Marine Management Organisation

OUTER DOWSING OFFSHORE WIND

EN010130

Marine Management Organisation

Principal Areas of Disagreement Summary Statement (PADSS)

Finalised: 04 April 2024

A new approach to establishing principal areas of disagreement between consultees and applicants is being trialled on the Outer Dowsing Offshore Wind (ODOW) project under the NSIP Reform Early Adopters Programme.

Pre-application is the optimal time to seek agreement between parties. The use of Principle Areas of Disagreement Summary Statement (PADSS) have proved helpful in Examination procedures and should also assist negotiations when developed during the Pre-application stage.

The development of 'Pre-application PADSS' is expected to be an iterative process with versions provided by consultees to the Planning Inspectorate and the Applicant to inform discussion at project update meetings with the Applicant. Finalised Pre-application PADSS are requested to be provided by consultees to the Applicant to accompany the submission of their application for development consent. and provided to the Applicant prior to submission.

If the application is accepted for Examination, subject to the discretion of the appointed Examining Authority PADSS should continue to be updated during the Pre-examination and Examination stages of the process where issues remain.

This document comprises a preferred format for consultees to record areas of disagreement during the Pre-application stage.

Ref	Area of disagreement	Summary of concern held by Marine Management Organisation	What needs to change, or be included or amended to overcome the disagreement?	Likelihood of the concern being addressed prior to submission of the application/ during the Examination
1	Marine Processes Scour	The MMO requests additional evidence to address the MMO's concerns regarding scour. There is concern that the potential radius of impact could be modified under certain conditions. The MMO requests that the Applicant still considers establishing a maximum radius to ensure that this does not exceed the seabed preparation footprint.	The ES does not recognise the possibility that scour effects will alter in profile over time. It would be of value to understand in the first instance whether there is any evidence from Hornsea One (or any other comparable windfarm) of depth-limited scour pits increasing in radius relative to unlimited sites and the Applicant should provide this information. If this does occur, it would be necessary to estimate a maximum likely radius to ensure that this does not exceed the seabed preparation footprint	The Applicant disagrees with MMO's position. This will not be addressed prior to the end of examination.
2	Chemicals, drilling and debris condition	Based on the best available evidence to date, the MMO aims to create a revised, consistent, and thorough approach to chemical consenting for OWF. This should proactively avoid last minute delays and provide robust evidence regarding environmental impacts.	The MMO requests to replace condition 11(1), Part 2, Schedules 10-11, condition 8(1), Part 2, Schedules 12-15 and condition 6(1), Part 2, Schedule 16, with the below: *'11 (1) Unless otherwise agreed in writing by the MMO, all chemicals with a pathway to the marine environment, used for the marine licensed activities, outside the course of normal navigation, must be approved in writing by the MMO prior to use. Submissions should include a site-specific chemical risk assessment that includes:* *(i) the function of the chemical;* *(ii) the quantities being used and the frequency of use;* *(iii) the physical, chemical, and ecotoxicological properties of the chemical. Chemicals present on the OSPAR List of Substances Used and Discharged Offshore which Are Considered to Pose Little or No Risk to the Environment (PLONOR) are exempt from this requirement;* *Submissions for approval must take place no later than ten weeks prior to use.'* Definitions must be added to 'Interpretation' section of DML: "pathway to the marine environment" open systems or closed systems that require top up. "chemicals" comprise both substances and preparations. "preparation" means a mixture or solution composed of two or more substances.	The Applicant disagrees with MMO's position. This will not be addressed prior to the end of examination.

