



NORTH FALLS

Offshore Wind Farm

Applicant Position Paper on Galloper Recommended Route

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1. INTRODUCTION AND SUMMARY

- 1.1 This submission is made at Deadline 5 to set out the Applicant's position in relation to the ships' routing measure known as the "Gallop" recommended route (RR), and to respond to **ExQ2 Q9.1.11** and **Q9.1.12** and submissions to date on this topic by the Maritime and Coastguard Agency (MCA).
- 1.2 Note, any failure in this submission to respond to any point made by the MCA or any other party in relation to the Gallop RR in submissions to date should not be taken as acceptance by the Applicant of that particular point.
- 1.3 In summary, for reasons set out in the following sections, the Applicant's position is as follows:
 - 1.3.1 The Gallop RR is a "*recognised sea lane*" but is not one that is "*essential to international navigation*".
 - 1.3.2 Granting development consent for North Falls, would not give rise to any risk of breach of article 60(7) of the United Nations Convention on the Law of the Sea 1982, as amended (**UNCLOS**).
 - 1.3.3 Section 104(4) and/or (5) of the Planning Act 2008 (**PA2008**) and paragraph 2.8.326 of National Policy Statement (**NPS**) EN-3 are not engaged.
 - 1.3.4 Considering the nature and infrequent use of the Gallop RR, for the purposes of NPS EN-3 it is, at most, a "*less strategically important shipping route*". A pragmatic approach is appropriate, per NPS EN-3 paragraph 2.8.330.
 - 1.3.5 The *Formal Safety Assessment for the Removal of Gallop Recommended Route (FSA)* [**REP2-025**] undertaken by the Applicant identifies at least four alternate routing options exist that are safe, commercially viable and would not lead to significant environmental impacts from additional vessel emissions (see section 6.2 of the FSA [**REP2-025**]).
 - 1.3.6 The residual impact of North Falls would be a negligible inconvenience to a small number of vessels that might otherwise opt to use the Gallop RR as a matter of convenience.
 - 1.3.7 The risk to shipping and navigations is "as low as reasonably practicable" (**ALARP**).
 - 1.3.8 Imposing the MCA's condition (especially in the terms proposed by the MCA) would not be pragmatic, considering the nature and infrequent use

of the Galloper RR when set against the urgent need for Critical National Priority (**CNP**) infrastructure such as North Falls.

2. CONTEXT – SHIP ROUTEING MEASURES AND IMO ROLE

- 2.1 Ship routeing measures can be established for a variety of purposes. This can be to improve safety of life at sea, for the efficiency or convenience of navigation, and/or to increase the protection of the marine environment¹.
- 2.2 Ships' routeing systems adopted by the International Maritime Organization (**IMO**) can be mandatory or recommended, and they can be established for use by certain categories of ships, ships carrying certain cargoes, or may apply to all ships².
- 2.3 Pursuant to UNCLOS and Chapter V of the International Convention for the Safety of Life at Sea 1974, as amended (**SOLAS**), the IMO is the international body responsible for overseeing the adoption, amendment or removal of ships' routeing systems.
- 2.4 However, the IMO does not act unilaterally in respect of routeing. The initiation of action to establish, change or remove a routeing system is the responsibility of the Member Government or Governments concerned (the interested coastal States), albeit subject to the approval of the IMO. Further, the IMO may not adopt or amend any routeing system without the agreement of the interested coastal States³.

3. ORIGIN AND PURPOSE OF THE GALLOPER RECOMMENDED ROUTE

- 3.1 The "Galloper" recommended route (**RR**) was ratified by the IMO in December 2006 as part of a suite of traffic routeing measures for the "SUNK Area"⁴. In COLREG.2/Circ.58, Part III it is described as follows [underlining added]:

"Description of the recommended route

(q) A recommended route ("Galloper" recommended route in the south-east sector of the scheme to enable regular ferry traffic sailing to and from the Port of Ostend to enter and leave the SUNK Outer Precautionary Area without deviating unnecessarily to use traffic separation lanes) connecting the following geographical positions:

¹ See paragraph 1.2 of MSC/Circ.1060, 2003.

² See paragraph 2.1 of MSC/Circ.1060, 2003.

