval made under condition 21 within a period of six months commencing on the date the application is received by the MMO, unless</p>	<p>Please see response to MMO-66, which provides for an extension by consent which could apply in the circumstances raised in the MMO's representation. It is entirely appropriate to include timescales to provide for a degree of regulatory certainty and ensure the carrying out of the</p>	<p>The MMO notes the Applicant's response and will provide an update at Deadline 3.</p>

	<p>otherwise agreed in writing with the undertaker such agreement not to be unreasonably withheld or delayed.</p> <p>The MMO requests this condition is removed from all the DMLs. This is not appropriate for the determination times to be conditioned. The MMO sets its own timescales, and this is dependent on the quality of the submission and the availability of primary advisors, please see comments under 3.2.1-3.2.5 Determination dates.</p>	<p>Project is not unnecessarily or unreasonably delayed given its nationally significant status, and the critical national priority need. The Applicant notes that the wording proposed is well-precedented and indeed is longer than provided in some DCOs. It is noted that the Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024 provides for four months and the Hornsea Four Offshore Wind Farm Order 2023 provides for six months, which is the longer time period provided for in this draft DCO.</p>	
MMO-83	<p>Pre-construction plans and documentation DML 1: Condition 21 (7) DML 2: Condition 22 (7) DML 3: Condition 21 (7) The undertaker must, before submitting any pre-construction plans and documentation required under this condition, provide a copy of the plans and documentation to any person to whom part of the benefit of the Order applying seaward of MHWS has been transferred or leased pursuant to article 5 (benefit of the order) of the Order.</p> <p>The MMO requests that the reference to benefit of the order should be removed.</p>	<p>The Applicant disagrees with this request. The condition as drafted ensures that the undertaker provides copies of relevant documentation to those with benefit of the Order. This is in keeping with Article 5 of the dDCO, in relation to which the Applicant has responded to above.</p>	<p>The MMO notes the Applicant's response and will provide an update at Deadline 3.</p>
MMO-84	<p>Reporting of engaged agents, contractors and vessels DML 1: Condition 24 (1)(b) and (3)(b) DML 2: Condition 25 (1)(b) and (3)(b) DML 3: Condition 24 (1)(b) and (3)(b)</p> <p>IMO not expanded on first use. Please expand to 'International Maritime Organisation (IMO) and include in Part 1 Licenced Marine Activities interpretation of DML 1, DML 2 and DML 3.</p>	<p>"IMO number" is a specific term understood in the offshore industry to mean the unique seven-digit identifier assigned to vessels above a certain tonnage. No change to the condition is necessary. Its use is well precededented including in the Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024 and the Hornsea Four Offshore Wind Farm Order 2023.</p>	<p>The MMO maintains its position that IMO should be expanded on first use to International Maritime Organisation (IMO) and included in part 1 Licensed Marine Activities interpretation of DML 1, DML 2 and DML 3.</p>

MMO-85	<p>Pre-construction monitoring and surveys DML 1: Condition 25 DML 2: Condition 26 DML 3: Condition 25</p> <p>This condition must be updated to state when the results of the pre-construction monitoring survey will be submitted and also state that the works will not commence until the MMO has approved the survey report.</p>	<p>The Applicant considers that the specification of timing is unnecessary as the monitoring plan to be approved under sub-paragraph (1) of these conditions will specify the timescales for provision of survey data (which may vary depending on the nature of the survey data and processing timescales). In respect of the activities not commencing before approval of the survey report, this is provided for in that compliance with Condition 25/26 is part of the discharge of condition 21(1)(f)/22(1)(f), before discharge of which “the licensed activities for each stage of construction of the authorised development must not commence”. The Applicant refers the MMO to Condition 21/22 generally.</p>	<p>The MMO notes the Applicant’s response and will provide an update at Deadline 3.</p>
MMO-86	<p>Pre-construction monitoring and surveys DML 1: Condition 25 (2) DML 2: Condition 26 (2) DML 3: Condition 25 (2) ‘Subject to receipt from the undertaker of specific proposals pursuant to this condition, the pre-construction survey proposals must comprise, in outline—’.</p> <p>The MMO recommends the wording is updated to: ‘The pre-construction surveys referred to in sub-paragraph (1) must, unless otherwise agreed in writing with the MMO include, but not be limited to, the need to undertake—’.</p>	<p>The Applicant considers this to be stylistic and no amendment is considered necessary.</p>	<p>The MMO maintains its position that the wording is updated for clarity to ‘The pre-construction surveys referred to in sub-paragraph (1) must, unless otherwise agreed in writing with the MMO include, but not be limited to, the need to undertake—’.</p>
MMO-87	<p>Pre-construction monitoring and surveys DML 1: Condition 25 (4) DML 2: Condition 26 (4) DML 3: Condition 25 (4)</p> <p>This should be updated to include the full name of the plans. This is to ensure clarity.</p>	<p>The surveys will be specified within the approved monitoring plan or plans, which will provide sufficient clarity. There is no need for this condition to be updated.</p>	<p>The MMO maintains its position that this condition should be updated to include the full name of the plans to ensure it is clear and</p>

			specific in the condition wording.
MMO-88	<p>Construction Monitoring DML 1: Condition 26 DML 2: Condition 27 DML 3: Condition 26</p> <p>This condition should be clarified to confirm the mechanism for agreement. E.g. 'in writing'.</p>	Provision is made in the condition for written approval.	The MMO welcomes this update.
MMO-89	<p>Post Construction Monitoring DML 1: Condition 27 DML 2: Condition 28 DML 3: Condition 27</p> <p>This condition should be clarified to confirm the mechanism for agreement. E.g. 'in writing'.</p>	Provision is made in the condition for written approval.	The MMO welcomes this update.
MMO-90	<p>Post Construction Monitoring DML 1: Condition 27 (2)(a) DML 2: Condition 28 (2)(a) DML 3: Condition 27 (2)(a)</p> <p>The MMO recommends the post construction survey design is also informed by the construction benthic survey report. This is to account for any mobile benthic habitats which may shift in extent. Suggested wording: 'undertake a survey to determine any change in the location, extent and composition of any habitats of principal importance or habitat with suitability for biogenic or geogenic reef feature identified in the pre-construction survey in the parts of the Order limits in which construction works were carried out. The survey design must be informed by the results of the pre-construction benthic survey and construction benthic surveys'.</p>	The Applicant notes that no construction benthic survey report is provided for. There is a pre-construction survey report, and a post-construction survey report, with the design of the latter being informed by the results of the former. This is provided for in Condition 27(2)/Condition 28(2), as follows: If the plan or plans submitted to the MMO under this condition contain survey proposals, the post-construction survey plan or plans must include, in outline— (a) details of a survey to determine any change in the location, extent and composition of any biogenic or geogenic reef feature identified in the pre-construction survey in the parts of the offshore Order limits in which construction works were carried out. The survey design must be informed by the results of the pre-construction benthic survey; The Applicant notes that the Order limits do not overlap with any designated site for benthic ecology and therefore considers any further provision to be unnecessary.	The MMO notes the Applicant's response and will provide an update at Deadline 3.

MMO-91	<p>4.1 General Comments</p> <p>4.1.1 Where projects contain plans that impact both the MMO below MHWS (in the DML), and the Local Planning Authority (LPA) (in the DCO) and there are issues raised with duplication of the requirement, the MMO requests that the Applicant submits the full plan to be approved by both MMO and Council prior to works commencing for their respective approvals under each jurisdiction. Whilst there is a geographic overlap within which the LPA and the MMO operate, their jurisdictions, and therefore their approval, are not. As with other cases, where the MMO and Local Planning Authority have separate consents, they will seek to work together to reduce duplicating unnecessary burden.</p>	<p>The Applicant will submit plans to the relevant local planning authority pursuant to the requirements in Part 3 of Schedule 1 of the draft DCO, and to the MMO in accordance with the DMLs. Where there is an overlap in the intertidal area, the consent of both the relevant local planning authority and the MMO will be required (to discharge their respective plans). The onus will be on the Applicant to ensure this is achieved in compliance with its legal obligations under the DCO. This is secured via the inclusion of Work No. 4B (which is in the intertidal) in the definition of offshore works and in the definition of onshore works.</p>	<p>The MMO welcomes this clarification and has no further comment at this deadline.</p>
MMO-92	<p>4.2 Cable Statement (Volume 7 – APP-262)</p> <p>4.2.1 The MMO requests ‘Section 1 Introduction’ is updated to state how and when the final cable statement will be agreed. This should state that the final document will be submitted to the MMO for approval.</p>	<p>The MMO appears to misunderstand the nature of the Cable Statement. The Cable Statement is submitted to meet the requirement of APFP Regulation 6(1)(b)(i) and is not a document which secures environmental mitigation. A cable specification and installation plan (a separate document) is secured via the DML conditions.</p>	<p>Noted. No further comment.</p>
MMO-93	<p>4.3 Outline Project Environmental Management Plan (Document 7.6 – APP-241)</p> <p>4.3.1 The MMO is still reviewing this and will provide comments during the examination process.</p>	<p>Noted.</p>	<p>No further comment.</p>
MMO-94	<p>4.4 Outline Offshore Written Scheme of Investigation WSI (Document 7.11 – APP-246)</p> <p>4.4.1 The MMO has no comments at this time and defers to Historic England.</p>	<p>Noted. Responses to Historic England’s relevant representation on Offshore and Intertidal Archaeology and Cultural Heritage are included as Applicant’s Ref HE-02 to HE-06.</p>	<p>The MMO will review and note any comments as necessary in future representations.</p>
MMO-95	<p>4.5 Outline Offshore Operations and Maintenance Plan (Document 7.20 – APP-255)</p> <p>4.5.1 The MMO notes in Section 1.4 Discharging the Consent Condition, paragraph 13 uses a traffic light</p>	<p>The Applicant welcomes agreement with the MMO on this point.</p>	<p>No further comment.</p>

	<p>system for the activity list, stating that 'Green indicates that an additional Marine Licence is not required, however a subsequent approval from the MMO may be required and/or notification should be provided to the MMO on works being undertaken; Amber indicates that an additional Marine Licence may be required if proposed works exceed those assessed within the ES or described within the DCO; or Red indicates that an additional Marine Licence would likely be required. This would be dependent on the works to be undertaken (e.g. scale and methodology), subject to agreement with the MMO'. The MMO welcomes this commitment.</p>		
MMO-96	<p>4.5 Outline Offshore Operations and Maintenance Plan (Document 7.20 – APP-255)</p> <p>4.5.2 The MMO notes that the list of activities to be undertaken during the operations and maintenance phase is provided as Appendix A. This list is considered to be a live document which will be updated for the final Outline Operations and Monitoring Plan(s) and will be sent to the MMO for approval. This is appropriate.</p>	The Applicant welcomes agreement with the MMO on this point.	No further comment.
MMO-97	<p>4.5 Outline Offshore Operations and Maintenance Plan (Document 7.20 – APP-255)</p> <p>4.5.3 The MMO notes that Appendix A Additional Cable Protection states that an additional licence may potentially be required. The realistic worst case assessed in the ES states that 'Scour protection is included in the reasonable worst-case scenario for 100% foundations requiring scour protection. The maximum area and volume of scour protection included in the ES and DCO application for the life of</p>	Noted.	No further comment.

	<p>the project is (based on gravity base foundations, excluding the foundation footprint):</p> <ul style="list-style-type: none"> • WTG/OSPs/OCP scour protection area per foundation: 83,774m²; 29 • WTG scour protection total area: 4,775,118m²; • WTG scour protection total volume: 9,313,113m³; • OSPs/OCP scour protection total area: 167,548m²; and • OSPs/OCP scour protection total volume: 326,776m³. 		
MMO-98	<p>4.5 Outline Offshore Operations and Maintenance Plan (Document 7.20 – APP-255)</p> <p>4.5.4 New cable or scour protection placed in an area where there was no protection during construction is not classed as 'maintenance'. New cable or scour protection is not maintaining the existing cable or scour protection. Although the ES assesses a maximum parameter, the MMO views cable protection as a high-risk activity and therefore placing cable protection throughout the lifetime of the licence that was not placed during the construction phase should not be included within the OMP. A separate licence should be applied for.</p>	<p>Scour protection would be deployed in proximity to WTG and OSP/OCP foundations and therefore, provided the areas and volumes are within the parameters assessed in the ES and secured in the DCO, no further licences should be required.</p> <p>Any cable protection must be deployed within 10 years of the date of the Order. Unless otherwise agreed by the MMO, cable protection required after 10 years would be subject to an additional marine licence. The Outline Offshore Operations and Maintenance Plan [APP-255] will be updated and submitted at Deadline 3.</p>	<p>Noted. The MMO will review the updated submission of the Outline Offshore Operations and Maintenance Plan and provide a response at Deadline 4.</p>
MMO-99	<p>4.6 Outline Fisheries Liaison and Co-existence Plan (Document 7.9 – APP-244)</p> <p>4.6.1 The MMO notes the Applicant states 'the FLCO will be subject to the Marine Management Organisation (MMO) for approval following consultation with relevant stakeholders'. This is appropriate.</p>	<p>Noted.</p>	<p>No further comment.</p>

MMO-100	<p>4.6 Outline Fisheries Liaison and Co-existence Plan (Document 7.9 – APP-244)</p> <p>4.6.2 The MMO requests that the below text in Section 1.2 paragraph 10 is updated to remove the word ‘material’. All changes to the Fisheries Liaison and Co-existence Plan must be submitted to the MMO for approval.</p>	Noted - the text will be updated post-consent in the final FLCP [APP-244] before submission to the MMO for approval.	The MMO notes this and will review and provide any additional comments in due course.
MMO-101	<p>4.6 Outline Fisheries Liaison and Co-existence Plan (Document 7.9 – APP-244)</p> <p>4.6.3 The FLCP will be reviewed as appropriate during the lifetime of North Falls, in line with project milestones and will exist alongside the existing Greater Gabbard Fisheries Liaison Plan, approved pursuant to its Marine Licences. Relevant updates to the FLCP may be incorporated during review cycles, as considered necessary to reflect any material changes to fisheries liaison requirements at the time, and with the purpose of maintaining effective fisheries liaison. This will also help to form an audit trail documenting the communication and engagement with commercial fishery stakeholders. The MMO will be consulted on any material changes to the FLCP.</p>	See response to MMO-110.	No further comment.
MMO-102	<p>4.6 Outline Fisheries Liaison and Co-existence Plan (Document 7.9 – APP-244)</p> <p>4.6.4 The Marine Management Organisation will not act as arbitrator or be involved in any commercial negotiations with any association / organisation, and / or individual fishermen.</p>	Noted.	No further comment.
MMO-103	4.7 Outline Vessel Traffic Monitoring Plan (Document 7.21 – APP-256)	Noted.	No further comment.

