



Marine
Management
Organisation

Environmental Impact Assessment Consent Decision Report

Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2017 (“the Regulations”)

Northern Gateway Container Terminal

MLA/2020/00079

2 March 2022

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1. Introduction

This document is the Environmental Impact Assessment (“EIA”) consent decision report for the construction of the Northern Gateway Container Terminal (“the Project”).

The purpose of this report is to provide an explanation of the Project; detail the consultation carried out with advisors and the public; and to record the Marine Management Organisation’s (“MMO”) evaluation and conclusions to inform the EIA consent decision.

2. Proposal

2.1 Project Background

Powell Druffyn Teesport (“the applicant”) submitted an application for regulatory approval for the Project, also requiring EIA consent, to the MMO on 26 January 2020.

In summary, the Project comprises:

- Capital dredging of the approach channel to the Project as well as creation of a new berth pocket (equating to dredging of up to 4.8 million m³ of material). Realignment of the existing approach channel in the vicinity of the proposed terminal and deepening of the two existing turning circles (Tees Dock turning circle and Seaton Channel turning circle) in the Tees estuary.
- Disposal of dredged material (through a combination of beneficial re-use (localised reclamation and raising land levels within the proposed terminal site) and offshore disposal).
- Construction of a container terminal facility.
- Construction of various landside elements (buildings, rail terminal, road access, lighting, drainage and a pumping station).

2.2 Location

The Project is located within Teesport, which is displayed in Figures 1a -c below.

Figure 1a: Works Area No. 1 (small polygon) and dredge area (large polygon).

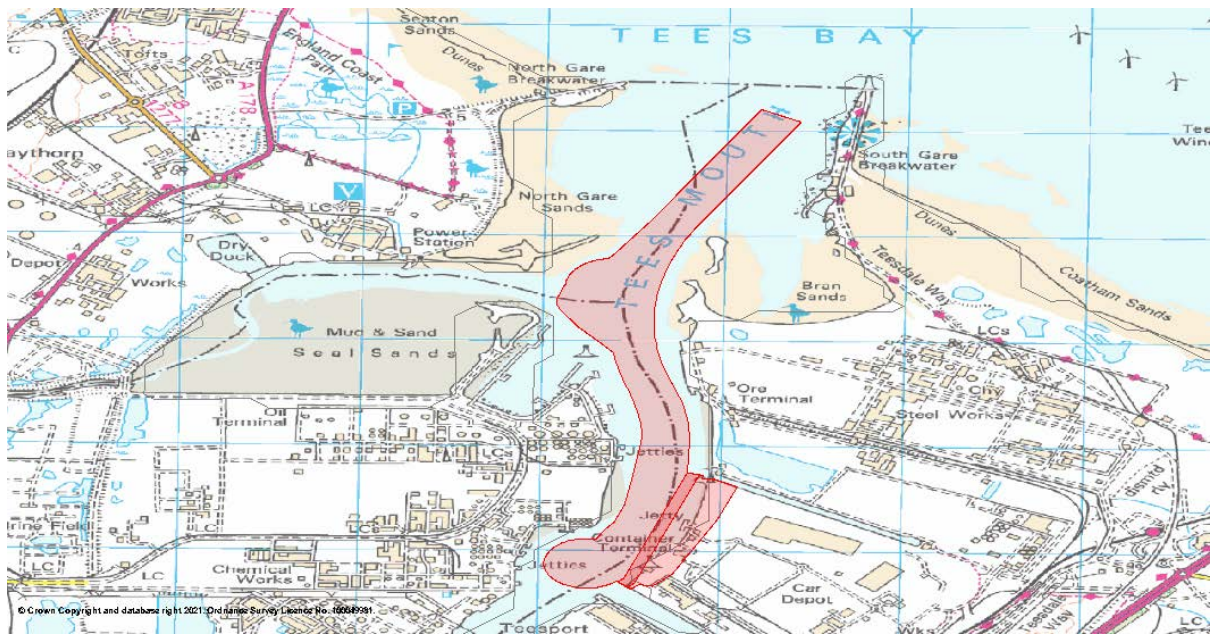


Figure 1b: Intervention Area.

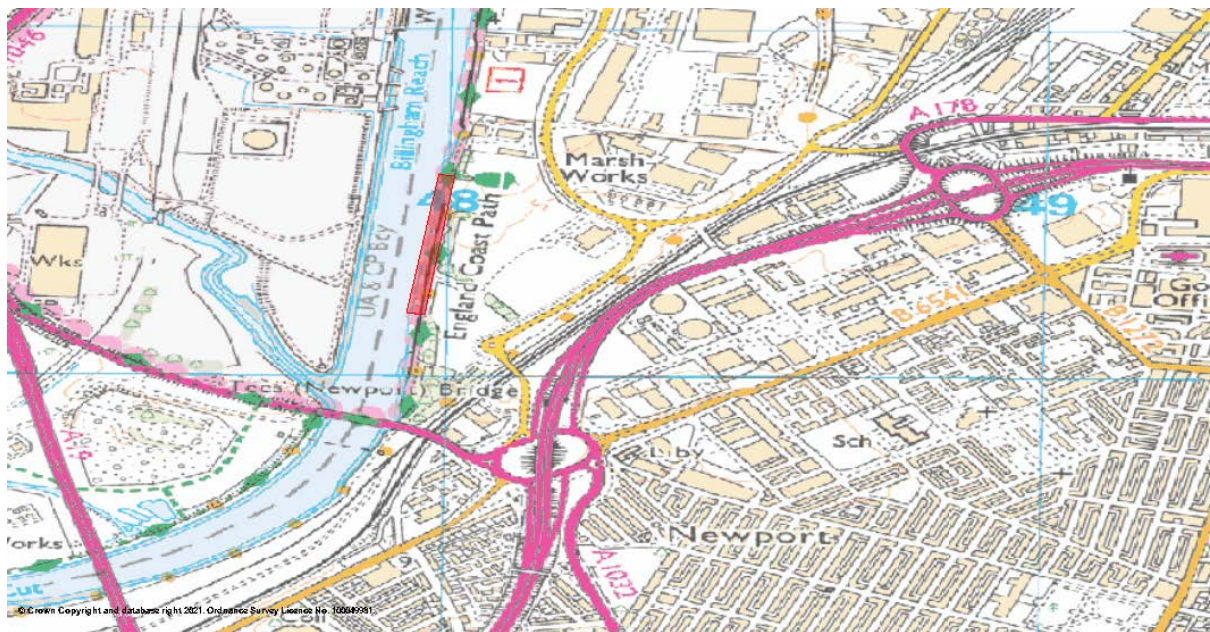
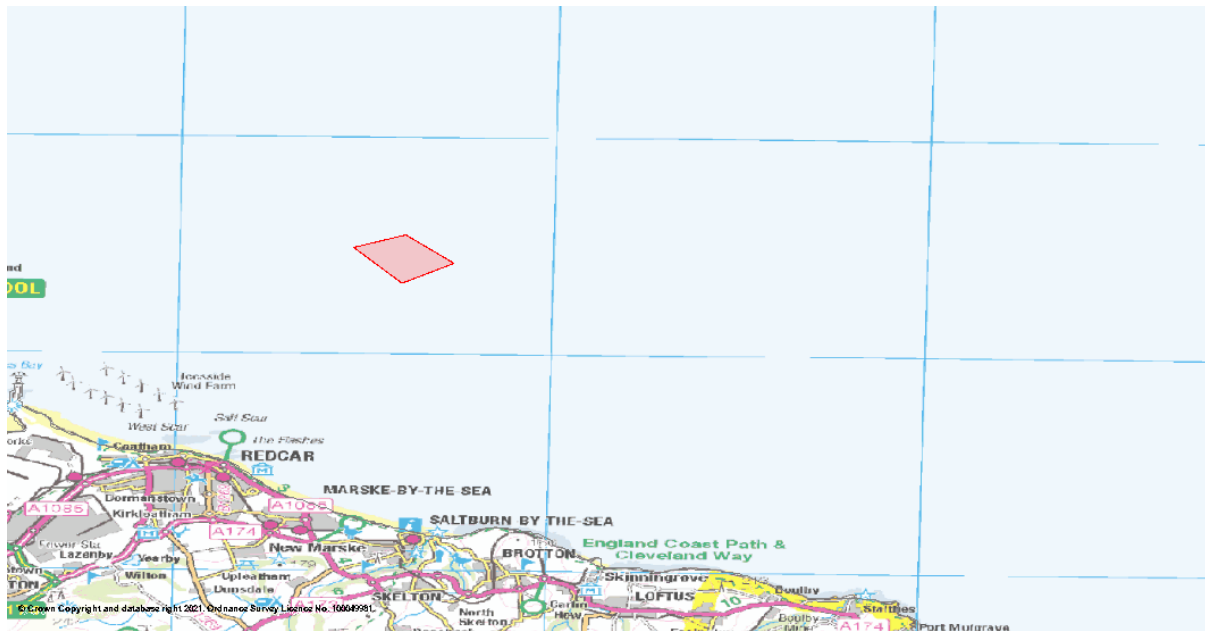


