



Planning Inspectorate
Arolygiaeth Gynllunio

Hearing Transcript

Project:	Morecambe Offshore Windfarm Generation Assests
Hearing:	Issue Specific Hearing 2 (ISH2) – Part 3
Date:	04 February 2025

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Good afternoon, everybody, and welcome back to this continued hearing Asia-Pacific hearing into the Morecambe offshore wind generating assets. Application development consent order application. Um, we will continue where we left off after lunch with agenda item six, which Mr. Rigby is going to lead on.

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Thank you, Mr. Jackson, for that.

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There was one preliminary matter. Um, which, if it pleases the panel, the applicant would just like to propose before we move on to the next agenda item, if that's okay, because it is relevant to it. Um, we were reflecting over the lunch break, um, about how we might, um, assist drawing together what you might call the sort of loose threads that perhaps have been a theme of the morning session. So questions or comments that have been raised and where there isn't a settled or resolved position, and the applicant will obviously do everything it can to engage with the MMO and with Natural England and within hours before the next deadline, and settle as much in a statement of common ground as possible.

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But but as I alluded to, you know that that's probably going to be, um, unlikely to result in all the loose ends being tied off. So what we were thinking of doing, um, essentially it would be a we'd be doing it for ourselves. But actually we thought we could submit as a, as a document if it was helpful. It's just a something short that sets out where we think there is a, you know, a live issue or a loose end and what we think the consequence is. So if there's a point that's been made, and if the consequence is there's a decision that needs to be made on the wording of a condition, then note that down or if there's a loose end comment that is not been agreed with.

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But we think the consequences. Isn't determinative because actually it doesn't go to, you know, the assessment. We would note that. And we were thinking we would be doing that, you know, for our own purposes. But actually it might be helpful if we submit that as part of the statement of commonality at the next deadline.

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Yes. That would be the obvious place to attach it to the section on the bottom of that. Yeah. Yes. And that presumably would be would evolve and develop during this week as we pass through the various hearings, because there are things that we might kick off today, but they'll actually come into their own later in the week and particularly on Thursday with the development consent order hearing. Yeah, I think that would help us a great deal. Thank you.

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Know that. Thank you. And sorry to have interrupted. I was just conscious that it kind of goes to our approach. And so we were just proposing to focus on Natural England MMO and our, the environmental stakeholders, where there's been less of a sort of two way engagement.

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What I'm going to suggest, for which reasons we may come a bit more obvious in nature. Scott to.

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Nature.

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Scott. Okay. Yes. Because obviously today it's the bodies you just mentioned. And then the other days it'll be other, other, other parties that you'll be wanting to, uh, summarise the position with as well.

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Yep. Absolutely. Although the other parties are probably, generally speaking, more active. So yeah, there are less in the way of just hanging live issues, which is why we thought about this, particularly for the environmental stakeholders. But but if the panel finds it useful, if it seems like an obviously helpful thing to do for the others, we can do that as well. But, um, it seems particularly, um, appropriate for just the, um, comments.

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Yeah. So if you've got an outstanding issue and a consequence, but you've also got some what drives that party is the likelihood of you getting a resolution, which is, as you say, depending on the party in question, I guess. Yeah. Yeah. Thank you.

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Yes. On agenda item six. First bullet points

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to start with is cumulative effects, which is a lead into other projects, decommissioning dates and so on. Which, um, really we're going to cover much more tomorrow. But, um, in the meantime, we need to establish distances and orientation to offshore wind farms and decommissioning dates so that we can establish what the correct future baseline is. That is how many existing installations continue to operate beyond your baseline data for 2028.

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And we we had anticipated more parties being here today. So we'll defer detailed discussion of this until it's your specific hearing three tomorrow.

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Meantime Time. We need to know what the correct future baseline is, which means knowing how many of the various projects will continue to operate.

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And at exam question one BM 46 assessments, we asked could the applicant JNC Natural England, Natural Resources Wales, NatureScot, Daera, the RSPB and the North-West Wildlife Trust. So that's pretty much everybody involved in these issues for today. Please give their views as to how the effects of the decommissioning of existing wind farms should be considered to avoid over precautionary mitigation and compensation.

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So Natural England's response says that background baseline mortality rates and BMPs population data are based on old data predating Most UK offshore wind farms, which will tend to overestimate the impacts. More up to date data is being progressed by the UK. SNC BS but is not yet available and they agreed to removing decommissioned offshore wind farms. But there appears to be no green method for for doing this.

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So my first question to the applicant is does this mean that there's double counting. But the extent of it is uncertain. Is that really what they're saying?

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Let me know.

00:06:27:28 - 00:06:58:18

Robin Hutchison for the applicant. Perhaps I'll I'll start and then, um, yeah. My, uh, colleague, Mr. Bower, who is our ornithology expert, can, um, pick up on on the technical detail. Um, I suppose if we're talking specifically about the wind farms that the applicant has assumed will be decommissioned. And I think we're really talking about the two Orsted projects. Uh, Barrow and, um, North Hoyle. Yeah.

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Um, the the applicant's position or the the history of this is that the applicant assessed on the basis of, um, or carried out the cumulative assessment on the basis of publicly available information in the EA's for the projects in question. So we did a sweep. We looked at all the EIA assessment information, carried out the cumulative assessment. On that basis, Natural England, um, raised the concern that actually some of the historic project ideas didn't assess, um, certain ornithology impacts in the same way, um, as uh, a modern best practice windfarm application would.

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And so we're kind of missing. Um, so the applicant undertook their own exercise to go back and I guess, um, second guess what they might have assessed at the time had they done it, to come up with historic figures, figures for those historic projects based on their EIA? Yeah. Now, what we did on that

approach was follow, um, what is said about their project in their EIA in the public domain. So where that EIA identified the project would be, um, decommissioned.

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We didn't include it in the assessment. What we did was we took a approach of looking back at the EIA submitted with the project and saying, how do you assess this in the way we do in a modern context? Here is our approximation for what that impact would be. So there's not a gap. But we figured that was, you know, over and above in terms of um, looking beyond our own boundaries. Um, and what we didn't then do was say, well, actually, um, looking at the publicly available information in the EIA at the time, do we need to do even more than that? Is there something more about this project, such as the decommissioning date being further in the future than that? Originally I we based it on the public domain information.

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Yeah.

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Um, so that was the that was the approach to to historic assessment. Um, whether that leads to, I don't think at least a double counting as such.

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Um.

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Um, just introduce myself. My name is Ross Bower. I'm principal ornithologist acting for the applicant on ornithology matters. Um, so in terms of double counting, I mean, the response that Natural England and NRC have provided in their written questions. I mean, we broadly agree with what they said on that in the sense that.

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Yes, obviously, as the older projects become decommissioned during the life of our project, obviously those those effects would be taken out of the equation, as it were. But there is no agreed method by which we could remove those from our assessment. The assessment is effectively a snapshot at the time that the, um, the windfarm becomes operational. Um, and we then undertake our modelling on that basis. And as you're probably aware, the, the kind of the finest detail of that is, is when we undertake a population viability analysis, PVA for certain species, um, and that looks at the whole lifetime of our project to the 35 year lifetime of our project.

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And we look at how the population trajectories for that species changed during that, during that time. Um, but there's no mechanism within the PVA tool to enable you to kind of Add in and take out additional wind farms during during that period. So? So there's. There's no way that we could agree with with the other stakeholders, a method by which you could take that into account. So in effect, as wind farms become decommissioned.

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Yes, the impact would be reduced, um, in the cumulative in combination effects. Um, but I think all we can say on that is that it just provides you with reassurance that our assessment includes a level of precaution, because we know that that effect is likely to diminish. And obviously with other projects as they come forward, it will be for them then to, you know, in, you know, in years after our project, there'll be for them to determine the cumulative and in combination effects as things occur at that time. But I'd like say but I don't think there's much else that we can do realistically to, to address those, um, that, that effect as, as those wind farms come out of come out of operation during the lifetime of our project.

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So what you're saying is that the the assumptions you've made are over precautionary, because if anything, the

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decommissioning will mean that there's lesser impacts cumulatively than.

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You've assessed for. Is that correct?