	4.7.1 The MMO has no comments at this time and defers to the Maritime and Coastguard Agency (MCA).		
MMO-104	<p>4.8 Marine Conservation Zone Assessment Report (Document 7.3 – APP-237)</p> <p>4.8.1 The MMO thanks the Applicant for setting out how the embedded mitigation and additional mitigation are secured in the DCO or DMLs (Table 5.3).</p>	Noted.	No further comment.
MMO-105	<p>4.9 Marine Conservation Zone MCZ Appendix 1 Screening (Document 7.3.1 – APP-238)</p> <p>4.9.1 The MMO defers to Natural England as the SNCB.</p>	Noted. Responses to Natural England's relevant representation on Benthic and Intertidal Ecology are provided in Section 2.24 of the Applicant's Responses to the Relevant Representations Received from Natural England [Document Reference:9.1].	The MMO notes this and will review and provide any additional comments in due course.
MMO-106	<p>4.10 Offshore In-Principal Monitoring Plan (IPMP) – APP-245</p> <p>4.10.1 The In-Principle Monitoring Plan (IPMP) has been produced to provide the basis for delivering the monitoring measures as required by the conditions contained within the DMLs for North Falls Offshore Wind Farm. The report confirms that if piled foundations are used in the final project design, underwater noise monitoring of the first four piles of each piled foundation type would be undertaken with the methods agreed with the MMO and relevant SNCB in the pre-construction period (point 53). This is in keeping with the standard requirements for OWF developments. The MMO would like the report updated to ensure a commitment that the first four piles monitored would be the worst-case scenario</p>	The build out sequence of North Falls will need to ensure safety of mariners. For the first four piles to be the worst case for underwater noise, this could lead to piles being scattered around the array area which could have safety implications for shipping traffic. The requirements would be that the build out sequence starts adjacent to the existing windfarm such that there are no isolated structures for a period of time. Therefore it is the Applicant's position that this is not appropriate. The Applicant has updated the DMLs within the draft DCO at Deadline 1 to include this provision: [...] (2) If the plan or plans submitted to the MMO under this condition contain survey proposals, the construction monitoring plan must include, in outline— (a) vessel traffic monitoring by automatic identification system for the duration of	The MMO notes the Applicant's response and will provide an update at Deadline 3.

	<p>piles. Monitoring of less impactful piles would not validate the predictions of the worst-case scenario within the ES.</p>	<p>the construction period, with provision for a report to be submitted to the MMO, Trinity House, and the MCA annually during the construction period for the authorised development; and (b) where piled foundations are to be employed, unless otherwise agreed by the MMO in writing, details of proposed monitoring of the noise generated by the installation of the first four piled foundations of each piled foundation type to be constructed collectively under this licence and the deemed marine licences granted under Schedules 9 and 10 of the Order. (3) If, in the reasonable opinion of the MMO in consultation with the SNCB the monitoring carried out pursuant to condition 26(2)(b) above shows impacts significantly in excess to those assessed in the environmental statement and there has been a failure of the mitigations set out in the marine mammal mitigation protocol, all piling activity must cease until either contingency measures approved within the marine management mitigation protocol have been implemented or an update to the marine mammal mitigation protocol and further monitoring requirements have been agreed. “</p>	
MMO-107	<p>4.10 Offshore In-Principal Monitoring Plan (IPMP) – APP-245</p> <p>4.10.2 The report confirms that it is the position of the Applicant that any ornithological monitoring proposal should be targeted to address impacts, evidence gaps or uncertainty of most relevance to the Project and specific species (Point 65). The Applicant considers that offshore ornithology monitoring for the Project should focus on the</p>	<p>The Applicant acknowledges this comment and will consult with Natural England during development of the Ornithology Monitoring Plan post-consent, in accordance with the In Principle Monitoring Plan [APP-245].</p>	<p>The MMO welcomes this comment.</p>

	potential displacement of redthroated divers and collision risk impacts on seabird species. This has the potential to be undertaken in collaboration with other OWF projects. The final details will be included in an Ornithological Monitoring Plan, to be agreed post consent with the MMO, in consultation with Natural England.		
MMO-108	<p>4.10 Offshore In-Principal Monitoring Plan (IPMP) – APP-245</p> <p>4.10.3 The MMO notes that pre-construction baseline surveys will form part of the analysis of impacts from the wind farm post-consent. Therefore, the survey design and sampling approach will be designed so that it will set a baseline to achieve an appropriate power to detect trends/changes in the populations/distributions of key species within the North Falls array area + buffer. This could be informed by the baseline surveys for North Falls used to inform the EIA, and desk study of existing data (e.g., from the Galloper and Greater Gabbard OWF surveys). The MMO requests that the Applicant provides more information on the timing of these proposed surveys, and the Applicant's intentions should the observations not meet these expectations of what monitoring is intended to observe.</p>	The scope for pre-construction monitoring surveys, including programmes and methodologies shall be submitted in accordance with the relevant dML to the MMO for written approval at least six months prior to the commencement. Consultation with the MMO and relevant SNCB will be undertaken during the development of the proposed monitoring.	The MMO welcomes this update.
MMO-109	<p>4.11 Outline Site Integrity Plan (SIP) for the Southern North Sea (SNS) Special Area of Conservation (SAC) – APP-234</p> <p>4.11.1 The MMO notes that preparing the final SIP, the Applicant will review this Outline SIP and the conclusions of the Appropriate Assessment (AA) as</p>	The Applicant welcomes agreement with the MMO on this point.	No further comment.

	<p>well as the final design of North Falls, and the potential in-combination effects of underwater noise during pile driving and if necessary provide an up-to-date in-combination assessment using the most recent information on other projects' planned programmes in order to inform the final SIP. This will include consideration of all data provided through both the SNS Activity Tracker and the Developers Activity Tracker shared between the key offshore wind farms within (or within 26km of) the SNS SAC. The Applicant will seek to liaise directly with other offshore wind farm projects to ensure the most recent information is used to inform these assessments. The MMO welcomes this approach.</p>		
MMO-110	<p>4.11 Outline Site Integrity Plan (SIP) for the Southern North Sea (SNS) Special Area of Conservation (SAC) – APP-234</p> <p>4.11.2 The Applicant has provided Indicative Milestones for Refinement of the Outline SIP towards Agreement of the Final SIP Pre-Piling in Table 1.2. The MMO welcomes this.</p>	The Applicant welcomes agreement with the MMO on this point.	No further comment.
MMO-111	<p>4.12 Outline Marine Mammal Mitigation Protocol – Document 7.7 – APP-242</p> <p>4.12.1 The MMO welcomes that the Applicant will be considering all suitable mitigation options including the use of Noise Abatement when developing the final MMMP (as stated in Table 1-2). However, the MMO requests that a specific section regarding noise abatement is added to the MMMP. At this stage the MMO considers there is clear justification and evidence that noise abatement measures will be</p>	The Applicant acknowledges this comment and will amend the Draft MMMP [APP-242] to add a section to detail how NAS will be considered as a mitigation measure for piling at North Falls.	The MMO notes this and will review and provide any further comments in due course.

	required for the project, to reduce the risk of potential impact on marine receptors.		
MMO-112	<p>4.12 Outline Marine Mammal Mitigation Protocol – Document 7.7 – APP-242</p> <p>4.12.2 The MMO welcomes that the final MMMP will include details of the embedded mitigation, such as the soft-start and ramp-up, as well as details of the Monitoring Area and any additional mitigation measures required to reduce potential effects of any physical injury or PTS. Potential additional noise mitigation systems include bubble curtains, hydro-sound dampers, screens or tubes. Consideration will be given to the requirements following any breaks in piling as well as prior to piling commencing.</p>	Noted.	No further comment.
MMO-113	<p>4.12 Outline Marine Mammal Mitigation Protocol – Document 7.7 – APP-242</p> <p>4.12.3 The MMO notes that the methods for reducing the potential impacts of any UXO clearance will be agreed with the MMO in consultation with the relevant SNCBs and will be secured as commitments within the final MMMP. The MMO welcomes that further discussions on this matter will take place before the finalisation of the MMMP.</p>	Noted.	No further comment.
Environmental Statement (ES)			
MMO-114	<p>5.1 General Comments</p> <p>5.1.1 The MMO has focused its review on the following chapters of Volume 3 North Falls Offshore Wind Farm Environmental Statement (ES) July 2024 Revision: 0, by North Falls Offshore Wind. However, MMO has also reviewed the accompanying figures and relevant appendices where required: 3.1.3</p>	Noted.	No further comment.

	Chapter 1: Introduction 3.1.5 Chapter 3: Policy and Legislative Context 3.1.7 Chapter 5: Project Description 3.1.10 Chapter 8: Marine Geology, Oceanography and Physical Processes 3.1.11 Chapter 9: Marine Water and Sediment Quality 3.1.12 Chapter 10: Benthic and Intertidal Ecology 3.1.13 Chapter 11: Fish and Shellfish Ecology 3.1.14 Chapter 12: Marine Mammals.		
MMO-115	<p>5.1 General Comments</p> <p>5.1.2 An up-to-date schedule including specific timings and dates for each of the proposed works must be provided to the MMO. MMO must be further informed of any updates, or changes to the schedule, prior to the commencement of the works, this is to ensure an effective inspection can occur.</p>	Commitment to provide a construction programme is secured in the draft Development Consent Order [AS-022], Schedule 8, Part 2, Condition 21(1)(b) and Schedules 9 and 10, Part 2, Condition 22(1)(b).	No further comment.
MMO-116	<p>5.1 General Comments</p> <p>5.1.3 It is strongly recommended that the Applicant engage with the MMO throughout the process in order to ensure the assessment is as smooth as possible and agreements can be reached through a SoCG.</p>	The Applicant has been engaging with the MMO through the Evidence Plan Process and are in discussion with the MMO regarding development of the Statement of Common Ground.	The MMO welcomes the continued engagement with the Applicant regarding the Statement of Common Ground.
MMO-117	<p>5.2 Coastal Processes (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.2.1 The MMO notes that the introduction covers some aspects of the development in great detail (e.g., on- and offshore connection options still under consideration) and serves as an introduction to the developer's consultant via description of their many other previous OWF projects, but provides no introduction to the actual NFOWF project. The Environmental Statement (ES) takes until Chapter 5</p>	The structure of the ES is consistent with that of other offshore wind farms. Chapter 1 provides an overview of the Project and outlines the structure of the ES [APP-015].	The MMO acknowledges the Applicants comments. The MMO consider that the introduction should include an introduction to the NFOWF project.

	before there is any indication to the reviewer what this project proposes, by which stage substantial amounts of project specific detail are presented with no meaningful context e.g., alternative scenarios are described, before any description of the actual development scenario(s).		
MMO-118	<p>5.2 Coastal Processes (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.2.2 The MMO notes that the Applicant has provided an explanation of how the definitions of sensitivity, value and magnitude are obtained when contributing elements are conflicting i.e. averaging of [scale/frequency/duration/reversibility], Tables 8.7 to 8.9. This is more detailed than is routinely provided by many applicants and has a positive impact on confidence in the overall conclusions.</p>	Noted.	No further comment.
MMO-119	<p>5.2 Coastal Processes (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.2.3 The MMO notes that with regard to the evidence being proposed; the assessment relies heavily on results and assessments previously made for the nearby Greater Gabbard windfarm, and on evidence and assessments obtained from multiple other previous offshore windfarm developments in similar seabed settings or that have applied similar methods. In this respect, the evidence is clearly of similar nature, but the reliance on non -(project) - specific data highlights an increasing move away from bespoke (location-specific) environmental evidence for windfarms. This will be more appropriate in some cases than in others, as good environmental analogies are required and where</p>	Noted.	No further comment.

	windfarm impact zones are not adjacent or overlapping.		
MMO-120	<p>5.2 Coastal Processes (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.2.4 The Cumulative Effects Assessment was conducted over a range of 2 x the tidal ellipse, which exceed the single tidal ellipse that has been seen in other applications. Notwithstanding the MMOs position that the standard definition and methods of CEA are inadequate, these have been adequately applied by the Applicant.</p>	Noted.	No further comment.
MMO-121	<p>5.2 Coastal Processes (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.2.5 The impacts of the project are defined (numerically) quite precisely, in respect of the changes to environmental parameters e.g., percent changes in currents, wave heights and direction; these calculations are made with reference to reasonable worst cases, and each is assessed in turn according to standard EIA methods.</p>	Noted.	No further comment.
MMO-122	<p>5.2 Coastal Processes (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.2.6 The MMO notes that the impacts of the project are defined (numerically) quite precisely, in respect of the changes to environmental parameters e.g., percent changes in currents, wave heights and direction; these calculations are made with reference to reasonable worst cases, and each is assessed in turn according to standard EIA methods.</p>	Noted.	No further comment.
MMO-123	5.2 Coastal Processes (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)	Noted and agreed.	No further comment.