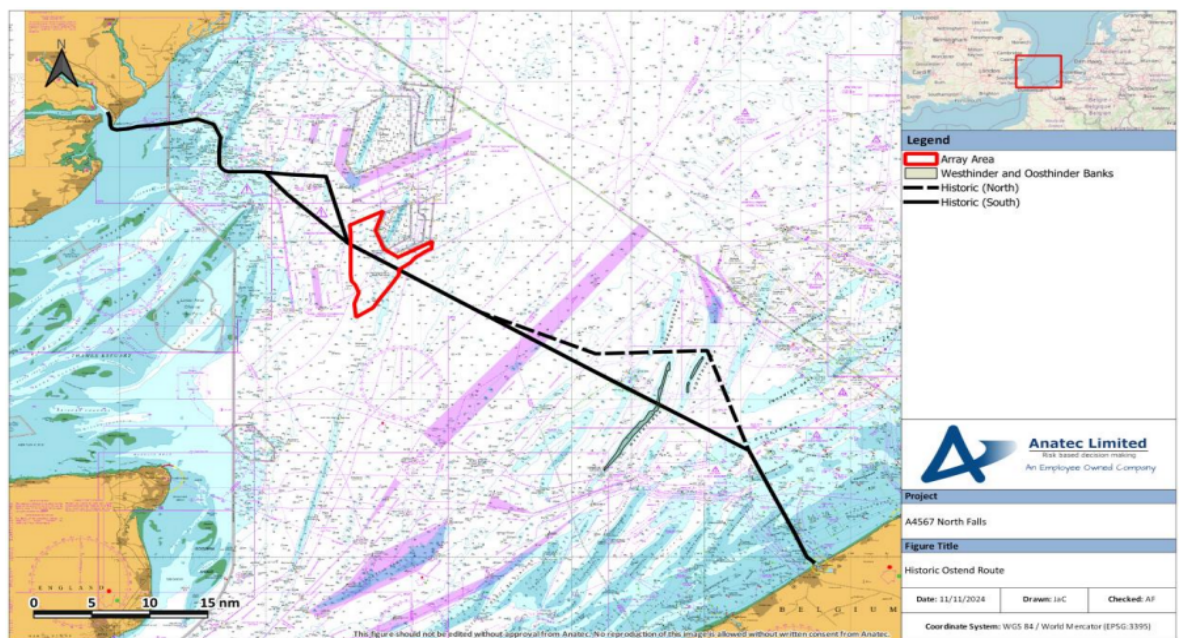
³ Section 3.4 of IMO Resolution A.572(14), adopted on 20 November 1985: General Provisions on Ships' Routing.

⁴ COLREG.2/Circ.58, 11 December 2006.

