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MMO Reference: DCO/2022/00003
Planning Inspectorate Reference: EN010136
Identification Number: 20048964

03 October 2024

Dear Susan Hunt,

Planning Act 2008, BP Alternative Energy Investments Ltd, Proposed Morgan Offshore Windfarm Generation Assets Order

Deadline 1 Submission

On 30 May 2024 the MMO received notice under Section 56 of the Planning Act 2008 (the PA 2008) that the Planning Inspectorate (PINS) had accepted an application made by bp Alternative Energy Investments Ltd, (the Applicant) for determination of a development consent order (DCO) for the construction, maintenance and operation of the proposed Morgan Generation Offshore Windfarm (the DCO Application) (MMO ref: DCO/2022/00003 PINS ref: EN010136).

The DCO Application seeks authorisation for the construction, operation and maintenance of the Morgan Offshore Windfarm Generation Assets (MOWF) located approximately 22 kilometres (km) from the Isle of Man Coastline and approximately 37km from the Northwest coast of England; comprising of up to 96 wind turbine generators, all associated array area infrastructure and all associated development in an area approximately 280 square kilometres (km²).

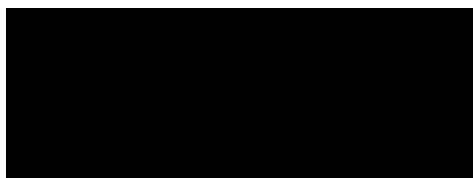
Two Deemed Marine Licences (DML) are included in the draft DCO. One in relation to Wind Turbine Generators (WTG) and Associated Infrastructure, and one for Offshore Substation Platforms and Interconnector Cables.

As a marine licence has been deemed within the draft DCO, the MMO is the delivery body responsible for post-consent monitoring, variation, enforcement, and revocation of provisions relating to the marine environment. As such, the MMO has an interest in ensuring that provisions drafted in a deemed marine licence enable the MMO to fulfil these obligations.



This document comprises the MMO's submission for Deadline 1. This written representation is submitted without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This representation is also submitted without prejudice to any decision the MMO may make on any associated application for consent, permission, approval or any other type of authorisation submitted to the MMO either for the works in the marine area or for any other authorisation relevant to the proposed development.

Yours sincerely



Liam Woods
Marine Licensing Case Officer

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1. Comments on Relevant Representations from other Interested Parties

1.1. General Comments

- 1.1.1. The MMO notes that a number of comments have been raised in relation to shipping, radar and impact to other industries. The MMO hopes the Applicant can resolve these comments and defers to the statutory Interested Party. The MMO will maintain a watching brief for any concerns where DML conditions may be required.

1.2. Corporation of Trinity House of Deptford Strond (TH) (RR-009)

- 1.2.1. The MMO notes that all correspondence, should it be necessary, between Trinity House and any other Interested Parties should be directed to its Legal Advisor, Russell Dunham. The MMO welcomes this point and will ensure that any correspondence is directed through this channel.

1.3. Environment Agency (EA) (RR-011)

- 1.3.1. The MMO notes the statement from the EA regarding the location of MOWF being outside of EA jurisdiction. The EA will not be consulted further for the generation assets.

1.4. Historic England (HE) (RR-013)

- 1.4.1. The MMO notes HE's request that the proposed archaeological mitigation programme needs to adequately take account of Principle 6 regarding anticipated micro-siting allowance and the use of Gravity Base Foundations (GBFs) as necessary to avoid known and unknown archaeological sites.
- 1.4.2. The MMO supports HE's confirmation that a Written Scheme of Investigation (WSI) is required, as conditioned within the deemed Marine Licences (Schedules 3 and 4) of the draft DCO.
- 1.4.3. The MMO is aware that HE will provide further comment through Written Representations and the MMO will keep a watching brief and provide comment when necessary.

1.5. Maritime and Coastguard Agency (MCA) (RR-019)

- 1.5.1. The MMO welcomes the MCA's confirmation that the MCA will be responding on matters of navigational safety and maritime emergency response. The MMO notes that the MCA have concerns about vessel routing, and the MMO hopes to see these concerns addressed throughout examination.



1.6. National Federation of Fishermen's Organisations (NFFO) (RR-24)

- 1.6.1. The MMO notes that this RR is a joint submission from both NFFO and Welsh Fishermen's Association (WFA-CPC).
- 1.6.2. The MMO acknowledges concerns raised regarding additional loss of space for fishing activities in an area already faced with extensive spatial restrictions such as existing offshore wind developments, offshore cables, Marine Protected Areas and legislative restrictions in the region. The MMO is aware that further displacement could cause economic harm, through loss of earnings from the ground and additional operating costs, due to increased steaming times during construction and operation of the project, as well as contributing to the spatial squeeze on fisheries in the region.
- 1.6.3. The MMO notes that the NFFO is concerned about the lack of up-to-date site-based survey data presented in the fish and shellfish ecology assessments, and a lack of focus on key commercial species. The MMO will review the Applicant's response in relation to this and may provide further comments at Deadline 2.
- 1.6.4. The MMO also notes concerns surrounding the methodology used in assessments and interpretation of data regarding displacement of fishing activity, specifically the return of mobile fishing gear to pre-construction levels. The MMO is aware that the NFFO feel that the assumption of no displacement effects observed during construction for all the different fishing gear sectors is vastly underestimated. The MMO will review the Applicant's response in relation to this and may provide further comments at Deadline 2.
- 1.6.5. The MMO acknowledges that the NFFO welcomes the development of a Fisheries Liaison and Co-existence Plan, and sees this as an integral and important step to minimise, and, if needed, mitigate impacts on the region's fisheries.
- 1.6.6. The MMO supports the NFFO's request for a Statement of Common Ground to ensure that fisheries concerns are considered during the decision-making process.