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The applicant? Yeah. I mean, whether whether they you would describe them as precautionary. I don't I don't know, but they are certainly precautionary. And and obviously again, it provides you with with confidence that that for example, obviously there's been a lot of discussion around the Barrow and North Hoyle wind farms which.

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Obviously, you know, provides additional precaution that or confidence that, you know, even if we assume as we are, that those should be removed from our assessment that that's not affecting any assessment conclusions.

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Thanks. Because those projects you mentioned obviously will be looking at tomorrow because there will be people around from from those those projects. Thank you.

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Yeah.

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Robin Hutchison for the for the applicant I think that's a it's a really important point that, um, the assessment that's carried out on that, on that snapshot. So if when we look at the EIA in the public domain project is to be decommissioned in 2032. Mhm. It's included in full as if it's going to be there for the entire lifetime of our project, when in reality of course it's not. And that, I think, gives comfort that the appropriate balance has been struck that when you look at that publicly available EIA and the project is due to not be there at all when our project is operational, then we've excluded that.

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It's our overall precautionary approach. Brooch.

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So. So yeah. So basically from the obviously from the EIA and the HRA viewpoints, we're seeking to understand the Secretary of State can have confidence that the assessments are, if anything, over precautionary rather than the other way. And here's why. And you can obviously pop that in your submissions at deadline for. So we've got that one.

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Absolutely. And we'll, we'll hear from the um, uh, I suspect the, the Orsted IPPs tomorrow on their view on in particular on on Barrow. And I won't comment on that now without them.

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Press will leave that till tomorrow.

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Yeah we'll leave that till tomorrow. But as a general proposition, you would expect an extension of life or, uh, repowering of a wind farm site, uh, to require consent and assessment. That project then becomes the the future agent of change, and they need to look at whether it's acceptable to continue Knew that wind farm and that site. With the new with the current baseline, which would include, you know, projects like ourselves. Um, or whether it's appropriate to repower it. So, um, uh, it's not the case that there would ever be a gap in assessment because we would look at the project as it appears in the public domain, um, for the life that is remaining and then a new assessment in due course, at the point at which it is being repaired would be carried out.

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Yes, because they'd have to do that separately at that time.

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Exactly, exactly. And as you might expect, you know, because we're mostly focusing here on historic projects as a general proposition as well. Their life span is likely to end somewhere in the early stages, or certainly within the lifespan of a new project such as this one.

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Um, thank you to my panel. Colleagues have anything to say? I think we'll wait for tomorrow. Yes. Right. Yes. Thank you. So second bullet point is to do with coordinated communication and mitigation. And first off, I've just got three.

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Questions. Short questions. Really? Um, first off.

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If you can explain why cumulative considerations across more than one project have not been included within the draft Marine Mammal Mitigation Protocol Act deadline two. Um, given that some of the distances in tables two, one and three. One might be less than for nearby consented and proposed offshore wind farm projects. And then whether current information

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can be updated and provided to include other Irish Sea projects, whether that's a reasonable proposition. Um, we're particularly concerned about mechanisms to minimise the impact of noise on marine marine receptors across project level. So thirdly, to what extent is it reasonable to consider coordinated mitigation across the Irish Sea? Um, perhaps you could tell us what's been done to date and whether they're already formal measures in place.

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And if there are, if there's any reason why these can't be secured. If you want to take it one bite at a time, I'm happy to repeat.

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Sarah Reed for the applicant. If you could just repeat the first part, that would be appreciated. Thank you.

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Yes. I was just wondering why cumulative considerations across more than one project have not been included within the draft MMP.

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And then we're getting on to issues about whether current information can be updated and provided to include other Irish Sea projects.

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Sara Reid for the applicant. So I think the MMP outlines the mitigation that the project could deliver, and we can only mitigate impacts that the project

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has, so we can't mitigate for other other projects. However, within the underwater sound management strategy, there is a section in there which allows us, at the point of time, closer to construction to consider The cumulative picture around us that may have any influence on the mitigations that we make, but ultimately we can only we can only mitigate the contribution that the project makes to to the cumulative picture.

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Thank you.

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If we can move on to updating of current information, whether current information can be updated and provided to include other Irish Sea projects,

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and to what extent it's reasonable to consider coordinated mitigation across the Irish Sea.

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I'd like to know your views on that, please.

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At Robin Hutchison for the applicant. Perhaps just a preliminary point. Are we talking mitigation in a broader sense? Um, the obviously the agenda item is on ornithology and the conversation has moved towards marine mammal and noise. Um, yes. Which is not a problem. Just how would you like the answer focused on ornithology or more generally.

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It it could be considered more generally or generally. It's sort of begun with the, the marine mammal and ornithology issues. But I guess it could be

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include you could include other aspects as well. It's just these those are the ones that sprung to mind when we were reading through everything immediately. And we wondered, what have you got to view on these issues?

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That, that that's that's understood and that's helpful. Um, I mean, I think the, um, the two aspects, the Principal challenge with any type of construction coordination between these projects is um, or it stems from the the way the UK energy support mechanisms are set up with contracts for difference, where projects need to bid into a finite auction for a contract for difference, to offer them price support if they're going down that route.

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But it is normal for an offshore wind farm to do so. Um, that price certainty will then underpin our, um, project financing, assuming that the project is, you know, borrowing money to deliver rather than doing it on its balance sheet. Um, so, so that that issue alone makes it quite difficult to as as we stand today to commit to coordinate because nobody knows exactly when they're going to be constructing. Yeah, that that issue is then compounded because the Republic of Ireland, of course, is a separate consenting regime, you know, separate jurisdiction entirely.

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Yeah. So trying to coordinate across these projects is, I think, disproportionately complex to the benefits. And the flip side of that or the the comfort that can be taken, is that a broad worst case envelope has been taken. So as Mr. Gardner explained, the noise assessment is based on the assumption that actually, you know, almost everybody in the region is piling at once, which in reality is, you know, impossible. There aren't enough vessels, you know, it's never going to happen.

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But but equally, it gives that, um, uh, confidence that the absolute worst case has been assessed, absent the possibility of, of any kind of coordination being a practical measure.

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Mhm.

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So yes.

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Sorry Sarah Reed for the applicant. And just to add to that, that each, each project that we're considering will also have their own MMP and mitigation that they will they will need to commit to as part of their their projects. So again, that's something that the CEA is based on on a worst case. It doesn't include noise abatement used by by projects. So again it highlights that the CEA is is robust enough, um to kind of deal with whatever picture we do end up end up facing.

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Thank you. So it's um, you might say, well, it's almost a level above where we are because it's a Crown Estate versus Republic of Ireland sort of issue. And I was just wanting to understand why there's anything practical we can do at this level, as it were. But I, I'm guessing that the uncertainty with program is one of the main issues in doing that.

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Robin Hutchison for the for the applicant. Yes, yes. We we agree that there's also like in any mitigation measure, um, uh benefit versus complexity balance to be struck. And you know, as Miss Read explained, as miss Reed explained, the um, uh, the mitigation that will be applied by individual projects, um, it is going to be, you know, the lion's share of what's effective, you know, in terms of what could be coordinated for ornithology mitigation.

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Yeah. It's difficult to see what you could what you could practically do. I mean, you know, there's going to be construction vessels, but, you know, these are not, um, the key source of impact. So the benefit of coordination, it's it's unclear that, you know, what benefit it would offer in terms of, you know, new mitigation measures that we aren't already looking at, and the complexity and effort and just uncertainty of being able to deliver it, I think, makes it falls into the sort of disproportionate pot.

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Yeah. Because obviously in the early days of wind farm development, these things weren't an issue. But it's this is something that's coming to the fore as more and more wind farm projects are being proposed.

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And, I mean, I would say that, you know, the government response to that is things like the, um, guidance that came out on the 21st, you know, it expressly recognizes there's more projects in the sea than there once was. And the response is to heighten the level of mitigation that is required of those individual projects. Each one is, you know, contributing less to the impact pie than they once were. So, you know, I think there is a response to the issue you identify already in terms of increased congestion.

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So that's something that you're taking account of in the mitigation you're proposing for this project?