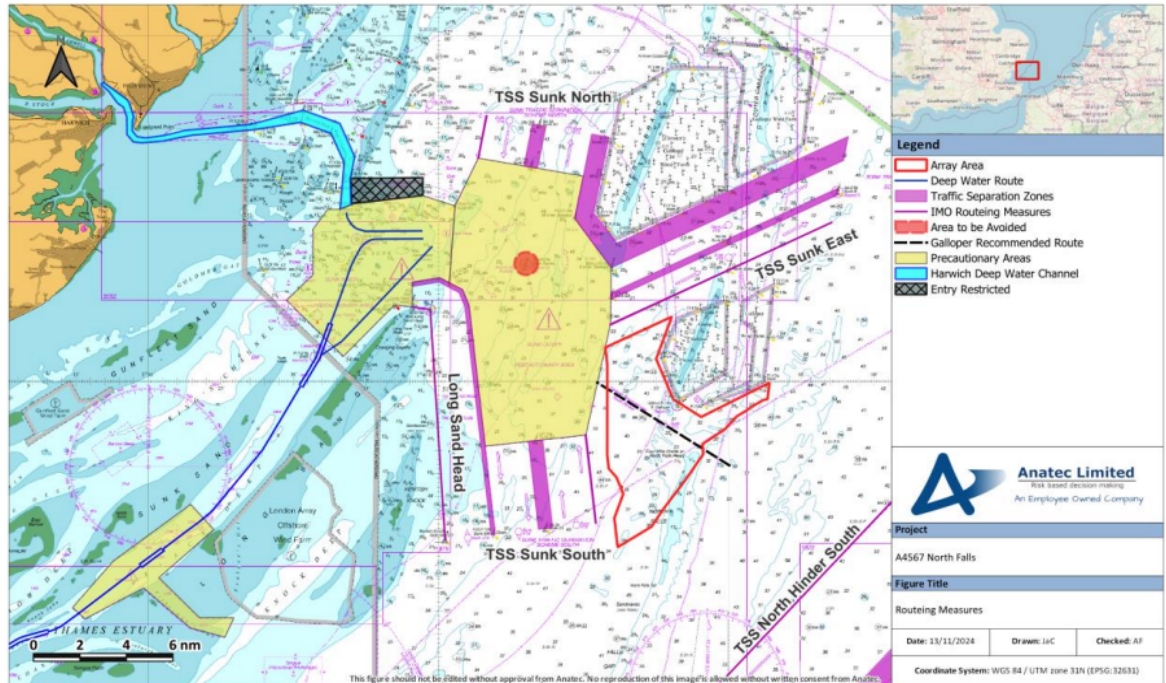
(54) 51° 44'.93N 001° 50'.93E

(55) 51° 41'.33N 002° 00'.03E"

- 3.2 There are two important matters to note from the above. First, the Galloper RR was established to provide a convenient route for specific category of vessel, namely ferry traffic (i.e. not cargo or tankers). Second, it related specifically to ferry traffic transiting to/ from the Port of Ostend in Belgium to/ from ports on the east coast of England (primarily Ipswich and Harwich). It was not a routeing measure designed for vessel traffic in general.
- 3.3 An overview of this historic route is presented in the figure below (Figure 5.1 of the FSA [REP2-025]). Two route options are identified owing to the presence of shallow banks, one passing through the Westhinder bank, and one passing north of both the Westhinder and Oosthinder banks.
- 3.4 The Applicant understands the preferred route (and the more commonly used route) was the historic (South) route.

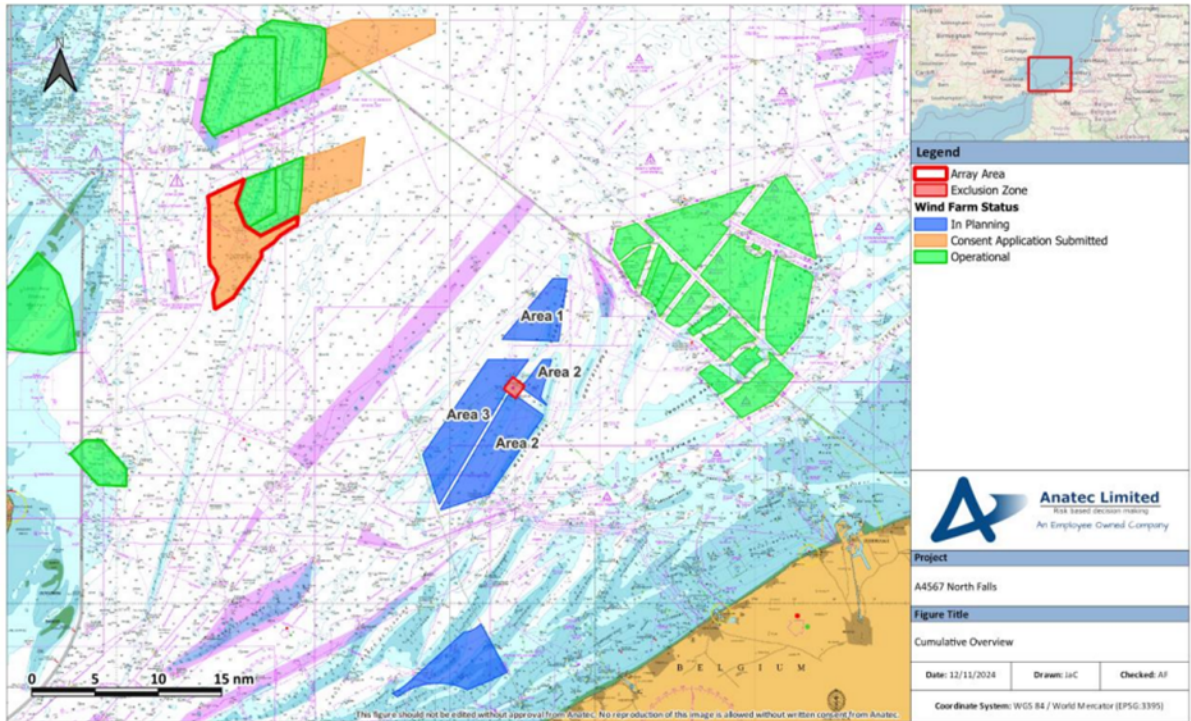


- 3.5 As originally intended, the Galloper RR would allow ferries operating to and from Ostend to take a "short cut", avoiding the need to use the Traffic Separation Scheme (TSS) Sunk East or Sunk South. This is illustrated on the figure below (Figure 4.2 of the FSA [REP2-025]).