Figure 1c: Disposal site.



2.3 Statement of Need

Container throughput at Teesport has generally increased since 2007, from approximately 80,000 containers in December 2007 to approximately 230,000 containers in 2018 (equating to an increase of 11% year on year, compared to the UK average of 2% over the same period). The throughput of containers at Teesport is now very close to capacity; in the absence of the Project, it is predicted that Teesport would be at full capacity by approximately 2024, preventing the future growth of the port for container cargo. The implementation of the Project would therefore provide the additional capacity required by Powell Duffryn Teesport (PDT) to accommodate the predicted increases in throughput at Teesport.

3. Environmental Impact Assessment

The Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2017 (“the Regulations”) transposed Council Directive 2011/92/EU (as amended) into UK law for marine licence applications. The regulations aim to protect the environment and the quality of life by ensuring that projects which are likely to have significant environmental effects by virtue of their nature, size or location are subject to an EIA before permission is granted.

Pursuant to Regulation 5 of the Regulations, it was agreed between the MMO and the applicant that the proposed works constitute an EIA development under Schedule A2, para numbers 63 and 89 of the Regulations, specifically:

63. *Construction of harbours and port installations including fishing harbours (unless included in Schedule A1).*

89. Any change to or extension of development of a description listed in paragraphs 1 to 87 of this Schedule where that development is already authorised, executed or in the process of being executed.

Therefore, the application required for the Project was accompanied by an Environmental Statement (“ES”) titled IBPB8270R001F01_EIA REPORT.

3.1 Other Legislative and Policy Framework

Relative considerations under other legislation and / or policy are set out below.

3.1.1 Marine and Coastal Access Act 2009, Section 66, Part 4 (Chapter 1)

A marine licence is required for the Project, under Part 4 (Chapter 1) Section 66 of the Act, for the following parts of the Project:

2. To deposit any substance or object within the UK marine licensing area, either in the sea or on or under the sea bed, from—

- a) any vehicle, vessel, aircraft or marine structure,*
- b) any container floating in the sea, or*
- c) any structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea.*

7. To construct, alter or improve any works within the UK marine licensing area either—

- a) in or over the sea, or*
- b) on or under the sea bed.*

9. To carry out any form of dredging within the UK marine licensing area (whether or not involving the removal of any material from the sea or sea bed).

3.1.2 The Conservation of Habitats and Species Regulations 2017

European sites are those designated under The Conservation of Habitats and Species Regulations 2017 (“Habitats Regulations”) as Special Protection Areas (“SPAs”), Special Areas of Conservation (“SACs”) or Sites of National Importance (“SNIs”). As a matter of Government policy, potential SPAs (“pSPAs”), candidate SACs (“cSACs”) and RAMSAR sites are also treated as European sites. See section 5.1 of this report for the designated sites near or adjacent to the Project and their consideration.

3.1.3 Marine Conservation Zones

Section 116 of the Act provides powers to the Secretary of State to designate Marine Conservation Zones (“MCZs”) with the aim of contributing to the achievement of a network of ecologically coherent and well-managed marine protected areas. Achieving this aim will make a major contribution to achieving good environmental status in the UK’s seas, as required by the Marine Strategy Regulations 2010.

See consideration of the Project in relation to this legislation under section 5.1 of this report.

3.1.4 Wildlife and Countryside Act 1981 (as amended)

Sites of special scientific interest (“SSSIs”) are protected by law to conserve their wildlife or geology. The Wildlife and Countryside Act 1981 (as amended) ensures that SSSIs are protected and managed effectively.

See consideration of the Project in relation to this legislation under section 5.1 of this report.

3.1.5 Marine Policy Statement and Marine Plans

The UK Marine Policy Statement (“MPS”) is the framework for preparing Marine Plans and taking decisions affecting the marine environment. The MMO must make licensing decisions in accordance with the MPS and marine plans, unless relevant considerations indicate otherwise (in which case the MMO must state its reasons).

3.1.6 Site of Importance for Nature Conservation and UK Biodiversity Action Plan

Sites of Nature Conservation Importance (SNCIs), together with statutory designations are defined in local and structure plans under the Town and Country Planning system and are a material consideration when planning applications are being determined.

The UK Biodiversity Action Plan (UK BAP) described the biological resources of the UK and provided detailed plans for conservation of these resources; action plans for the most threatened species and habitats requiring conservation. As a result of new drivers and requirements, the 'UK Post-2010 Biodiversity Framework', published in July 2012, has succeeded the UK BAP, the framework particularly sets out the priorities for UK-level work to support the Convention on Biological Diversity's (CBD's). The UK BAP lists of priority species and habitats remain, however, important and valuable reference sources.

See consideration of the Project and these designations under section 5.1 of this report.

3.1.7 National Planning Policy Framework

The National Planning Policy Framework sets out the government’s planning policies for England and how these are expected to be applied. It sets out the government’s

requirements for the planning system only to the extent that it is relevant, proportionate and necessary to do so¹. It provides a framework within which local people and their accountable councils can produce their own distinctive local and neighbourhood plans, which reflect the needs and priorities of their communities.

4. Consultation Exercise

This section summarises consultation undertaken by the MMO in relation to the Project.

4.1 Consultation with Consultation Bodies

As part of its consideration of the proposed Project, the MMO consulted the bodies listed below in Table 1. The relevant responses have been detailed within this decision report and the full responses are provided in Annex 1. The Centre for Environment, Fisheries and Aquaculture Science (Cefas) provided technical advice as the MMO’s scientific advisors.