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Robin Hutchinson for the applicant. Well, certainly in terms of noise. Yes, because the cumulative assessment considers everybody at once and the mitigation will be proposed on the basis of, of that worst case. Um, obviously, if when we come to approve the final plan, if the situation has evolved, if there's a project that's built, we won't assume that they are still to be built. That wouldn't be right. But, you know, essentially the worst case assessed and the mitigation that is in contemplation and being secured all assumes that there is a sort of worst case, uh, cumulative position actually, um, unfolding.

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Um, so to, to summarize, really what's been done to date, whether there are formal measures in place and whether any of these should be secured. Um, well, how would you sum up?

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At Robin Hutcheson for the applicant. In terms of coordination between projects, we consider that our position would be that

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an assessment has been made on the basis that there isn't coordination. So we've assessed the uncoordinated position, and we have mitigated impacts on the basis of an uncoordinated position. So rather than seek to coordinate the policy position is to ensure that each project minimizes its own contribution and a decision can be made on the worst case assumption. Everybody comes forward at the same time and has mitigated their own individual impacts and appropriately.

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So there isn't a need to have a further assumption that there's a coordinated and staggered construction, because actually the levels of impacts have been appropriately mitigated.

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Because I'm just thinking about as there are more projects, as there obviously are as Mona and Morgan as well as this project, Objects. It's really the piling and the vessel movements in respect to marine mammals that were really interested in

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knowing whether there's proposals to coordinate the mitigation for those.

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Sarah Read for the applicant. I think in terms of the projects you mentioned, so the Moana and Morgan projects, we have all submitted an underwater sound management strategy. And so there has been alignment in how we each mitigate our own contribution to that cumulative effect. But beyond that, we don't feel there's any any further requirement for for any coordination and that it's for each project to secure the mitigation appropriate to their final design in line with their final design of their of their project.

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But the issues acknowledged all the same. It's it's basically the vessel movements and the piling that are the big, the big, the big ticket items. I think really for in respect of marine mammals.

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Serried for the applicant. Yes. I guess it would be worth noting that we also, within our vessel traffic management plan, having best practice measures for reducing disturbance to marine mammals and birds. Yeah. And again that's something you'll see in in the other projects as well in terms of each using best practice to to minimize the contribution that they make to the to the cumulative picture. Yeah.

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Thank you.

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Catherine Nolan, on behalf of the applicant, I think the other point to draw out here is we obviously talked about the updated noise guidance that came out recently, and that does have sections that deals with probably I think the concern you're getting at is a more taking a step back at a wider picture of activities in the Irish Sea beyond just these projects, and there are discussions with Defra and with an industry to kind of gather those, those stakeholders together to come up with an approach. But that is really something that, as we've explained, can't be led by a project alone.

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It's a kind of a government drive to do it. And those discussions are ongoing. And I think the applicant's view would be as part of its commitment to abide by the noise guidance and to kind of follow the the discussions that come out or the output of those discussions. There would be possibly resolution within that, but it really needs to be driven at a kind of government level. And and it does go beyond as you've drawn out.

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Yeah.

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So the UK government alone, it has to go more widely.

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Yeah. So it's a bit like what we're just discussing earlier. It needs to be at a higher level than the project level. But you're open to if you're if you're open to cooperate with that then that's sort of I guess that helps. So Oliver.

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For the applicant. Yeah of course we're open to To to be part of those. And we obviously have regular conversations with the other Irish Sea projects as well. Um, you know, but as, as um, Miss Reid has stated, you know, we, we, we feel that we don't need to formally commit to anything at this stage. But obviously we'll maintain a watching brief on the guidance as it comes forward. And if there are any initiatives that that, um, we can become part of, we will be. And we're very much open to that. Um, as a responsible developer.

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Yeah. So it's it's so it's sort of a direction of travel thing, really. So we're trying to establish. Thank you. Uh, Richard West, on behalf of the applicant, I think it's it's worth also.

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Mentioning that where this type of coordination has taken place before with other developers has been around Harbour Porpoise, special areas of conservation and certain thresholds and seasonal restrictions that um or seasonal limits to the activities within there. It's worth bearing in mind that we are some distance from the harbour Harbor. Porpoise. Sack. Yes. And the driver is not as keen as in the Irish Sea as it would perhaps have been in the southern North Sea, where you have more of.

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A.

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Specific driver to manage thresholds between developers in that in that sense?

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Yes. Thank you. I was just thinking more about ecologically, at least, the general proposition that that's the direction of travel, as it were. So yeah, thank you very much for all that. Um, my next, um, question would have been to the MMO, um, their deadline three summary.

00:31:46:12 - 00:32:18:21

At 307 says that the MMO is reviewing your draft outline Marine Mammal Mitigation Protocol, which covers UXO and piling, and they will provide comments as soon as possible. So I assume anybody from MMO listening that that means deadline for along with your response to the draft underwater sound Management strategy? So I'm hoping that that will come in at deadline for again in your rapidly expanding shopping list of things that you want to talk about between now and then.

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That'd be correct.

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Thank you.

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And then I think we covered the next point already, actually. It was really to do with how those two documents work together. And I think you've given us a response on how they would, whether there would be any duplication of controls and whether either of them was the main control document. Um, again, I hope that um, MMO will have some comments to make on that at deadline for. Is there anything else you want to say about that issue just now?

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Kathryn Nolan on the on behalf of the applicant. No, no.

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Thank you very much.

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Right.

00:33:06:03 - 00:33:09:05

I think the next.

00:33:11:03 - 00:33:11:22

Item.

00:33:11:24 - 00:33:18:10

Is not worth pursuing here due to absence of persons.

00:33:20:07 - 00:33:22:04

We were really seeking to

00:33:23:22 - 00:33:56:11

find out from Mona and Morgan Projects, Natural England and the MMO. Basically their views on coordination and communication between projects during construction to minimize effects. And we asked, um, an HRA question. So I think we would leave that where it is for now. Um, and hope to see some comments at uh, deadline for perhaps from those other, those other people.

00:33:56:15 - 00:34:03:22

But it's just covering stuff that we've already talked about with the other projects and the other surveys.

00:34:03:24 - 00:34:04:09

Bass.

00:34:17:07 - 00:34:33:00

One thing I was going to put to wrap up this little bullet point item to all the parties that might have been here, was whether you consider that the provision of the kind of engagement we've talked about

00:34:34:18 - 00:35:02:09

coordination to reduce cumulative effects. For instance, the MMO North Sea Coordination Forum, they have about for underwater noise, um, and whether that needs to be secured through conditions in a named plan, whether you think that that's something that might be eventually happening with the Irish Sea projects, um, so that you'd have some sort of formalized Engagement.

00:35:05:09 - 00:35:40:12

Yeah. Robin Atchison for the applicant. Um, I think to an extent here, the, uh, the point is what's proportionate. Mhm. And, um, the, the panel and then eventually the Secretary of State will have before them an assessment of the worst case of each project in a sort of, um, uncoordinated way, but each individually mitigated insofar as is appropriate. So there is comfort that the worst case has been assessed and is before you.

00:35:40:16 - 00:36:17:00

Mhm. Um, our position is that, you know, the, the, the level of impact even on a worst case basis, um, you know, aren't uh, don't weigh heavily against the benefits of the project. Um, and so anything further in terms of, you know, coordinated forums, you know, are nice to have, but they're not essential such that they require mitigation. So obviously if guidance starts to, um, uh, push the applicant or offer that that forum and opportunity, as you've heard from the project manager, um, you know, we will be open to it.

00:36:17:06 - 00:36:48:28

And obviously, with the future discharge of conditions and plans, you know, it may be important to, to carry out further engagement as required and best practice. But, but, but ultimately you have the assessment of the worst case before you. And I think anything else is is disproportionate and doesn't need to be secured. You know, you've assessed the worst that could happen if there's some upside to that in terms of additional forums in the future or additional coordination, then you know that that is that is upside but doesn't need to be secured in DCO requirements.

00:36:49:00 - 00:36:51:25

It doesn't mean that test of being reasonable and proportional.

00:36:53:25 - 00:36:54:12

So.

00:36:56:16 - 00:37:10:28

If I put the proposition that the provision of such engagement could itself be considered to be a form of embedded mitigation. What would your view be on that proposition, particularly if it was secured?