4. USAGE OF THE GALLOPER RECOMMENDED ROUTE

- 4.1 The Ostend to Harwich and Ostend to Ipswich routes have not been active since 2009 and the Applicant is not aware of any plans by any ferry operator to re-establish this routeing from Ostend.
- 4.2 New and future constraints (Belgian offshore wind farms) mean that in the event of any plans to re-open an Ostend to UK ferry route, different routeing patterns would need to be established regardless of the presence of the Galloper RR. The Princess Elisabeth Island has already begun construction, and an exclusion zone is in place over the historic (South) route. This is illustrated by the figure below (Figure 4.6 from the FSA [REP2-025]).



4.3 The Applicant has collected four years of AIS data. As shown in Section 5.2 of the FSA [REP2-025], this data demonstrates usage of the Galloper RR by commercial vessels (cargo, passenger, tankers) is extremely low: an average of one cargo, tanker or passenger vessel per month based on the most recent 2023-24 data studied.

4.4 Commercial vessel traffic undertaking transits using the Galloper RR declined over the four year period studied:

Period	Usage by commercial vessels
July 2020 to June 2021	one per week
July 2021 to June 2022	one per week.
July 2022 to June 2023	one per fortnight
July 2023 to June 2024	one per month

4.5 Usage by commercial ferries is even lower. A total of 14 commercial ferry transits were identified using the Galloper RR over four years (an average of one very four months). All were transiting to or from ports in the Netherlands, not to/ from Belgian ports.

4.6 The typical routing undertaken by ferries does not use the Galloper RR, with vessels usually using the Sunk TSS South or Sunk TSS East. A number of these

ferries were operated by Stena Line. Stena Line were consulted as part of the Navigation Risk Assessment (**NRA**) process (Anatec, 2024) **[APP-106 to 108]** and confirmed use of the Sunk TSS lanes would be a safe alternative.

- 4.7 The Galloper RR is used by recreational vessels. However, the typical size of these vessels is such that they are generally more comfortable navigating through operational offshore wind farms. There are a number of options to ensure recreational vessel transits are facilitated including a sympathetic line of orientation, or use of a buoyed channel. It has been agreed with the MCA that this can form part of post consent layout discussions. The Applicant met with the Royal Yachting Association (**RYA**) on 17th March 2025 and the RYA are content with this position noting a fully agreed and signed Statement of Common Ground with the RYA was submitted at Deadline 4 **[REP4-049]**.

5. NATURE AND STATUS OF THE GALLOPER RECOMMENDED ROUTE

- 5.1 As is evident from its name, the Galloper RR is a recommended route. In other words, it is a suggested route.

- 5.2 The IMO define a recommended route as follows [underlining added]:

*“recommended route: a route of undefined width, for the convenience of ships in transit, which is often marked by centreline buoys”.*⁵

- 5.3 The following points can be noted in relation to the Galloper RR:

- 5.3.1 It is not a mandatory routeing measure and vessels are under no legal obligation to use or follow it.
- 5.3.2 It was not a routeing measure put in place to address any specified safety or environmental concern.
- 5.3.3 It was brought into being for the “convenience” of a narrowly defined category of vessel (ferry traffic) sailing specifically to and from the Port of Ostend (a “short-cut” to alternative routes following establishment of the SUNK Routeing Measure i.e. to allow them to legally contravene the rules of the TSS South).

- 5.4 NPS EN-3 paragraphs 2.8.326 and 2.8.327 refer to interference with “*the use of recognised sea lanes essential to international navigation*” and provide that development consent should not be granted where there would be such interference. The later reference in NPS EN-3 paragraph 2.8.335 (i.e. “without

⁵ Section 2 (definitions) of IMO Resolution A.572(14), adopted on 20 November 1985: General Provisions on Ships' Routing.

amounting to interference with the use of such sea lanes”) is similarly understood by the Applicant to refer to sea lanes essential to international navigation.

- 5.5 NPS EN-3 refers to article 60(7) of UNCLOS. Article 60(7) of UNCLOS provides as follows:

“Artificial islands, installations and structures and the safety zones around them may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation.”

