Hornsea Offshore Wind Farm

Project Two

The Applicant's Response to Deadline VII

Application Reference: EN010053

10 December 2015

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1. Overview

1.1 In response to the Examining Authority's ("Ex. A") letter of 22 June 2015 (the "Rule 8 Letter"), which set the procedural timetable for the examination of the Hornsea Offshore Wind Farm Project Two application (Application Reference: EN010053) ("the Application"), the letter from the Ex. A of 26 November 2015 (the "First Rule 17 Letter") and the subsequent letter from the Ex. A of 7 December 2015 (the "Second Rule 17 Letter") (the "First Rule 17 Letter" and "Second Rule 17 Letter" together collectively referred to as the "Rule 17 Letters"), SMart Wind Limited, as agent on behalf of the joint applicants Optimus Wind Limited ("Optimus Wind") and Breesea Limited ("Breesea") (together "the Applicant") has prepared the following:

1.1.1 The Applicant's response to the questions within the First Rule 17 Letter (at Part 1 of the Response);

1.1.2 The Applicant's response to the questions within the Second Rule 17 Letter (at Part 2 of the Response);

1.1.3 A further update to the draft DCO (Version 8) at Appendix A of the Response, together with an update to the Schedule of Changes to the draft DCO at Appendix F of the Response and Version 2 of the Explanatory Memorandum at Appendix G of the Response;

1.1.4 A Memorandum of Understanding with Natural England to signpost the agreement reached between the parties on matters relating to HRA/EIA conclusions (at Appendix Q of the Response);

1.1.5 The Applicant's comments on Natural England's, the RSPB's and E.ON E&P UK Limited's ("E.ON E&P") submissions submitted at Deadline VI (at Appendices N to P of the Response);

1.1.6 The Applicant's comments on the RIES issued by the Ex. A at Deadline VI (at Appendix M of the Response);

1.1.7 An update to the Environmental Information Signposting Document (Version 6); and

1.1.8 An update to the Book of Reference (Version 4) at Appendix I of the Response, together with an update to the Schedule of Changes to the Book of Reference and Plot-by-Plot Analysis Table at Appendices J and K of the Response respectively.

1.2 These documents (collectively "the Response) are submitted for the deadline of 10 December 2015 ("Deadline VII") specified in the Rule 8 letter and are discussed in more detail below.

2. Response to the Rule 17 Letters

2.1 The First Rule 17 Letter contained eleven specific questions by the Ex. A, which were directed for the most part to the Applicant and also in some circumstances to other interested parties. The Applicant has provided responses to each of these questions at Part 1 of the Response. Where additional material has been submitted to aid the response, this has been provided by way of Appendix.

2.2 Subsequently, the Second Rule 17 Letter contained four specific questions by the Ex. A, three of which were directed to the Applicant (with question two being directed to Natural England). The Applicant has provided responses to these questions at Part 2 of the Response, with any additional material again submitted by way of Appendix.

3. Updated Development Consent Order

3.1 The Applicant submitted Version 6 of the draft DCO at Appendix A to its response to Deadline V. The Applicant further submitted a Schedule of Changes to the draft DCO at Appendix D of its response to Deadline V, which narrated the changes from Version 1 of the draft DCO.

3.2 The Applicant also submitted Version 7 of the draft DCO (Appendix E of the response to Deadline V) which showed Version 6 of the draft DCO with all of the "dead clauses" removed, together with a signposting table showing changes in clause numbering between Version 6 and Version 7 of the draft DCO (Appendix F of the response to Deadline V) for the Ex. A's ease of reference.

3.3 The Applicant has provided a further update to the draft DCO (Version 8) at Appendix A of the Response, which incorporates further changes as a result of on-going discussions with stakeholders and to address responses to the questions raised within the Rule 17 Letters.

3.4 To assist the Ex. A, the Applicant has also updated the Schedule of Changes to incorporate these further amendments at Appendix F of the Response.

3.5 Finally, the Applicant has provided a composite updated Explanatory Memorandum (Version 2) to reflect the updates to Version 1 of the draft DCO submitted with the Application. This updated Explanatory Memorandum is provided at Appendix G of the Response, together with a comparison against Version 1 at Appendix H of the Response.