			"substance" means a chemical element and its compounds in the natural state or obtained by any manufacturing process, including any additive necessary to preserve its stability and any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition.	
3	<u>Benthic and Intertidal Ecology</u> Monitoring of Sediment Macrofauna Communities	The MMO would generally expect the impact of the array on sediment macrofauna communities to be monitored as standard.	The MMO does not agree with the assertion that "the offshore wind industry has moved away from assessing impacts on general sediment macrofauna communities", as this issue should be evaluated on a case-by-case basis. The MMO considers that the default position should be that such monitoring is undertaken unless there are clear and well-justified reasons for omitting it. The MMO would certainly expect monitoring to be implemented where an offshore windfarm is proposed in areas with relatively low levels of natural disturbance and/or where notable populations or assemblages of sensitive sediment macrofauna are present.	The Applicant disagrees with MMO's position. This will not be addressed prior to the end of examination.
4	<u>Benthic and Intertidal Ecology</u> *Sabellaria Spinulosa* images	The MMO noted at Deadline 5 (Table 5, REP5-174) that additional information is needed from the Applicant regarding the assessment of *Sabellaria Spinuloa* reefiness using seafloor imagery to ensure robust interpretation of future surveys.	There are several points relating to the interpretation of images of Sabellaria aggregations that require clarification for the MMO. The MMO feels a consensus should be reached before the interpretation of future surveys intended to inform mitigation measures (e.g., micro-routing). Please see Table 5 in the MMO Deadline 5 response (REP5-174) which includes images not being provided for certain stations, and discrepancies in classification.	This will not be addressed prior to the end of examination.
5	<u>Draft Development Consent Order</u> Article 6(1)-(2)	MMO resists the inclusion of Article 6(1)-(2) as this provision operates to make the decision that of the undertaker, with the Secretary of State (SoS) providing consent to the transfer, rather than the MMO as the regulatory authority for marine licences considering the merits of any application for a transfer. it is the position of the MMO that these provisions are removed and that any transfer should be subject to the existing regime under the 2009	The MMO understands that Article 6 – Transfer of Benefit is drafted in a similar way to previous consents granted by the Secretary of State (SoS), however the MMO has major concerns over the wording. Article 6(1)-(2) gives the right to permanently transfer the benefits of the DCO including the deemed marine licences (DML) in Schedule 11,12& 13 to a third party with the consent of the SoS. Part 2: Article 6(1)-(2) *"6.—(1) Subject to this article, the provisions of this Order have effect solely for the benefit of the undertaker.* *(2) Subject to paragraph (3), the undertaker may with the written consent of the Secretary of State— (a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order (including the deemed marine*	The Applicant disagrees with MMO's position. This will not be addressed prior to the end of examination.

		Act, with the decision maker remaining the MMO.	*licences) and such related statutory rights as may be agreed between the undertaker and the transferee*;" The MMO considers that this is a clear departure from the 2009 Act, which would normally require the licence holder (here 'the undertaker') to make an application to the MMO for a licence to be transferred. Instead, this provision operates to make the decision that of the undertaker, with the Secretary of State (SoS) providing consent to the transfer, rather than the MMO as the regulatory authority for marine licences considering the merits of any application for a transfer. Parliament has already created a statutory regime for such a process and it is unclear what purpose the written consent of the SoS actually serves. If the intention is for the undertaker to be able to transfer the benefits under the terms of the DCO outside the established procedures under 2009 Act, the MMO queries why is it considered necessary or appropriate for the SoS to 'approve' the transfer of the DML. It is also unclear what criteria the SoS would be taking in determining whether to approve any transfer, and how this would differ from a consent granted by the MMO under the existing 2009 Act regime. Because of this confusion and potential duplication, it is the position of the MMO that these provisions are removed and that any transfer should be subject to the existing regime under the 2009 Act, with the decision maker remaining the MMO.	
6	<u>Draft Development Consent Order</u> Article 6(2)(b)	MMO resists the inclusion of Article 6(2)(b) as there is no clarity on how will operate. It will be an additional administrative procedure for marine licences.	This Article 6(2)(b) gives the right to temporarily transfer the benefits of the DCO (including DML) to a third party. Article 6(2)(b) "*6(2)(b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including the deemed marine licences) and such related statutory rights as may be so agreed, except where paragraph (6) applies, in which case the consent of the Secretary of State is not required*." The MMO resists the inclusion of this article. Here the written consent of the SoS is not required. The MMO does not recognise that this would create a more streamlined system. Rather it simply operates to create an additional administrative procedure for marine licences (and one not envisaged by Parliament) and with no clarity in how it will operate.	The Applicant disagrees with MMO's position. This will not be addressed prior to the end of examination.