- 5.6 The phrase “*recognized sea lanes essential to international navigation*” is not defined in article 60(7) or elsewhere in UNCLOS⁶. The Applicant has not identified any cases on Article 60(7) in the public databases of the International Court of Justice or the International Tribunal on the Law of the Sea.
- 5.7 The Applicant accepts that the Galloper RR is a ‘recognized sea lane’ as it remains part of an IMO- adopted scheme. However, the Applicant submits that not all ‘recognized sea lanes’ are ‘essential to international navigation’. There are different types of recognised sea lane which serve different purposes and have different status.
- 5.8 Under the Vienna Convention on the Law of Treaties, a convention should be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose⁷. It is a general principle of public international law (*‘effet utile’*) that a provision of an international treaty may not be given an interpretation that deprives it of its useful effect. The words “*essential to international navigation*” set a clear qualifying condition that must be applied in accordance with its ordinary meaning and in light of its object and purpose: Article 60(7) only bars interference with a recognised sea lane, if that sea lane is *essential to international navigation*.
- 5.9 The Applicant’s position accordingly is that article 60(7) is intended to safeguard sea lanes that are “essential to international navigation”. It does not apply to any “recognized sea lane”. Therefore, while the Galloper RR is a recognised sea lane, it is not essential to international navigation. The ordinary and plain meaning of “*essential*” is “*absolutely necessary*” or “*extremely important*”⁸. A sea lane that is recommended (non-mandatory), for the convenience of a narrow category of vessel (ferries to/ from Ostend), is used infrequently, and which to the limited extent it is used is not for its original purpose, cannot be “*essential*” to international navigation.

⁶ The phrase “recognized sea lanes essential to international navigation” is used twice in UNCLOS, in article 60(7) and in article 147(2)(b). The latter similarly contains provision relating to artificial installations not interfering with the use of recognized sea lanes essential to international navigation.

⁷ Article 31, The Vienna Convention on the Law of Treaties 1969.

⁸ Collins Dictionary.

- 5.10 Therefore, article 60(7) of UNCLOS is not infringed should North Falls proceed. In turn, there would be no risk of breach of any international obligations and section 104(4) of the PA2008 is not engaged. For the same reasons, NPS EN-3 paragraph 2.8.326 is not engaged.
- 5.11 At most⁹, for the purposes of NPS EN-3 policy, Galloper RR could be regarded as a “*less strategically important shipping route*” within the terms of NPS EN-3 paragraph 2.8.330. The baseline data collected by the Applicant (see section 4 above) indicates giving it that status would be suitably precautionary. On that basis, the ExA and Secretary of State should take a “*pragmatic approach to considering proposals to minimise negative impacts*”.

6. RISK OF OBJECTION TO REMOVAL OF GALLOPER RR

- 6.1 As noted above, the initiation of action to establish, change or remove a routeing system is the responsibility of the Member Government or Governments concerned (the interested coastal States), albeit subject to the approval of the IMO. Further, the IMO may not adopt or amend a routeing system without the agreement of the interested coastal States¹⁰.
- 6.2 ExQ2 Q9.1.11 refers to NPS EN-3 paragraph 2.8.183. The Applicant is cognisant of the advice in NPS EN-3 paragraph 2.8.183 concerning the need for international endorsement and that such processes may take time and with no guarantee of outcome, and the consequent need for early consultation. It is for this reason that the Applicant has undertaken consultation regarding the Galloper RR with the MCA and the Belgian Directorate General of Shipping, and other shipping and navigation stakeholders, over several years (since September 2023). This consultation is summarised in Table 3.1 of **[REP2-025]**. This engagement continues and the Applicant met again with the MCA on 14 May 2025.
- 6.3 The interested coastal states for the Galloper RR are the UK and Belgium. The MCA and Belgian Directorate, the agencies with responsibility to represent the UK and Belgium in these matters, do not oppose the removal of the Galloper RR. As shown in the email chain submitted into examination in the Appendix to Applicant's Response to ExA's Second Written Questions (ExQ2) [9.82], submitted at Deadline 5, the Belgian Directorate have consulted on the FSA **[REP2-025]**, and confirmed that the consultation is closed with a positive outcome.

⁹ Considering the nature and infrequent use of the Galloper RR, there is a reasonable basis to conclude that it does not meet the threshold of a “*less strategically important shipping route*”. The baseline data does not indicate that it has any ‘strategic importance’.

¹⁰ Section 3.4 of IMO Resolution A.572(14), adopted on 20 November 1985: General Provisions on Ships' Routing.

6.4 The Applicant has consulted widely and there has been no substantive concerns or objections from any ferry, shipping operator or recreational user regarding the proposed removal of the Galloper RR. All consultation and assessment to date undertaken on this topic indicates that the removal of the Galloper RR would constitute a minor amendment with negligible impact on vessel traffic.