Table 1. Consultation bodies

Organisation	Response Received	MMO Consideration
Natural England (“NE”) (Statutory Nature Conservation Body)	Comments.	NE were unable to conclude no adverse effect on designated sites but MMO concluded that the functional integrity of the site will not be adversely affected - see Section 5 below for further detail.
Ministry of Defence (“MoD”)	No comments.	No action required.
Centre for Environment Fisheries Aquaculture and Science (Cefas)	Conditions required and advisories to applicant which will be included in Marine Licence cover letter.	Conditions included - see Section 5 below for further detail.
Historic England (“HE”)	Conditions required.	Conditions included - see Section 5 below for further detail.
Environment Agency (“EA”)	Conditions required and advisories to applicant.	Conditions included - see Section 5 below for further detail.
Maritime and Coastguard Agency (“MCA”)	Conditions required and advisories to applicant.	Conditions included - see Section 5 below for further detail.
Trinity House	Condition required.	Condition included - see Section 5 below for further detail.

Local Planning Authority – Middlesbrough Council	No comments.	No action required.
Crown Estate (“TCE”)	Landowner’s consent may be required.	Advisory to applicant, see Section 5 below for further detail.
MMO Coastal Office – North Eastern	No objections.	No action required.
Royal Yachting Association (“RYA”)	No comments.	No action required.
North East Inshore Fisheries and Conservation Authority (“NEIFCA”)	No objections.	No action required.
Royal Society for the Protection of Birds (“RSPB”)	No comments.	No action required.

4.2 Responses from Consultation Bodies

The full responses obtained through consultation are available on the MMO public register:

https://marinelicensing.marinemanagement.org.uk/mmofox5/fox/live/?thread_id=94bcer59j1bv786psg4rsr9tm7uu96fltsljagfsj3v4f0vvvoqsh01i9jdh37acvu5q5s731ihgq56hkrbmrkspkp7evia4q4g6c&resume=1

4.3 Public Consultation

The Project, as an EIA proposal, was advertised for 2 successive weeks in 2 publications (Northern Echo and Teeside Gazette) on 29/04/2020 and 06/05/2020. Public consultation was held for 42 days from the issue of the first notice (29/04/2020).

The MMO received no public representations during consultation.

5. Evaluation and Assessment

The following section includes a summary of impacts where there were representations made during the consultation process (as detailed in section 4 of this report); and the correspondence undertaken to resolve these issues. Any conclusions held within the application and supporting Environmental Statement (ES), where no representations were received, are considered to be appropriate and, as such, the MMO agree with the conclusions of the ES. The subjects of all representations received by the MMO are detailed below.

The MMO, as the appropriate authority for this EIA determination, has considered the likely significant effects of the Project ensuring that it has applied its own expertise as well as the expertise of its technical advisors Cefas and that of the Statutory Nature Conservation Body.

The MMO has reached a conclusion on the likely significant effects of the project with regard to the following mandatory factors:

5.1 Biodiversity / Nature Conservation (Including Habitats Regulations Assessment outcome)

The ES notes that the Project is located within the Teesmouth and Cleveland Coast Special Protection Area (SPA) and in close proximity to the Teesmouth and Cleveland Coast Ramsar Site. The MMO initially adopted the Habitats Regulations Assessment (HRA) completed on behalf of PD Teesport Limited as a competent authority in their own right. The MMO consulted Natural England in March 2020, NE replied in May 2020 stating *“further information is required for the following topics:*

- *Above water noise disturbance to SPA and Ramsar birds from percussive piling*
- *Impacts of dredging upon Vopak foreshore*

Comments from the applicant were received in July 2020 and further submitted to NE in August 2020. NE replied stating that noise shrouding was a good mitigation technique and stated *“If the predicted levels of above-water noise attenuation (14-16 dB) can be achieved, Natural England advise that noise disturbance will not cause an adverse effect upon site integrity for the Teesmouth and Cleveland Coast SPA, Ramsar site and SSSI waterbirds.”* Follow up advice in August 2020 and July 2021 confirmed *“subject to the use of noise attenuation there will be no adverse effect on the interest features of the Teesmouth and Cleveland Coast SPA and Ramsar site as a result of piling or other noisy activities covered by this application”.*

Further information was required in relation to the element of potential habitat loss on the designated sites, namely inter-tidal habitat at Vopak Foreshore caused by capital dredging. Modelling included within the EIA indicates that the river basin dredging will result in the loss of up to 2.7ha of inter-tidal habitat at Vopak Foreshore. This represents 0.019 % of the total SPA. Subsequent peak survey counts undertaken between August 2020 and March 2021 have shown that Vopak Foreshore supports over 1% of the SPA over-wintering bird assemblage when exposed. While not an interest feature of the SPA in its own right, the area is classed as SPA supporting habitat.

The applicant sought advice from NE which indicated bird surveys should be undertaken and data supplied regarding the use of the Vopak foreshore. The applicant produced a technical note addendum (applicant ref PB8270-RHD-ZZ-XX-NT-Z-0003) to the original HRA in March 2021. This was originally supplied direct to NE, and later provided to NE via MMO as formal addendum to the adopted HRA in which MMO were in agreement.

Natural England stated in their response *“The loss of SPA habitat undermines the SPA conservation objective of restoring the extent and distribution of suitable habitat (either within or outside the site boundary) which supports the features for all stages of the non-breeding/ wintering period (moulting, roosting, loafing, feeding).”*

and “*The appropriate assessment concludes that the proposal will not result in adverse effects on the integrity of the sites in question. Having considered the assessment, and the measures proposed to mitigate for any adverse effects, it is the advice of Natural England that **it is not possible** to ascertain that the proposal will not result in adverse effects on the integrity of the sites in question*”.

And following on “*However, Natural England recognises that Vopak Foreshore provides only limited feeding for birds associated with the SPA (and SSSI). This is because it is primarily used as a low tide roost and that alternative roosting and feeding sites are available across the SPA. Because of this Natural England advises, based on the information that is currently available, that the ecological risks here are low. Natural England acknowledge that there is no further information that could be provided to address our concerns, and accept that MMO are required to make a decision.*”

The MMO has reviewed advice from NE, supporting information from the applicant and considered guidance on potential habitat loss. In reaching a decision, the characteristics of the impacted habitat have been considered, such as:

- rarity;
- sensitivity and vulnerability to potential change;
- location;
- distribution (and temporal variation);
- ecological function;
- whether the effected loss is loss of site fabric (i.e. part of the site but not site feature).

The technical note addendum concludes that sediment sampling data undertaken at the Vopak foreshore was less muddy than other areas of intertidal in the estuary. Further particle size analysis confirmed the material type dominated as medium to fine sand. This has significance when understanding what the birds are using the area for. The bird count data demonstrated the area was used predominately for roosting. The data also showed that roosting was being undertaken across the low, mid and high area of the foreshore as well as other areas in the vicinity – not affected by this dredging proposal. Data on benthic invertebrate communities (possible prey items for birds) concluded no significant difference in numbers across the different levels of the foreshore.