1.7. Natural England (NE) (RR-26)

- 1.7.1. The MMO is aware that there remain unresolved issues that centre around protected sites and that on the basis of the information submitted, NE, as the competent authority (Conservation of Habitats and Species Regulations 2017), is not satisfied that it can be excluded beyond reasonable scientific doubt that the project would have an adverse effect alone or in-combination on the integrity of the following sites:
- Liverpool Bay SPA
 - Morecambe Bay and Duddon Estuary SPA
 - Morecambe Bay and Duddon Estuary Ramsar



- Ribble and Alt Estuaries SPA
- Ribble and Alt Estuaries Ramsar
- Bowland Fells SPA
- Bowland Fells SSSI
- Isles of Scilly SPA
- Flamborough and Filey Coast SPA
- Flamborough and Filey Coast SSSI

- 1.7.2. The MMO defers to NE on all matters related to HRA. The MMO will maintain a watching brief on these matters and will ensure we are included/are provided updates on any discussions in relation to the HRA. The MMO highlights that any mitigation secured through the HRA will need to be included within the conditions on the deemed marine licence.
- 1.7.3. The MMO notes NE's decision to use the 'Red Amber Green' (RAG) system to denote the level of risk associated with a topic related to this development. The MMO welcomes NE's use of this system and considers it a clear and concise way to present the severity of an outstanding concern.
- 1.7.4. The MMO acknowledges concerns raised by NE regarding seascape, landscape, and visual impacts. The MMO defers fully to NE and the LPA on this topic but will keep a watching brief throughout examination and hope to see concerns resolved.

Development Consent Order and Deemed Marine Licence

- 1.7.5. The MMO is aware of NE concerns regarding the DCO and DMLs not accurately capturing all the required maximum parameters of the proposed works, and agrees that the Applicant should update the DCO and DMLs to ensure maximum parameters of all important metrics are appropriately secured.
- 1.7.6. The MMO agrees to support NE's view that due to the increasing complexity of construction of large offshore works, the proposed four months consultation on pre-construction documentation is no longer considered an appropriate period, and the DML should be amended to allow for documents to be submitted at least six months prior to commencement. The MMO has provided more comments within Section XX of this document.
- 1.7.7. The MMO agrees that the DML should be updated to include an appropriate requirement to provide an updated Offshore Operations and Maintenance Plan (OOMP).
- 1.7.8. The MMO also agrees that monitoring of benthic, ornithological and marine mammals should be secured through appropriate conditions.



Offshore Ornithology

- 1.7.9. The MMO notes NE'S major concerns that the Cumulative Effects Assessment (CEA) does not appear to be sufficiently robust. NE advise that the Round 4 Irish Sea windfarms should be using the same data to conduct their cumulative and in-combination assessments and urge collaboration on this aspect. The MMO defers to NE for matters relating to ornithology.
- 1.7.10. NE raised further concerns regarding Collision Risk Modelling (CRM), displacement assessments and subsequent apportioning undertaken. The MMO acknowledges NE concerns regarding lack of clarity on results of assessments and their interpretation. The MMO defers to NE for matters relating to ornithology and supports NE's request to update the assessments as required.

Marine Mammals

- 1.7.11. The MMO supports NE in recommending that the Applicant commits fully to using Noise Abatement Systems (NAS) as a mitigation measure to reduce both injury and disturbance to marine mammal receptors during construction activities but notes the Applicant's reservation in relation to this. The MMO would highlight that policy is leading to the requirement for all projects to have NAS and would strongly suggest this is taken into account as part of the Application.

Physical Processes

- 1.7.12. The MMO welcomes comments raised by NE relating to coastal processes and welcomes the request for updated assessments to assess the potential risks to designated features. The MMO supports NE in requesting that an updated ES is submitted which includes and assess these pressures/impacts.

Fish and Shellfish Ecology

- 1.7.13. The MMO supports the exclusion of soft start and ramp up methods, contained within the Marine Mammal Mitigation Protocol (MMMP), as appropriate mitigation for fish species.

Benthic and Subtidal Ecology

- 1.7.14. The MMO has noted NE's major concerns that the Applicant has not committed to return the seabed to its original state at the end of the project.

Other Plans

- 1.7.15. The MMO is aware that NE will submit detailed advice on the Offshore In Principle Monitoring Plan (IPMP) at Deadline 1. The MMO will maintain a watching brief of their advice.



1.8. North West Wildlife Trusts (NWWT) (RR-31)

- 1.8.1. The MMO notes that NWWT are supportive of offshore wind generation, however development must not be at the expense of nature.
- 1.8.2. The MMO notes NWWT's disappointment that there is no future monitoring plan embedded within the project for many ecological reports to validate predictions in the ES and inform future projects.
- 1.8.3. The MMO notes that NWWT has concerns over the 'very large' maximum design parameters and wishes to see more refined parameters to be properly informed. The MMO notes this is the Rochdale Envelope approach but welcomes any further refinement at this stage.
- 1.8.4. The MMO is aware of the NWWT's concerns regarding the potential for this scheme to have adverse impacts on designated areas whilst not physically passing through designations. The MMO further notes that NWWT expect designated sites that are close to the site to be fully considered, particularly those that fall within the Zone of Impact (ZOI), within assessments and that suitable mitigation should be proposed. The MMO defers to NE on these matters.
- 1.8.5. The MMO notes NWWT's concerns over the possible disturbance, displacement and barrier effects on sensitive receptors, particular black-legged kittiwake and northern gannet, and their expectation of a full cumulative impact assessment to be undertaken, including consideration of transboundary impacts. The MMO defers to NE on these matters.
 - The MMO further notes that NWWT raised concerns regarding the potential for significant barrier effects resulting from the 'belt' of wind farms that will exist from the Isle of Man down to Wales.