	<p>5.2.7 The ES affords a general description of project outcomes to be assembled (which will be common to many OWF developments). Effectively, offshore windfarms result in hydrodynamic changes highly localised around the turbines and modelled changes beyond the development boundary would be difficult to detect in practice. Associated changes at the seabed include scattered mounds or depressions of disturbed sediment and short -lived changes in sediment suspension during construction, with some potential for longer -term changes due to sub - surface wakes at the turbine bases lifting bedload sediment into the water column.</p>		
MMO-124	<p>5.2 Coastal Processes (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.2.8 In the present case, the near -field impacts are described but not valued as they do not affect a named receptor. The agreed receptors are external to the windfarm site (i.e., the larger changes to the sea and seabed occur over the 95km² of the OWF, but this is not a defined receptor – the 96km² of the immediately adjacent Kentish Knock East MCZ is a defined receptor, but the projected impacts here are smaller).</p>	Noted.	No further comment.
MMO-125	<p>5.2 Coastal Processes (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.2.9 The combined significance of each of these changes is almost inevitably assessed as negligible in desk -based assessments, based on expert opinion. This is difficult to change or critique because there is no knowledge base that can be applied to</p>	Noted and agreed.	No further comment.

	<p>assess the impacts described in any alternative way. Even technically sophisticated modelling of sediment processes linking the hydrodynamic and seabed changes would not alter the conclusions – because these are ‘micro-scale’ changes in seabed slopes and orientation, sediment distributions, etc. These are temporarily out of sync with the surrounding bed and forcing but there is no evidence that this micro-habitat reorganisation has any wider -scale or long-term consequence for coastal processes or morphology. No method currently available could detect or model them. Equally, standard cumulative assessment methods do not account for the incremental changes resulting from widespread seabed redistribution associated with all other activities over large scales, because there is again no appropriate method or evidence to do so.</p>		
MMO-126	<p>5.2 Coastal Processes (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.2.10 Therefore, all coastal process change at this scale will continue to appear negligible (and so be neglected), no matter how frequently it occurs or how widespread development becomes e.g., Figure 3 - 23, Appendix 8.1, showing minor wave changes across a large proportion of the Outer Thames Estuary region cumulatively from ongoing development. This may not have visible consequences for coastal processes (for example, no obvious immediate change in major sediment systems).</p>	Noted.	No further comment.
MMO-127	<p>5.2 Coastal Processes (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p>	Noted.	No further comment.

	5.2.11 The ES indicated that sediment suspension plumes have been scoped out at an earlier stage so no data on vertical changes to suspended profiles and distribution is included. It has been previously agreed that the assessment of worst -case scenarios in the absence of a finalised design for the locations and connection of turbines is appropriate. Therefore, the MMO identifies no further specific information gaps.		
MMO-128	5.2 Coastal Processes (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022) 5.2.12 The MMO notes that transboundary effects were scoped out of the assessment at the scoping stage.	Noted.	No further comment.
MMO-129	5.3 Dredge and Disposal (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022) 5.3.1 The MMO notes that the Applicant has assessed the impact of potential increased suspended sediment concentration and release of contaminants, as a result of the works, on the following receptors: <ul style="list-style-type: none"> • Benthic and Intertidal Ecology • Fish and Shellfish Ecology • Marine Mammals • Water Quality 	Noted.	No further comment.
MMO-130	5.3 Dredge and Disposal (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022) 5.3.2 The MMO notes that further assessment has been made in relation to the Blackwater, Crouch,	Noted. Responses to Natural England’s relevant representation on Benthic and Intertidal Ecology are provided in Section 2.24 of the Applicant’s Responses to the Relevant Representations Received from Natural England [Document Reference:9.1]. The Applicant will continue to	The MMO welcomes the continued engagement with the Applicant regarding the Statement of Common Ground.

	<p>Roach and Colne Estuaries (BCRC), Kentish Knock East, and Orford Inshore Marine Conservation Zones (MCZs). The former two of which have been screened in for further assessment in relation to increased suspended sediment concentrations and re-mobilisation of contaminated sediments (as shown in Table 7.1). However, please note the MMO defers comment to Natural England for conclusions drawn in relation to designated sites. It is strongly recommended that the Applicant engage with the MMO throughout the process in order to ensure the assessment is as smooth as possible and agreements can be reached through a SoCG.</p>	engage with the MMO in order to seek to reach agreements through a SoCG.	
MMO-131	<p>5.3 Dredge and Disposal (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.3.3 In regard to sediment quality, the Applicant has provided sediment data, which are presented in Chapter 9 and Appendix 10.1. However, the Applicant has provided the 2021 sediment survey results in PDF format and not in the standard MMO excel template. In the current format the MMO is currently unable to fully interrogate the data without manually transcribing the data into the template – which carries a high risk of human error. This is necessary to fully understand the levels of contamination present within the surface sediments of the proposed dredge area. As such, the MMO is unable to agree with the conclusions reached with regard to contaminants. The MMO asks that the Applicant provide a copy of these results in the standard MMO template. Until the results are provided as request, the MMO defers comment on</p>	The 2021 sediment survey results are being provided to the MMO in the standard MMO excel template as requested.	The MMO notes this and will review and provide any further comments in due course.

	whether the mitigation measures are sufficient as the likely significant impacts are currently unknown.		
MMO-132	<p>5.3 Dredge and Disposal (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.3.4 The MMO further notes that the Applicant states, “PCB data indicated that the sample were at or below the detection limits, and therefore are not presented in the table” and would request the Applicant provides the Polychlorinated Biphenyl (PCB) data from the 2021 survey to support this statement.</p>	The PCB results are being provided to the MMO in the requested template.	The MMO notes this and will review and provide any further comments in due course.
MMO-133	<p>5.3 Dredge and Disposal (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.3.5 The MMO notes that the Applicant has referred to a variety of Sediment Quality Guidelines (SQGs) in the assessment of their results (Appendix 10.1 Benthic and Intertidal Ecology Survey Report, Section 4) including UK Action Levels, Canadian SQGs and Coordinate Environmental Monitoring Programme (CEMP) OSPAR and National Oceanic and Atmospheric Administration (NOAA) levels. However depending on the extraction method used, the resultant concentration level in the sample will vary. Therefore, the contaminant level produced using the specific extraction method for each respective contaminant cannot be used for direct comparison with all SQGs.</p>	Given the cross over with the requirement for any sediment disturbed or dredged to be included in the disposal to sea application, sediment contaminant analysis has been undertaken by an MMO accredited lab that meets the analysis requirements for disposal to sea sampling. The ES Chapter 9 Marine Water and Sediment Quality [APP-023] then uses Cefas Action Levels to assess the potential risk to the marine environment alongside providing information regarding the suitability for disposal to sea assessment. For additional context and in line with comments on other offshore windfarm ES' from other consultees, sediment contaminant concentrations have also been compared to sediment guidelines used by the OSPAR Commission – Background Assessment Concentrations (BAC) and the United States (US) Environmental Protection Agency's Effects Range-Low (ERL). A full explanation regarding	The MMO notes the Applicant's response and will provide an update at Deadline 3.

		the use of sediment guidelines within the ES is provided in section 9.4.1.4 of Chapter 9 [APP-023].	
MMO-134	<p>5.3 Dredge and Disposal (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.3.6 The MMO considers the description of the aspects of the project within the remit of dredge and disposal in Chapters 1 and 5 of the ES to be clear, and as such do not require any further information at this time.</p>	Noted.	No further comment.
MMO-135	<p>5.3 Dredge and Disposal (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.3.7 The MMO notes that the Applicant has compiled and reviewed available data and information via a combination of desk -based exercises and surveys. To provide site -specific and up to date baseline data on which to base the impact assessment, a geophysical survey undertaken within the Preliminary Environmental Information Report (PEIR) offshore project area was completed between May and August 2021 (Fugro 2021a, b). Moreover, a benthic survey of the same area was also undertaken between May and August 2021 in which samples were sent for Particle Size Analysis to the MMO validated laboratory Fugro, and chemical contaminant analysis (Polycyclic Aromatic Hydrocarbons, trace metals and Polychlorinated Biphenyl's) undertaken by MMO validated laboratory SOCOTEC. The Applicant's decision to not test for Organotins and, organochlorines and</p>	Noted.	No further comment.

	<p>Polybrominated Diphenyl Ethers was not considered necessary, although not justified, was supported by the MMO (Table 9.1 Consultation responses, Chapter 9). In addition, sediment data collected for other linked projects, along with information presented in ES Chapter 8 Marine Geology, Oceanography and Physical Processes, based on numerical modelling and theoretical studies undertaken for Galloper Offshore Wind Farm (GWF) and GGOW were reviewed.</p>		
MMO-136	<p>5.3 Dredge and Disposal (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.3.8 The MMO considers that the evidence proposed is consistent with that of similar operations.</p>	Noted.	No further comment.
MMO-137	<p>5.3 Dredge and Disposal (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.3.9 The Applicant presents Table 9.14 ‘Potential Cumulative Effects’ (Chapter 9) in relation to Marine Water and Sediment Quality, which identifies either no potential for cumulative effects, or effects at isolated locations for a time-limited duration.</p>	Noted.	No further comment.
MMO-138	<p>5.3 Dredge and Disposal (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.3.10 Furthermore, the Applicant concluded that “there is the potential for cumulative effects on water quality due to increased suspended sediment during construction and decommissioning of the Project</p>	Noted.	No further comment.

	with other nearby plans and projects” (NeuConnect, SeaLink Interconnectors, and aggregate extraction area 524, and Five Estuaries). However, it is considered that these cumulative effects on water quality, should all projects be in the construction or decommissioning phase in parallel, “would be of minor or negligible adverse significance.”		
MMO-139	<p>5.3 Dredge and Disposal (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.3.11 In regard to inter -related impacts, the Applicant presents Table 9.17 and concludes that the “impacts of different phases of the development and lifetime have been assessed as negligible, with the adoption of good practice methodologies.”</p>	Noted.	No further comment.
MMO-140	<p>5.3 Dredge and Disposal (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.3.12 Details of ‘good practice methodology’ would be welcome as the Applicant regularly refers to this in the assessment of cumulative and inter-related effects yet does not appear to specify or provide evidence to justify this statement.</p>	<p>Assessments in ES Chapter 8 [APP-022] have been informed by industry good practice documents, as presented in section 8.13 (References) in including:</p> <ul style="list-style-type: none"> • BERR (2008) Review of Cabling Techniques and Environmental Effects applicable to the Offshore Wind Farm Industry. • The Crown Estate / RPS (2019). Review of Cable Installation, Protection, Mitigation and Habitat Recoverability. Available at: https://www.rpsgroup.com/media/4295/review-of-cable-installation-protection-mitigation-and-habitat-recoverability.pdf 	Noted. The MMO welcomes this clarification.
MMO-141	5.3 Dredge and Disposal (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)	Noted.	No further comment.

	5.3.13 A decision to select an option for co-locating North Falls and Five Estuaries onshore substations has also been undertaken to reduce cumulative effects associated with both projects.		
MMO-142	<p>5.3 Dredge and Disposal (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.3.14 In relation to offshore cable burial, the Applicant states “Remedial protection measures could include rock or gravel burial, concrete mattresses, flow energy dissipation devices, dredged sandy material, protective aprons or coverings, or bagged solutions (geotextile sand containers, rock filled gabion bags or nets, grout bags filled with material from the site or elsewhere).”</p>		The MMO notes there has been no response from the Applicant for this point.
MMO-143	<p>5.3 Dredge and Disposal (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.3.15 Should dredging be required to protect cables/fill geotextile containers, it is important that the Applicant informs the MMO of the source of the material as sampling may be required to characterise the material quality in relation to contaminants and sediment compatibility, especially in the context of leaching. Moreover, the dredging method would need specifying.</p>	Noted. Further discussions with the MMO will occur in the future as more certainty on cable burial, dredging and protection methods are understood. The dredging method required will depend on the final burial depth. The final burial depth will depend on a number of factors, including seabed strength (to determine anchor penetration depths) and safety margins required for future dredging activities over the top of the cables. The Applicant is engaging with ports on cable burial depths and methodology, for the purpose of obtaining sufficient depths to allow for access of larger vessels in the future, while also minimising impact on shipping during the installation process, and thus the environmental impacts.	The MMO welcomes further discussions.

MMO-144	<p>5.3 Dredge and Disposal (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.3.16 Should any of the above proposals include plastic materials; it will act as a source of plastic pollution into the marine environment and therefore be of concern.</p>	<p>Use of plastic will be minimised. There are some key aspects, such as cable protection systems when leaving the foundation that are made of high-density plastics. These are needed for the windfarm to function, and have been used across numerous windfarms both in construction and in operation. These items are identified in Chapter 5 Project Description [APP-019].</p>	<p>Noted. The MMO welcomes this clarification.</p>
MMO-145	<p>5.3 Dredge and Disposal (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.3.17 The MMO requests that the Applicant provides the sample results in the standard MMO excel template, and the PCB data from the 2021 Benthic survey to support their assessment. The disposal site characterisation report and Horizontal Directional Drilling (HDD) Method Statement and Contingency Plan are also inaccessible currently and the MMO requests that these are provided.</p>	<p>The survey results are being provided to the MMO in the standard MMO excel template, as requested. The Site Characterisation Report [APP-261] and Outline Horizontal Directional Drill Method Statement and Contingency Plan [APP-250] have been submitted with the DCO application and are available through the examination library.</p>	<p>The MMO notes this and will review and provide any further comments in due course.</p>
MMO-146	<p>5.3 Dredge and Disposal (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.3.18 The MMO notes that the HDD exit location would be up to 1.5km from shore, with the potential to disturb the shallow subseabed (to an average depth of 1.2m) and width of up to 24m. The trench will extend from the HDD exit location to the Offshore Substation Platform (OSP), which will be located on the seabed approximately 1m-8m depth. At the entrance and exit of the HDD, more intense but localised sediment disturbance at the exit pit, however, the potential effects on marine water</p>	<p>The increases in suspended sediment associated with installation of the offshore export cables are assessed in ES Chapter 9 [APP-023] in Section 9.6.1.3. During the excavation process the SSCs will be elevated above prevailing conditions but are likely to remain within the range of background nearshore levels (which will be high close to the coast because of increased wave activity) and lower than those concentrations that would develop during storm conditions. Also, once installation is completed, the high energy nearshore zone is likely to rapidly disperse the suspended sediment (i.e., over a period of a few hours) in the absence of any further sediment</p>	<p>The MMO notes the Applicant's response and will provide an update at Deadline 3.</p>