00:37:14:18 - 00:38:09:19

Robin Hutchison for the applicant, if it was secured, it would be a form of mitigation to the extent it is so. So to the extent such a mitigation is secured. But the question we're addressing is do we need to do anything further. And I think our position is that actually what has been presented by the applicant is already, you know, cautious best practice and precautionary. And there isn't a need to introduce, you know, further levels of coordination and especially for the reasons we've explained because of the, you know, just the practical difficulty in actually achieving any meaningful commitment to coordination because of the financial timelines of these projects there can be talking shops, but ultimately, if financial closes at different times and projects are in different construction timelines, then you know, that's what the mitigation would be a talking shop rather than anything meaningful.

00:38:10:29 - 00:38:11:15

Thank you.

00:38:13:12 - 00:39:07:19

Does anybody want to make any comments here? No thank you. So if we move thank you very much for that. If we move on to the third bullet point, the Liverpool Bay displacement assessments. Red throated diver. Before we start this topic, we know that the applicant has just yesterday been in touch with us regarding the submission of the Webb et al. 2006 report entitled recommendations for the

selection of and Boundary Options for an Spa in Liverpool Bay, referred to by the applicant in response to our first round of written questions And the submission of this into the examination, along with a figure showing the location of the proposed developments in relation to data obtained from the web et al.

00:39:07:21 - 00:39:38:11

Report. So we have deliberated since 5:00 yesterday, and in order to ensure procedural fairness to other parties, we've decided that if you consider that, it will assist us in our discussions under this agenda item, we're happy for you to refer to these in summary form, but please ensure that they're submitted at deadline for so that other parties can respond if they choose as necessary.

00:39:40:19 - 00:40:16:09

Is that okay for the applicant? No, thank you very much and we appreciate your short consideration of this. It's really just one figure that we want to share. which I think illustrates a point which is explained in the text of the written documents, but is quite difficult to draw out until you see a figure on a plan. Or at least for me. The penny dropped about the points that our ornithologist were making when presented with a figure, so we thought it would assist everyone to be able to just talk to that.

00:40:16:11 - 00:40:21:21

And of course, we can submit at the next deadline so that everyone has the opportunity to comment on it should they so wish.

00:40:23:10 - 00:40:30:18

Would you like to open with that in view of the fact that you've got it with you?

00:40:34:24 - 00:40:36:25

Just give us some background.

00:40:37:21 - 00:40:42:29

Um, Ross Boer for the applicant. Um, so the purpose of.

00:40:43:03 - 00:40:44:06

Sorry. Can you speak up?

00:40:44:08 - 00:40:46:00

Sorry. I'll try and move a bit closer.

00:40:47:29 - 00:40:49:03

Okay. Is that better?

00:40:49:05 - 00:40:49:20

Yes.

00:40:49:23 - 00:41:18:10

Thank you. Um, so the purpose of presenting this new figure to you. But just to reiterate it, it doesn't include new information that we haven't presented previously. It just presented in a in a clearer way.

Um, this information is primarily designed to explain or demonstrate how the boundary of the Spa was derived and the relative importance of the Spa for red throated diver. That's the.

00:41:18:12 - 00:41:19:14

Original designation.

00:41:19:16 - 00:41:30:28

As opposed to the original. The original. Yes yes yes yes yes. Thank you. Yes. Thank you for clarifying that this was the original designation, not the 2017 updated, um, designated boundary.

00:41:31:03 - 00:41:36:03

To 2006 paper we sought. So it's starting back before the SBA effectively.

00:41:36:05 - 00:42:13:18

So yeah, this is from before it was in spa. Yeah. Okay. So, um, the, uh, the boundary of the spa, which, um, or the, the original spa boundary, which is shown as a blue dotted line on that figure, if you can see it. Um, was originally set out in, um, a document that NRA and Natural England presented in 2010, which, um, provide their advice on how the, uh, the reasons for the SBA designation, which at that time was just for two species common Scouter and red throated diver.

00:42:14:04 - 00:42:54:28

Um, and those recommendations were then carried forward, obviously, to the actual designation of the Spa. Now, the data that underpinned that was presented in the Webb et al. 2006 paper that, uh, you refer to uh, previously. Um, and that that was based on, um, a range of available data at that time on the distribution and abundance of red throated diver and common scouter within the spa. Um, so what this figure shows is, um, obviously you can see, uh, the Morgan, uh, Application site, um, with the, uh, dotted ten km buffer around it.

00:42:55:20 - 00:43:26:06

Um, which, as we know, ten kilometres is considered to be the distance over which red throated divers. Um, could be impacted by, um, by wind farms as a result of disturbance. Um, and you can see, uh, it's quite distant from me here, so I can't quite see the colours, but the, um, the you can see where it overlaps the, uh, the spa boundary and what we refer to as our area of potential impact on red throated divers, um, outlined in yellow, I believe.

00:43:26:21 - 00:43:28:20

Um, on that plan? Yeah.

00:43:30:09 - 00:44:06:05

Yes. Well, um, so the, um, the different colours that are shown on that, the green and the purple and the pink. So those are the, um, the boundaries that were identified by Webb et al, which was then subsequently used to designate the boundary. So the areas, um, shown in pink are the areas that were designated primarily because of the high densities of red throated diver that were present within those areas. The areas of green are the areas where high densities of common Scouter occurred, and so that was the reason for designation there.

00:44:06:13 - 00:44:46:16

And there the area of kind of purple color is the overlap where both commons go to and red either occurred in sufficient densities for designation. So what this plan shows clearly is the area our area of impact. The area shown in yellow was never designated for as importance for diver. It was important it was designated for common Scouter. In other words, had it been decided at that stage that common Scouter um was not taken forward as an SP species? Yeah, the boundary of the spas would have been very different to how it's shown now, and would not have included the area that is impacted or potentially impacted by our project.

00:44:47:11 - 00:45:02:11

Um, in essence, what that shows is that the occurrence or the frequency of occurrence and the densities of red throated diver within that area are not high enough to meet the threshold as designation as Spa.

00:45:04:11 - 00:45:46:12

Following on from that, um, within our red throated diver technical note which has been submitted into the examination, um, there's a number of figures which show subsequent, um, updates of of data that are available for diver, and those have consistently shown that the densities of red throated diving in that area remain very low. And that red floater diver occurs in there very infrequently. So the tenor of our argument, as you're aware, is that Natural England consider that our project would adversely affect the, um, distribution conservation objective for red throated diver.

00:45:47:00 - 00:46:17:29

In other words, that it would reduce the ability of red throated divers to use parts of the spa which they currently use. But what we believe this shows is that those areas are not used by significant numbers of red throated diver. That area would not meet the threshold for Spa designation, and that for those reasons, the we would not have that effect on the conservation objective in in respect to red throated diver.

00:46:18:15 - 00:46:24:17

And like I say and and that's backed up I think by, by the further evidence that we presented in our diver note.

00:46:25:12 - 00:46:40:18

And of course, that's why you've got a derogation case which is without prejudice. Exactly that the green is the quick one, the green area there. That is that the original spa boundary as it currently is.

00:46:40:20 - 00:47:11:27

Yeah. So that was the other thing I was going to explain. So if you kind of take the pink and the green and the purple as a whole, if you take the outer boundary of that, you'll see that it's roughly the same as the the blue spa boundary, but it's not exactly the same. So what Natural England did at the time when they took the Webb et al. Data, is they refine that using a statistical statistical methods and also kind of reviewed it to kind of simplify the boundary to make it less wiggly, for want of a better word.

00:47:12:18 - 00:47:33:09

Um, they so they use that data to refine to refine that. And so that's why the final SBA boundary is slightly different to what is shown on the boundary that was presented by, by Webb et al. But the um, but but in essence, it, you know, it broadly follows and is based on the data that Webb et al presented.

00:47:33:29 - 00:47:45:12

So how many kilometers is the green away from the site boundary at the moment. Is it about two three kilometres? Something like that.

00:47:46:03 - 00:47:50:19

Ross Bauer for the applicant. Um, I haven't got the the exact the exact distance to hand.

00:47:50:21 - 00:47:51:14

But it's just that little.

00:47:51:16 - 00:47:52:01

Bit. It would.

00:47:52:03 - 00:47:52:18

Be.