1.9. Royal Society for the Protection of Birds (RSPB) (RR-35)

- 1.9.1. The MMO notes RSPB's significant concerns regarding findings from impact assessments and considers that Adverse Effect on Integrity (AEI) cannot be ruled out for collision impacts arising through the project alone and in combination with other projects.
- 1.9.2. The MMO acknowledges that the RSPB's key concerns with the impact assessment relate to:
 - Manx Shearwater: Baseline characterisation and Potential Impacts arising through collision
 - Gannet: the application of a macro-avoidance correction factor to baseline densities for collision risk modelling



- Flight speeds used as parameters in collision risk modelling
- Methodology for assessment of cumulative/in-combination impacts
- Ecosystem impacts: a lack of consideration of impacts compounded by Highly Pathogenic Avian Influenza.

The MMO will maintain a watching brief of these concerns and will look to see resolution on these points. The MMO defers to NE for matters relating to ornithology.

1.10. UK Chamber of Shipping (UKCOS) (RR-41)

- 1.10.1. The MMO notes UKCOS support of the Government's obligations to achieve Net Zero Carbon by 2050 and welcomes the development of offshore renewable energy to succeed in this obligation.
- 1.10.2. The MMO acknowledges the UKCOS stance in seeking to ensure navigational safety is upheld, and that developments are appropriately positioned to enable existing and future commercial navigation to continue safely and efficiently.
- 1.10.3. Further to this the MMO is aware of UKCOS' concerns in finding that the development, as initially presented, is unacceptable on grounds of navigation safety in isolation and cumulatively, and that UKCOS has advocated for enhanced mitigation measures.
- 1.10.4. The MMO notes that the UKCOS has welcomed the amendment of the Red Line Boundary to take in account of navigational safety concerns for national and international scheduled services.
- 1.10.5. The MMO is aware that there remain ongoing concerns relating to deviation, scheduling and negative environmental impact upon the shipping industry from the revised boundaries, along with potential negative economic impact to island communities which need full consideration.
- 1.10.6. The MMO welcomes the UKCOS' request to provide further representation in the area of navigational safety and impact upon commercial routeing at Examination and will maintain a watching brief for anything that may need to be included within the DML.

2. Comments on Pre-Examination Procedural Deadline Submissions

- 2.1. **PD1-006 Applicant's response to Relevant Representation from Marine Management Organisation: Fish and Shellfish 4.6.5 (Annex 3.1)**
 - 2.1.1. The MMO acknowledges the submission of this response and will provide further comment at Deadline 2.



2.2. PD1-007 Applicant's response to Relevant Representations from Marine Management Organisation (RR-020): Underwater Sound (Annex 3.2)

2.2.1. The MMO acknowledges the submission of this response regarding the maximum design scenario and subsequent mitigation and will provide further comment at Deadline 2.

2.3. PD1-008 Applicant's response to Relevant Representation from Marine Management Organisation: Fish and Shellfish 4.6.12 (Annex 3.3)

2.3.1. The MMO acknowledges the submission of this response and will provide further comment at Deadline 2.

2.4. PD1-017 Applicant's Response to Relevant Representations

2.4.1. The MMO welcomes the submission of this response, specifically Table 2.20 which refers to the Applicant's response to MMO comments raised in the MMO's Relevant Representation (RR-020). The MMO has provided comments in the following table (table 1) and will provide further comments at Deadline 2.



Table 1. MMO Response to Applicants Pre-examination Procedural Deadline Submission

Applicant's Reference	Relevant Representation Comment	Applicant's Response	MMO's Deadline 1 response
RR-020.2	<p>Marine Plans</p> <p>The ES correctly identified that the proposed development is within the North West Offshore Plan Area. The MMO requests that all policies are reviewed within a table to show compliance. This must be produced as the Secretary of State must use the North West Offshore Marine Plan when making planning decisions for the sea, coast, estuaries and tidal waters, as well as developments that impacts these areas, such as infrastructure. The relevant marine plan policies that should be met can be identified using the Explore Marine Plans tool and policy information on the following website: https://www.gov.uk/guidance/explore-marine-plans</p>	<p>The Planning Statement (APP-074) has regard to the relevant policies of the North West Offshore Marine Plan and how the proposed development accords with it. The conclusions throughout the Planning Statement are that the proposed development accords with the plan.</p> <p>The Applicant does not consider it necessary to submit a standalone document setting out policy compliance with marine plan policy, as this information is already included in the Planning Statement.</p>	<p>The MMO maintains the position that a document showing compliance with all plans is submitted as even those that are not applicable need to be revised to show that each policy has been assessed.</p> <p>The MMO has reviewed the Planning Statement (J2) and has identified that the following policies within the North West Offshore Marine Plan Policy have not been assessed for compliance:</p> <p>NW-ACC-1, NW-AGG-3, NW-AQ-2, NW-CAB-2, NW-CC-1, NW-CCUS-1, NW-CCUS-2, NW-CCUS-3, NW-DD-3, NW-DEF-1, NW-FISH-1, NW-INNS-2, NW-ML-1, NW-ML-2, NW-MPA-2, NW-MPA-3, NW-MPA-4, NW-OG-2, NW-PS-4, NW-UWN-1</p>
RR-020.3	<p>Although some marine plan policies are discussed under the relevant chapters to which they relate, the MMO requires the Applicant to detail how the proposed project is compliant with the relevant marine plans by producing a marine plan policy assessment in one document.</p>	<p>Refer to initial response above (RR-020.2)</p>	<p>Please see response to RR-020.2 above.</p>
RR-020.5	<p>Unexploded Ordnance (UXO)</p> <p>The MMO would like clarity on whether the investigation of and the detonation of unexploded ordnance (UXO) are included within the licenced activities. These are not part of any of the works orders or set out within the activities of Schedule 3 and 4, however, a draft UXO marine mammal mitigation plan is proposed.</p>	<p>The Applicant can confirm the investigation and detonation of unexploded ordinance is included within the licenced activities. This is authorised by paragraph 2(e) of each deemed marine licence in schedules 3 and 4, which state inter alia:</p> <p><i>"2. Subject to the conditions, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable</i></p>	<p>The MMO's general position is that UXO activities are sought within a separate marine licence due to the nature of the impacts. The MMO is currently discussing the inclusion of the UXO clearance within the DML and will provide further comments in due course.</p>

