WRITTEN SUMMARY OF THE ORAL CASE PUT BY THE MARINE MANAGEMENT ORGANISATION AT THE ISSUE SPECIFIC HEARING ON THE DEVELOPMENT CONSENT ORDER HELD ON 21 AND 22 NOVEMBER 2012

1. This is the written summary of the oral case put by the Marine Management Organisation ("MMO") at the issue specific hearing into the Development Consent Order ("DCO") for the proposed Able Marine Energy Park held on 21 and 22 November 2012.

2. Only those issues or sections of the DCO on which the MMO made submissions at the hearing are included below.

The DCO

3. The Panel were informed by ABP that the coordinates provided by the Applicant in Article 2 (Interpretation) were erroneous, an example being that the berthing pocket extended onto land. The Applicant subsequently informed the Panel that updated coordinates had since been *provided to and approved by the MMO*. The MMO clarified to the Panel that the applicant had indeed provided updated coordinates in the requested format to the MMO, however this was via an email from Mr Richard Cram on the morning of Monday 19 November 2012. As such, the MMO had certainly not 'approved' these updated coordinates in any formal manner. The MMO has however undertaken an internal check of the new coordinates and considers that they appear to be acceptable. It should be noted that the MMO only received drawings numbered *'AME - 06070 B Deemed Marine License* [sic] *Definition of Areas - South Bank.pdf'* and *'AME - 06071 B Deemed Marine License* [sic] *Definition of Areas - North Bank.pdf'* prior to the hearings, and therefore had not had view of the revised detailed works plans subsequently produced in hard copy for all parties at the hearing on 22 November.

4. The MMO suggested amending the definition of Cherry Cobb sands channel in Article 2 to avoid confusion with the existing channel of the same name. The MMO agrees with the Panel's suggestion that the term "Cherry Cobb sands breach" would be an appropriate amendment.

The Deemed Marine Licence: Schedule 8

5. The MMO makes the following submissions in relation to Schedule 8 of the DCO:

Paragraph 4(1)(c)

6. The MMO highlighted that the maximum number of flap anchor piles stated in this paragraph differed from the figure of 500 given in the statement of common ground. After receiving further clarification from the Applicant, the MMO is satisfied that 750 is an acceptable figure.

Paragraph 13

7. The MMO is content that HMH be added as a consultee under this paragraph.

8. Insofar as it is suggested that there is an overlap between the Deemed Marine Licence ("DML") and CRO's existing dredging licence, the MMO makes the following points:

    (1) It is not aware of any other case where there has been an overlap of licences;

    (2) It is content that, as regulator, it would be able to police the terms of both licences. In particular, the MMO receives biannual returns from the licence holder and has powers to inspect the licence holder's log books;

    (3) The MMO understands CRO's concerns and if the Panel are satisfied that CRO requires protection the MMO does not disagree;

    (4) However, the MMO's firm view is that any such protection should be included (as CRO proposes) by way of protective provision, rather than as a condition attached to the DML. The MMO does not wish a marine licensing precedent to be created.

Paragraph 14

9. The MMO is content for HMH to be added as a consultee under this paragraph.

Paragraph 32

10. HMH proposed amendments to paragraph 32 of Schedule 8. The MMO does not consider that HMH's proposed amendments are necessary. Paragraph 32 is a standard marine licence condition. It simply provides that the licence holder cannot commence works until a Notice to Mariners has been issued. The mechanism for procuring the issue of such a notice and the costs of doing so are provided for elsewhere. It is not therefore necessary to prescribe those matters in this condition.

Paragraph 35(1)(b)

11. Natural England proposed including shrouds in the list of matters to be included in the piling method statement under this paragraph. The MMO has no objection.

<u>Other matters</u>

Fairness/equity

12. ABP invoked principles of fairness and equity to argue that the provisions relating to piling should be varied so that they are similar to the conditions imposed on ABP's licence in respect of Green Port Hull. The MMO opposes this. The proposed development and Green Port Hull are not alike: the proposed development is a different project, of a different design and in a different location. The experts at the Environment Agency and Natural England have advised that the provisions included in the draft DCO are appropriate to deal with the particular impacts likely to be caused in this case. As such, they are objectively justified on the facts of this case.

Consulting HMH

13. HMH sought amendments to ensure that it was consulted on various matters in paragraphs 13, 14, 31, 36, and 37. The MMO does not object to this.

Reasoned Justification for the conditions in DML

14. Appendix 1 to these submissions sets out the reasoned justification for the conditions contained in the DML.

Proposed drafting changes to Schedule 8

15. Appendix 2 to these submissions sets out the MMO's proposed drafting changes to Schedule 8 to the DCO, together with the reasoned justification. The proposals are agreed by the Applicant and they are incorporated into the latest draft of the DCO provided by the Applicant on 23 November 2012.

ABP's protective provisions

16. As a general proposition, the MMO does not consider protective provisions to be necessary where protection can be effectively and appropriately be provided through the MMO's regulatory powers.

17. The DML and the conditions within are to control the licensable activities and manage any impacts on legitimate users of the sea.

18. The MMO does not consider it necessary to include the protective provisions proposed by ABP in its draft paragraph 96. The appropriate regulatory tool to deal with these matters is the DML which the MMO is able to enforce.

19. The draft DCO does include protective provisions for other interested parties with marine interests, in particular C.Ro. In this case the MMO has taken the view that their provision regards primacy of marine licensing and a requirement for the undertaker to consult to ensure any overlap between C.Ro and the undertaker is managed. Such an overlap of licences is, in the MMO's experience, novel and the MMO does not consider that the licensing regime would necessarily solve the problem. Therefore protective provisions are appropriate in this instance.

20. In the case of ABP, it is the MMO's view that their proposed provision relates to environmental impacts and the management thereof. Therefore it is appropriate to include protection through a provision in the DML and remediation in the Marine Environmental Management and Monitoring Plan (MEMMP).

21. It is not apparent to the MMO that it lacks the powers to deal with ABP's concerns. However, should the Panel be satisfied that ABP cannot be adequately protected and that it requires the protections within Schedule 9 of the DCO, the MMO does not disagree, although the MMO would not see this as precedent.

Schedule 11, paragraph 3(2)

22. The MMO reiterates its submissions of 26 October 2012 in relation to the possibility of amending the DCO by means of a harbour revision order under the Harbours Act 1964. The MMO is of the view that the DCO may only be amended by means of the procedure laid down in Schedule 6 to the Planning Act 2008. Accordingly, paragraph 3(2) of Schedule 11 is superfluous because the premise upon which it is based (*viz* an amendment to by way of harbour revision order) would not be lawful.

Reports provided by the Applicant since 15 October 2012

23. It is recognised that the Examination period for this case is now closed, subject to a decision by the Panel in relation to an application by ABP for a time extension. As it is currently unknown as to the potential outcome of this request, the MMO feels it prudent to update the Panel with the current status of the numerous additional submissions that have been made by the applicant since the 15 October 2012 (when the MMO first received notice). Appendix 3 attached to this submission outlines the status of these reports. It should be noted by the panel that it has not been possible for the MMO to thoroughly

review all documentation produced by the Applicant in time for inclusion in this submission.

Submissions to the Examining Authority

24. The MMO has provided Appendix 4 to provide a short summary of all submissions made to the Examining Authority throughout the Examination period.

MARINE MANAGEMENT ORGANISATION

23 November 2012