00:47:52:21 - 00:48:07:14

It would be something there. So but but the important point to consider there is that this is designated for common scouter. Yes. So, so the distance of effect for common SCO to is four kilometers. Not yes. Not ten kilometers as it is, is for a diver.

00:48:07:18 - 00:48:11:16

So for km. Yeah. You're about you're probably not. So it probably is short of that.

00:48:11:18 - 00:48:43:06

But also it's worth bearing in mind that our assessment for common Scouter was actually, uh, within our within the rear document is actually, um, precautionary in the sense that we have actually assessed all of the all of the sorry, common Scouters that are that are present within that four kilometer buffer, whether or not they're overlapping with the, with the spar. So, so, so our assessment has taken that into account. And the, the Predicted mortality rate as a result of disturbances is is negligible.

00:48:43:19 - 00:48:47:09

Um, so. So there's very little effect on commentators in that in that sense.

00:48:47:11 - 00:48:51:28

And for red throated diver you're saying that.

00:48:54:18 - 00:49:09:16

If we drew ten kilometres round the proposed development, you've got the broken line. Is that it? Yeah. What you're saying is that there are very few of them in that area. Anyway, from the information you've got.

00:49:09:20 - 00:49:10:05

Yeah.

00:49:10:07 - 00:49:16:06

Yeah. So it's not the same level of issue as it is with the other features with the other species.

00:49:16:14 - 00:49:33:00

No. Well, I mean, in essence, there's its own red throated ivory is really the only species within the spa where there is any, um, potential risk of, of, of adverse effects. So there are no other species affected.

Yes. And, and the area that we're affecting is, is of

00:49:34:19 - 00:50:06:07

not great importance for red throated diver On the basis of the original designation and the subsequent survey information that's become available since the time of designation. Um, it's also worth worth adding that, um, in the, uh, round four HRA, the Secretary of State came to the same conclusion in respect of our project. And again, it's worth bearing in mind that for a wind farm, the, um, the displacement effect is, is based solely on the boundary of the wind farm.

00:50:06:09 - 00:50:53:15

So it makes no difference, obviously, with compared to collision risk, where you have to take into account the, the turbine parameters and other things which might change within the wind farm for displacement effect is literally the boundary of the wind farm which you use to inform the assessment. So the boundary in respect of its distance from the spars unchanged. And the Secretary of State, um, in their decision for the in respect of the ground for um HRA was that there would be no risk of adverse effect on integrity for the red throated diver feature of Liverpool Bay spa, and there's nothing that we're aware of, and there's no new information which would enable anybody to reach a different conclusion in that respect.

00:50:55:09 - 00:50:57:23

So you're referring to.

00:51:00:04 - 00:51:08:06

Red throated diver. That's your technical note number three. And you've also got two other technical notes relating to

00:51:09:29 - 00:51:15:11

black bat goal and various collision risk issues as well.

00:51:15:15 - 00:51:25:05

So yes, there's separate technical. There's one with an update to some of the EIA matters which are address a number of species. And there's another update which addresses other HRA.

00:51:25:07 - 00:51:25:22

Issues.

00:51:26:03 - 00:51:29:10

Primarily around the black black hole and other matters.

00:51:29:12 - 00:51:39:12

I suppose it's the same thing again, that presumably these technical notes will be We used to update the E's and. Would you update the RIAA?

00:51:40:00 - 00:52:10:29

That's correct. We're proposing to update the RIAA with, um, and and the E.s chapter with, with the information that's contained in those technical notes. But as you may be aware, there are still. So we've recently received submissions from um, uh, Natural Resources Wales with some additional comments which will also need to address particularly within the, within the RIAA. Um, so we need to consider how we're going to address those comments as well.

00:52:11:25 - 00:52:29:19

Obviously, ideally we want to update the RIAA in one rather than doing multiple updates on it. So so we need to review the the information that we've got from RW in terms of the time frames for updating updating the rear. Um, with with this additional information.

00:52:30:16 - 00:52:31:18

Yeah.

00:52:35:24 - 00:52:49:17

Just thinking. Your offshore ornithology technical note three that you put in at deadline one. The heat maps there for January 2015 and February 2019

00:52:51:06 - 00:52:54:21

might suggest a greater occurrence of retrofitted diver.

00:52:54:27 - 00:52:55:12

I think.

00:52:55:21 - 00:53:00:10

Within proximity, would that go against what we've just been talking about?

00:53:00:26 - 00:53:37:02

Ross Bower for the applicant, I think the important thing is the so it's not only the the abundance of red throated divers, but it's also the frequency of occurrence of them. So, um, although there there are sporadic occurrences of red throated diver in those areas. Again, we would maintain that those are not meeting the thresholds which would, um, be accordance with the Spa designation. For example, we've recorded red throated diver within our wind, you know, within the wind farm array area during our digital surveys, which informed the assessment.

00:53:37:13 - 00:54:13:03

But that doesn't mean that the Spa should be extended to, you know, or the importance of the red throated diver should be extended to to our array because red divers occur all around the coast, all

around the UK. You know, it's it's a relatively widespread species. So the so the kind of sporadic occurrence of red throated diver within that area is very different to the really high densities of red throated diver that you get closer to the coast. Um, within, within the, within the spa, which are, you know, focused on the, the kind of pink areas on, on our, on our plan that we're presenting today.

00:54:15:14 - 00:54:30:04

We've got. Thank you. I'm just thinking our understanding of the current position with Natural England, um, is that they remain in disagreement Agreement because

00:54:31:28 - 00:54:35:09

uncorrected values without gradients have been used.

00:54:36:26 - 00:54:43:15

And they. That's what they would advocate. And as RSPB and Natural Resources Wales.

00:54:45:16 - 00:55:08:08

Have comments to make as well. Um I suppose three things really one. First off, we're obviously referring to the original Spey boundary here, aren't we? Not the not the, um, the revised one. I wondered if, bearing in mind that others parties are not here at the moment,

00:55:09:27 - 00:55:25:25

whether you can give an update or any further progress in agreeing adverse effects on integrity, outstanding issues, and whether you've given any further consideration to siting turbines further away from the original Spey boundary.

00:55:33:07 - 00:55:36:09

Rob. Robin Hutchison for the applicant. Um.

00:55:38:20 - 00:56:25:17

In just 2 to 2 points in response to that, uh, one which perhaps, um, uh, expands on your question about where we find the other documents submitted, which are relevant to the the plan that we're showing on the screen. And the I would also draw the examining authority's attention to our response to examining authority. Question one, HRA two, and in particular, the, um, quote from the round four plan level HRA um, which refers to when applying a ten kilometre buffer around the preferred project as advised by Natural England.

00:56:26:07 - 00:57:02:06

Densities of red throated diver in the overlap area are below the threshold used to identify the Spa boundary, based on diver density alone. Webb et al. And this plan is essentially showing that that the purple is the area of purple, and pink is the area where there is density sufficient to designate the site for red to diver, and the ten kilometre buffer that Natural England are proposing now, and did propose that their own for HRA stage as well. Their position has been consistent, doesn't overlap with that area of density that is sufficient to allow designation.

00:57:02:19 - 00:57:42:28

And the particular reason for bringing it up is because this was an important point that underpinned the conclusion in the round for HRA that was prepared by the Crown Estate, but adopted by the Secretary of State, that there isn't an adverse effect on site integrity for red throated diver. It was it was this density point so that, as Mr. Bower explained, Natural England's position has been consistent ten K buffer and this decision has previously been taken by the Secretary of State, taking and placing weight on the actual densities of the species which are shown in this plan.

00:57:43:07 - 00:57:57:13

And the decision was no adverse effect. And the applicant's position is that we don't see any reason or anything new that could change what's already been. Um, uh, you know, the ground that has already been trodden.

00:57:57:18 - 00:57:59:05

This is from the plan level.

00:57:59:13 - 00:58:43:16

This is from the plan level HRA. Exactly. But it was, you know, endorsed and adopted by the Secretary of State with the same point from Natural England and the same, uh, you know, or the reference to the web data, which we're, we're showing before you. So it feels like a, to an extent a case of, of history repeating itself. Um, and we don't see a reason for, for a different outcome or different decision for the Secretary of State. This time around, and in response to your particular question about increasing the buffer zone, why can't we just do what Natural England are asking us? Um, and it's it's not just because we believe we're right, although we do believe we're right.