The available evidence supports the conclusion that functional integrity of the site will not, therefore, be adversely affected.

Therefore, after considering the information in the ES and associated documents, and the responses from consultees, the MMO concludes that the risks of this project to Biodiversity / Nature Conservation is unlikely to be significant and within acceptable limits.

5.2 Seascape / Landscape

The assessment of impacts on Seascape/Landscape is presented within Section 19 of the ES.

The landside elements of the proposed scheme have commenced under the planning permission granted by Redcar and Cleveland Borough Council (RCBC) in 2006 and PDT is not seeking new permissions or changes to the development that is already authorised under the existing planning permission.

The 2006 planning permission granted by RCBC contained a number of conditions with specific regard to the landscape and visual environment. The conditions imposed by RCBC within the planning permission relate to the development of landside infrastructure which has not yet been constructed on site. There was therefore no requirement to discharge the conditions prior to commencement of the landside works. The future development of the wider Project (beyond the commencement works) will require all of these conditions to be discharged prior to works commencing. Therefore, it can be concluded that there are measures in place to manage any risks associated to landscape and visual amenity.

Based on the above, no further assessment works were considered necessary to illustrate that the findings of the 2006 ES (with specific regard to landscape and visual amenity) remain valid.

Middlesbrough Council were consulted and had no comments to make. Therefore, after considering the information in the ES and associated documents, and the responses from consultees, the MMO concludes that the risks of this project to Seascape/Landscape is unlikely to be significant and within acceptable limits.

5.3 Archaeology / Cultural Heritage

The assessment of impacts on Archaeology/Cultural Heritage is presented within Section 15 of the ES.

It was recognised that due to the size and scale of the proposed dredge, this could create large sediment plumes, which could potentially impact the protected wreck site along the coast from the area where the terminal and quay are to be constructed. The potential for discovering previously unknown remains or deposits was also highlighted. The applicant proposed mitigation in the form of a Written Scheme of Investigation (WSI).

HE were consulted and recommended that the developer uses a named archaeological contractor to produce a short geoarchaeological assessment of any future ground investigation work. They were confident that the applicant has suitably assessed and understood the nature of the historic environment in relation to this application and find that the suggested historic environment mitigations outlined in the application are reasonable and proportionate.

HE recommended that MMO include conditions to ensure the applicant follows the WSI, commissions a geoarchaeological assessment and submits an entry to the Online Access to the Index of Archaeological Investigation (OASIS) system. These conditions have therefore been included in the Marine Licence.

Therefore, after considering the information in the ES and associated documents, and the responses from consultees, the MMO concludes that the risks of this project

to Archaeology/Cultural Heritage is unlikely to be significant and within acceptable limits.

5.4 Air Quality & Climate

The assessment of impacts on Air Quality is presented within **Section 17 of the ES.**

The landside elements of the proposed scheme have already commenced, and the 2006 planning permission granted by RCBC contained one condition with specific regard to air quality which had to be discharged prior to the commencement of the works authorised by the planning permission. The condition imposed by RCBC was discharged prior to the landside elements of the proposed scheme being implemented and the future development of the wider Project (beyond the commencement works) will be subject to the same controls to manage any risks to air quality.

Within its scoping response, the EA noted that odours may arise from the storage and reuse of dredged material on land. The material to be re-used within the reclamation (if required) and land-raising activities will be sands and gravels. It is considered that odours will have the potential to be generated if a significant volume of dredged material (containing high levels of organic matter) were to be stockpiled on site for a significant duration of time. However, the dredged material to be used beneficially will be placed on site and dewatered as part of the construction works.

Sediment samples from the Tees have confirmed percentage organic matter values of between 1.2% and 8.7% within the proposed dredge footprint. The placement of sands and gravels with low percentages of organic matter content is considered unlikely to result in the generation of odours, and therefore no further assessment was undertaken in this regard.

The assessment of impacts on Climate is presented within Section 23 of the ES.

It was considered that the Project will not have a significant impact on regional initiatives to address the causes and impacts of induced climate change. In addition, the provision of the Project in the North of England is likely to lead to a reduction in vehicular freight miles nationally and therefore, contribute to a reduction in road-based emissions within the UK. PDT has considered the existing and future risks to the Port's operations as a result of climate change and has put in place measures to minimise such risks from occurring. It was concluded that the development of the Project will not impact on the mitigation strategies that are already in place.

Middlesbrough Council were consulted and had no comments with regard to air quality and climate.

EA were consulted and had no comments with regard to air quality. However, EA did initially object to there being an inadequate assessment of the hydrodynamic and sedimentary regime in respect to most recent climate change allowances. After further consultation, EA removed their objection on the basis that the applicant identified further measures in the form of habitat enhancement.

Following considering the information in the ES and associated documents, and the responses from consultees, the MMO concludes that the risks of this project to Air Quality & Climate is unlikely to be significant and within acceptable limits once agreed measures were confirmed.

5.5 Water Quality

The assessment of impacts on Water Quality is presented within Section 7 of the ES. A Water Framework Directive (WFD) Assessment is presented within Section 28 of the ES.

Within Section 7 of the ES the applicant concluded that the potential impact to water quality associated with the increase in suspension, dispersion, remobilisation and redistribution of suspended solids would lead residual impacts of negligible significance.

Within Section 28 of the ES the applicant concluded that with the implementation of the mitigation measures below, deterioration in the ecological status of the Tees transitional water body and the Tees coastal water body would not be anticipated:

- Undertaking dredging operations using a trailer suction hopper dredger (TSHD) in long strips along the axis of the estuary rather than dredging along the width of the river. This is to reduce both the extent and impact of the plume.
- Locating the cutter suction dredger (CSD) on either the western or eastern side of the estuary.

EA were consulted and initially objected to the application as submitted as it may have a detrimental impact on the ecology of the estuary and may prevent the WFD waterbody from reaching Good Ecological Potential (GEP). EA advised that the proposed activity had been incorrectly scoped, with some habitats not being scoped into the assessment. There had also been an inadequate assessment of water quality, an inadequate assessment of the hydrodynamic and sedimentary regime in respect to most recent climate change allowances, a lack of clarity on the loss of intertidal habitat and how this will be mitigated and no assessment as to whether the activity would jeopardise the waterbody attaining GEP.

The applicant provided further information and updated their WFD assessment and after several rounds of consultation, EA removed their objection subject to mitigation measures being employed (detailed below). The further information provided by the applicant included an additional water quality assessment and a calculation of the impacted biodiversity units.

EA confirmed that they were satisfied that existing conditions on the Redcar and Cleveland Council planning decision notice (reference: R/2006/0433/00/DM) would be adequate to prevent significant adverse effects to the environment. Specifically, these conditions are:

24 – *Implementation of The Northern Gateway Container Terminal: Dredging Protocol.*

25 – *Submission and implementation of a programme of dissolved oxygen and suspended solid concentrations monitoring.*

26 – *Implementation of The Seal Sands monitoring protocol.*

29 – *A revised mammal and amphibian survey prior to commencement*

30 – *Submission and implementation of a scheme for water column monitoring and suspended sediment monitoring.*

31 – *Submission and implementation of a scheme for post implementation water monitoring.*

EA were notified that MMO do not intend to duplicate these conditions on the marine licence and EA confirmed they were content with this approach on 25 June 2021.