		<p><i>marine activities under section 66(1) (licensable marine activities) of the 2009 Act</i></p> <p>...</p> <p><i>(e) site clearance and preparation works including clearance of unexploded ordnance, debris, boulder clearance and the removal of out of service cables and static fishing equipment;”</i></p>	<p>The MMO is content for the UXO investigation activities to be included and recommend this is a clearly identifiable activity within the DML.</p> <p>If the ExA and SoS are minded to include UXO clearances the DML should be updated to ensure these activities are set out as a separate activity taking into account activities 10-13 under section 66(1) (licensable marine activities) of the 2009 Act. This would also include any lift and shift opportunities.</p> <p>The MMO also requests the number of UXOs to be fully assessed at this stage and the maximum number to be included within the DML. The MMO has reviewed the Underwater Sound Management Strategy (Document reference J13) which indicates a maximum UXO clearance number of 13. The MMO requests clarification on this number.</p>
RR-020.6-8	<p>Arbitration</p> <p>Article 13 proposes a new enhanced appeals procedure for the Applicant should the MMO refuse an application. This appeals procedure is not available for other marine licence holders. The MMO strongly requests that the appeals procedure for the MMO is removed from the DCO.</p>	<p>The Applicant agrees that this article does not need to be included within the draft DCO for the Proposed Development. The Applicant will update the next version of the draft DCO to reflect this.</p> <p>This article has been included in a number of recent DCOs to manage the appeals procedure for the discharge of requirements, rather than DMLs, and it was not the Applicant's intention to apply this to the discharge of DML conditions.</p>	<p>The MMO welcomes this update.</p>
RR-020.9-16	<p>Transfer of Benefit of the Order</p> <p>The MMO understands that Article 7 – Benefit of the Order 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.</p> <p>Article 7(1)-(3) gives the right to permanently transfer the benefits of the DCO including the deemed marine licences (DML) in Schedule 3 and 4 to a third party with the consent of the SoS.</p>	<p>Article 7 of the draft DCO (AS-003) contains provisions for the transfer or lease of powers under the DCO. As set out in the Explanatory Memorandum (AS-005) these provisions are based on the Model Provisions and the drafting has developed through their inclusion in many offshore wind farm development consent orders.</p> <p>Following the precedent drafting from other offshore wind farm orders article 7(2) provides the transfer or grant of DCO powers to take place with the written consent of the Secretary of State and article 7(5)</p>	<p>The MMO notes the Applicant's response and will provide an update at Deadline 2.</p>