00:58:44:00 - 00:59:18:04

Um, it's also because the project can't accommodate it. Um, it's a project that has already been, uh, tailored to fit in to the, you know, brownfield area coexisting with a range of existing or on the way out infrastructure. Um, as is going to be the way of the future as we're trying to meet net zero and accommodate, as you've the panels already articulated, the large number of of offshore wind farms that are going to be needed. You know, um, careful siting and careful tailoring of boundaries is going to be necessary.

00:59:18:18 - 00:59:41:08

And, um, it simply there isn't room within the project Red line boundary to accommodate a three kilometer bite out of that eastern boundary, without substantially eroding the overall capacity and objective of the of the project. We do have a useful plan that shows that that may be something we'll bring up.

00:59:41:18 - 00:59:42:03

We are.

00:59:42:05 - 00:59:42:20

Aware. We are.

00:59:42:22 - 00:59:43:16

Aware. You've seen the plan.

00:59:44:04 - 00:59:50:00

We've seen the one in question. And in one sort of sense, it's fairly obvious from the nominal layout which which we saw as well.

00:59:53:21 - 01:00:14:09

So yeah, thanks for that. So really working down, we could say, well, does this mean a ten kilometre buffer is necessary from the original site boundary, or could a smaller buffer be achieved. Do you think that would be acceptable to Natural England?

01:00:19:18 - 01:00:23:26

Robin Hutchison for the applicant. We are second guessing what Natural England might say.

01:00:24:13 - 01:00:27:24

Yeah, that's unfortunate, isn't it? But yes.

01:00:27:28 - 01:00:29:20

We agree it's unfortunate. I mean.

01:00:29:22 - 01:00:34:02

We're thinking maybe 8 or 9km, for instance. Just the principle of whether.

01:00:34:04 - 01:00:37:00

What we think it's already what do we think it is seven point.

01:00:40:00 - 01:00:42:16

Is it all right to worry about seven kilometres anyway. Is it.

01:00:42:21 - 01:00:43:20

Exactly.

01:00:43:22 - 01:00:49:25

So I'm just thinking back to the the other plan I've got, which has got lots of big thick lines and colours on it and things. Yeah.

01:00:49:27 - 01:01:06:25

Well so the natural buffer is six. And as to what Natural England might say, I mean, we've got no reason to believe they will change their mind. The quote from their own four plan level HRA says applying a ten kilometre buffer as advised by Natural England. They're still advising the same thing.

01:01:07:03 - 01:01:18:00

And if it was that 8 or 9km that might eat into your red line a bit, so would that be acceptable to you? That's the other side of the coin, isn't it?

01:01:18:02 - 01:01:30:25

It's the same point, the viability point, because we lose capacity as soon as we start eating into that eastern boundary, that there really isn't room for any further increase in the buffer. And, you know.

01:01:33:11 - 01:01:45:29

Somewhere between, you know, the existing seven and ten just erodes capacity as you as you eat further into that boundary. Yeah. And our position is that none of that is warranted.

01:01:46:05 - 01:02:08:12

Yeah. Thank you. I'm hoping that, um, Natural England will also comment at deadline for on what we've just been discussing about negotiating away through the little impasse there between the top right hand corner of your projects and the bottom left hand corner of the spa boundary.

01:02:08:21 - 01:02:23:22

Richard West, for the applicant we have offered as mitigation the aerial surveys for retrofitted diver. And just to just to comment that we're still awaiting feedback from Natural England on that proposal to affirm the conclusions that if you could just just include.

01:02:23:24 - 01:02:29:04

The points in your submissions, and then we're up to speed with where you are and that'll be that will help us, I think.

01:02:30:01 - 01:02:58:24

Rob Robin Hutchison for the applicant, in the interests of, um, you know, not being disingenuous and setting expectations, um, in our a list of items where our, uh, of live items and how they might be resolved. It may well be that at the end of examination, there is a determination needed on this issue, because I don't see Natural England changing their position on ten kilometres. Yeah. Our position on viability I think has been very clearly stated.

01:02:58:26 - 01:03:08:07

I think we think we we know this is going to be one of those parties where we're going to have to make a we'll make a recommendation one way or the other. We're just exploring whether there is any middle ground, and.

01:03:09:04 - 01:03:37:07

Hence the discussion we're having now. We just want to see how far we can get with it before we can't get any further. Um, thank you very much, everybody. Um, just coming on to the next point about assessments. Um, you're off shore. Ornithology. Something like three the deadline. One. You note the effects of existing disturbance by helicopters and sea craft.

01:03:38:24 - 01:04:11:18

And it's stated that apart from ferries, a significant proportion is associated with the oil and gas industry. This was our BM 48 question. The decarbonisation agenda will mean that these operations will be phased out over time. This is something we've been talking about a bit earlier. Um, because repurposing for carbon capture assessment would need a revised assessment because it's not currently consented. So it's whether the effects of the removal of this traffic form part of the overall assessment.

01:04:12:03 - 01:04:49:10

Now natural England's view as they're not here, I can just recite it is it is advised that there will be an eye on the Liverpool Bay spa from the projects alone. Therefore, the reduction of disturbance from other sources won't change this outcome. Furthermore, while decommissioning or repurposing of offshore oil and gas may be under consideration, the significant uncertainty around these projects, many are yet to secure the relevant permissions and consents, and it's not clear how much of a reduction in disturbance this will lead to.

01:04:50:04 - 01:05:02:29

So they say there's no meaningful way to represent this in the assessment. And the Duncan centred activities normally should not be considered as part of an HRA in combination assessment.

01:05:04:22 - 01:05:13:19

I just wanted your view on that response and whether that's tying in with your approach.

01:05:15:15 - 01:05:21:08

Um, Ross Bauer for the applicant. Um, so in respect of the, um.

01:05:21:10 - 01:05:22:26

Sorry. Can you speak louder?

01:05:22:28 - 01:05:23:13

Sorry.

01:05:23:21 - 01:05:58:18

Ross Bauer for the applicant. So, in respect of the, uh, oil and gas projects in the future, um, our position, I think is, is as we've set out in our in our response to those questions, but but the we don't consider that there's enough certainty around how those may change in the future to adjust our assessment. Um, the, um, the disturbance which occurs there and it kind of goes back to the, the, the, the discussion we were having earlier around the kind of the snapshot approach to the assessment.

01:05:58:22 - 01:06:38:16

We have to base our assessment on, on what is happening at the moment. Um, and the, the helicopter and shipping traffic that is currently affecting that area in terms of disturbance to red throated divers. Um, and as you say, there's there's no certainty about how that may change in the future. Um, so our position is that our assessment is is reasonable based on the information that we have and that that, um, disturbance is potentially affecting any red throated divers that might be present in an area, noting that actually there are very few, um, in that area in any case.

01:06:42:26 - 01:06:50:26

Yeah. Ultimately, we're not trying to claim any credit in our assessment for the fact that post decommissioning that disturbance will disappear.

01:06:51:15 - 01:06:52:00

Mhm.

01:06:52:06 - 01:06:53:02

That's the point. Yeah.

01:06:55:04 - 01:07:31:00

Thank you. Is there anything else you want to comment on Robert or not? Thanks. I think we'll move on to the last bullet point on agenda item six the Liverpool Bay HRA derogation case and effects on red throated diver and lesser black black gull now taking the lesser black bag Gulf. First, your HRA without prejudice derogation case was revised at deadline three.

01:07:31:02 - 01:07:57:01

So apologies we missed that when we were sending out the the um references and that was revised to take account of the offshore ornithology. Technical note two in respect of lesser black gull breeding and non breeding features of the Morecambe Bay spa, Dun Spa, both Ramsar sites and for the rural and all territories spar also Ramsar sites and

01:07:58:18 - 01:08:06:13

bottom line there you you you were revising steps two and four of the HRA process. So.

01:08:08:19 - 01:08:14:04

Bottom line with that is Natural England confirm that they're satisfied with that approach.

01:08:16:13 - 01:08:54:03

And so I really want to push on to Red diver where you've submitted further evidence in respect to the red throated diver feature at Liverpool Bay at 3064 in the library to support your without prejudice derogation case, which you submitted with the application. And there's also an outline compensation implementation and monitoring plan for Red diver. So my understanding of the latter is that that just outlines the generic process that you would follow for the implementation of the compensation.