During discussions with the MMO, EA advised there are two alternative options to satisfy the test if “*all practical steps to mitigate*” have been taken. EA were keen to support the applicant in pursuing off-site mitigations but understood that there is no legal mechanism to support this through a marine licence issued by MMO.

EA advised that the first consideration is that MMO should be fully satisfied that on-site mitigation cannot be achieved. Further, the MMO should also be satisfied that there are no means to condition off-site mitigation (similar to a Grampian condition). EA advised that if this is the case, and the MMO considers that there are no other *practical* solutions to mitigate the impacts of the proposal, the WFD test referenced above should be carried out and the overriding public interest should demonstrably outweigh the harm.

Alternatively, EA have proposed an amendment to the existing legal agreement to secure mitigation although it is apparent this will be off-site; with this agreement in place the EA consider that satisfactory mitigation would be in place to meet this condition. This legal agreement would need to be in place and prior to the applicant commencing licensable activities.

In their WFD assessment, the applicant provided an assessment of whether the proposal would jeopardise the waterbody meeting GEP as required under the Clearing the Waters guidance. This stated enhancement measures, including a proposal to input into a Tees River Trust (TRT) project (Newport Bridge), and an existing legal agreement which agree contributions of £50,000 and £20,000 toward the improvement of salmonid spawning habitat and toward alterations of a fish pass on the River Skerne, Darlington respectively.

However, through further work on the biodiversity net gain calculation, it has now been clarified that there would be a total of 46.86 habitat units impacted and the TRT project would only contribute 8.9 units in compensation. Therefore, leaving a net loss of 39.7 units. EA also had concerns in ensuring this was secured through the marine licence decision. On that basis, we did not agree that the mitigations put forward would ensure that the objective of GEP would be met in the Tees.

The applicant has worked closely with the EA and other bodies to identify a parcel of land for additional post-intervention works at the North Tees Mudflat. In a recent,

biodiversity metric calculation following two areas of work (Central area and upstream area) this is currently showing as a gain of 29.9 units. EA are working on an agreement with the applicant and MMO understand in principle that this is feasible.

As MMO have no legal mechanism to support habitat compensation through a marine licence, it was agreed that the proposed amendment to the existing legal agreement between EA and PD Ports to cover the enhancement of mudflat would be the appropriate option. EA were notified of MMO's position on 29 June 2021.

The works should therefore not commence until an agreement has been reached between the Licence Holder and the Environment Agency with regard to the delivery of habitat restoration measures.

Therefore, after considering the information in the ES and associated documents, and the responses from consultees, the MMO concludes that the risks of this project to Water Quality is unlikely to be significant and within acceptable limits.

5.6 Seabed Quality

The assessment of impacts on Seabed Quality is presented within Section 7 (Marine Sediment and Water Quality) and Section 26 (Offshore Disposal of Dredged Material) of the ES. The ES noted that there is potential for impacts during capital and maintenance dredging through remobilisation, dispersion and redistribution of sediment but concluded no significant adverse impacts. Results of sediment sampling were also provided.

Cefas were consulted with regard to dredge and disposal activities and that an appropriate evidence base has been used with samples being collected and sediment analysis conducted in accordance with Cefas advice under pre-application SAM/2018/00069.

Cefas noted that no elevated levels were observed for organotins and found no major cause concern concerning the metals or tins content for this application.

Regarding polychlorinated biphenyls (PCB's), Cefas noted that there are no PCB concentrations in the Project dredge area, but there are raised levels at nearby area Billingham Beach. This area should be sampled again during repeat sampling requirements on the marine licence.

Cefas noted that Polycyclic aromatic hydrocarbons (PAH's) are raised but that this is not uncommon for the Tees due to its industrial past. Given that sediment was deemed acceptable for disposal at the pre-application stage based on these levels, the current values are now also deemed acceptable for disposal at sea.

Regarding Polybrominated diphenyl ethers (PBDE's), Cefas also had no concern with the levels and confirmed disposal at sea is acceptable.

Cefas requested additional sampling if the dredging has not started after 2 years from the date of sampling. This date has passed and therefore additional sampling will be required, and approval needed before dredging can commence.

Cefas noted that due to the large volumes of sediment to be disposed of at the Tees C site, they requested consultation be undertaken with their coastal processes and benthic ecology specialists. This consultation has been undertaken and is summarised in Sections 5.12 and 5.13 of this Consent Decision respectively.

Cefas expressed concern regarding the potential cumulative impacts at the Tees Bay C disposal site, should disposal of capital dredged material arising from the Northern Gateway Container Terminal (NGCT) and several other projects that had the potential to coincide. PDT (as Statutory Harbour Authority) has confirmed that it is highly unlikely that the three major dredging projects would be permitted within the river at the same time, given the likely impacts on commercial navigation as a result. However, the following licence condition will be included to mitigate against any potential in-combination impacts:

The applicant will liaise with South Tees Development Corporation no later than 6 months in advance of the proposed start date of capital dredging and disposal for NGCT and, subject to the outcome of that discussion, will provide either of the following to the MMO no later than 3 months in advance of the proposed start date of capital dredging and disposal:

- a) Written confirmation that disposal of dredged material from the NGCT project will not temporally coincide with that arising from the South Bank Quay Phase 1 project (meaning that no single phase of the capital dredging and disposal for the two projects would occur at the same time); or,*
- b) Written confirmation that the total (aggregated) quantity of dredged material to be disposed would not exceed 1.34 million m³ per month (the peak monthly volume assessed within the NGCT EIA), should it be apparent that the dredging and disposal from NGCT could temporally coincide (meaning that any phase of the capital dredging and disposal for the two projects could occur at the same time); or,*
- c) Further environmental assessment information (the scope of which would be agreed with the MMO) to analyse the potential nature of the cumulative environmental impact associated with offshore disposal should it be apparent that the dredging and disposal programmes for NGCT and the South Bank Quay project could (i) temporally coincide and (ii) the total (aggregated) quantity of dredged material to be disposed could exceed 1.34 million m³ per month, with a detailed programme of environmental monitoring to verify the predicted cumulative environmental impacts of disposal of dredged material.*

The measures listed above will help mitigate against any potential adverse impacts as a result of the dredge and disposal activity.

Therefore, after considering the information in the ES and associated documents, and the responses from consultees, the MMO concludes that the risks of this project to Seabed Quality is unlikely to be significant and within acceptable limits.

5.7 Population and Human Health

The assessment of risks to Population and Human Health is presented within Section 16 (Noise and Vibration) and Section 17 (Air Quality) of the ES.

The ES noted in Section 16 that the 2006 planning permission granted by RCBC contained one condition with specific regard to noise and vibration, which had to be discharged prior to the commencement of the works authorised by the planning permission. This was adequately discharged prior to the landside elements of the proposed scheme being implemented and therefore the applicant concluded no further assessment works are considered necessary to illustrate that the findings of the 2006 ES (with specific regard to noise and vibration) remain valid.

Additionally, the 2006 planning permission granted by RCBC contained one condition with specific regard to air quality which had to be discharged prior to the commencement of the works authorised by the planning permission. The condition imposed by RCBC was discharged prior to the landside elements of the proposed scheme being implemented and the future development of the wider Project (beyond the commencement works) will be subject to the same controls to manage any risks to air quality.