	<p>Part 2: Article 7(1)-(3)</p> <p><i>“(1) Subject to this article, the provisions of this Order have effect solely for the benefit of the undertaker.</i></p> <p><i>(2) Subject to paragraph (5), 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 (excluding licence 1 or licence 2) and such related statutory rights as may be agreed between the undertaker and the transferee; and (b) grant to another person (the lessee) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (excluding licence 1 or licence 2) 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.</i></p> <p><i>(3) Subject to paragraph (5), the undertaker may with the written consent of the Secretary of State—(a) where an agreement has been made in accordance with paragraph (2)(a), transfer to the transferee the whole of licence 1 or licence 2 (as appropriate) and such related statutory rights as may be agreed between the undertaker and the transferee; and (b) where an agreement has been made in accordance with paragraph (2)(b), grant to the lessee for the duration mentioned in paragraph (2)(b), the whole of licence 1 or licence 2</i></p>	<p>provides for this transfer or grant to take place without the need for consent in the circumstances specified in the paragraph. Both of these allow for the transfer or grant of powers under the deemed marine licence. Article 7(4) requires the Secretary of State to consult with the MMO before giving consent to the transfer or grant to another person of the benefit of either deemed marine licence.</p> <p>Article 7(11) disapplies sections 72(7) and (8) of the Marine and Coastal Access Act 2009 in relation to a transfer or grant of the benefit of the deemed marine licence. The drafting in the draft DCO reflects a long-established precedent regarding the transfer of DCO powers and deemed marine licences that has been endorsed by the Secretary of State many times, including most recently in the Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024. Where a transfer of the deemed marine licence is sought under Article 7(2), the Secretary of State would consider the appropriateness of the party to whom the transfer or grant is proposed and would also take into account any representations made by the MMO before determining whether to grant consent.</p> <p>From the procedural perspective it is important that the DCO and any deemed marine licence can be transferred together using the process set out in Article 7. It is considered important that the timing of any transfer or grant of powers/authorisations under the DCO and DMLs be aligned, as there is considerable overlap between the authorisations and the requirements/conditions. This justifies a departure from the procedure under the Marine and Coastal Access Act 2009. Having deemed the marine licence in the DCO, it is also appropriate that any transfer under the Order include the deemed marine licence as part of the wider transfer – it is one element of the wider order powers and should not be separated out</p>	
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	<p><i>(as appropriate) and such related statutory rights as may be so agreed.”</i></p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p>from the authority to construct, operate and maintain the NSIP granted by the Order.</p> <p>The Planning Act 2008 is clear that marine licences may be deemed in a DCO in appropriate areas (s149A) and that a DCO may include such further provisions ancillary to the operation of that DML (s122(3)), including transfer along with the benefit. Section 122(5)(a) and (c) set out that a DCO may “apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order” or “include any provision that appears to the Secretary of State to be necessary or expedient for giving full effect to any other provision of the order”. The ability to transfer the DML is related to the deeming and is submitted to be a sensible, expedient part of the wider power to transfer the benefit of the order.</p> <p>There is accordingly no legal barrier to including these provisions in the draft DCO and there is a clear advantage to doing so for the reasons set out above. This has been accepted by the Secretary of State in a number of offshore wind farm DCOs and is well precedented.</p>	
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	<p>the decision maker remaining the MMO.</p> <p>Article 7(2)(b) and 7(3)(b) gives the right to temporarily transfer the benefits of the DCO (including DML) to a third party.</p> <p>Article 7(2)(b) <i>“grant to another person (the lessee) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (excluding licence 1 or licence 2) 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.”</i></p> <p>Article 7(3)(b) <i>“where an agreement has been made in accordance with paragraph (2)(b), grant to the lessee for the duration mentioned in paragraph (2)(b), the whole of licence 1 or licence 2 (as appropriate) and such related statutory rights as may be so agreed.”</i></p> <p>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 operates simply to create an additional administrative procedure for marine licences (and one not envisaged by Parliament) and with no clarity in how it will operate.</p> <p>The MMO has concerns regarding Article 7(4).</p> <p>Article 7(4) <i>“The Secretary of State shall consult the MMO before giving consent to the transfer</i></p>		
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	<p><i>or grant to another person of the benefit of the provisions of licence 1 or licence 2.”</i></p> <p>The MMO notes that there is no obligation for the SoS to take into account the views of the MMO when providing its consent. Furthermore, there is no obligation for the MMO to be informed of the decision of the SoS, notwithstanding its impact on the MMO as the licencing authority. From a regulatory perspective it is highly irregular that a decision to transfer a licence should not be the decision of the regulatory authority in that area (the MMO), but instead should be subject to such a cursory process as is set out in Article 7(1)-(3). The MMO thus resists this change as unworkable. As explained above, Articles 7 (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 7(11) explicitly disapplies sections 72(7) and (8) of the 2009 Act, which would otherwise govern these procedures.</p> <p>Article 7(11). <i>“Section 72(7) and (8) of the 2009 Act do not apply to a transfer or grant of the benefit of the provisions of licence 1 or licence 2 to another person by the undertaker pursuant to an agreement under this article.”</i></p> <p>This conflicts with the MMO’s stated position that the DML granted under a DCO should be regulated by the provisions of the 2009 Act, and specifically by all provisions of section 72.</p>		
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	<p>Section 72(7)(a) of the 2009 Act permits a licence holder to make an application for a marine licence to be transferred, and, where such an application is approved, for the MMO to then vary the licence accordingly (s. 72(7)(b)). This power that should be retained and used in relation to the DML granted under the DCO and the MMO therefore resists the inclusion of this article 7(11) to disapply these provisions.</p> <p>The key concern held by the MMO is that Article 7 operates to override and/or unsatisfactorily duplicate provision that already exist within the 2009 Act 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, as referenced in comment 3.3.2, provides that where the undertaker choses to have a marine licence deemed by a DCO, the MMO, “will seek to ensure wherever possible that any deemed licence is generally consistent with those issued independently by the MMO.” Article 7 as drafted is not in compliance with this guidance.</p> <p>The MMO objects to the provisions relating to the process of transferring and/or granting the deemed marine licences set out in the draft DCO at Part 2, Article 7 insofar as these are intended to apply to the MMO and requests paragraphs 7(4), 7(8) and 7 (11) be removed in their entirety, with a clarification added to specifically exclude these provisions from applying to the MMO (with corresponding wording</p>		
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	<p>amended in the Deemed Marine Licences).</p> <p>The MMO is concerned that the procedure proposed represents an unnecessary duplication of the existing statutory regime set out in s72 of the 2009 Act and that it will give rise to significant enforcement difficulties for the MMO. The MMO also considers that it has the potential to prejudice the operation of the system of marine regulatory control in relation to the proposed development. The MMO also regards the proposed procedure as cumbersome, more administratively burdensome, slower and less reliable than the existing statutory regime set out in s72 of the 2009 Act.</p> <p>To summarise, the MMO considers that little advantage is gained for the Applicant by these provisions, and the tangible risks and disadvantages that it poses can be avoided by retaining the existing statutory regime in full.</p>		
RR-020.17-23	<p>Use of 'Maintain' and 'Materially'</p> <p>The MMO strongly considers that the activities authorised under the DCO and DML should be limited to those that are EIA assessed within the ES, and the statement that activities will be limited to those that 'do not give rise to any materially new or materially different environmental effects' should be updated to clarify this.</p> <p>The MMO considers that wording should be updated to 'do not give rise to any new or different environmental effects to those</p>	<p>The Applicant does not consider that the wording within the definition of "maintain" in each deemed marine licence in schedules 3 and 4 of the draft DCO (AS-003) needs to be updated. The purpose of the EIA Regulations is to identify the likely significant environmental effects that will arise from a project. That facilitates the relevant decision maker making an informed decision on the likely effects of the project before they grant or refuse consent. The detail in an Environmental Statement is not intended to be wholly prescriptive. That is not how the EIA regime operates. In undertaking an EIA, a developer has to make certain assumptions about how the project will be undertaken, particularly in respect of the operation</p>	<p>The MMO notes the Applicant's response and will provide an update at Deadline 2.</p>