	<p>quality have already been assessed as either ‘minor adverse’ or ‘negligible’. On this basis, the Applicant states that “no additional mitigation measures are proposed beyond the embedded” mitigations presented for accidental pollution and sediment release. The MMO does not consider the implementation of embedded mitigations to be robust and would expect to see further consideration of mitigations. Moreover, until the sample results have been provided in the correct format, the MMO is unable to determine the suitability of the mitigations.</p>	<p>input. The significance of effect of this impact is assessed as minor adverse which is not significant. Therefore, the Applicant considers the embedded mitigation presented in Section 9.3.3 of the ES Chapter 9 [APP-023] and secured via the outline PEMP [APP-241] to be appropriate and proportionate to the level of impact. The survey results are being provided in the standard MMO excel template to the MMO.</p>	
MMO-147	<p>5.3 Dredge and Disposal (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p> <p>5.3.19 The Applicant states in Chapter 9 that “Based on the conclusions of the Galloper Wind Farm in 2011, whose Zone of Interest is stated to be similar to that of the proposed development, the Applicant proposes to scope transboundary effects in relation to Marine water and sediment quality out of the assessment.” Thus, due to the distance of North Falls from the Economic Exclusion Zone (20km) and given that there will not be a significant effect on water quality, transboundary impacts are scoped out of further assessment in accordance with the scoping opinion (Planning Inspectorate, 2021). However, the MMO defers comment to the Environment Agency with regards to the conclusions drawn for water quality.</p>	<p>Noted. Relevant Representations received from Environment Agency [RR-091] does not raise any concern regarding offshore water quality.</p>	<p>No further comment.</p>
MMO-148	<p>5.3 Dredge and Disposal (Chapter 8 – Marine Geology Oceanography and Physical Processes – APP-022)</p>	<p>The survey results are being provided in the standard MMO excel template to the MMO.</p>	<p>The MMO notes this and will review and provide any further comments in due course.</p>

	<p>5.3.20 The description of the project is clear, and the MMO considers the receptors scoped into the ES to be appropriate. However, further information is required from the Applicant as outlined above. In particular, the Applicant has provided the 2021 sediment survey results in PDF format and not in the standard MMO excel template. In the current format the MMO is unable to fully interrogate the data without manually transcribing the data into the template – which carries a high risk of human error. This is necessary to fully understand the levels of contamination present within the surface sediments of the proposed dredge area. As such, the MMO is unable to agree with the conclusions reached with regard to contaminants. Please can the Applicant provide a copy of these results in the standard MMO template.</p>		
MMO-149	<p>5.4 Benthic Ecology (Chapter 10 – Benthic and Intertidal Ecology – APP-024)</p> <p>5.4.1 The MMO agrees with the conclusion reached regarding the impacts that have been scoped out of subsequent assessment. No further assessment of transboundary effects has been considered within the Environmental Statement (ES), in line with the Scoping Opinion. The MMO agrees with this decision.</p>	The Applicant welcomes agreement with the MMO on this point.	No further comment.
MMO-150	<p>5.4 Benthic Ecology (Chapter 10 – Benthic and Intertidal Ecology – APP-024)</p> <p>5.4.2 The MMO considers that the Project description is clearly presented within Chapter 5 of the ES and remains consistent throughout Chapter</p>	The Applicant welcomes agreement with the MMO on this point.	No further comment.

	10 Benthic and Intertidal Ecology (documents referenced in paragraphs 5 and 10).		
MMO-151	<p>5.4 Benthic Ecology (Chapter 10 – Benthic and Intertidal Ecology – APP-024)</p> <p>5.4.3 The Applicant includes a commitment to conduct engineering related monitoring to assess the condition of the Project infrastructure (i.e. visual assessment of flaking paint on Wind Turbine Generator (WTGs)) within the In-Principle Monitoring Plan (document referenced in paragraph 14). However, the MMO notes that no further assessment of the potential impact on the benthic assemblage has been proposed. This is in line with other similar developments where applicants have not been required to undertake additional monitoring or research.</p>	The Applicant agrees with the MMO's comments that other offshore wind farms have not been required to undertake monitoring or research of paint flakes and considers that the approach presented in the InPrinciple Monitoring Plan [APP-245] is appropriate and proportionate.	No further comment.
MMO-152	<p>5.4 Benthic Ecology (Chapter 10 – Benthic and Intertidal Ecology – APP-024)</p> <p>5.4.4 Should a robust assessment of surficial sediment bound paint flakes be undertaken during pre-construction monitoring (even if this solely involves the collection, storage and / or provision of samples to collaborators for this purpose) a robust comparison of the sediment bound paint flakes could be made in the future. Adequate sampling of the pre-construction condition is a pre-requisite for robust comparison with post-construction condition, and the MMO would encourage the Applicant to seek opportunities for collaboration between researchers and industry to ensure that the opportunity to investigate this relatively recently identified potential</p>	Monitoring of infrastructure condition will be undertaken to inform the requirement for maintenance works. It is not in the Project's interests to have flaking paint and exposed metal surfaces due to the potential for infrastructure to become damaged. Therefore, there will be minimal flaking paint and no further monitoring or research of paint flakes is proposed.	Noted. The MMO welcomes this update.

	impact to benthic ecology (see Tagg <i>et al.</i> , 2024) is not missed.		
MMO-153	<p>5.4 Benthic Ecology (Chapter 10 – Benthic and Intertidal Ecology – APP-024)</p> <p>5.4.5 The MMO notes that the results of the site-specific benthic grab and drop-down video conducted in July 2021 have been used to determine the benthic habitats and species present within the array area and export cable corridor. Potential Annex I reef was determined following assessment from the imagery acquired from station ST39 and the overall assessment was conducted in line with best practice guidance (ES Appendix 10.1: Benthic and Intertidal Ecology Survey Report).</p>	Noted.	No further comment.
MMO-154	<p>5.4 Benthic Ecology (Chapter 10 – Benthic and Intertidal Ecology – APP-024)</p> <p>5.4.6 Table 10.4 of Chapter 10 of the ES provides a summary of the characterising species and biotopes present within the offshore project area. The MMO defers to the relative Statutory Nature Conservation Body (SNCB) regarding the classification of seabed samples (sediment and imagery) into biotopes.</p>	Noted. Responses to Natural England’s relevant representation on Benthic and Intertidal Ecology are provided in Section 2.24 of the Applicant’s Responses to the Relevant Representations Received from Natural England [Document Reference:9.1].	The MMO will keep a watching brief of Natural England’s (NE) comments in relation to Benthic and Intertidal Ecology.
MMO-155	<p>5.4 Benthic Ecology (Chapter 10 – Benthic and Intertidal Ecology – APP-024)</p> <p>5.4.7 The MMO considers the appropriate data sources have been identified. In addition to the July 2021 site specific survey date, several other relevant and available datasets were identified and have been used to inform the assessment.</p>	The Applicant welcomes agreement with the MMO on this point.	No further comment.
MMO-156	5.4 Benthic Ecology (Chapter 10 – Benthic and Intertidal Ecology – APP-024)	The Applicant welcomes agreement with the MMO on this point.	No further comment.

	<p>5.4.8 The MMO considers that the approach to cumulative and inter-related impacts assessment is discussed in Chapter 6 of the ES and the MMO considers the approach to be appropriate. The potential for cumulative effects of the impacts to benthic receptors because of the NFOW is discussed in Section 10.8 of Chapter 10 of the ES (document referenced in paragraph 10). Table 10.22 includes the impacts with the potential for cumulative effect and a rationale for their inclusion in the assessment, and Table 10.23 includes a summary of the projects considered in relation to benthic ecology.</p>		
MMO-157	<p>5.4 Benthic Ecology (Chapter 10 – Benthic and Intertidal Ecology – APP-024)</p> <p>5.4.9 The MMO agrees with the proposed mitigation measures regarding the informed micro siting around Sabellaria spinulosa reef and / or Piddocks in clay (Section 5.5.3 of the In-Principle Monitoring Plan (North Falls Offshore Windfarm Offshore In-Principle Monitoring Plan, Royal HaskoningDHV, July 2024, Revision 0).</p>	The Applicant welcomes agreement with the MMO on this point.	No further comment.
MMO-158	<p>5.4 Benthic Ecology (Chapter 10 – Benthic and Intertidal Ecology – APP-024)</p> <p>5.4.10 Within Section 5.5.3 of the In-Principle Monitoring Plan (North Falls Offshore Windfarm Offshore In-Principle Monitoring Plan, Royal HaskoningDHV, July 2024, Revision 0), the Applicant discusses post-construction benthic monitoring whereby 10% of the Wind Turbine Generator foundations are proposed to be surveyed</p>	The Applicant welcomes agreement with the MMO on this point.	No further comment.

	(grab sampling) to assess change from the pre-construction condition and the MMO welcomes the Applicant's commitment to this assessment.		
MMO-159	<p>5.4 Benthic Ecology (Chapter 10 – Benthic and Intertidal Ecology – APP-024)</p> <p>5.4.11 The MMO recommends that the Applicant considers collecting scrape samples and assesses imagery from infrastructure monitoring alongside grab sampling to determine the presence and composition of the Invasive Non-Native Species assemblage that may colonise WTG infrastructure.</p>	The Applicant considers the proposed grab sampling approach to monitoring Invasive Non-Native Species, outlined in the In Principle Monitoring Plan [APP-245] to be appropriate and this is consistent with other consented projects, such as Dudgeon and Sheringham Shoal Extension Projects.	The MMO notes the Applicant's response and will provide an update at Deadline 3.
MMO-160	<p>5.4 Benthic Ecology (Chapter 10 – Benthic and Intertidal Ecology – APP-024)</p> <p>5.4.12 The MMO defers to the relevant SNCB regarding the assessment of the potential impacts on the designated features of the Kentish Knock East Marine Conservation Zone because of the NFOW.</p>	Noted. Responses to Natural England's relevant representation on Benthic and Intertidal Ecology are provided Section 2.24 of the Applicant's Responses to the Relevant Representations Received from Natural England [Document Reference:9.1].	The MMO will keep a watching brief of NE comments in relation to Benthic and Intertidal Ecology.
MMO-161	<p>5.5 Fish Ecology (Chapter 11 – Fish and Shellfish Ecology – APP-025)</p> <p>5.5.1 The MMO notes that the project description is clearly presented with a detailed outline of each construction stage and the key components of the offshore project characteristics are presented in Table 5.3 of Chapter 5: Project Description.</p>	Noted.	No further comment.
MMO-162	<p>5.5 Fish Ecology (Chapter 11 – Fish and Shellfish Ecology – APP-025)</p> <p>5.5.2 The MMO notes that the Applicant has used generally appropriate data sources to inform their assessment for fish. A summary of the data sources used to inform the ES are provided in Section 11.4.2</p>	Noted.	No further comment.

	and in Table 11.6 of Chapter 11: Fish and Shellfish Ecology. Where a data source was used to characterise a receptor, for example the International Bottom Trawl Survey (IBTS) data which was used to support the characterisation of the environment for sandeel for the ES, the Applicant has appropriately discussed the limitations associated with these data, which have been recognised in the technical report. The MMO considers this to be appropriate.		
MMO-163	<p>5.5 Fish Ecology (Chapter 11 – Fish and Shellfish Ecology – APP-025)</p> <p>5.5.3 The MMO notes that the North Sea Sandeel Survey (NSSS) data could have also been used to supplement the characterisation of sandeel habitat for the ES. The NSSS is a targeted sandeel dredge survey that has been carried out annually in December since 2004. The NSSS data can be downloaded from the International Council for the Exploration of the Sea (ICES) at Datras: https://datras.ices.dk/Data_products/Download/Download_Data_public.aspx. The MMO would typically recommend that a minimum of 10 years of the most recently available data is used to inform the assessment.</p>	The suitability of the NSSS to inform the PEIR was discussed during the Expert Topic Group meeting (November 2023). The data had been reviewed and was not considered representative as the spatial coverage of the NSSS does not extend as far south as the fish and shellfish ecology study area identified for ES Chapter 11 Fish and Shellfish Ecology [APP-025]. The NSSS area is focussed on the key sandeel grounds in the North Sea between Dogger Bank and Scotland, which is outside of the North Falls Array Area by approximately 118km.	The MMO notes the Applicant's response and will provide an update at Deadline 3.
MMO-164	<p>5.5 Fish Ecology (Chapter 11 – Fish and Shellfish Ecology – APP-025)</p> <p>5.5.4 The MMO notes that some clarifications and corrections are also needed regarding the Applicant's potential herring spawning habitat and potential sandeel habitats 'heat' maps which have been presented to support the habitat suitability assessments. Several data layers appear to have</p>	The Applicant notes that in the MMO's consultation response to the PEIR dated 14th July 2023, it was recommended that a heat map approach be undertaken and referenced MarineSpace (2013) as an example of a heat map approach. The approach was therefore tailored to fit using available data sources appropriate to sandeel and herring in areas relevant to the Project and is considered to be	The MMO notes the Applicant's response and will provide an update at Deadline 3.