4. Memorandum of Understanding with Natural England

4.1 The Applicant advised within its submission to the Ex. A of 4 December 2015 (the "4 December Submission") of further proposed refinements to the Project's Design Envelope in view of on-going discussions with Natural England. The Applicant has included at Appendix Q of the Response a Memorandum of Understanding with Natural England to set out the final agreed positions between the parties, as well as statements of act where there may be differences between the Applicant and Natural England as to the ornithology assessment methodology and/or outcomes.

4.2 The Applicant would direct the Ex. A to Section 1.6 and Table 1 of the MoU, which sets out a summary of Natural England's HRA conclusions. In relation to the kittiwake feature of the Flamborough Head and Bempton Cliffs (FHBC) SPA and the Flamborough and Filey Coast (FFC) pSPA, Natural England have reached this conclusion on the basis of the Applicant's further mitigation (more particularly detailed in paragraph 1.3 of the 4 December Submission), which has allowed them to conclude the effect of the additional predicted mortality from the Project alone (14.2 based on Natural England's calculation) is so small as to not materially alter the significance of the overall in-combination mortality figure or the likelihood of an adverse effect on the integrity of the FHBC SPA or FFC pSPA arising from such an in-combination level of mortality.

4.3 In addition to Natural England's HRA conclusions at Table 1, the MoU further provides a summary of the assumptions advocated by Natural England and the Applicant in relation to the collision risk assessment for the kittiwake feature of the FHBC SPA and FFC pSPA (see Table 2) and the EIA conclusions for each relevant species at Section, with Table 3 providing a summary of the Applicant and Natural England's positions regarding the cumulative EIA for Gannet.

5. The Applicant's comments on Natural England, E.ON E&P and the RSPB's written submissions to Deadline VI

5.1 Together with the MoU referenced in Section 4 of the Response above, the Applicant has provided a response to Natural England's submissions at Deadline VI at Appendix N of the Response for sake of completeness. Similarly, the Applicant has provided a response to E.ON E&P's Deadline VI submission at Appendix P of the Response.

5.2 The RSPB made a number of comments at Deadline VI. The Applicant has already made detailed submissions on a number of these points throughout the Examination of the Project and does not propose to repeat the same submissions in this Response. The Applicant submits that the submissions which it has made on these topics remain valid and should be preferred to the arguments advanced by the RSPB. The Applicant has, however, provided further responses to particular points at Appendix O of the Response.

6. The Applicant's comments on the Ex. A's RIES

6.1 The Applicant has provided its comments on the RIES issued by the Ex. A on 26 November 2015 at Appendix M of the Response.

7. Environmental Signposting Document

7.1 The Applicant submitted Version 5 of the Environment Information Signposting Document at Appendix S of its response to Deadline V.

7.2 The Applicant has submitted a further update (Version 6) to this document at Appendix L of the Response to ensure that a link is provided to all the referenced documents published on the Planning Inspectorate webpage, to reference the further proposed mitigation referenced in the December Submission as well as to include the further clarification information submitted at Deadline VI, within the December Submission and in this Response.

8. Book of Reference

8.1 The Applicant has submitted Version 4 of the Book of Reference at Appendix I of the Response to reflect refreshed Land Registry and Companies House searches as at 27 November 2015. In addition, Version 4 also reflects:

8.1.1 the removal of plots CL1 and CL2 from Part 4 of the Book of Reference to remove any residual ambiguity as to whether the Applicant was seeking to compulsorily acquire E.ON E&P's offshore interests (as confirmed in paragraphs 4.32 to 4.34 of Appendix G to its response to Deadline V). The Applicant would confirm that as a result of these deletions the Offshore Crown Plans (Doc ref No 10.1, as updated at Appendix E of the Applicant's response to Deadline III) are no longer relevant and can be disregarded for the purpose of the examination of the Project going forward (plots CL1 and CL2 were the only plots shown on this plan); and

8.1.2 the agreed amendment to the Crown interest exclusion wording proposed in Version 3 of the Book of Reference (as confirmed at paragraph 13.9 of Appendix I to the Applicant's submission of Deadline V). The Applicant has set out the proposed amendment below for ease of reference:

"*Including all interests other than those interests held by or on behalf of the Crown ~~in accordance with Article 39 of the Order.~~"*

8.2 For completeness, the Applicant has provided an update to the Schedule of Changes to the Book of Reference at Appendix J of the Response and the

Plot-by-Plot analysis table at Appendix K of the Response to reflect the further updates since their previous versions were submitted at Appendices F and G respectively to Deadline IV.