	<p>assessed in the environmental information’. This also applies to the definition of “maintain”.</p> <p>The intention behind the EIA legislation is to protect the environment by ensuring that in deciding whether to grant a development consent for a project, and in deciding what conditions to attach to that consent, the decision has full knowledge of what the likely significant environmental effects of the project/development will be. That knowledge then guides the consent process and what conditions, if any, to attach to the consent. Additionally, there is considerable public consultation under the EIA legislation process because the process recognises the importance of local knowledge in environmental decision making.</p> <p>The EIA legislation was designed to apply to those plans/projects which could be sufficiently detailed and particularised at the application stage, to allow the consenting decision to be taken in the full knowledge of what the likely significant effects of that plan or project would be. In such circumstances, it would be unnecessary to create a legal obligation under the order which requires the activities to remain within what was assessed within the ES under the EIA legislation. This is because the consent authorises the detailed and well particularised project, assessed in the ES, to be carried out, and, therefore, providing the development is constructed as per the consent, those works would, by default,</p>	<p>and maintenance phase. Key parameters that underpin the assessment will then be included in the terms of the consent granted.</p> <p>In respect of operation and maintenance activities, the use of the word “materially” reflects that the detail of potential maintenance activities included in an Environmental Statement are based on assumptions. The word “materially” gives a limited degree of flexibility, but would not authorise any activities that would give rise to new or different significant effects. That would clearly be outwith the scope of the deemed marine licence. The Applicant therefore considers the existing definition to be appropriate. It is well precedented in DCOs for offshore wind farms, including East Anglia One North Offshore Wind Farm Order 2022, the East Anglia Two Offshore Wind Farm Order 2022, the Norfolk Boreas Offshore Wind Farm Order 2021, the Norfolk Vanguard Offshore Wind Farm Order 2022.</p>	
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	<p>remain within the parameters of the EIA assessment.</p> <p>The difficulty identified with assessment of environmental impact, as was discussed in the Rochdale Envelope case, is that to deal with an outline planning case, where the project will flex over time, you need to undertake the assessment at the outline permission stage when there is not enough detail to identify properly what the final design of the project will actually be. In the case of Rochdale, the court was saying things could remain flexible providing the assessment of environmental impact took account of the need for evolution of the project over time and assessed the likely significant effects within clearly defined parameters, and then the consent granted imposed conditions to ensure that the process of evolution kept within the parameters of the assessment of environmental impact. Whilst there might not be an express provision that you can point to in the legislation that says that a project cannot exceed the effects assessed in the assessment, it is implied (or the purpose of EIA would be undermined) and the Rochdale case discusses this.</p> <p>In this DCO and the DML, the Applicant is wanting flexibility in terms of the design details (both in terms of some of the construction details, and in relation to some of the maintenance activities). Where those design details are not finalised at the application stage, the Applicant is wanting to retain some flexibility and is proposing that the works</p>		
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	<p>that can be carried out should be restricted to those which do not give rise to materially new or materially different environmental effects to those assessed in the ES. The concern with this is that the inclusion of the word materially here would allow the undertaker to carry out works whose effects are outside of the likely significant effects assessed in the ES, providing they do not do so materially, that is, in any significant way, greatly, or considerably. This is not what the purpose of the EIA process is, and it runs contrary to the purpose of EIA. In addition, whilst the undertaker is responsible for producing the environmental information and statement on which the EIA decision is based, the appropriate authority is responsible for the EIA consent decision. The inclusion of the word materially means essentially that the undertaker makes the decision as to what is and what is not material. Under EIA legislation it is for the appropriate authority to determine what the likely significant effects will be, and how those should be mitigated.</p> <p>The MMO does not consider that it is appropriate to use the word 'material' in these circumstances. If the Applicant wants the flexibility of not being prescriptive about the design from the start, the Order, and the DML granted through it, should restrict works which can be carried out to those which do not give rise to any new or different environmental effects to those assessed in the ES.</p>		
RR-020.24	Schedules 3 and 4	As set out in more detail above, the Applicant is seeking to disapply sections 72(7) and (8) of the	The MMO notes the Applicant's response and will provide an update at Deadline 2.

	Paragraph 7 of Part 1 which refers the provisions of section 72 should be removed in its entirety.	Marine and Coastal Access Act 2009. This paragraph provides clarity that the remainder of that section remains applicable to each DML. Therefore, no amendment is proposed.	
RR-020.25	For regulatory certainty and consistency with other DMLs, the MMO proposes that Paragraph 9, Part 1 is amended to state the following: Any amendments to or variations from the approved details, plans or schemes must be in accordance with the principles and assessments set out in the environmental statements. Such agreement may only be given where it has been demonstrated to the satisfaction of the MMO that it will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.	The Applicant has reviewed the wording in paragraph 9, Part 1 of each DML and considers that this is substantively the same as that requested by the MMO. Therefore no amendment is considered necessary.	<p>The MMO does not agree with the Applicant's response.</p> <p>These changes are necessary to ensure that the power to amend or vary is consistent with the requirements of the EIA regime as explained in the case of R. (Barker) v Bromley LBC [2007] 1 A.C. 470. That case concluded that EIA will be required at stages subsequent to an initial grant of consent where those likely significant effects were not identified at the earlier consenting stage. It follows that a mechanism to permit a variation or amendment will not be lawful until it prevents any possibility of a materially new or different significant environmental effects arising as a result of the variation or amendment.</p>
RR-020.26-27	<p>Determination Dates</p> <p>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, the complexity of the issues, and the amount of consultation the MMO is required to undertake with other organisations to seek resolutions. 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</p>	<p>The Applicant will continue discussions with the MMO about timings for submission of documents for approval in terms of conditions in the deemed marine licence.</p> <p>Including timescales within the conditions of the deemed marine licence provide a degree of certainty to the Applicant when it is discharging conditions to allow works to commence. The timeous discharge of conditions is important to ensure that the Applicant can meet its construction programme.</p> <p>The Applicant notes that it is well precedented in offshore wind DCOs for such timescales to be included in conditions of a deemed marine licence.</p>	<p>The MMO acknowledges the Applicant's comments. The MMO believes a timescale is inappropriate.</p> <p>The MMO has internal Key Performance Indicators (KIPs) which work towards a 13-week turn around. The MMO will never unduly delay but cannot be bound by arbitrary deadlines imposed by the Applicant since this would potentially prejudice other licence applications by offering expediency to the Applicant at the expense of other applications. It is also unclear what consequences would result if this deadline was not met, and how that would impact on the MMO's regulatory function.</p> <p>The MMO would highlight that this has been requested by the MMO since the Hornsea Project Three Offshore Wind Farm Examination. Since this examination, there is even more of a concern that more and more time is being spent working to</p>