7	<u>Draft Development Consent Order</u> Article 6(3)	MMO resists the inclusion of Article 6(3) as does not take into account the views of MMO. There is no obligation for MMO to be informed.	The MMO has concerns regarding Article 6(3) Article 6(3) "*6(3) The Secretary of State must consult the MMO before giving consent to the transfer or grant to another person of the benefit of any or all of the provisions of any of the deemed marine licences*." The MMO notes that there is no obligation for the SoS to take into account the views of MMO when providing its consent. Furthermore, there is no obligation for MMO to be informed of the decision of the SoS, notwithstanding its impact on the MMO as the licencing authority. From a regulatory perspective it is highly irregular that a decision to transfer a licence should not be the decision of the regulatory authority in that area (MMO) but instead should be subject to such a cursory process as is set out in Article 6(1)-(3). MMO thus resists this change as unworkable. As explained above, Articles 6 (1)-(3) sets out what is effectively a new non-legislative regime for the variation and transfers of marine licences. In support of these provisions, Article 6(12) explicitly disapplies sections 72(7) and (8) of the 2009 Act, which would otherwise govern these procedures.	The Applicant disagrees with MMO's position. This will not be addressed prior to the end of examination.
8	<u>Draft Development Consent Order</u> Article 6(12)	MMO resists the inclusion of Article 6(12) as it conflicts with the MMO's stated position that the DML granted under a DCO should be regulated by the provisions of 2009 Act.	Article 6(12) *"(12) Section 72(7) and (8) of the 2009 Act do not apply to a transfer or grant of the whole or part of the benefit of the provisions of any of the deemed marine licences to another person by the undertaker pursuant to an agreement under this article 6 (benefit of the Order) save that the MMO may amend any deemed marine licence granted under Schedule 11, Schedule 12 or Schedule 13 of the Order to correct the name of the undertaker to the name of a transferee or lessee under this article 6 (benefit of the Order)*." This conflicts with the MMO's stated position that the DML granted under a DCO should be regulated by the provisions of 2009 Act, and specifically by all provisions of section 72. Section 72(7)(a) of 2009 Act permits a licence holder to make an application for a marine licence to be transferred, and where such an application is approved for MMO to then vary the licence accordingly (s. 72(7)(b)). This power that should be retained and used in relation to the DML granted under the DCO and MMO therefore resists the inclusion of this article 6(12) to disapply these provisions.	The Applicant disagrees with MMO's position. This will not be addressed prior to the end of examination.