	<p>been omitted or misrepresented which represents a departure from the recommended 'heat' mapping approaches of MarineSpace (2013a and b) and means the Applicant's 'heat' map may be underrepresenting the true extent and importance of potential herring spawning habitat and potential sandeel habitats.</p>	<p>representative of potential herring spawning and suitable sandeel habitats.</p>	
MMO-165	<p>5.5 Fish Ecology (Chapter 11 – Fish and Shellfish Ecology – APP-025)</p> <p>5.5.5 The MMO also notes from Table 6.14 of the ES Appendix 11.1 Fish and Shellfish Ecology Technical Report, that the Applicant appears to have omitted the Eastern Sea Fisheries Joint Committee (ESFJC) Fishing Grounds layer from their 'heat' map as well as unnecessarily refining vessel monitoring system (VMS) data to Danish demersal fishing vessels. This is inconsistent with the 'heat' mapping methodology defined by the MarineSpace (2013a) as the VMS data layer should be formed from 10 years of VMS data for vessels using demersal fishing gears in the area of interest, and not be filtered to present the activity of one particular nation as this will underrepresent the true extent and importance of potential sandeel habitat in the area. Omission of the ESFJC layer is also not acceptable as, although some layers may not occur in all regions, they must not be omitted as the inclusion of all the layers described in the methodology directly affect the categorisation of 'heat' associated with the mapping approach. With this in mind, the MMO requests that the Applicant redoes their herring spawning habitat 'heat' map following the updated version of the MarineSpace methodology (Reach <i>et al.</i>, 2023).</p>	<p>The Applicant notes that in the MMO's consultation response to the PEIR dated 14th July 2023, it was recommended that a heat map approach be undertaken and referenced MarineSpace (2013) as an example of a heat map approach. The approach was therefore tailored to fit using available data sources appropriate to sandeel. The Applicant considers that the VMS data layers included in the Marine Space (2013) methodology (UK vessels using demersal fishing gears) is not representative of sandeel presence, particularly given the lack of a UK targeted sandeel fisheries in that area. UK vessels using demersal fishing gears would be targeting demersal species. For example, sole and thornback ray are the highest value species in UK demersal trawls landings. Furthermore, consultation undertaken with local fisheries stakeholders to inform the commercial fisheries chapter did not identify any local commercial sandeel fishery in the study area. The Applicant notes that the ESFJC data was not included given the caveats in the dataset, where they identified significant limitations in regards to the accuracy of the data shown. It should also be noted that these data layers have not been available from the IFCA website for the last five</p>	<p>The MMO notes the Applicant's response and will provide an update at Deadline 3.</p>

		<p>years. The heat map approach adopted for North Falls, follows MMO's consultation response to the PEIR (dated 14/07/2023) and agreed through technical discussions undertaken during expert topic group (ETG) meetings.</p> <p>The heat maps were produced using the Marine Space (2013) methodology as a guidance and are considered to be representative of potential herring spawning and suitable sandeel habitat.</p>	
MMO-166	<p>5.5 Fish Ecology (Chapter 11 – Fish and Shellfish Ecology – APP-025)</p> <p>5.5.6 The Applicant has assessed the magnitude of impact associated with the project works for sandeel to be negligible and concluded that effects to sandeel are of minor significance, which is not significant in EIA terms. The current potential sandeel habitat 'heat' map provided by the Applicant (documents reviewed; Appendix 11.1 Fish and Shellfish Ecology Technical Report, Figure 6.23) shows the OWF array site to be situated entirely within seabed habitat with 'medium' confidence score. Therefore, for these impacts in question, the MMO would typically expect the magnitude of impact to be classified as 'low' at the very minimum. Considering the broader potential sandeel spawning habitat that is available in the wider region, and the localised and temporary nature of these impacts that are largely restricted to the boundary of the OWF array site, the MMO would not anticipate significant impacts on sandeel at the population level however the clarifications requested of the Applicant's 'heat' map for sandeel, and consideration of the NSSS data in the Applicant's assessment for sandeel</p>	<p>The suitability of the NSSS to inform the PEIR was discussed during the Expert Topic Group meeting (November 2023). The data had been reviewed and was not considered representative as the spatial coverage of the NSSS does not extend as far south as the fish and shellfish ecology study area identified for ES Chapter 11 Fish and Shellfish Ecology [APP-025]. The NSSS area is focussed on the key sandeel grounds in the North Sea between Dogger Bank and Scotland, which is outside of the North Falls Array Area by approximately 118km.</p>	<p>The MMO notes the Applicant's response and will provide an update at Deadline 3.</p>

	should be presented before the MMO can accept the Applicant's conclusions.		
MMO-167	<p>5.5 Fish Ecology (Chapter 11 – Fish and Shellfish Ecology – APP-025)</p> <p>5.5.7 The MMO notes that in relation to previous comments raised for the PEIR, regarding recommendation of a multi-layered map presenting BGS data, herring spawning and nursery grounds data as per Coull <i>et al.</i> (1998) and Ellis <i>et al.</i> (2012), the existing PSA data collected during the benthic surveys, and PSA data from the Cefas' OneBenthic Portal; the Applicant has presented ES Figure 11.3.</p>	Noted.	No further comment.
MMO-168	<p>5.5 Fish Ecology (Chapter 11 – Fish and Shellfish Ecology – APP-025)</p> <p>5.5.8 The MMO also notes that Figure 6.33 provided in Appendix 11.1 Fish and Shellfish Ecology Technical Report, the Applicant's 'heat' scale ranges from 0 – 13 which is inconsistent with the 'heat' scale defined by the MarineSpace (2013) methodology, which ranges from 0 – 16. In the MarineSpace methodology, each data layer is assigned a score and if all layers were to coexist at one location, the maximum possible score would be 16 (as defined in sections 2.5.7 – 2.5.10 of the MarineSpace method statement). Although some layers may not occur in all regions (for example the Eastern Sea Fisheries Joint Committee (ESFJC) Fishing Grounds layer), they must not be omitted as the categorisation of 'heat' associated with mapping (section 2.5.10 of MarineSpace (2013)) explicitly categorises 'heat' scores into four discrete intervals: 1-4 (low), 5-8 (medium), 9-12 (high), 13-16 (very high). MarineSpace have completed regional 'heat'</p>	<p>The heat map approach adopted for North Falls, follows MMO's consultation response to the PEIR (dated 14/07/2023) and agreed through technical discussions undertaken during expert topic group (ETG) meetings.</p> <p>The Applicant notes the heat map produced using the Marine Space (2013) methodology as a guidance is therefore considered to be representative of potential herring spawning.</p> <p>The ESFJC data was not used given the caveats in the dataset. The Applicant notes that these data layers have significant limitations in regard to the accuracy of the data shown and that this data has not been available from the IFCA website for the last five years.</p> <p>The data presented in Table 6.16 had been incorrectly referenced, the Applicant can confirm</p>	The MMO notes the Applicant's response and will provide an update at Deadline 3.

	<p>mapping assessments for herring spawning potential habitat and the scale has remained consistent across regions, even where certain layers (such as the ESFJC Fishing Grounds) do not occur. It appears from Table 6.16 of the fish ecology technical appendix, and Figure 6.33, that the Applicant has not only omitted the ESFJC layer from their 'heat' map but has also presented inaccurate vessel monitoring system (VMS) data as well. Table 6.16 outlined that Danish VMS data for the years 2014-2018 has been used to form the 'heat' map. This represents a significant departure from the recommended 'heat' mapping approach and means the Applicant's 'heat' map may be underrepresenting the true extent and importance of herring spawning habitat.</p>	<p>that the VMS incorporated into the heat map was for UK Pelagic Trawl/Seines.</p>	
MMO-169	<p>5.5 Fish Ecology (Chapter 11 – Fish and Shellfish Ecology – APP-025)</p> <p>5.5.9 For many years, MarineSpace (2013) represented the only available 'heat' mapping methodology, however, MarineSpace Ltd, in consultation with the MMO and Cefas Fisheries Advisors, have published an updated version of the methodology (Kyle-Henney <i>et al.</i>, 2023) which takes into account changes in data availability which have occurred since the original method was published and incorporates new data to enhance the 'heat' mapping process. As outlined in point 3.5.7 above, there are several elements of the Applicant's herring spawning habitat 'heat' map which require clarification and correction. With this in mind, the MMO requests that the Applicant redoes their herring spawning habitat 'heat' map following the updated</p>	<p>The heat map approach adopted for North Falls, follows MMO's consultation response to the PEIR (dated 14/07/2023) and agreed through technical discussions undertaken during expert topic group (ETG) meetings. The Applicant notes that the assessment presented is appropriate to the available herring data sources and highlights that the updated herring methodology (Kyle-Henney <i>et al.</i>, 2024), is based on the original methodology from MarineSpace (2013) The ESFJC data was not used given the caveats in the dataset. The Applicant notes that these data layers have significant limitations in regard to the accuracy of the data shown and that this data has not been available from the IFCA website for the last five years. The data presented in Table 6.16 had been incorrectly referenced, the Applicant can confirm that the VMS incorporated into the heat map was for UK Pelagic Trawl/Seines.</p>	<p>The MMO notes the Applicant's response and will provide an update at Deadline 3.</p>

	version of the MarineSpace methodology (Kyle-Henney <i>et al.</i> , 2023).		
MMO-170	<p>5.6 Shellfish Ecology (Chapter 11 – Fish and Shellfish Ecology – APP-025)</p> <p>5.6.1 The MMO agrees with the conclusions reached by the Applicant and the rationale behind the scoping of shellfish receptors in or out of assessment.</p>	Noted.	No further comment.
MMO-171	<p>5.6 Shellfish Ecology (Chapter 11 – Fish and Shellfish Ecology – APP-025)</p> <p>5.6.2 The MMO notes that the applicant has employed a variety of sources for evidence in relation to shellfish and shellfisheries. These include MMO landings data from the years 2016-2020 which covers both the site -specific ICES rectangles and adjacent rectangles, published literature and consultation with local IFCA's as evidenced in point 85, section 11.6.1.1.1 "Magnitude of Impact" in the ES Chapter 11: Fish and Shellfish Ecology document.</p>	Noted.	No further comment.
MMO-172	<p>5.6 Shellfish Ecology (Chapter 11 – Fish and Shellfish Ecology – APP-025)</p> <p>5.6.3 The MMO considers the data sources to be appropriate for this assessment. The Applicant has provided similar evidence to that provided by those operations of a similar nature. This includes MMO landings, survey data, published literature and consultation with local IFCA's.</p>	Noted.	No further comment.
MMO-173	5.6 Shellfish Ecology (Chapter 11 – Fish and Shellfish Ecology – APP-025)	Noted.	No further comment.

	5.6.4 The MMO considers that the Applicant has provided a sufficient description of the cumulative and inter-related impacts within the environment, providing justification to support the scoping in or out of a receptor from the assessment.		
MMO-174	<p>5.6 Shellfish Ecology (Chapter 11 – Fish and Shellfish Ecology – APP-025)</p> <p>5.6.5 The MMO agrees with the embedded mitigation measures proposed for both shellfish and commercial shellfisheries. These include:</p> <ul style="list-style-type: none"> • Provision of an offshore fisheries liaison officer and coexistence plans. • A minimum depth of 0.6m for cable burial or cable protection where burial is not achieved to reduce the impacts of electromagnetic fields. • The use of hard sediment. • A soft start for pile driving to reduce the impact of underwater noise during construction. • The piling restriction between 1 November and 31 January inclusive to reduce the impacts on Downs herring will also help protect edible crabs (<i>Cancer pagarus</i>) through reducing the level of activity occurring while females are buried and have limited mobility. 	Noted.	No further comment.
MMO-175	<p>5.6 Shellfish Ecology (Chapter 11 – Fish and Shellfish Ecology – APP-025)</p> <p>5.6.6 The Applicant has noted the impacts towards international fleets, namely Belgian, Dutch and French fleets and has considered these impacts throughout the commercial fisheries impact</p>	Noted.	No further comment.

	assessment process. Potential transboundary impacts for shellfish have been scoped out of the assessment as the Applicant is considering shellfish stocks and populations irrespective of national jurisdictions. The MMO would consider this to be adequate in relation to shellfish species.		
MMO-176	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.1 The MMO considers that all relevant/applicable marine mammal functional hearing groups have been considered in the underwater noise modelling assessment. The marine mammal species scoped into the Environmental Statement, which sit within these hearing groups, are harbour porpoise, minke whale, grey seal and harbour seal. The MMO defers to Natural England to ensure that all relevant marine mammal species have been scoped in. The MMO notes that all fish groups have been considered as per Popper <i>et al.</i> (2014).</p>	Noted.	No further comment.
MMO-177	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>.7.2 The MMO considers that all relevant impacts have been scoped in for assessment. Specifically, the potential effects of auditory injury (Permanent Threshold Shift, (PTS)) and Temporary Threshold Shift, (TTS)) and disturbance resulting from the following activities, have been considered:</p> <ul style="list-style-type: none"> • Piling. • Other construction activities including the clearance of Unexploded Ordnance (UXO), 	Noted.	No further comment.

	<p>seabed clearance methods, and cable installation methods.</p> <ul style="list-style-type: none"> • Construction vessels. • Noise from operational wind turbines. • Operational and Maintenance (O&M) activities. • O&M vessels. 		
MMO-178	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.3 The MMO considers that the data sources identified are largely appropriate and the evidence being proposed is consistent with that submitted for operations of a similar nature.</p>	Noted.	No further comment.
MMO-179	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.4 Please see specific comments on the Draft Marine Mammal Mitigation Protocol (MMMP) below. This outline MMMP details how the Applicant would mitigate the risk of auditory injury to marine mammals. Both piling and UXO clearance have the potential to produce underwater noise capable of causing auditory injury to marine mammals. It is noted that preconstruction, separate Marine Licences for UXO clearance will be sought, with the necessary information (including the final MMMP for UXO clearance) being provided through the marine licensing process. A summary of the proposed measures to mitigate potential impacts from UXO clearance have been provided within the Draft MMMP for information purposes only. The MMO</p>	Noted.	No further comment.

	largely defers to Natural England and other relevant SNCBs for comments on the outline Site Integrity Plan (SIP) for the Southern North Sea (SNS) Special Area of Conservation (SAC).		
MMO-180	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.5 Consideration of the cumulative sound exposure predictions in the MMMP: The MMO previously advised that the MMMP (and the cumulative sound exposure during installation) should be based on the worst-case number of piles in a 24-hour period. This is because the recommended guidance (NOAA (NMFS, 2018) / Southall <i>et al.</i> (2019)) applies to a period of 24 hours for the cumulative sound exposure (SEL_{cum}). Thus, it follows that the worst case is the maximum amount of noise that could occur in 24 hours, not just for a single pile. The Applicant has responded with the following: “The mitigation proposed for piling will be carried out prior to each pile, and therefore mitigation should be based on the potential for effect from each individual pile, rather than the total piles to be installed within 24 hours”.</p>	The Applicant notes the MMO's comment and will amend the Draft MMMP so that the sequential piling impact results are presented and mitigation measures are based on these. It must be noted the Draft MMMP [APP-242] impact ranges will remain largely the same, as by the time the subsequent piles are installed the fleeing receptor is at such a distance that the additional exposure is small.	The MMO welcomes this update and will provide further comments once the amended draft MMMP has been reviewed.
MMO-181	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.6 The MMO does not agree that as mitigation will be carried prior to each pile, mitigation should be based on the potential for effect from each individual pile, rather than the total piles to be installed within 24 hours. Even if mitigation is required prior to piling</p>	See response to MMO-180 above.	See response to MMO-180.