	<p>Whilst the MMO acknowledges that the Applicant may wish to create some certainty around when it can expect the MMO to determine any applications for an approval required under the conditions of a licence, and whilst the MMO acknowledges that delays can be problematic for developers and that they can have financial implications, the MMO stresses that it does not delay determining whether to grant or refuse such approvals unnecessarily. The MMO makes these determinations in as timely a manner as it is able to do so. The MMO's view is that it is for the developer to ensure that it applies for any such approval in sufficient time as to allow the MMO to properly determine whether to grant or refuse the approval application.</p>	<p>determine documents submitted. There are a number of instances on projects where the submission at the four or six month date does not include everything that is required or within the outline plans and is more of a compliance requirement to ensure something is submitted in line with the consent. This leads to requests for additional information and multiple rounds of consultation and updates to ensure enough information is provided for the MMO to make a determination. It is becoming increasingly difficult to review the first submission of a document and therefore delays to the determination could cause significant impact to both the MMO and the Applicant.</p> <p>In relation to precedented timescales within other offshore wind DCOs. The MMO, of course, accept that there is a need for consistency in decision making. However, a decision maker is not bound by previous decisions and can depart from them where there is good reason to do so.</p> <p>The MMO would reiterate that it does not delay approvals unnecessarily and believes more realistic timescales should be included to allow for the Applicant to account for this within their programming.</p> <p>However, without prejudice to this position the MMO believes that if time scales are included within the DML for plans then these should be six months not four months and is open to discussions on which documents must be six months and which documents could be four months to take into account the concerns that the Applicant may have. The MMO will continue to work with the Applicant to advise on any plans or documents that could have a four month timescale.</p>
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RR-020.28	<p>Additional Conditions</p> <p>Condition 13(3) uses the following wording: “13(3) An operations and maintenance plan substantially in accordance with the outline offshore operations and maintenance plan” The MMO requests that the word ‘substantially’ is removed from this condition as it is not required.</p>	<p>The Applicant considers that the word ‘substantially’ is a reasonably qualifying term to include in this sub-paragraph. It reflects the fact that the final offshore operations and maintenance plan may not fully align with the outline version submitted with the application (e.g. additional measures could be added to reflect updates to the project) but must be broadly in the same terms. Ultimately, the MMO will retain control on whether or not the terms of the final plan submitted to it are acceptable.</p> <p>As such, no amendment to this sub-paragraph is proposed.</p>	<p>The MMO believes that ‘in accordance’ is enough to allow any changes to the operations and maintenance plan. The Outline operations and maintenance plan must have the minimum requirements the MMO and other Interested Parties believe is required at this stage. The inclusion of ‘substantially’ does not provide any additional requirements of the condition and is a surplus requirement.</p> <p>The MMO would highlight that this has not been used in similar Offshore Wind DCOs recently granted.</p>
RR-020.29	<p>Maintenance of the Authorised Scheme</p> <p>Condition 13(4) refers to activities being carried out with accordance with a plan. The MMO assumes that this plan is the operations and maintenance plan referenced in 13(3) however the DML contains a number of plans. The MMO requests that the wording is amended making it explicit for the avoidance of doubt. For example: All operations and maintenance activities must be carried out in accordance with the approved plan approved under sub-paragraph (3).</p>	<p>The Applicant will update condition 13(4) of the next version of the draft DCO as suggested.</p>	<p>The MMO welcomes this update.</p>
RR-020.30	<p>Notifications and Inspections</p> <p>Should the undertaker become aware that any of the information on which the granting of this licence was based was materially false or misleading, the undertaker must notify the MMO of this fact in writing as soon as is reasonably practicable. The undertaker must explain in writing what information was materially false or misleading and must provide to the MMO the correct information.</p>	<p>The Applicant will update the condition in the deemed marine licence in the next version of the draft DCO that is submitted during the Examination to reflect this request.</p>	<p>The MMO welcomes this update.</p>

	<p>The MMO, in addition to being informed of cable damage, destruction and decay further requires a notification of cable repair. The MMO has provided the following wording for condition 15(11):</p> <p>The undertaker must ensure that the MMO, the MMO Local Office, local fishermen's organisations, and the Source Data Receipt Team at the UKHO Taunton, Somerset, TA1 2DN (sdr@ukho.gov.uk) are notified within five days of each instance of cable repair, replacement or protection replenishment activity.</p>		
RR-020.31	<p>Adaptive Management</p> <p>The MMO requests that the following conditions be added to the post-construction monitoring and surveys condition (condition 29 of Schedules 3 and 4) to allow the Applicant to provide potential solutions when reviewing the results of monitoring, to be discussed with the MMO and Statutory Nature Conservation Bodies (SNCB). "(6). In the event that the reports provided to the MMO under sub-paragraph (3) identify a need for additional monitoring, the requirement for any additional monitoring will be agreed with the MMO in writing and implemented as agreed." "(7). In the event that monitoring reports provided to the MMO under subparagraph (3), identifies impacts which are beyond those predicted within the Environmental Statement/Habitat Regulations Assessment, adaptive management/mitigation may be required. An Adaptive Management/Mitigation Plan to reduce effects to within what was predicted within the Environmental Statement/Habitat Regulations</p>	<p>The Applicant notes that a similar condition was included within the recently granted Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024 following a recommendation by the Examining Authority on that application. That recommendation related specifically to concerns raised about the impact of that project on sensitive habitats and species. The Environmental Statement has not identified any likely significant environmental effects that would require ecological post-construction monitoring or need for potential adaptive management beyond that already included in condition 29. The Applicant does not consider any amendment to this condition to be necessary.</p>	<p>The MMO has noted the Applicants comments and although the condition was included due to 'the impact of that project on sensitive habitats and species.' if monitoring shows an impact higher than predicted within the Environmental statement the MMO may require additional monitoring or mitigation at the post consent stage.</p> <p>The MMO will review the monitoring requirements and condition and provide further updates in due course.</p>

