



# Marine Management Organisation

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## (Email only)

MMO Reference: DCO/2019/00003  
Planning Inspectorate Reference: EN010103

07 November 2022

Dear Sir/Madam,

## Planning Act 2008, Proposed Net Zero Teesside full chain carbon capture, utilisation and storage project

### Deadline 12 Submission

This document comprises the Marine Management Organisation's (MMO) Deadline 12 response in respect to the above Development Consent Order (DCO) Application. This is without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This is also 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.

The MMO reserves the right to modify its present advice or opinion in view of any additional matters or information that may come to our attention.

Yours Faithfully

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## 1 Comments on any other information submitted at Deadline 9

1.1 REP12-004 Deadline 8 Submission - 2.1 – Final Draft DCO (Tracked) – Nov 2022

1.2 The MMO considers the only remaining outstanding issue relevant to the SoCG is the disapplication of section 72(7) and (8) of the Marine and Coastal Access Act 2009 within the Deemed Marine Licence (Schedules 10 & 11 Part 2 (7)). The MMO has outlined its position on our disagreement below:

1.2.1 It is the MMO's stated position that the Deemed Marine Licence (DML) granted under a Development Consent Order should be regulated by the provisions of the Marine and Coastal Access Act 2009 (MCAA 2009), and in respect of this issue, specifically by all provisions of section 72 MCAA 2009.

1.2.2 As set out in Advice Note Eleven, Annex B – Marine Management Organisation | National Infrastructure Planning ([planninginspectorate.gov.uk](http://planninginspectorate.gov.uk)) where a developer chooses to have a marine licence deemed by a DCO, we, the MMO, "will seek to ensure wherever possible that any deemed licence is generally consistent with those issued independently by the MMO."

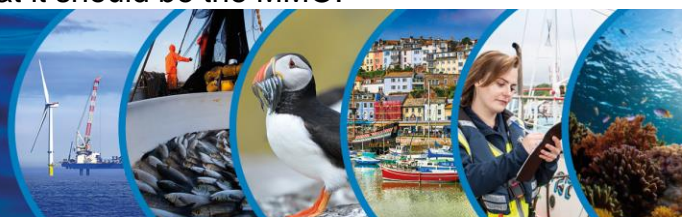
1.2.3 Developers can seek consent for a marine licence directly with the MMO, reinforcing that in respect of marine licences the DCO process nothing more than a mechanism for granting a marine licence and not a vehicle to amend established process and procedures, such as those for the transfer of a marine licence.

1.2.4 As the guidance further sets out, we, the MMO are responsible for enforcing marine licences regardless of whether these are 'deemed' by a DCO or consented independently, and it is therefore fundamental that all marine licences are clear and enforceable, and consistency is a key element in achieving this.

1.2.5 Section 72(7)(a) MCAA 2009 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 (section 72(7)(b)).

1.2.6 In considering the proposed provisions of Article 8 DCO, Article 8(2), being read with Article 8(1) no longer requires the licence holder (undertaker) to make an application for a licence to be transferred it is simply their decision to make the transfer which is a clear departure from MCAA 2009. Further the newly introduced process involves the Secretary of State 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.

1.2.7 Further if it is the intention of the applicant for DML's to be transferred by the Undertaker under the terms of the DCO and outside of the established procedures under MCAA 2009 (which the MMO opposes) the MMO question why it is considered necessary or appropriate for the Secretary of State to 'approve' the transfer of the DML, even with their obligation to consult the MMO. We remain strongly of the view that it should be the MMO.



- 1.2.8 It further seems slightly at odds with Article 8(1)(a) and 8(1)(b) as the written consent of the Secretary of State is not required in those cases. Although the process proposed has not been tested, it may be the case that the applicant/undertaker faces unnecessary delay as it is not clear that the Department for Business Energy and Industrial Strategy will have a process in place to deal with requests of this nature and it is not clear what any consultation period would be.
- 1.2.9 It is noted that the Secretary of State “must consult” the MMO (Article 8(3)), however the obligation goes no further than this, the Secretary of State is not obligated to take into account the views of the MMO in providing its consent and there is no obligation for the MMO to be informed of the decision of the Secretary of State. In the regulatory sphere it strikes the MMO as highly unusual that a decision to transfer a licence is not the decision of the regulatory authority in that area.
- 1.2.10 Despite the proposed changes to the process of transferring a marine licence it remains that neither the licence holder nor the Secretary of State has any power to actually vary any terms of a marine licence and it will still therefore be necessary for the MMO to take steps to vary a marine licence to reflect that it has been transferred to another entity. To the MMO the proposed mechanism for transfer of a marine licence does not actually work and in fact does little more than complicate the process.
- 1.2.11 The MMO consider that there are also very real practical concerns as to how the proposed process would work in practice. The transfer of the licence would happen first, and then the licence would need to be varied. After the transfer of the licence, the new licensee would have a marine licence which would still be in the name of the licensee who had transferred the licence. The new licensee would have no authorisation to carry out any acts until the variation had taken place and until the variation had been affected the old licence holder would remain liable for any actions undertaken. The procedure under section 72 MCAA avoids this issue.
- 1.2.12 Article 8(2)(a) specifies the transfer of the whole of a deemed marine licence and Article 8(2)(b) specifies a grant to a lessee for an agreed period Article 8(1)(b). There is however no mechanism either in the DCO or indeed in MCAA 2009 for a marine licence to be ‘leased’, specifically there is no provision for the licence ‘reverting’ to the licence holder after the agreed lease period – in practical terms it would be necessary to vary the licence to change the details of the licence holder at the beginning of the agreed period and then again at the end of the agreed period.
- 1.2.13 It is essential as the regulatory authority in the marine environment that we are always fully aware who has the benefit of marine licences in order that we can carry out our regulatory function and where necessary take enforcement action. The mechanism currently proposed for the transfer of a marine licence departs from this clear process without clear justification as to why such a departure is necessary or appropriate in the circumstances.



1.2.14 It is therefore the MMO's position that the DML should be regulated in accordance with the provisions of MCAA, in this context specifically all provisions of section 72 MCAA 2009.