6.5 Should any ferry operator wish to re-establish an Ostend to UK ferry route, the FSA [REP2-025] identifies at least four alternative potential routes (see section 6) and concludes all would be safe and viable options with modest additional transit times (3 – 15%, which amounts to between 15 and 40 extra minutes, noting the original timetables would require changing regardless of the presence of North Falls].

6.6 IMO Resolution A.572(14)¹¹ provides [underlining added]:

5.2 The routeing system selected for a particular area should aim at providing safe passage for ships through the area without unduly restricting legitimate rights and practices, and taking account of anticipated or existing navigational hazards.

“5.4 Routeing systems should be reviewed, re-surveyed and adjusted as necessary, so as to maintain their effectiveness and compatibility with trade patterns, offshore exploration and resource exploitation, changes in depths of water, and other developments.”

6.7 Resolution A.572 advises (paragraph 5.3) that, when reviewing or adjusting a routing system, the following factors should be taken into account:

.1 their rights and practices in respect of the exploitation of living and mineral resources;

.2 previously established routeing systems in adjacent waters, whether or not under the proposing Government's jurisdiction;

.3 the existing traffic pattern in the area concerned, including coastal traffic, crossing traffic, naval exercise areas and anchorage areas;

.4 foreseeable changes in the traffic pattern resulting from port or offshore terminal developments;

.5 the presence of fishing grounds;

¹¹ General Provisions on Ships' Routeing A 14/Res.572 – 20, adopted by the IMO on 20 November 1985.

.6 existing activities and foreseeable developments of offshore exploration or exploitation of the sea-bed and subsoil;

.7 the adequacy of existing aids to navigation, hydrographic surveys and nautical charts of the area;

.8 environmental factors including prevailing weather conditions, tidal streams and currents and the possibility of ice concentrations; and

.9 the existence of environmental conservation areas and foreseeable developments in the establishment of such areas.”

- 6.8 Pursuant to UNCLOS and the Energy Act 2004, the Crown Estate granted North Falls the legitimate right to develop an offshore wind farm to exploit the wind resource within an area of the UK’s Exclusive Economic Area which includes the Galloper RR. The legal basis of this is discussed further in section 8 below. However, it is relevant here to note the leasing process and award of the North Falls area has not been the subject of any objection or challenge relating to interference with the Galloper RR or otherwise.
- 6.9 Ships’ routing measures adopted by the IMO are contained in the IMO publication “*Ships’ Routing*”. The publication includes general provisions on ships’ routing, which are aimed at standardizing the design, development, charted presentation and use of routing measures adopted by IMO. The provisions state, *inter alia*, that the objective of ships’ routing is to “*improve the safety of navigation in converging areas and in areas where the density of traffic is great or where freedom of movement of shipping is inhibited by restricted searoom, the existence of obstructions to navigation, limited depths or unfavourable meteorological conditions*”¹². None of these objectives would be frustrated by removing the Galloper RR or served by maintaining it.
- 6.10 Considering all the above, the Applicant cannot identify any legitimate shipping, navigation, safety or environmental basis for any IMO member to object to a proposal by the relevant coastal states (UK and Belgium) to remove the Galloper RR. The Applicant is accordingly confident the proposed removal of the Galloper RR will be ratified by the IMO in due course.

7. TIMELINE AND PROCESS FOR REMOVAL OF GALLOPER RR

- 7.1 The MCA outlined the multiple steps for the removal process and indicative timelines in its Deadline 2 and Deadline 4 submissions [REP2-046 and REP4-080].
- 7.2 The Applicant agrees with the process and steps outlined by the MCA and notes that it can be expected to take in excess of two years. It is for this reason that the

¹² [Ships’ routing](#).

Applicant is keen that the MCA commence that process now, prior to the grant of development consent.

- 7.3 North Falls is CNP infrastructure for which NPS EN-1 identifies an urgent need. The Government has committed to fully decarbonising the power system by 2035, subject to security of supply, to underpin its 2050 net zero ambitions. As set out in NPS EN-1 paragraph 4.2.2:

“The UK’s strategy to increase supply of low carbon energy is dependent on deployment of renewable and nuclear power generation, alongside hydrogen and CCUS. Our energy security and net zero ambitions will only be delivered if we can enable the development of new low carbon sources of energy at speed and scale.”