	<p>Assessment, unless otherwise agreed in writing by the MMO, must be submitted alongside the monitoring reports submitted under sub-paragraph (3), including timelines and associated monitoring to test effectiveness. This plan must be agreed with the MMO in consultation with the relevant SNCBs to reduce effects to a suitable level for this project. Any such agreed or approved adaptive management/mitigation should be implemented and monitored in full. In the event that this adaptive management/mitigation requires a separate consent, the Applicant shall apply for such consent." The conditions ensure that all parties are clear what is required if the monitoring shows higher impacts than predicted during the assessment stage.</p>		
RR-020.32	<p>Provisions on Variations and Approvals With respect to any condition which requires the licensed activities to be carried out in accordance with the plans, protocols or statements approved under this licence, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO. Subsequent to the first approval of those plans, protocols or statements provided, it has been demonstrated to the satisfaction of the MMO that the subject matter of the relevant amendments does not give rise to any materially new or materially different environmental effects to those assessed in the environmental information.</p>	<p>The Applicant considers that this is secured by paragraph 9 of each of deemed marine licence within schedules 3 and 4 of the draft DCO (AS-003)</p>	<p>The MMO notes this and will review and provide any additional comments in due course.</p>

RR-020.33	<p>Conditions to Remove Force Majeure</p> <p>The MMO does not consider that this provision is necessary as section 86 of the 2009 Act provides a defence for action taken in an emergency in breach of any licence conditions. The MMO requires justification or rationale as to why this provision is considered necessary.</p>	<p>This condition and section 86 of the Marine and Coastal Access Act 2009 serve slightly different purposes. This condition imposes a duty on the undertaker to notify the MMO of the circumstances of such a deposit. This ensures that the MMO is provided with that information. Section 86 of the 2009 Act does not contain any such duty. It simply acts as a defence in the event a person is charged with an offence.</p>	<p>The MMO has previously requested the removal of this clause. That is because it unnecessarily duplicates the effect of s.86 of the 2009 Act.</p> <p>The MMO is reviewing this response, and will advise whether the condition can remain, or will provide further comment at Deadline 2.</p>
RR-020.34-93	Where a response is required, the MMO will provide comments at Deadline 2.		
RR-020.94	<p>Outline Fisheries Liaison and Coexistence Plan</p> <p>The MMO welcomes and notes that an Offshore Fisheries Liaison Officer (OFLO) will be appointed, alongside a Company FLO and a Marine Coordinator for Morgan OWF.</p>	<p>The Applicant notes and welcomes the MMO's response.</p>	<p>Nothing further to add.</p>
RR-020.95	<p>Advice should be sought via the FLO when the timetable of works is known so that the local industry can provide real-time advice.</p>	<p>The Applicant notes and accepts the MMO's response. Proposed measures for fisheries liaison at all project phases, are presented in the Outline fisheries liaison and co-existence plan (APP-065). A Fisheries Liaison and Coexistence Plan is being developed by the Applicant through ongoing consultation with fisheries stakeholders.</p>	<p>The MMO acknowledges this comment and will continue to keep a watching brief on the document and consultee responses.</p>
RR-020.96	<p>The MMO would note that the MMO will not act as arbitrator in regard to compensation and will not be involved in discussions on the need for or amount compensation being issued. This needs to be made clear within the Outline Fisheries Liaison and Coexistence Plan.</p>	<p>The Applicant notes the MMO's response. The Final FLCP will ensure this point is made clear.</p>	<p>The MMO looks forward to reviewing the updated Plan.</p>

3. Initial Statements of Common Ground (SoCG)

- 3.1. The MMO has worked with the Applicant to prepare a SoCG which will be submitted at Deadline 1. The MMO will continue to work with the Applicant outside of the written process to ensure issues are being moved to resolution where possible.

4. Comments from ISH1

- 4.1. The MMO has reviewed EV2-005 'Action Points Arising from Issue Specific Hearing 1' and will review the documents/updates to be submitted by the Applicant.

- 4.2. Regarding point five in document EV2-005:

"Provide comments on the appropriateness of a 7-year commencement period in draft DCO Schedule 2, Requirement 1."

The MMO notes this is longer than the standard five years on Offshore Wind Nationally Significant Infrastructure Projects. The MMO will review the Applicant's response but would highlight initial concerns in the accuracy of the information within the Environmental Statement. The MMO uses up to a 5-year maximum standard for information relating to environmental impacts due to the nature in some environments changing over this period.

5. Notification by Statutory Parties of their wish to be considered as an IP by the ExA

- 5.1. The MMO wish to be considered as an interested party by the ExA.

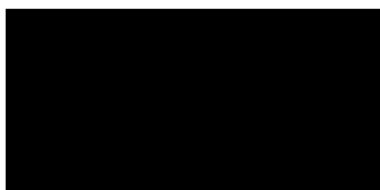
6. Notification of wish to have future correspondence received electronically

- 6.1. The following people request future correspondence to be received electronically:

- [REDACTED]@marinemanagement.org.uk
- [REDACTED]@marinemanagement.org.uk
- [REDACTED]@marinemanagement.org.uk



Yours sincerely



Liam Woods

Marine Licensing Case Officer

D [REDACTED]

E [REDACTED] [@marinemanagement.org.uk](mailto:[REDACTED]@marinemanagement.org.uk)