	<p>at each location (which is, nevertheless, standard practice), this does not negate the fact that an animal may still be exposed (to underwater noise) more than once from multiple piles. The Developer should put forward an appropriate justification to explain why the cumulative sound exposure of two piles is not required in their MMMP. In the absence of a sufficient argument, the MMO strongly recommends that mitigation is required prior to piling of foundations at each pile location, and the mitigation requirements should be based on the predicted PTS ranges for the cumulative exposure for three monopiles and six pin piles installed sequentially (or whatever the finalised worst-case number of monopiles/pin piles installed in 24-hours will be).</p>		
MMO-182	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.7 The MMO previously advised that the JNCC (2010) guidance recommends that if there is a pause in piling operations for a period of greater than 10 minutes, then the pre-piling search and soft-start procedure should be repeated before piling recommences. If a watch has been kept during the piling operation, the Marine Mammal Observer or Passive Acoustic Monitoring (PAM) operative should be able to confirm the presence or absence of marine mammals, and it may be possible to commence the soft-start immediately. However, if there has been no watch, the complete pre-piling search and soft-start procedure should be undertaken. The guidance recommends that the soft-start duration should be a period of no less than 20</p>	<p>Continuous monitoring will be ensured throughout piling, including any break in piling, to ensure the MA is free from marine mammals before piling recommences. This will be made clear when finalising the MMMP post consent. However, we consider the requirement for another full soft-start period to be disproportionate, instead of the 5-6 hammer blows at low energy (<400kJ) which will allow any marine mammals that may have moved nearby during the break time to move away again without providing any excessive noise.</p>	<p>The MMO would like to refer the Applicant to the further comments made by the MMO at Deadline 1 in relation to the Underwater noise policy papers that have been published, by DEFRA, JNCC, NE and Cefas. These set out the direction of travel into reducing the noise at source for piling and sets out further detail on UXO mitigation. The MMO is awaiting response from the Applicant at Deadline 2 on how the publication of these documents</p>

	minutes. Any requested variation from a 20-minute soft-start should be agreed with the relevant agency and regulator. The MMO recommended that the guidance is adhered to, and the full soft start is implemented (not 5 to 6 blows at the starting hammer energy as is proposed in the MMMP).		changes their Application and what updates will be made at which deadline. Please refer to Section 3 Further Comments of the MMO Deadline 1 Response (REP1-067).
MMO-183	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.8 The Applicant has responded stating that “Procedures have been amended based on Natural England comments to ensure the MA (Monitoring Area) will continue to be monitored during breaks in piling”. Provided that the MA is being continually watched/monitored during the full break in piling (of more than 10 minutes but less than two hours), and the monitoring operatives can confirm that marine mammals are not present, then the MMO has no major objections to the altered soft-start procedure, provided Natural England and JNCC are content with the proposals. The Draft MMMP confirms that the full mitigation procedure is required for any breaks in piling of more than two hours.</p>	Noted.	No further comment.
MMO-184	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.9 As advised in March 2024, references to bubble curtains are made throughout the Draft MMMP. Paragraph 104, for example, notes the ‘potential use of bubble curtains if high-order UXO detonation is required, taking into account the</p>	Comment linked to MMO -186 below.	See response to MMO-186.

	<p>environmental conditions within which they could be effective'. Paragraph 117 further states that the required Acoustic Deterrent Device (ADD) activation period for low-order clearance, high-order detonation with bubble curtain (if required) and high -order detonation without bubble curtain, will be determined based on the maximum potential area for PTS impact ranges.</p>		
MMO-185	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.10 In fact, paragraph 119 acknowledges that it is likely that an ADD alone would not provide sufficient deterrence from the full PTS ranges for harbour porpoise (for the larger UXO sizes, for a high-order clearance), and therefore additional mitigation options would be required for a high-order clearance of a device of 120kg or higher.</p>	Comment linked to MMO-186 below.	See response to MMO-186.
MMO-186	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.11 It is the understanding of the MMO that bubble curtains will be required for all high-order detonations, and this should be clear in the final MMMP. The MMO suggests that the Applicant consults with the specific UXO contractor to determine the appropriate parameters for safely deploying bubble curtains. If environmental conditions are not conducive to the use of a bubble curtain, then the MMO recommends postponing any high-order detonations until conditions are suitable.</p>	Noted and the Draft MMMP will be amended to ensure it is clear that if high-order clearance is required then NAS must be used.	The MMO welcomes this update and will provide further comments once the amended draft MMMP has been reviewed.

MMO-187	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.12 The MMO considers that transboundary impacts have been considered in the EA and the MMO largely defers to the relevant SNCBs for comments on this matter.</p>	Noted.	No further comment.
MMO-188	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.13 The MMO notes that Paragraph 75 of Appendix 12.4 Underwater Noise Technical Assessment confirms that the cumulative exposures (for other construction activities such as cable laying and dredging etc.) are based on the noise source being present for 12 hours in any 24-hour period. However, this is at odds with the previous paragraph (74) which states that “for the cumulative exposure ranges for these noise sources it has been assumed that the noise will be present for 24 hours a day”. The MMO presumes para 75 is a mistake and this should be ‘24 hours’ and not 12 hours. Appendix 12.3 states that all (other construction) sources have been assumed to operate constantly for 24 hours to give a worst-case assessment of the noise (which is appropriate).</p>	Noted. In line with the comment, the text in paragraph 75 should read: “Table 1.25 includes the assessment of the potential for PTS onset due to the cable laying, suction dredging, trenching, and rock placement activities that may occur in either the construction or operation and maintenance phases. The cumulative exposures are based on the noise source being present for 24 hours in any 24 hour period.” The Applicant acknowledges this comment and agrees this is a mistake in the text.	Noted. The MMO welcomes this clarification and update.
MMO-189	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.14 For monopiles, the current noise modelling assumes three monopiles (17m diameter) installed in</p>	Noted. A more precautionary approach to cover any potential worst-case scenario was updated and assessed in the ES Chapter 12 Marine Mammals [APP-026] compared to the initial PEIR.	Noted. The MMO welcomes this update.

	a 24-hour period with a maximum hammer energy of 6,000kJ. Note for the PEIR, the modelling was based on two monopile foundations (17m diameter) installed in a 24-hour period (maximum 6,000kJ hammer).		
MMO-190	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.15 For pin piles, the PEIR assumed four pin piles (3.5m diameter) would be installed in a 24-hour period, with a maximum hammer energy of 3,000kJ. In the current ES assessment, it is expected that six pin pile foundations (6m diameter) will be installed in a 24-hour period, with a maximum hammer energy of 4,400kJ.</p>	Noted. A more precautionary approach to cover any potential worst-case scenario was updated and assessed in the ES Chapter 12 Marine Mammals [APP-026] compared to the initial PEIR.	Noted. The MMO welcomes this update.
MMO-191	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.16 The largest marine mammal impact ranges are predicted for the worst case monopile and pin pile scenarios at the East modelling location. Maximum PTS injury ranges are predicted for Low-Frequency (LF) cetaceans, with ranges of up to 7.0km; Very High Frequency (VHF) cetaceans show maximum PTS ranges of up to 3.3km. When comparing the impact ranges for a single pile installation and sequential pile installations, the overall increases for the sequential scenarios results are minimal, as by the time the subsequent piles are installed, the fleeing receptor is at such a distance that the additional exposure is small. The largest</p>	Noted.	No further comment.

	increases seen in impact ranges for these scenarios are only a few hundred metres.		
MMO-192	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.17 For fish, the largest recoverable injury ranges (203 dB SELcum threshold) in species of fish are predicted to be 9.4km (single monopile) and 6.7km (single pin pile); 1km assuming a stationary receptor for both the three sequentially installed monopiles scenario and the six sequentially installed pin piles scenario. TTS ranges (186 dB SELcum threshold) are predicted up to 33km (single monopile), 28km (single pin pile); 42km for sequential pile installations. When comparing the impact ranges for a single pile installation and sequential pile installations, the ranges are significantly increased for a stationary receptor.</p>	Noted.	No further comment.
MMO-193	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.18 Section 4.1, and Table 4-2, presents the maximum predicted unweighted peak sound pressure level (SPL_{peak}) and the single strike sound exposure level (SEL_{ss}) noise levels at a range of 750m from the source. For the SEL_{ss} metric, the MMO observes that the monopile values (for a 17m diameter pile and 6,000kJ hammer energy) are only 0.5–1dB above the corresponding pin-pile values (for 6m diameter piles and 4,400kJ hammer energy). This is somewhat at odds with the emerging evidence from literature, which suggests that the pile</p>	The Applicant is aware of the von Pein et al (2020 and more recent 2022) reports and disagrees with some of its conclusions. The pile diameter term of the scaling equations the authors propose may ‘fit’ the extremes of the data, but a visual interrogation of the plots in the paper shows that the increases at larger diameters do not in fact lead to significant increases. The indicated trend for noise vs pile diameter in von Pein <i>et al</i> (2022) does not fit with the empirical data used for the assessment, which, although not extending to 17m piles, does show a good fit and trend from less than 1m up to approximately 10m. The blow energy has a much greater influence than pile diameter and also tends to increase with pile	The MMO notes the Applicant’s response and will provide an update at Deadline 3.

	diameter is a very important factor in the scaling of piling noise (von Pein <i>et al.</i> , 2020). At the same time, the MMO is aware that the INSPIRE model is based on existing empirical data, which presumably does not yet exist for the parameters relevant to the monopile foundation at this windfarm, and thus needs to be extrapolated up to the scale anticipated for the current application.	diameter. The Applicant stands by the predictions of the assessment.	
MMO-194	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.19 The MMO notes that when considering the maximum hammer energy of 6,000kJ for monopiles, the unweighted SPLpeak predictions at 750m range from 202.0 to 202.4dB depending on the modelling location (Table 4-2). These values slightly exceed the PTS threshold value of 202dB SPLpeak for VHF cetaceans under the Southall <i>et al.</i> (2019) impulsive criteria. This indicates that the maximum PTS ranges for VHF cetaceans would be slightly larger than 750m. However, the summary results in Tables 4-3 (East location), 4-7 (South location) 4-11 (West location), predict maximum ranges of only 680m, 660m, and 610m respectively for VHF cetaceans.</p>	The Applicant acknowledges the apparent inconsistency, and this is related to model resolution for each of these runs. The VHF PTS modelling was undertaken at a higher resolution to determine the impact ranges; a lower resolution was used for the predictions at specific distances, which leads to these small discrepancies. The results from the modelling undertaken at a higher resolution specifically for the VHF PTS impact ranges has been used to provide a robust assessment of PTS on VHF cetaceans.	The MMO notes the Applicant's response and will provide an update at Deadline 3.
MMO-195	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.20 The purpose of the noise monitoring during construction is to determine the actual underwater noise levels on site for comparison with the modelled levels presented in the ES. The MMO acknowledges that the measurements taken during installation will</p>	The underwater noise modelling will be updated post consent to inform the MMMP, based on the final design envelope, at which time the requested plot will be provided.	Noted.

	<p>be constrained by various factors such as the piling plan and site limitations and a direct (like-for-like) comparison with a modelled scenario is unlikely to be possible. Nevertheless, even if the piling locations and choice of transects would not be matched precisely, both modelling and monitoring should provide enough information to deduce some envelope of received level curves in each case. Thus, some sort of comparison/s in the form of 'level vs range' plots (for comparable hammer strike energies), with the associated envelopes of variability, should be possible and would be expected. Therefore, the MMO recommends that such a plot is provided.</p>		
MMO-196	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.21 This assessment is provided within the ES for information purposes only. A separate Marine Licence (ML) application for UXO clearance will be submitted post-consent, once detailed information on the locations and extent of UXO required to be cleared is known.</p>	Noted.	No further comment.
MMO-197	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.22 After conducting a spot check on the predicted ranges for both low order and 0.5kg charge weights, as well as the largest (high order) charge weight of 750kg plus donor, the MMO can confirm that the predictions in Tables 1.5 and 1.6 appear to be reasonable.</p>	Noted.	No further comment.