Middlesbrough Council were consulted and had no comments to make.

EA were consulted and had no comments with regard to air quality.

Therefore, after considering the information in the ES and associated documents, and the responses from consultees, the MMO concludes that the risks of this project to Population and Human Health is unlikely to be significant and within acceptable limits.

5.8 Cumulative Impacts & In-Combination Impacts

The assessment of Cumulative Impacts & In-Combination Impacts is presented within Section 27 of the ES.

In the ES it was concluded that the main factors which could have cumulative/in-combination impacts are:

- Hydrodynamics and sedimentary regimes
- Marine water and sediment quality
- Marine ecology
- Waterbird populations
- Fish and shellfish
- Commercial Navigation
- Disposal of dredged material

The report concluded that there would be a minor adverse effect for marine ecology and effect of negligible significant for all other factors cumulatively and in-combination.

Each of these topics has been explored in this report as summarised below:

- Hydrodynamics and sedimentary regimes – Section 5.13
- Marine water and sediment quality – Section 5.6
- Marine ecology – Section 5.11
- Waterbird populations – Section 5.1
- Fish and shellfish – Sections 5.13 and 5.14
- Commercial Navigation – Section 5.15
- Disposal of dredged material – Section 5.6

After considering the information in the ES and associated documents, the responses from consultees, and the potential impacts from other plans and projects, the MMO concludes that the potential Cumulative Impacts & In-Combination Impacts are unlikely to be significant and within acceptable limits.

5.9 Risk of Major Accidents and Disasters Relevant to the Project (including those caused by Climate Change)

The assessment of risks from Major Accidents and Disasters is presented within Section 25 of the ES. The ES considered that the main major accident / natural disaster which could affect the proposed scheme is tidal flooding. The findings from the applicant's coastal protection / flood defence assessment, address this risk and concluded no further specific accident / natural disaster assessment would be necessary

EA were consulted and advised that further consideration of the hydrodynamic and sedimentary regime was required as the physical processes affected by climate change increase the risk of adverse impacts such as coastal squeeze, which could drown out the intertidal habitats due to sea level rise. EA advised that the ES has identified the sources of flooding for this development but has used incorrect climate change allowances.

EA removed their objection to this topic due to the further mitigation put forward by the applicant which is included in the legal agreement outlined in Section 5.5. This would lead to a gain of 29.9 habitat units and allayed EA's concerns regarding climate change and coastal squeeze.

Therefore, after considering the information in the ES and associated documents, and the responses from consultees, the MMO concludes that the risks of this project from Major Accidents and Disasters is unlikely to be significant and within acceptable limits.

5.10 Mitigation and Monitoring

The key mitigation measures for the project are summarised below:

Heritage

- Conditions to ensure the applicant follows the WSI, commissions a geoarchaeological assessment and submits an entry to OASIS.

Please see Section 5.3 for further details.

Water Quality

- Works should not commence until an agreement has been reached between the Licence Holder and the Environment Agency with regard to the delivery of habitat restoration measures.

Please see Section 5.5 for further details.

Dredge and Disposal

- Condition mandating additional sampling if the dredging has not started after 3 years from the date of sampling – August 2019. .
- Condition requiring the applicant to liaise with South Tees Development Corporation no later than 6 months in advance of the proposed start date of capital dredging and disposal for NGCT, in order to mitigate any in-combination dredge and disposal impacts.

Please see Section 5.6 for further details.

Fish Ecology and Fisheries

- Percussive piling activities required for the installation of tubular and sheet piles in the marine environment must be undertaken in such a way as to minimise the duration of percussive piling required for each pile and must use soft-start procedures. Should percussive piling be required during the months of May, July and August then the duration of percussive piling must not exceed 120 minutes in any 24 hour period. Employ a soft start piling approach in accordance with the JNCC's guidelines
- No piling to be undertaken at night

Please see Section 5.13 for further details.

Navigation

- HM Coastguard, in this case nmoccontroller@hmcg.gov.uk, The National Maritime Operations Centre to be made aware of the works prior to commencement.
- Suitable bunding, storage facilities are employed to prevent the release of fuel oils, lubricating fluids associated with the plant and equipment into the marine environment.

- Any jack up barges / vessels utilised during the works/laying of the cable, when jacked up, should exhibit signals in accordance with the UK Standard Marking Schedule for Offshore Installations.
- Any requirement to relocate any existing aids to navigation (AtoN) to be approved by Trinity House.

Please see Section 5.15 for further details.

Monitoring

The only monitoring which is required to be included within the marine licence is the sampling condition outlined above.

5.11 Benthic Ecology

The assessment of impacts on Benthic Ecology is presented within Section 9 of the ES.

The impact of capital dredging on the existing marine communities is described in Section 9.5 of the ES. Following the completion of the dredging, the marine community within the dredge footprint will recolonise the impacted area. The nature of the communities that would recolonise the seabed compared with those which are currently present is largely dependent on the change in nature of the sediments that are exposed at the surface of the seabed.

Given that the navigation channel is dredged to geological material, the proposed capital dredging is expected to result in the exposure of a similar sediment type to that which is currently present. As such, over time the marine communities that colonise within the proposed dredge area will be of a similar structure to those which are currently present.

Any recolonisation of the seabed following the capital dredging would be beneficial compared with the immediate post-dredge situation but maintenance dredging would restrict continuous recovery.

Based on the above, it was concluded that there would be an impact of negligible significance on the benthic community following completion of the capital dredge.

The impact of maintenance dredging on the existing marine communities is described in Section 9.6. of the ES. The predicted changes to the rate of infill of the navigation channel as a consequence of the proposed scheme are minimal. It is concluded that the predicted changes are insignificant with respect to potential effects on the existing maintenance dredging strategy, and no changes to the present-day maintenance dredging strategy are necessary. As such, there would be no impact on marine communities as a result of the maintenance dredging requirement arising from the proposed scheme.

Cefas were consulted and advised that potential direct and indirect impacts, during both the construction and operational phases of the project, have been adequately listed with no evident omissions in this respect. Cefas concurred with the rationale

behind the various assessments of the sensitivities and overall significance of the various impacts to benthic ecological features with no objections being made.

Therefore, after considering the information in the ES and associated documents, and the responses from consultees, the MMO concludes that the risks of this project to Benthic Ecology is unlikely to be significant and within acceptable limits.

5.12 Coastal Processes

The assessment of impacts on Coastal Processes is presented within Section 6 of the ES. The ES identified that there had been no changes to baseline understanding regarding the hydrodynamic and sedimentary regime in the estuary since the production of the 2006 ES. The ES did not identify any significant adverse effects on Coastal Processes during the construction phase or operational phase.

Cefas were consulted and initially requested that some updates be made to the ES. They advised that the applicant should include an Appendix in the ES, showing the results of their review and any information relevant to the 2014 baseline established in the York Potash Harbour Facilities Study. Cefas also requested further information with regard to the dispersion modelling used by the applicant.

Following receipt of further information and re-consultation, Cefas confirmed that in the context of the local setting they consider that it is very unlikely that the dispersed suspended sediment concentrations (SSC) would have any significant impact on coastal process receptors and do not view the matter of SSC as an ongoing concern.