			The key concern held by MMO is that Article 6 operates to override and/or unsatisfactorily duplicate provision that already exist within MCAA 2009 for dealing with variations to marine licences. Such provisions are also inconsistent with the PINS Guidance on how DMLs should operate within a DCO. Advice Note Eleven, Annex B – Marine Management Organisation | National Infrastructure Planning (https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/an11-annex-b/) provides that where the undertaker choses to have a marine licence deemed by a DCO, MMO, "*will seek to ensure wherever possible that any deemed licence is generally consistent with those issued independently by the MMO*." Article 6 as drafted is not in compliance with this guidance.	
9	Draft Development Consent Order Lifespan/Operational lifetime	The MMO considers that DMLs should have an end date included to keep them in line with other Marine Licenses that include construction and maintenance activities.	The assessment of long term effects in the Environmental Statement is based on a high level estimate of the likely operational lifetime of up to 35 years. The MMO considers that this should be treated as a limit for the assessment to remain valid and to give confidence in its findings. The MMO considers that the DMLs should not be an indefinite consent and notes that all other Marine Licences have an end date.	The Applicant disagrees with MMO's position. This will not be addressed prior to the end of examination.
10	Draft Development Consent Order Force Majeure/Notification of Unauthorised Deposits	The MMO maintains that this condition should be removed.	Force Majeure is not something that the MMO would include in standalone marine licences. The MMO provided a thorough response to this condition at Deadline 4 (REP4-129) and noted how the condition does not meet the five tests. The MMO notes the recent amendments to this condition to represent a notification to the MMO. However, the MMO still considers that this condition should be removed. The dropped object condition already serves as a notification to the MMO. The MMO has fundamental issues with the inclusion of the Condition in relation to enforcement and liability issues. The MMO does not agree with the Applicant's reasons for including this provision. The condition should be removed, as the defence (Section 86 of the Marine and Coastal Access Act, 2009) will apply if the Applicant or vessel masters needs to make a deposit for a Force Majeure reason.	The Applicant disagrees with MMO's position. This will not be addressed prior to the end of examination.
11	Draft Development Consent Order Determination Timescales	The MMO maintains that the DML should not place determination timescales on the regulator.	The MMO strongly considers that it is inappropriate to put timeframes on complex technical decisions of this nature. The time it takes the MMO to make such determinations depends on the quality of the application made, and the complexity of the issues and the amount of consultation the MMO is required to undertake with other organisations to seek resolutions.	The Applicant disagrees with MMO's position. This will not be addressed prior to the end of examination.

			The MMO's position remains that it is inappropriate to apply a strict timeframe to the approvals the MMO is required to give under the conditions of the DML given this would create disparity between licences issued under the DCO process and those issued directly by the MMO, as marine licences issued by the MMO are not subject to set determination periods.	
12	Draft Development Consent Order Document Timescales	The MMO welcomes the increase from three to four months for the submission of the MMMP (piling) and the Site Integrity Plan (SIP) for the Artificial Nesting Structures (ANSs), however the MMO maintains its position that it must be six months for all MMMPs and SIPs regardless of the scale of the activity.	The MMO stresses the difficulties in managing noise in the Southern North Sea (SNS) Special Area of Conservation (SAC) without the most up to date information at the earliest opportunity to ensure that a thorough in-combination assessment with other activities taking place can be completed.	The Applicant disagrees with MMO's position. This will not be addressed prior to the end of examination.
13	Draft Development Consent Order Cable Protection	Consistency in the DCO is required. Updated condition wording is required.	The Applicant has stated different units of measurement in the DCO relating to cable areas. Some of these have been stated as lengths and some as percentages. For example, in the table in Schedule 10 Part 2, 3. For consistency the MMO requests the Applicant chooses area and volumes as units of measurement for cable protection throughout the DCO. The MMO has reviewed the condition wording in correspondence and agreement with Natural England, and has proposed to the Applicant, the below wording to be included within the DCO/DML in relation to cable protection: '*21. No cable protection granted by this licence may be deployed within the IDRBNR SAC after the construction period has ended.* *Any cable protection to be installed outside of the IDRBNR SAC following completion of construction in locations where cable protection was not installed during construction must be deployed within 10 years of completion of construction, unless otherwise agreed by the MMO in writing.*'	The Applicant disagrees with MMO's position. This will not be addressed prior to the end of examination.
14	Decommissioning	Decommissioning activities have not been fully considered and the MMO considers that an outline decommissioning plan should be submitted as part of the consenting process.	The MMO has directed the Applicant to the Decommissioning of Offshore Renewable Energy Installations Under The Energy Act 2004 Guidance notes for industry Decommissioning of offshore renewable energy installations under the Energy Act 2004. The MMO considers that this should therefore be provided during this consenting process to align with the guidance.	The Applicant disagrees with MMO's position. This will not be addressed prior to the end of examination.