01:08:55:25 - 01:08:59:12

Is that that correct for the applicant document?

01:08:59:18 - 01:09:01:03

Yes. That's correct. Yes.

01:09:01:05 - 01:09:01:24

Yeah. Thank you.

01:09:04:00 - 01:09:24:00

So previously you'd submitted your update on the without prejudice compensation measures. So you included the site selection process proposals for Step Home Island for Red throated diver and the bank smash megaphones for gulls. And Natural England responded to.

01:09:24:07 - 01:09:40:15

Me, sir. Just a point of clarification. Sorry. Yes. Um, sorry. The steep Holme Island is one of the alternatives for a lesser black bag gull. Yes. So not read through to diver. The red throated diver proposed compensation if needed. Is rafts elsewhere?

01:09:42:13 - 01:09:43:27

Yeah. And the. Yeah.

01:09:45:06 - 01:09:45:27

Apologies.

01:09:46:15 - 01:10:10:14

That's fine. But but any players broadly concerned with the proposals for the banks Marsh mega fence. Although they've commented some of it might be liable to flooding. So I'm thinking that we're beginning to get some consensus on those two compensation measures. Is that a reasonable statement to make?

01:10:10:21 - 01:10:42:27

Richard West for the applicant, we've had very we've had a lot of. Discussions and conversations and meetings with Natural England on both of these measures. Uh, Natural England directed us towards these measures. And it's fair to say that we have made considerable progress for the lesser black black gull derogation case to wards delivering the compensation measure that we have outlined in the in the derogation case for, uh, rebel in our estuaries.

01:10:43:02 - 01:10:48:20

Um, we very much have Natural England on board with that. They're working together with us to deliver the process.

01:10:48:29 - 01:11:21:22

So in terms of sort of direction of travel, as I might say, things are going in the right direction at this stage. Yeah. So really the main focus for us is the See proposed compensation measures to be located in Scotland, which we'll refer to as the Scottish compensation measures. So to begin with, I think it would be useful if you could summarise the current position. I'm thinking in terms of agreeing the impacts on the original.

01:11:24:04 - 01:11:49:07

Spey boundary as against the revised boundary, both projects alone and in combination. Then you've got the mitigation you've considered following agreements of the likely significant effects. And finally, we're getting to the compensation proposed in Scotland in terms of effectiveness and deliverability. So

01:11:51:04 - 01:11:52:12

is it secured?

01:11:54:15 - 01:12:00:10

And deliverable basically how far have you got in the process for that.

01:12:02:07 - 01:12:40:18

Richard works for the applicant. Uh, as firstly, I should say, um, this the driver for us to produce the red throated diver compensation case, of course, came from yourselves, from the examiner and

authority questions. Yes. And that was something we received not end of November. Um, since in the what now, six weeks? Eight weeks since then, we have done a lot of work to, uh, contact landowners to look at areas that are suitable for red throated diver breeding improvement measures.

01:12:41:06 - 01:13:21:03

We have contacted a vast number of landowners, uh, across Scotland, and, uh, the panel will be aware that the exact details of those are redacted. Um, and in terms of measures. Since then, we have we've now as we presented with the case, we've got three letters of support. It's a bit of a challenging path for us to take, given that this is a without prejudice case, but we have shown with those letters of support that a derogation case within those landholdings is secure.

01:13:22:08 - 01:13:58:10

Um, obviously, the driver for us to move forward to implement that measure will be the decision of the Secretary of State on the assessment we are making and continuing to make progress with those measures, with the landowners that we've contacted and had letters of support from. We are behind the scenes working up the, uh, the the details of the measures based on those landholdings and looking at red throated driver presence in the breeding season within those areas we are.

01:13:58:12 - 01:14:48:16

So we are with the with the letters of support we have so far. We are going through a process of developing those measures into a more detailed case to to put forward for the compensation for divers. We are also looking at still having those discussions with landowners across Scotland, and still looking to add to those letters of support that we've received and to develop further cases. We've had a number of quite encouraging conversations with some fairly large landowners across Scotland, and we're looking to further, further meet with them to develop proposals with their land holdings as well, both in the in terms of installing rafts for the breeding population, but also habitat restoration as well, which is also detailed in our derogation case for retro to diver.

01:14:51:27 - 01:15:12:19

Thank you. Um, as well as progress on adverse effects on integrity, which I understand are things are progressing there. We need to know to what extent you've engaged with nature. Scott. Could you, um, expand on that?

01:15:12:21 - 01:15:42:11

Richard West for the applicant? Yes. We contacted NatureScot last week to forward them details of the derogation case we submitted into application together with the the compensation implementation and monitoring plan. So I want to say slowly, um, we've provided them with all of the details of the unredacted case that the panel has viewed, and the SCB is also and we are awaiting a response from NatureScot on that.

01:15:43:04 - 01:15:48:03

Do you have any feel for how long that might be? And.

01:15:49:12 - 01:15:56:00

Uh, Richard quest for the applicant, based on our experiences with Scabs. It could be anyone's guess.

01:15:56:02 - 01:16:09:20

Hard to know. Useful if when you're putting your post hearing submissions, then you could maybe give us a bit of a idea of when that might be, because obviously the examination period is finite.

01:16:10:11 - 01:16:41:23

Um, it is our intention to write NatureScot ourselves to try. And so they'll get a pincer movement. Can I put it like that? Yes. Um, clearly. But we are intended to because we know to know. The other point obviously, is that without referring to one of the matters you referred to earlier on in, in relation to the Scottish compensation matters, unless they are secured, of course, then we can't be they can't be taken into account by the Secretary of State in assessing the derogation case.

01:16:41:25 - 01:16:45:26

They do need to be positively secured. Um, otherwise.

01:16:49:04 - 01:16:53:14

They may be contingent on on the DCO being granted, but they do need to have to be secured.

01:16:54:10 - 01:16:54:25

Mhm.

01:16:59:14 - 01:16:59:29

Um.

01:17:00:01 - 01:17:02:09

Yes. Yes. Sorry. Come.

01:17:04:06 - 01:17:39:03

Okay. Yeah. Sorry. Robin Hutchison for the applicant. Um. I mean, in terms of securing, uh, this conversation, um, if it's required, um, there would of course, be a schedule to the DCO, which we haven't seen, which which will be submitted to deadline for, which would secure the delivery of the measures. Um, our view is that, um, the level of confidence in the, um, uh, landowner, uh, letters of support that have been provided is enough to demonstrate that they're secure.

01:17:39:12 - 01:18:07:01

There's a we've identified a location. We've identified a willing landowner. That's that's as far as is needed in order for the secretary of state to be satisfied that in imposing a schedule which says that you need to deliver this measure, that it is deliverable, there is an impediment to delivering that measure. I mean, I would reiterate that our very strong view remains that there isn't an adverse effect on site integrity here.

01:18:07:03 - 01:18:07:22

I fully appreciate.

01:18:07:24 - 01:18:24:18

That. And so, you know, taking the levels of buying lock ins in estates in Scotland as a, you know, taking it to that level feels to us, you know, disproportionate, given that we are strongly refuting the need for it in the first place.

01:18:25:00 - 01:18:41:02

We've noted in the submissions that you've worded it with the landowners so that this may never happen effectively. We don't. Your position is that you don't need it, but you need to be satisfied that they will be content to come to an agreement if it were needed.

01:18:41:04 - 01:19:14:20

Exactly. We are satisfied. We don't. We don't need it. We're satisfied. The Secretary of State has previously been satisfied that they didn't need it. Um, so which gives us a lot of confidence. But in the event they were wrong on that, and the Secretary of State decides to change their mind for whatever reason this time around and require the compensation, then we think it's that there is enough certainty on the deliverability of that measure to enable that, that that schedule of compensation to be imposed in the knowledge that it is likely to be discharged.

01:19:15:03 - 01:19:34:00

Because we've identified, as I said, the landowners who are willing. And, you know, ultimately, these are large estates who are going to get an income stream for a piece of ecological mitigation on some lockdowns in their estate, which are, um, you know, it's I think it's generally been quite a welcome approach from the, um, applicant.