Therefore, after considering the information in the ES and associated documents, and the responses from consultees, the MMO concludes that the risks of this project to Coastal Processes is unlikely to be significant and within acceptable limits.

5.13 Fish Ecology and Fisheries

The assessment of impacts on Fish Ecology and Fisheries is presented within Section 12 of ES. The ES considered the following potential impacts to fish:

- Direct uptake and disturbance of fish during capital dredging.
- Impacts caused by increased suspended sediment during capital dredging and dewatering during reclamation.
- Effects of light on fish populations during construction and operation.
- Restriction of access to potential fishing grounds during construction.
- Underwater noise disturbance during construction and operation.
- Impact on feeding resource for fish during operation.

NEIFCA were consulted and advised they do not foresee any significant adverse impacts arising from the outlined works and have no objection to the proposal.

EA were consulted and noted that the closed quay design has been assessed as the representing the most harm and the need for piling. EA were aware that the final design of the quay is yet to be agreed and this would be submitted in an additional

terrestrial reserved matters application. EA were unclear whether this would trigger an additional marine licence and appreciated clarification on the matter.

EA advised that in order to maintain fish passage during the construction it is recommended that:

- *Between the 1 March and 30 November, in any given year, no percussive or impact piling should take place for 3 hours following low water to allow migration of adult salmon and sea trout on the flooding tide.*
- *During the month of May, in any given year, no percussive or impact piling should take place at all. If this is not possible then no piling of any types should take place for the first 5 hours of the ebbing tide to allow migration of the juvenile salmon and sea trout.*

Reason

To protect migratory fish. The associated noises of piling activity can be detrimental to the upstream passage of salmon and sea trout. Impact or percussive piling will have the greatest effect on fish movement causing both a barrier and, in extreme circumstances, fatal effects.

PDT advised the MMO that the above restrictions would have severe impacts on the construction works, to the extent that the NGCT would become economically unviable. PDT therefore undertook a programme of underwater noise modelling in order to support the findings of the ES with respect to migratory fish. They provided the results in a report (PB8270-RHD-ZZ-XX-NT-Z-0005_underwater noise.pdf). PDT advised that based on the piling durations and working hours, there would be approximately 140 minutes of percussive piling per month. The underwater noise report concluded that there would be no significant adverse effects on migratory fish species through injury, behavioural response or barrier to migration.

EA reviewed the underwater noise report and accepted that the piling activity is over relatively short duration, occurring every fourth day, so this would reduce risk. However, during the days that impact piling occurs uncertainties remained regarding the way fish will respond to encountering the first phase of piling activity and if they would subsequently be affected by the second phase (pile). EA advised there is no guarantee the fish will simply swim away from the noise and continue migration. EA welcomed the cessation of night-time piling but advised that according to their records, daytime migrations are equally significant and often more so.

EA confirmed the recommended restrictions are there to provide a window of opportunity for unhindered fish passage and currently only occupy a quarter of the tidal cycle. Fish would migrate at other times so even this would not provide total protection but enable a substantial working window for percussive piling activity.

EA also noted that the WFD assessment references an additional agreement in addition to mitigation measures to minimise disruption to fish passage. As outlined in Section 5.5 above, EA proposed an amendment to the existing legal agreement to secure off-site mitigation and are working closely with the applicant to find a suitable solution/project to provide mitigation for the loss of intertidal habitat. This would be in

addition to the monetary compensation identified in a previous legal agreement in 2007. This would lead toward the improvement of salmonid spawning habitat and toward alterations of a fish pass on the River Skerne, Darlington respectively. EA are working on an agreement with the applicant and understand in principle that this is feasible.

As MMO have no legal mechanism to support habitat compensation through a marine licence, it was agreed that the proposed amendment to the existing legal agreement between EA and PD Ports to cover the enhancement of mudflat would be the appropriate option. However, the applicant will be advised that works should not commence until an agreement has been reached between the Licence Holder and the Environment Agency with regard to the delivery of habitat restoration measures. Please see Section 5.5 for further details.

During further consultation, EA advised that their advice would always be to restrict piling to be carried out in certain months but aren't pushing this and are not requesting this as a condition formally. Overall, EA are satisfied with the approach and the monitoring of the impacts through the planning conditions/financial contribution in the existing habitat agreement referred to above. On this basis, EA deferred this matter to the MMO to decide to condition or not.

Cefas were consulted with regard to Fish Ecology and Fisheries and initially advised that the applicant should provide clarification on the proposed times and durations of dredging and piling works so that the likelihood of potential impacts to fish receptors can be more accurately assessed. They also advised that a revised underwater assessment is required using appropriate modelling parameters.

Cefas were consulted on the underwater noise report and had concerns regarding temporal threshold shift (TTS) effects on migrating salmon and cumulative underwater noise effects.

Further consultation was undertaken with Cefas who maintained that the following piling restrictions must be conditioned in order to mitigate impacts on migratory fish:

- *“Between 1 March and 30 November, in any given year, no piling of any type should take place for three hours following low water. Reason: To allow migration of adult salmon and sea trout on the following tide.*
- *During the month of May, no impact piling must take place at all.*
- *Additionally, during the month of May, no piling of any type must take place for the first five hours of the ebbing tide. Reason: To allow the migration of juvenile salmon and sea trout.”*

Having reviewed the consultation with EA and Cefas, MMO consider that PDT is using the best available technology to minimise impacts and keep impact piling within acceptable levels. The applicant has reduced impact piling as much as possible and this is in line with other similar projects. Cefas have raised concerns that this is too much and would result in significant impacts. Having reviewed the assessments provided by the applicant, and considering the small timeframe that

this could occur, MMO do not agree with the Cefas position. This is on the basis that the measures below are implemented to mitigate against any potential significant effects:

- Percussive piling activities required for the installation of tubular and sheet piles in the marine environment must be undertaken in such a way as to minimise the duration of percussive piling required for each pile and must use soft-start procedures. Should percussive piling be required during the months of May, July and August then the duration of percussive piling must not exceed 120 minutes in any 24 hour period – This will minimise piling as much as possible during sensitive migration periods.
- Employ a soft start approach in accordance with the JNCC’s guidelines – This will give mobile receptors and opportunity to move away.
- No piling would be undertaken at night – Night time is when many mobile receptors migrate.

Therefore, after considering the information in the ES and associated documents, suggested conditions from the applicant, and the responses from consultees, the MMO has implemented conditions that are in line with other activities on the Tees. These satisfy the MMO and we conclude that the risks of this project to Fish Ecology and Fisheries is unlikely to be significant and within acceptable limits.

5.14 Shellfisheries

The assessment of impacts on Shellfisheries is presented within Section 12 of the ES. The ES concluded that the sensitivity of the key shellfish species present in the Tees is considered to be low and the impact to shellfish from increased suspended sediment would be negligible. The applicant also noted that the effect of the dredging does not represent an irreversible loss of habitat as the benthic community would be expected to recover to one that is similar to that present throughout the existing dredged approach channel.

Cefas were consulted and advised that the applicant has assessed the shellfish species present accurately, used appropriate data sources to inform the report and assessed the potential impacts of the work sufficiently for the level of work proposed. According to Cefas, there are no areas of concern in relation to shellfish species or shell fishers. Overall, Cefas anticipate this work causing minimal disruption and no long-term impacts.