- 7.4 The MCA’s proposed condition and timeline could impede the delivery of North Falls at speed.
- 7.5 To the best of the Applicant’s knowledge, there is no legal reason why the process to remove the Galloper RR could not commence before the grant of development consent. The MCA has not advised the Applicant or submitted into Examination any legal or procedural reason why the process for removal of Galloper RR could not commence before grant of development consent.
- 7.6 The MCA provided a timeline for removal within its Written Representation submitted at Deadline 2 [REP2-046]. The Applicant provides a summary of what it considers to be a pragmatic and reasonable alternative timeline below.

Milestone	MCA Timeline suggested at D2 in REP2-046	Applicant’s Position on Timeline	Applicant’s Notes
UKSON	March / April 2026	Autumn 2025	The Applicant is aware of no technical or legal reason that the proposal could not be raised in the Autumn 2025 UKSON session. The Applicant has offered to undertake the associated risk assessment and documentation on behalf of the MCA.

NCSR	May/June 2027	June 2026	The Applicant's position remains that the pragmatic approach dictated by the circumstances is that an application to remove the Galloper RR can and should commence prior to North Falls receiving consent, noting that it is likely that a consent decision will have been received prior to the NCSR committee in 2026. This would allow for NCSR to provide their recommendations into the 2027 MSC session.
MSC	May 2028	2027 Session	
Ratification	Earliest Q4 2028	Earliest Q4 2027	

7.7 As noted above, IMO Resolution A.572 advises ships' routing measures should be reviewed, re-surveyed and adjusted as necessary to maintain their effectiveness. Considering that the Galloper RR has not been used for its intended purpose for over 15 years, the review (and removal) of Galloper RR is long-overdue and should happen whether or not North Falls receives development consent.

8. USE OF / INTERFERENCE WITH GALLOPER RR PENDING REMOVAL

8.1 ExQ2 Q9.1.12 asks by what powers or rights shipping vessels could continue to use the Galloper RR (pre-removal) and whether any UK or international body could enforce the route remaining open and by what enforcement powers.

8.2 The IMO itself has no powers to enforce UNCLOS or other convention provisions. The enforcement of UNCLOS and other conventions depends upon the Government of relevant contracting States. Contracting Governments generally enforce the provisions of international conventions as far as their own ships are concerned. Disputes and matters of interpretation can be arbitrated by the International Court of Justice or the International Tribunal on the Law of the Sea.

- 8.3 There are convention provisions that can be enforced within a state's territorial sea (0 – 12nm)¹³ and in respect of TSS¹⁴. However, the relevant section of Galloper RR is outside UK territorial waters and located within the UK's claimed 200nm Exclusive Economic Zone (**EEZ**).
- 8.4 Beyond the seaward limit of UK territorial sea, in the EEZ, shipping generally has freedom of navigation, subject to the other rights and provisions set forth in conventions such as UNCLOS.
- 8.5 Under UNCLOS¹⁵, the UK has the sovereign right to explore, exploit, conserve and manage all natural resources in the EEZ including wind resources. In exercising its rights in the EEZ, the UK must have "*due regard*" to the rights and duties of other States and act in a manner compatible with the provisions of UNCLOS¹⁶.
- 8.6 The UK is entitled to build, and to authorise the construction of, installations and structures (e.g. wind farms) in the EEZ for the purposes of exploiting wind resources and to establish safety zones of up to 500 metres around these structures¹⁷. Due notice must be given of the construction of such installations or structures, and permanent means for giving warning of their presence must be maintained¹⁸.
- 8.7 To the Applicant's knowledge, the only hard constraint on the rights described above is that, per art 60(7) of UNLCOS, construction of installations and structures is not permitted where it would interfere with the "*use of recognized sea lanes which are essential to international navigation*". For the reasons set out in sections 5 and 6 above, article 60(7) of UNCLOS is not engaged in the event of interference with the Galloper RR as a result of construction of North Falls.
- 8.8 Therefore, the Applicant is not aware of any power or right that could be exercised or directly enforced by any vessel, international body or other coastal State in respect of continued usage of the Galloper RR, considering the nature of the routing measure (non-mandatory etc.). Furthermore, the Galloper RR was established for a narrow category of ferry travelling a particular route to/ from Belgium no longer in usage. The Applicant cannot see a basis whereby vessels in general could seek to exert a legal right to use the Galloper RR.