01:19:34:09 - 01:19:52:18

We obviously we have we're going to have a discussion about the equivalent provisions in the letter back. Gilt backed back gull on Thursday. Um, so we can have a chat. So and I'm sure that things flowing out of that may will also flow out of the drafting for another schedule thereafter anyway.

01:19:52:25 - 01:19:53:10

Yeah.

01:19:53:12 - 01:20:24:12

Yeah. Kathryn Nolan, on behalf of the applicant, I think we took a deliberate view not to put in the wording of that schedule of compensation. We are mindful of discussions we had at the preliminary meeting and at issue specific hearing. One of trying to streamline the amount of revises to the DCO. So we have been working up the schedule that we would use for that without prejudice measures. And we are, um, intending to tailor that to comments we received from Natural England and others on the structure of compensatory measures for lesser black vehicle.

01:20:24:18 - 01:20:29:10

And then obviously, any comments that the panel had on the structure of that schedule as well.

01:20:31:27 - 01:21:08:09

Um thank you. Um, Ross Bauer for the applicant. Um, just in respect of, um, your discussions around, uh, nature, Scott's response to this, just to reiterate that as we've set out in our in the derogation case that we have sought to identify sites that are outside of space designated for red throated diver. So so

we're seeking to avoid any potential conflict with, with NatureScot on on that matter in the sense that we're able to proceed on, on private land with, with our compensatory measures.

01:21:08:18 - 01:21:26:27

And, you know, NatureScot isn't in a position to prevent that, you know, whether, whether they would like to or not. Um, I guess it's more important that Natural England are supportive of our measures than the NatureScot because those ultimately we're compensating for, um, effects on uh.

01:21:27:03 - 01:21:37:21

With natural within, within the principle that you provided compensation. But obviously it's north of the border. So it's sort of a two headed thing, isn't it.

01:21:37:25 - 01:21:54:06

Yeah it is but but but like I say, I mean we're following as you as you'll be aware, we're following the approach that North Falls have adopted. Yes, the North Falls project have adopted for their compensation, which Natural England has agreed is an appropriate way of compensating for Retro Diver.

01:21:54:16 - 01:22:15:04

Yeah, quite. And it's the case that the physical measures are located in Scotland, but the benefits are felt via recruitment to the population of red throated diver throughout the national site network. So it's not a measure that is locally felt in Scotland. It's going to be felt in the the English national psyche network as well. That's the that's the point.

01:22:17:00 - 01:22:50:19

And we would obviously hear from Natural England but we won't. Um, so we would say to Natural England, we would expect comments from them on the discussion we're having at deadline for as my colleague Mr. Jackson has said, we will write to NatureScot anyway because otherwise They've they're not on notice otherwise. So we'll be doing that. Um, I think that's all I want to say on that.

01:22:50:21 - 01:22:52:01

Is there anything you want to say

01:22:53:24 - 01:22:57:21

very quickly on the rest of this item?

01:23:04:13 - 01:23:43:03

There was a question we put to Natural England SSC one, HRA 12 about the updated assessment for Red throated diver. The applicant states that the lack of reference of disagreement by Natural England to other conservation objectives, such as population for the Liverpool Bay spa, has led to the view that Natural England is content with the conclusions in relation to these, and we were inviting Natural England to confirm this position by commenting on each of the objectives set out in table 1.2,

01:23:44:27 - 01:24:05:00

and Natural England confirms adverse effects on integrity for objectives for non breeding population and distribution of veterinary diver and the supporting habitat for red throated diver. And I wondered if you wanted to comment on that response.

01:24:08:01 - 01:24:42:13

Ross Bauer for the applicant. Um, so um, as we discussed earlier, the um, Natural England, up until this point, Natural England has always, um, uh, presented their concerns in respect of the distribution conservation objective. Um, this is they haven't previously mentioned the habitat conservation objective to us. And until the response they've presented in their recent submission, um, Obviously there is some interrelationship between the between the two objectives.

01:24:42:25 - 01:25:18:01

Um, our position on it would be, um, taking into account that we don't consider there's an adverse effect on integrity. We do accept that if there were one, that it is the distribution conservation objective that we should be considering, i.e. the ability of the birds to use that part of the spa. I don't think we'd necessarily agree that the habitat conservation objective is likely to be compromised, in the sense that there's no change to the habitat within the spa as a result of the presence of the wind farm.

01:25:18:09 - 01:26:00:27

So, you know, the the seabed within the spa isn't changing. The distribution of prey species within the Spa isn't changing. Um, so it would continue the habitat within the Spa would continue to function in the same way as it has before. The only reason that there might be fewer red throated divers. There is because of the presence of the turbines, which are, for whatever reason, causing them to move further away. So, um, in answer to your question, we are like I say, we would agree with them regarding the distribution conservation objective, but we wouldn't necessarily agree on the habitat conservation objective.

01:26:01:11 - 01:26:13:19

Um, but it probably makes little difference in the end in terms of the, the overall conclusions, um, as to whether there's an adverse effect or not. On, on, on red throated divers.

01:26:19:24 - 01:26:20:11

Thank you.

01:26:23:03 - 01:26:25:00

Is there anything else you wanted to ask?

01:26:26:19 - 01:26:29:22

Just briefly. I think that's pretty much

01:26:31:19 - 01:26:56:29

everything we need to do here. I was only just simply going to Recite a couple of questions I had for Natural England. Um, we put questions to Natural England. HRA 17 and HRA 23. To do with the without prejudice derogation case and the compensation measures. The habitat management

01:26:58:21 - 01:27:14:23

and the question for Natural England was please advise whether the applicant should avoid the breeding season fully, or whether some management early or late in the breeding season might be acceptable,

01:27:16:16 - 01:27:41:23

and Natural England has advised that the lesser black gull breeding season is typically April to July, but March and August also relevant in respect of vegetation clearance wherever the species may be nesting, for instance, typically breeding season for small birds. Although you might be able to do clearance August to March in areas dominated by.

01:27:44:05 - 01:27:58:26

The Alexanders, which does not provide nesting opportunities for small birds and therefore where the risk of nest destruction is negligible. So that's areas of the clearance you might be able to do things and.

01:28:01:06 - 01:28:14:17

Seek a consent for Natural England to provide advice regarding Liverpool Bay on behalf of JNK for this project examination. We fully support Natural England in the advice they've been providing.

01:28:16:14 - 01:28:28:00

I just wondered, had Natural England been here, we would have put the questions. I wondered if there was anything you wanted to comment on in the meantime, are you clear which questions I'm talking about?

01:28:30:22 - 01:29:06:15

Um, Rossmoor for the applicant. So in respect of the the timing of the vegetation clearance. So obviously this is in respect of the steep whole proposed compensation measure. Yes. Um for, for the lesser black bag goal. Yeah. The um so the we would we are seeking to undertake any management work outside of the outside of the breeding season, and we don't foresee any reason to undertake the, uh, the major clearance work. So the scrub clearance work during the, um, during the breeding season, as, as Natural England has identified.

01:29:06:22 - 01:29:41:27

I think perhaps where, where there was an overlap on that was in respect of the Alexanders. So we yeah, there is the potential for the need to clear Alexanders during the, during the period because it's a very fast growing species which grows up very quickly and would potentially prevent the lesser black bag goals from, from nesting. So there is the potential we might need to undertake clearance of Alexanders Alexander's within the breeding season, but we don't anticipate any requirement to undertake the scrub clearance within within the breeding season, which will be the major part of the of of the work.

01:29:42:02 - 01:29:45:07

The Alexander's is more a kind of ongoing, ongoing management.

01:29:48:20 - 01:29:49:08

Thank you.

01:29:50:27 - 01:30:00:12

Does anybody want to say anything else on this subject? My panel colleagues, I think we might be break time.

01:30:01:14 - 01:30:24:21

That was that's what we were. We were muttering to say to ourselves, I think we now have a quarter of an hour off till ten two, where we can adjourn till then, and we'll come back and do the remaining items on the agenda. But it does look like we'll be finishing today, which is good news for Thursday afternoon if you look at it like that. So that obviously would be how would we do tomorrow but will adjourn now until 1010 to 1550.

01:30:25:14 - 01:30:26:08

Thanks everyone.