Therefore, after considering the information in the ES and associated documents, and the responses from consultees, the MMO concludes that the risks of this project to Shellfisheries is unlikely to be significant and within acceptable limits.

No 5.15 Navigation / Other Users of the Sea

The assessment of impacts on Commercial Navigation and Recreation and Access are presented within Sections 13 and 18 respectively of the ES.

In Section 13 the ES recognised that potential between construction plant and shipping traffic could take several forms, including delays to shipping, increased risk collision, obscuring navigational aids and the prevention/interference of activities of other operators that are present in the vicinity of the proposed terminal. However, PDT would manage any potential conflicts in the same way as routine dredging and other construction activities, through co-ordination via the Harbour Master and issue of Notices to Mariners (NTM's). The Port Maritime Safety Code will be included within the detailed design of the proposed scheme. Liaison with the Harbour Authority will be undertaken to develop a robust Safety Management System, which would be implemented and adhered to during the construction phase.

The ES also found that during the operational phase, it is predicted that there will be no change in the existing risk of collision as a result of the construction of the terminal with all vessel traffic in the estuary and Tees Bay being controlled by Vessel Traffic Service (VTS).

The ES concluded that based on the above, the magnitude of the impact is anticipated to be very low on a medium sensitivity receptor and therefore the Project is predicted to have an impact of negligible significance on commercial navigation during the construction and operational phases.

In Section 18 the ES concluded that the main potential for conflict with recreational activity is during the dredging that will take place close to the mouth of the estuary where some sailing is undertaken. However, given the limited duration of dredging in this area and particularly the fact that the dredging would take place within an existing navigation channel that is heavily used by commercial shipping, conflict between recreational vessels and the construction activities are predicted to be of negligible significance.

Commercial vessels will be confined to navigating within the dredged channel (as at present) and recreational craft, therefore, avoid this area. Additionally, much of the water-based recreation is undertaken outside of the estuary within Tees Bay and along the coast. Consequently, during the operational phase, the potential for conflict between commercial shipping and recreational activity is the same as at present and as a result no impact is predicted.

MCA were consulted and had no objections to a licence being granted. This is on the understanding that all maritime safety legislation is adhered to, and that the following risk mitigation measures take place:

- The Licensee must ensure that HM Coastguard, in this case nmoccontroller@hmcg.gov.uk, and The National Maritime Operations Centre is made aware of the works prior to commencement.
- The Licensee should ensure suitable bunding, storage facilities are employed to prevent the release of fuel oils, lubricating fluids associated with the plant and equipment into the marine environment.

- Any jack up barges / vessels utilised during the works/laying of the cable, when jacked up, should exhibit signals in accordance with the UK Standard Marking Schedule for Offshore Installations.
- The site is within port limits and the Licensee should gain the approval/agreement of the responsible local navigation authority or the Harbour Authority/Commissioners/Council. They may wish to issue local warnings to alert those navigating in the vicinity to the presence of the works, as deemed necessary.
- The Licensee should consider adopting the Port Marine Safety Code (PMSC), which sets out a national standard for every aspect of port marine safety. The Code is not mandatory, however it is endorsed by the UK Government, devolved administrations and representatives from across the marine industry sector. It is applicable to both Statutory Harbour Authorities (SHA) and non-SHAs including marinas, terminals, marine berths and jetties. The Department for Transport also publishes the PMSC Guide to Good Practice which provides useful information and detailed guidance on the safe management of these facilities and is intended to supplement the Code. This can be found here: <https://www.gov.uk/government/publications/a-guide-to-good-practice-on-port-marine-operations>

Trinity House were consulted and had no objections to the proposed application but requires the following conditions to be included in any licence issued:

- Any requirement to relocate any existing aids to navigation (AtoN) to be approved by Trinity House.

RYA were consulted and had no comments to make.

Therefore, after considering the information in the ES and associated documents, the responses from consultees, and the inclusion of mitigation measures, the MMO concludes that the risks of this project to Navigation / Other Users of the Sea is unlikely to be significant and within acceptable limits.

5.16 Underwater Noise

The assessment of impacts on Underwater Noise is presented in Sections 9, 11 and 12 and Appendix 14 of the ES, and the NGCT Underwater Noise Report. These concluded that without mitigation, the impacts of underwater noise through impact piling on marine mammals, fish and marine invertebrates could lead to moderate adverse effects. However, following mitigation (soft start piling techniques), the effect would be minor adverse. For bird species it was concluded that the effects would be minor/negligible without mitigation and negligible with mitigation.

Cefas were consulted with regards to Underwater Noise and initially had some concerns with the proposal. Cefas did not consider that an appropriate evidence base has been used to support the assessment and considered the assessment is outdated in terms of the noise exposure criteria. They also advised that whilst they support the proposed mitigation (soft start piling techniques), they have some reservations on whether these will be appropriate to mitigate the risk of potential impact on migratory species.

In response to Cefas comments, the applicant provided an updated underwater noise report which Cefas were consulted on. Cefas were content that most of their initial concerns had been addressed but still had concerns regarding migratory fish species and felt further mitigation was necessary. As outlined in Section 5.13, they requested that the following mitigation measures be conditioned in order to mitigate impacts on migratory fish:

- *“Between 1 March and 30 November, in any given year, no piling of any type should take place for three hours following low water. Reason: To allow migration of adult salmon and sea trout on the following tide.*
- *During the month of May, no impact piling must take place at all.*
- *Additionally, during the month of May, no piling of any type must take place for the first five hours of the ebbing tide. Reason: To allow the migration of juvenile salmon and sea trout.”*

Cefas only remaining concern in respect of underwater noise was therefore relating to migratory fish species. As outlined in Section 5.13 of this consent decision, MMO concluded that these measures would not be necessary. Having reviewed the assessments provided by the applicant, and considering the small timeframe that this could occur MMO do not agree with the Cefas position. This is on the basis that the measures below are implemented to mitigate against any potential significant effects:

- Percussive piling activities required for the installation of tubular and sheet piles in the marine environment must be undertaken in such a way as to minimise the duration of percussive piling required for each pile and must use soft-start procedures. Should percussive piling be required during the months of May, July and August then the duration of percussive piling must not exceed 120 minutes in any 24 hour period – This will minimise piling as much as possible during sensitive migration periods.
- Employ a soft start approach in accordance with the JNCC’s guidelines – This will give mobile receptors and opportunity to move away.
- No piling would be undertaken at night - Night time is when many mobile receptors migrate.

Therefore, after considering the information in the ES and associated documents, and the responses from consultees, the MMO concludes that the risks of this project to Underwater Noise is unlikely to be significant and within acceptable limits.

EIA Decision

After conducting a comprehensive review of the Project and applying its appropriate expertise, the MMO has concluded a favourable determination and that EIA consent for the project should be given.

The MMO is satisfied that adequate mitigation strategies have been agreed to minimise, or altogether remove, the potential significant adverse impacts associated with the construction and operational phases of the Project.

The MMO is also content that positive social, economic or environmental benefits derived from the Project sufficiently outweigh any residual adverse impacts derived by the Project.

Daniel Walker
Marine Licensing Case Officer



2 March 2022