¹³ Article 22 of UNCLOS permits a coastal State to require foreign ships exercising the right of innocent passage through its territorial sea to use such 'sea lanes' and TSS as it may designate or prescribe for the regulation of the passage of ships

¹⁴ Rule 10 of the Convention on the International Regulations for Preventing Collisions at Sea 1972, as amended sets forth rules for ships using TSS. The Galloper RR is not a TSS subject to Rule 10 of the COLREG. There are no rules in COLREG relating specifically to use of a "recommended route".

¹⁵ Article 56(1). Available at: [1999-TS0081.pdf](#)

¹⁶ UNCLOS, article 56(2).

¹⁷ UNCLOS, article 60(1).

¹⁸ UNCLOS, article 60(3).

- 8.9 Therefore, the Applicant has not identified any risk of breach of any international obligations and submits that section 104(4) of the PA2008 would not be engaged¹⁹ in this scenario and absent the MCA's proposed condition.
- 8.10 The practical effect will be that any ships that might seek to use the Galloper RR (if not removed) would in future deviate around North Falls (which would be charted and a known obstacle). As set out in the NRA [**APP-106, APP-107, APP-108**], embedded mitigations that would ensure the risk is and remains ALARP include:
- 8.10.1 Safety Zones during construction – to aid passing vessel awareness of areas where sensitive construction or maintenance operations are ongoing;
 - 8.10.2 Use of a buoyed construction area as directed by the relevant General Lighthouse Authority (Trinity House) - to aid passing vessel awareness of areas where sensitive construction operations are ongoing;
 - 8.10.3 Charting of infrastructure – to aid passing vessel awareness of the locations of infrastructure;
 - 8.10.4 Lighting and marking as directed by the relevant General Lighthouse Authority (Trinity House) - to aid passing vessel awareness of the locations of surface infrastructure;
 - 8.10.5 Layout Approval in liaison with MCA and Trinity House – to agree a layout that is sympathetic to surface navigation; and
 - 8.10.6 Promulgation of information - to aid vessel awareness of areas where sensitive construction or maintenance operations are ongoing.
- 8.11 Given the above, there are no safety, environmental, legal or policy consequences that flow in the (unlikely) scenario removal of Galloper RR is not approved by the IMO.

9. CONCLUDING REMARKS

- 9.1 The Applicant remains confident the removal of the Galloper RR will be endorsed in due course by the IMO. This should be an administrative exercise and the

¹⁹ While not a point relied upon by the Applicant given its conclusions, it is noted that Section 104 of the PA2008 Act does not place an obligation on the Secretary of State to act in compliance with international law when determining an application for development consent. Where s104 is engaged, the effect is that the Secretary of State is no longer subject to the requirement to determine in accordance with the relevant NPS. See *R. (on the application of Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport* [2024] EWCA Civ EWCA Civ 1227

Applicant again requests that the MCA commence this process as soon as possible.

- 9.2 The interested coastal states do not oppose the removal of the Galloper RR. The fact that the MCA and Belgian Directorate General of Shipping do not oppose removal of Galloper RR is strong corroborating evidence that it is neither essential nor of any strategic importance. The Applicant can see no substantive shipping or navigation safety basis for any IMO member to oppose the removal of the Galloper RR.
- 9.3 The Secretary of State should make use of the advice of the MCA on shipping and navigation safety matters as per paragraph 2.8.334 of NPS EN-3 but is not bound by it. The MCA has not set out any legal or safety basis for imposing its proposed condition.
- 9.4 The Applicant believes the Secretary of State is entitled to, and should, take a pragmatic approach as advocated by NPS EN-3 paragraph 2.8.330. The MCA's proposed condition would risk substantially delaying a CNP infrastructure project. Considering the nature and very infrequent use of the Galloper RR (by vessels not using it for its original purpose), weighed against the urgent need for CNP infrastructure, imposing the condition proposed by the MCA would not be pragmatic.
- 9.5 As per NPS EN-1 paragraph 4.2.15, where residual impacts remain after the mitigation hierarchy has been applied, these residual impacts are unlikely to outweigh the urgent need for CNP infrastructure in all but the most exceptional circumstances. One exception to this presumption are residual impacts which *"present an unacceptable risk to, or unacceptable interference offshore to navigation"*.
- 9.6 North Falls does not pose an unacceptable risk or unacceptable interference to navigation. The CNP presumption applies.



NORTH FALLS

Offshore Wind Farm



HARNESSING THE POWER OF NORTH SEA WIND

North Falls Offshore Wind Farm Ltd

A joint venture company owned equally by SSE Renewables and RWE.

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