MMO-198	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.23 Section 1.4.3.3 states the following: “The number of harbour porpoise, minke whale, grey seal and harbour seal that could potentially be impacted by a high-order UXO detonation (up to 750kg NEQ), and low-order clearance (0.5kg) has been estimated based on the maximum potential PTS impact ranges (Table 1.7). For high-order detonation of the maximum potential UXO with an NEQ of 750kg plus donor charge, the magnitude for PTS is assessed as a worst-case (Table 1.7) to be:</p> <ul style="list-style-type: none"> • Medium for harbour porpoise and minke whale • Low to medium for grey seal • Negligible to medium for harbour seal”. 	Comment linked to MMO-199 below.	See response to MMO-199.
MMO-199	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.24 The MMO would question the ‘Medium’ rating for harbour porpoises, especially when 1,981 individuals are predicted to be at risk of PTS (refer to Table 1.7). Similarly, for TTS, the assessment concludes that for the high-order detonation of the maximum potential UXO with an NEQ of 750kg plus donor charge, the magnitude for TTS is assessed as a worst-case scenario (Table 1.8) to be ‘Low’ for harbour porpoises and minke whales, ‘Negligible’ for grey seals, and ‘Negligible to low’ for harbour seals. For harbour porpoises, a total of 6,832 individuals</p>	The Applicant notes this comment and maintains its position regarding the magnitude levels used in the assessments, justification on the magnitudes are provided in the document Further Information Regarding Marine Mammals (Document Reference 9.14) submitted at Deadline 1.	The MMO notes the Applicant’s response and will provide an update in Deadline 3.

	are at risk of TTS, which casts doubt on the 'Low' magnitude rating.		
MMO-200	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.25 The above comment also pertains to section 1.4.4.3 of the report and the extent of impact from disturbance caused by UXO. Based on a 26km Effective Deterrence Range (EDR) for high-order detonation with no mitigation, a total of 6,832 harbour porpoise are at risk, but this has been assessed as 'Low' magnitude (see Table 1.10).</p>	See response above for MMO-199.	See response above for MMO-199.
MMO-201	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.26 Section 1.4.4.6 of the report concludes that “no mitigation measures are required to minimise potential disturbance to marine mammals due to UXO clearance”. However, implementing mitigation measures like low order clearance methods and noise abatement will help reduce risks of auditory injury as well as behavioural disturbances (notwithstanding the fact that using an ADD will intentionally cause some disturbance or displacement (in order to prevent auditory injury)).</p>	The Applicant agrees that UXO clearance requires appropriate mitigation measures to be applied, details of potential mitigation measures for UXO clearance are described in the Draft MMMP [APP-242]. In Appendix 12.5 of the ES [APP-100] the conclusion that “no mitigation measures are required to minimise potential disturbance to marine mammals due to UXO clearance” was based on the assessment findings. However, this paragraph will be amended in the Draft MMMP [APP-242] to say ‘mitigation measures will be undertaken for UXO clearance to minimise any potential disturbance’.	Noted. The MMO welcomes this update.
MMO-202	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.27 It is appropriately recognised (in section 5.7.3 of the plan) that monitoring is an important element in the management and verification of the actual</p>	Noted.	No further comment.

	Project impacts. If piled foundations are used in the final project design, underwater noise monitoring of the first four piles of each piled foundation type will be undertaken with the methods agreed with the MMO and relevant SNCBs in the preconstruction period.		
MMO-203	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.28 The MMOs notes that the Applicant has agreed for one of the first four piles to be within an area anticipated to generate the greatest underwater noise emissions. This is likely to be determined through detailed ground investigations, with areas of hard substrate and / or depth being correlated with higher anticipated noise emissions. The MMO recommends that where possible, the ‘worst case’ piles should be the first four to be installed.</p>	See response to MMO -106.	See response to MMO-106.
MMO-204	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.29 Paragraph 181: “A MMMP for piling (Section 12.8) in accordance with the Draft MMMP (Document Reference: 7.7) would reduce the risk of PTS from a single strike of both monopiles and jacket pin piles, at the maximum hammer energy, and from the cumulative exposure of one monopile and one jacket pin pile. Mitigations will be undertaken for each pile, and therefore should be designed to ensure they cover for the potential impact of the installation either one monopile or one jacket pin pile, as required (as well as for any</p>	The Applicant notes the MMO's comment and will amend the Draft MMMP so that the sequential piling impact results are presented, and mitigation measures are based on these. It must be noted the Draft MMMP [APP-242] impact ranges will remain largely the same as by the time the subsequent piles are installed the fleeing receptor is at such a distance that the additional exposure is small.	The MMO welcomes the Applicants comment regarding amending the Draft MMMP and will provide further comments once reviewed.

	<p>simultaneous piling events)". As noted above under Question 11 (point 28), even if mitigation is required prior to piling at each location, this does not negate the fact that an animal may still be exposed (to underwater noise) more than once from multiple piles. The Developer should put forward an appropriate justification to explain why the cumulative sound exposure of two piles is not required in their MMMP. In the absence of a sufficient argument, the MMO strongly recommends that mitigation is required prior to piling of foundations at each pile location, and the mitigation requirements should be based on the predicted PTS ranges for the cumulative exposure for three monopiles and six pin piles installed sequentially (or the worst-case number of monopiles/pin piles installed in 24-hours).</p>		
MMO-205	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.30 The MMO can confirm that the ranges predicted for marine mammals and fish species, in general, look plausible, including the resulting impact ranges when considering single vs sequential foundations. The MMO sense checked the various impact ranges both for fleeing and stationary receptors, the differences when considering monopile versus pin-pile scenarios, as well as the scaling of impact ranges with the number of sequential piles. It should be noted that this sense checking was informed by the modelling assumptions detailed in the report (e.g., the choice of source level (SL) values and their setup for monopile</p>	Noted.	No further comment.

	vs. pinpile, see comment 46 below) and thus is not intended to serve as validation of the modelling outputs, but a check of their plausibility under the presented assumptions.		
MMO-206	<p>5.7 Underwater Noise (Chapter 12 Marine Mammals – APP-026 and Chapter 26 – Noise and Vibration – APP-040)</p> <p>5.7.31 The MMO notes that similar impact ranges are predicted for both monopile and pin pile foundations, when considering fleeing receptors. Although the piling profile used for monopile scenarios deliver more than twice the cumulative strike energy (per pile) than the corresponding pin pile profile, the differences in predictions are very minor. The reasons for this situation arise from the fact that a disproportionately large portion of the cumulative sound exposure is experienced by the fleeing receptors in the early stages of piling where they are closer to the pile location. As illustrated and explained in Section 3.3 of the report, the pin pile scenario reaches its maximum energy over a shorter period of time (compared to the monopile scenario) and it also reaches a faster strike rate sooner and this seems to balance out the lower maximum and lower overall cumulative energy of the pin-pile vs. monopile profiles. Additionally, any subsequent piles (i.e., going up to 3 monopiles or 6 pin-piles) result in negligible additional cumulative exposure for fleeing receptors, although in the case of stationary receptors (i.e., fish) the additional piles result in a scaling up of the SELcum impact ranges. The MMO was able to successfully verify all of the above</p>	Noted.	No further comment.

	patterns within the modelling sense-checking exercise		
MMO-207	<p>5.8 Offshore Ornithology (Chapter 13 – Offshore Ornithology – APP-027)</p> <p>5.8.1 The MMO defers to Natural England as SNCB and supports any comments raised in relation to the Ornithology. The MMO will continue to be part of the discussions relating to securing any mitigation and monitoring or other conditions required within the DMLs.</p>	Noted.	No further comment.
MMO-208	<p>5.9 Commercial Fisheries (Chapter 14 Commercial Fisheries – APP-028)</p> <p>5.9.1 The MMO notes that some areas in which the activities are proposed, are frequented by inshore commercial fishing operations, specifically those areas within 20 nautical miles (nm) of the shore, where the cable corridor is proposed; East Anglian whelk potters and some lobster fishermen often fish outside of 12nm from the Suffolk and Essex coasts, primarily setting baited whelk pots on soft ground, but also lobster pots in the areas close to shipwrecks. Further inshore, inside of 12nm, the activities may interact with fishing operations which target demersal fish species using bottom towed gear, long lines, and static and drifting gill nets.</p>	Activity by whelk potters and lobster fishermen within and outside 20 nm of the shore is captured in Section 6.2 of ES Appendix 14.1 [APP-105]. Demersal fishing activity within 12 nm of the shore is also identified and described in this Section.	Noted. The MMO welcomes this clarification.
MMO-209	<p>5.9 Commercial Fisheries (Chapter 14 Commercial Fisheries – APP-028)</p> <p>5.9.2 The proposed activities are likely to interfere with fishing operations in a navigational capacity and a spatial capacity, i.e., the increase in construction, survey and supply vessel traffic could interfere with</p>	Temporary loss and reduced access to fishing grounds, increased steaming times to fishing grounds and interference with fishing activities is assessed for all fleets during construction in Section 14.6.1.1, 14.6.1.3 and 14.6.1.4 ES Chapter 14 Commercial Fisheries [APP-028] respectively.	Noted. The MMO welcomes this clarification.

	transiting fishing vessels and reduce access to the grounds on which they deploy their gear. Recreational use of the seas for sailing, angling and water sports may also be disturbed by the transiting of contractor vessels.		
MMO-210	<p>5.9 Commercial Fisheries (Chapter 14 Commercial Fisheries – APP-028)</p> <p>5.9.3 The MMO notes that disturbance of the seabed during dredging operations, drilling and the placement of rock berms and concrete mattresses could have a small impact on shellfish stocks (namely whelk, edible crab and European lobster) owing to the release of sediment into the water column. However, with the sediment in the area(s) largely consisting of light material like sand, it is likely that any suspended benthic material will disperse quite freely in the tidal current before resettling on the seabed nearby, in a low density/concentration.</p>	The impact on commercial fishing as a result of impacts on exploited fish and shellfish species during construction is assessed in Section 14.6.1.6 ES Chapter 14 Commercial Fisheries [APP-028]. Furthermore, the impacts of physical disturbance and temporary habitat loss, increased SSCs and sediment re-deposition and re-mobilisation of contaminated sediments are assessed in Sections 11.6.1.1, 11.6.1.2 and 11.6.1.3 ES Chapter 11 Fish and Shellfish Ecology [APP-025].	Noted. The MMO welcomes this clarification.
MMO-211	<p>5.9 Commercial Fisheries (Chapter 14 Commercial Fisheries – APP-028)</p> <p>5.9.4 The whelk fishery off the East Anglia coast is one of the few local fisheries which operates year-round (weather permitting) so fishing operations targeting whelk could incur disturbance at any time during the proposed activities. All other fisheries in the locality could incur disturbance during their specific seasons, i.e., the herring fisheries in autumn and late winter/spring, the European seabass fishery in spring and autumn, the sole fishery in summer and autumn etc.</p>	It is noted in Section 6.2.2.1 ES Appendix 14.1 [APP-105] that whelks are landed year-round in the study area, and this is incorporated into the impact assessment. The seasonality of all other key fish species landed in the area is also described in this Section.	Noted. The MMO welcomes this clarification.
MMO-212	5.10 Shipping and Navigation (Chapter 15 – Shipping and Navigation – APP-029)	Noted.	No further comment.

	<p>5.10.1 The MMO defers to the Maritime and Coastguard Agency and Trinity House on matters of shipping and navigation and supports any comments raised. The MMO will continue to be part of the discussions relating to securing any mitigation, monitoring or other conditions required within the DMLs.</p>		
MMO-213	<p>5.11 Marine and Intertidal Archaeology (Chapter 16 – Offshore and Intertidal Archaeology and Cultural Heritage – APP-030)</p> <p>5.11.1 The MMO defers to the Historic England on matters of marine archaeology and supports any comments raised. The MMO will continue to be part of the discussions relating to securing any mitigation, monitoring or other conditions required within the DMLs.</p>	Noted.	No further comment.

2. MMO comments on the updated DCO/DML (REP1-011)

- 2.1 The MMO acknowledges the revisions to the draft DCO (dDCO) which have been submitted by the Applicant in their Deadline 1 submission. The MMO provided initial comments on the dDCO in its Deadline 1 submission, which have been included for reference in Table 1. The MMO hopes to see further amendments to the dDCO during the examination process.
- 2.2. Transfer of the Benefit of the Order
- 2.2.1. 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.
- 2.2.2. If the application for the DCO is granted, the MMO will be the regulatory authority responsible for the enforcement of the provisions of the DMLs. As a result, it must retain a record of the DML and who holds the benefit of that licence in order to be able to fulfil its statutory responsibilities as it does in respect of any other Marine Licence.
- 2.2.3. The Marine and Coastal Access Act (“the 2009 Act”) addresses the procedure for transfer of a Marine Licence as follows:
- “(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).”*
- 2.2.4. The purpose of these provisions is to ensure that there is at all times a record of the person who has the benefit of the licence. That is because pursuant to the 2009 Act section 65(1), no person may carry on a licensable marine activity, or cause or permit any other person to carry on such an activity, except in accordance with a marine licence granted by the appropriate licensing authority. A person who contravenes section 65(1), or fails to comply with any condition of a marine licence, commits an offence (see section 85(1) of the 2009 Act).
- 2.2.5. Thus, it is a key part of the enforcement provisions of the 2009 Act, that the MMO maintains a record of the person who has the benefit of a marine licence at all times.
- 2.2.6. In practice, the process of obtaining a transfer is relatively quick. Whilst the MMO officially indicates that this can take up to 13 weeks, it is an administrative task and in practice often much quicker and around six weeks. The MMO is not required to consult with any other body. As far as it is aware, the MMO has never refused a request to transfer a Marine Licence.

The current draft DCO Article 5 Procedure

2.2.7. As presently drafted, dDCO Article 5(2) creates a power whereby the undertaker can:

- “a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in paragraph (3) below) and such related statutory rights as may be agreed between the undertaker and the transferee; and*
- b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in paragraph (3) below) and such related statutory rights as may be so agreed.”*

2.2.8. Article 5(3) provides a power to the undertaker to:

- “a) transfer to the transferee the whole of any of the deemed marine licences and such related statutory rights as may be agreed between the undertaker and the transferee; or*
- b) grant to the lessee for the duration of the period mentioned in paragraph (2)(b), the whole of any of the deemed marine licences and such related statutory rights as may be so agreed.”*

2.2.9. The consent of the Secretary of State to a transfer/grant pursuant to Article 5(2) or 5(3) is required except where Article 5(6) applies. Where the Secretary of State’s consent is required, the dDCO Article 5(4) provides that:

The Secretary of State must consult the MMO before giving consent to the transfer or grant to another person of the benefit of the provisions of the deemed marine licences (see dDCO Article 5(6)).

The MMO notes that it is not explicitly stated that the undertaker must consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application.

2.2.10. The Secretary of State’s consent to the transfer or grant of a DML is not required and thus, there is no requirement for consultation with the MMO prior to the undertaker making that transfer or grant where:

- “a) the transferee or lessee is the holder of a licence under section 6 of the 1989 Act (licences authorising supply etc.).”*

The Basis for Objection

2.2.11. The MMO raises objection to Article 5 in relation to:

- a. The procedure seeking to duplicate the existing statutory regime set out in s72 of the 2009 Act;
- b. The proposed procedure being cumbersome, more administratively burdensome, slower and less reliable than the existing statutory regime set out in s72 of the 2009 Act;

- c. No pre-consultation required with the Secretary of State;
- d. The power for an undertaker to grant a DML;
- e. The power to grant a DML for a period of time;
- f. The basis for disapplication of the need for Secretary of State's consent to a transfer/grant for DML is unrelated to any matters relating to marine licensing.
- g. The absence of any power provided to the MMO to change the DML held in its records to reflect any transfer.
- h. The overall effect on the ability of the MMO to enforce the marine licensing regime in respect of any transferred or granted DML.

Previous DCOs

- 2.2.12. It is acknowledged that DCOs previously granted have removed the effect of s72 of the 2009 Act and made provision for the transfer of DMLs including by way of example, Sheringham Dudgeon OFW, Times Tideway Tunnel DCO and Sizewell C DCO.
- 2.2.13. However, it is to be noted that in very few, if any, do the relevant ExAs explain the rationale for the approach adopted. The same is true of the relevant decision letters. To date, the Applicant has not provided the MMO with any ExA Report or Decision letter which explains why the approach it seems to adopt in the dDCO is appropriate nor indeed to be preferred to the existing statutory procedures.
- 2.2.14. The MMO notes that, within Rampion 2 OWF Examination, Dogger Bank Wind Farm was raised as a precedent. The ExA in that case addressed the issue of transfer at paragraph 15.25 and following. At Para15.26 it explained that the Applicant in that case and the MMO had reached agreement in relation to the issue of transfer as follows:

“The MMO also requested that additional drafting be included in Article 8, such that it would be consulted prior to any transfer of the benefits of the Order, providing details such as the person responsible for carrying out the activities, location and timing of works etc (REP-274). The applicant and the MMO reached agreement on this point, such that version 5 of the draft DCO included the proposed insertion of a clause at Article 8(7) which would require the undertaker to consult the MMO prior to the transfer to another person; and inclusion of an amendment to Article 8(9) which requires the MMO to be informed in writing within 14 days (previously 21 days) should any agreement come into effect which transfers the relevant provisions to another person (REP-480). These proposed changes have been carried forward into Article 8 of the ExA's recommended DCO, together with some minor changes to the drafting in the interests of clarity, which don't materially alter the intention and effect of the articles which have been subject to examination.”

- 2.2.15. Thus, the Dogger Bank decision did not determine that the mechanism now proposed is to be preferred to the statutory mechanisms – rather it was a compromise reached between the parties in that case. The MMO has consistently challenged provisions of this nature in draft DCOs as the existing statutory procedure is to be preferred to mitigate risk on all parties by using established mechanisms.

- 2.2.16. None of the ExA Reports or Decision Letters relating to the Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024 raised by the Applicant contain any rationale for the transfer provisions. In addition to this, no other projects (Hornsea Four Offshore Wind Farm Order 2023, East Anglia One North Offshore Wind Farm Order 2022, East Anglia Two Offshore Wind Farm Order 2022, Sizewell C or Thames Tideway Tunnel) contain any rationale. To date, the Applicant has not identified any reasoned justification in any previous decision which explains why the transfer process which it proposes is justified and to be preferred over the existing statutory mechanism.
- 2.2.17. The MMO, of course, accept that there is a need for consistency in decision-making. However, a decision maker is not bound by previous decisions and can depart from them where there is good reason to do so.
- 2.2.18. If the Secretary of State in the present case determined that on balance, the existing statutory mechanisms relating to transfer of marine licences is to be preferred to the mechanism proposed in the dDCO, then it is open to him to so determine provided he gives reasons for so doing. The absence of any reasoned decision which determines the point previously and which provides a rationale for departing the existing statutory mechanism is a reason to look at this issue again.

Materially Inferior Procedure

- 2.2.19. As explained above, the statutory system for transfer requires an application to the MMO. There is no further consultation, and the transfer is given effect by amendment to the licence holder section of the Marine Licence. The MMO does not have any relevant statutory or non-statutory policy relating to the transfer of a licence – it is essentially a purely administrative act to ensure that the licence contains the name of the person with the benefit of the licence. As explained, as far as the MMO is concerned it has never refused an application for a transfer.
- 2.2.20. In contrast, the dDCO Article 5 procedure requires:
- a. An application to the Secretary of State;
 - b. Consultation with the MMO;
 - c. A decision by the Secretary of State;
 - d. Notification of the decision;
- 2.2.21. Given the contrast between the two procedures, the MMO does not consider that the dDCO procedure has any material procedural or administrative advantages over the existing statutory process. Indeed, the dDCO procedure is decidedly more complex, is more administratively burdensome for all parties, and will take longer to give effect to a transfer. The MMO believes that as a result the dDCO should be amended to remove the mechanisms to enable transfer of the DMLs and to remove the exclusion of the existing s72 process; the statutory regime which already exists is a much better option for all and should remain applicable.

Pre-application consultation with the Secretary of State

- 2.2.22. The MMO notes that there is not a mechanism for pre-consultation with the Secretary of State – should the Secretary of State decide to include the transfer of benefit this pre-consultation would be welcomed in the form of the following wording:

“(X) The undertaker must consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application.”

The Grant of a DML

- 2.2.23. dDCO Articles 5(2)(b) and 5(3)(b) seek to make provision for the undertaker to “grant” another person the “benefit of the provisions of the Order (including the deemed marine licences for Article 5(3)(b)) and such related statutory rights as may be so agreed” or “the whole of any of the deemed marine licences and such related statutory rights as may be so agreed”.
- 2.2.24. This appears to be drawn from Article 9(1)(b) of the Sizewell C DCO, although it is unclear from the wording of that provision whether the power to grant “the benefit of the provisions of this Order and such related statutory rights” includes the power to grant a new DML to a third party. Further, the rationale for the inclusion of such a power or the basis upon which it is to be exercised is not explained in the DCO, the ExA Report or the Decision Letter for the Sizewell C project.
- 2.2.25. The Applicant has not justified or explained:
- a. Why it is necessary for it to have the power to **grant** a DML;
 - b. Why it is necessary for it to have the power to **grant** a DML when it would have a power to transfer a DML;
 - c. The basis on which such a power to grant will be exercised;
 - d. The basis on which it will determine whether or not to grant a DML
 - e. The basis on which it will determine the conditions to be imposed on the grant of a DML;
 - f. Why it is appropriate for it to be able to grant DMLs without the consent of the Secretary of State or the MMO.

- 2.2.26. The MMO considers that the power sought for the undertaker to grant a DML would confuse and usurp its statutory function. It would allow licences to be granted on terms wholly different from those accepted as part of the DCO process. The power to grant a DML should therefore be removed from the dDCO.
- 2.2.27. In the event that its primary position that the existing statutory mechanism should remain applicable is rejected, the MMO considers that, at most, the power to transfer the benefit of an existing DML to another person is all that is required.

A Time Limited DML

- 2.2.28. dDCO Article 5 (3)(b) seeks to make provision for a DML to be granted by the undertaker to another person for a limited period of time.

- 2.2.29. The only precedent for this provision which the MMO has found is Article 9(1)(b) of the Sizewell C DCO, to the extent that that power applies to DMLs (which is unclear). The Sheringham DCO does not provide a power for the undertaker to grant a DML for a limited period of time.
- 2.2.30. The Applicant has not explained why these provisions are necessary or why a departure from the statutory provisions within the 2009 Act is justified.
- 2.2.31. In the event that its primary position that the existing statutory mechanism should remain applicable is rejected, the MMO considers that, if the intention is to enable the transfer of the benefit of a DML to a third party for a defined period of time, with the benefit of that DML then reverting to the undertaker at the end of that period, a provision can be drafted to give effect to this.

Disapplication of the Secretary of State's Consent

- 2.2.32. As explained above, Article 5(8) disapplies the need for the consent of the Secretary of State to be obtained and the need for any consultation with the MMO where:

(a) the transferee or lessee is the holder of a licence under section 6 of the 1989 Act

- 2.2.33. Whilst it is recognised that the drafting here reflects earlier DCOs, the rationale for the removal of the need for consent or consultation when this criteria is met has not been explained. The Applicant has not explained why the fact that the transferee holds a s6 licence should mean that the consent of the Secretary of State is not required nor that consultation with the MMO is unnecessary.
- 2.2.34. In the absence of any clear justification for excluding a consent process, consent should be required to reflect the process in section 72 of the 2009 Act. In other words, a transfer of a DML should not be given effect unless it has been approved by a decision maker. The MMO's primary position is that the statutory mechanism should remain applicable and that it should remain the relevant decision maker. If that is rejected, then the next best option would be for the Secretary of State to be the relevant decision maker but unable to consent to the transfer without the approval of the MMO. If that is rejected, then the next best option would be for the Secretary of State to be the relevant decision maker in consultation with the MMO.

It is not acceptable, however, for the Applicant (or any successor) to be able to transfer a DML to whomever they wish whenever they wish, which is eventually the effect of the provisions in the dDCO.

Power to Amend DMLs to Reflect a Transfer

- 2.2.35. The MMO is a statutory body. As a result, it can only act where it has statutory power to do so. The dDCO provides for the transfer of a DML, however it does not give the MMO the power to amend the DML it holds in its records upon notification that a transfer is to occur. This has the potential to cause real difficulties going forward since, in the absence of such a power, the MMO records will not be

changed. This is likely to cause significant administrative difficulties and could result in obstacles to enforcement.

- 2.2.36. Such a confusion is but one symptom of the complications which result from the dDCO's proposed transfer mechanism. This reinforces the MMO's primary position that the existing statutory mechanism is to be preferred and to remain applicable.
- 2.2.37. If the Secretary of State was to retain the Article, then the MMO would still require the Applicant to submit a DML variation to the MMO to ensure the undertaker is updated to the correct entity within the DML and within the MMO's systems.

Overall Effect on Ability to Enforce

- 2.2.38. As drafted, the ability to transfer licences, grant licences for a limited time, or transfer/grant without consultation and without providing a power for the MMO to amend its records, will give rise to significant enforcement difficulties for the MMO and has the potential to prejudice the operation of the system of marine regulatory control in relation to the proposed development. Further, the dDCO procedure is administratively burdensome and time consuming.
- 2.2.39. All of these difficulties can be avoided by retaining the existing statutory regime which is simple to operate and relatively speedy. The best way forward for all concerned is to retain the statutory procedure for transfer as set out in s72 of the 2009 Act.

Force Majeure

- 2.2.40. The MMO maintains its position regarding Force Majeure, as it is not necessary to be included within the DMLs. It is not something the MMO would include in standalone marine licences.
- 2.2.41. The MMO understands that Force Majeure is about events, situations and circumstances that arise which are outside of a person's control.
- 2.2.42. 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 Condition 20 in Schedule 8 and 10 and Condition 21 in Schedule 9 does 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 aspects.

Necessary

- 2.2.43. If you read Section 86(1)(b) and 86(2) of MCAA 2009, 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 Condition 20 in Schedule 8 and 10 and Condition 21 in Schedule 9 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.

Enforceable

- 2.2.44. The condition as it stands is too subjective and therefore unenforceable and this is 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.

Precise

- 2.2.45. 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.
- 2.2.46. In effect, the only obligation the master would have if Condition 20 in Schedules 8 and 10 and Condition 21 in Schedule 9 is 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, if it was to remain, should there not be further requirements to then remove the items.

Reasonable

- 2.2.47. The test set in Condition 20 in Schedules 8 and 10 and Condition 21 in Schedule 9 which must be met to allow these deposits to be made is a much lower threshold to test to that set out in Section 86 of MCAA 2009. 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 a vessel. The MMO questions why these masters and vessels be treated more favourably than others in this situation.
- 2.2.48. 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 2009) will apply if the Applicant or vessel masters need to make a deposit for Force Majeure reason.

2.3 Schedule 8, 9 and 10 (Deemed Marine Licences)

Part 1: Paragraph 9

- 2.3.1. The MMO seeks changes to Part 1 paragraph 9 to both DMLs. The MMO's proposed amendments are shown in bold (the Applicant's wording struck through):
- "Any amendments to or variations from the approved details, plan or scheme must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the MMO that it ~~is unlikely to~~ **will not** give rise to any materially new or materially ~~greater~~ **different** environmental effects from those assessed in the environmental statement."
- 2.3.2. This change is necessary to ensure that the power to amend or vary is consistent with the requirements of EIA regime as explained in the case of R. (Barker) v

Bromley LBC [2007] 1 A.C.470. This case concluded that EIA will be required at stages subsequent to an initial grant of consent where those likely significant effects were not identified at the earlier consenting stage. It follows that a mechanism to permit a variation or amendment will not be lawful until it prevents any possibility of a materially new or different significant environmental effects arising as a result of the variation or amendment.

Condition 20 (Schedule 8, 10) and Condition 21 (Schedule 9)

- 2.3.3. Condition 20 of Schedule 8 and 10 and Condition 21 of Schedule 9, Force Majeure provides as follows:

“(1) If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the safety of human life and/or of the vessel is threatened (an “unauthorised deposit”), within 48 hours full details of the circumstances of the deposit must be notified to the MMO in the manner provided in condition 19(10).”

- 2.3.4. The MMO has previously requested the removal of this clause. That is because it unnecessarily duplicates the effect of s.86 of the 2009 Act. If it is to be retained, then the relationship between this clause and section 86 of the 2009 Act should be clarified.
- 2.3.5. The MMO welcomes the Applicant's comments regarding Force Majeure in point MMO-78 of document REP1-045 regarding the Applicant's response to Relevant Representations. The MMO is currently reviewing the Applicant's comment and will provide a response in due course.

3. MMO comments on the Statement of Common Ground between North Falls Offshore Wind Farm Limited and the Marine Management Organisation.

- 3.1 The MMO provided comments on the draft Statement of Common Ground on 11 February 2025. It is expected that the draft Statement of Common Ground will be provided for Examination will be provided at Deadline 3.

Yours Sincerely,

[Redacted Signature]

[Redacted Name]

Marine Licensing Case Officer

[Redacted Email Address]

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