9. Additional Matters

9.1 Finally, the Applicant has provided at Appendices V and W of the Response minor updates to the Offshore and Onshore Works Plans to correct the Version number referenced at the bottom of their respective Coordinates Pages. These coordinates are now consistent with the remainder of the plans in those respective documents (noting Version 2 per the respective updates at Appendices B and C to the Applicant's response to Deadline III) and accurately referenced in Schedule M of Version 8 of the draft DCO. For the sake of clarity, the Applicant can confirm that, other than the update of the coordinate version number, no other changes have been made to these plans from those submitted at Deadline III.

PART 1
The Applicant's response to the First Rule 17 Letter

1.	Please provide confirmation or otherwise that the removal of the 5MW Wind Turbine Generator (WTG) option will reduce the maximum number of offshore wind turbines from 360 to 300	Applicant

1. The Applicant can confirm that the proposed removal of the 5MW WTG option will reduce the maximum number of WTGs from 360 to 300. Full details of this change were detailed in the 4 December Submission, including details of the proposed changes to the draft DCO at Table 1 of Appendix A. The Applicant further confirms that these changes have been incorporated into Version 8 of the draft DCO submitted at Appendix A of the Response.

2.	Please provide details of the underpinning assessment of the potential implications for offshore ornithology of the removal of the 5MW WTG option and an increase in hub height of 3.5m.	Applicant

1. The Applicant notes that subsequent to the publication of this question within the First Rule 17 Letter, the Second Rule 17 Letter repeated the question, but reflected the further mitigation offered by the Applicant in the intervening period (at the 4 December Submission). Accordingly, the Applicant would refer the Ex. A to its response to Question 4 of the Second Rule 17 Letter for its composite response on this matter.

3.	Please clarify whether there are there any other implications of the removal of the 5MW WTG option and an increase in hub height of 3.5m. Your response should, as a minimum, include reference to the area of the seabed needed for the reduced number of turbines and the operations proposed by E.ON E&P Ltd, and to navigation routes.	Applicant

1. The Applicant notes that subsequent to the publication of this question within the First Rule 17 Letter, the Second Rule 17 Letter repeated the question, but reflected the further mitigation offered by the Applicant in the intervening period (at the 4 December Submission). Accordingly, the Applicant would refer the Ex. A to its response to Question 3 of the Second Rule 17 Letter for its composite response on this matter.

4.	The Applicant is requested to submit any updates for the Development Consent Order (DCO) to reflect the removal of the 5MW WTG option and an increase in hub height of 3.5m.	Applicant

1. The Applicant would refer to Appendix A of the Response, which provides Version 8 of the draft DCO. For ease of reference, the specific changes to the draft DCO in view of the proposed refinements to the Project's Design Envelope were specified in Table 1 of Appendix A to the 4 December Submission.

5.	Please provide an update on progress on those Protective Provisions which were not agreed by Deadline 5. In the event that agreement is not reached, each party should set out its views on how the issues should be taken forward for consideration by the Examining Authority (ExA) in making its recommendation to the Secretary of State.	Applicant and Statutory Undertakers

1. The Applicant would refer to Appendix U of the Response, which provides an update as to the status of the Protective Provisions.

6.	Please provide an update on the negotiations between ConocoPhillips and the Applicant. In the event that agreement is not reached, each party should set out its views on how the issues should be taken forward for consideration by the ExA.	ConocoPhillips, Applicant

1. As the Ex. A is aware, the Applicant and ConocoPhillips have been engaged in on-going constructive discussions regarding the interface between the Project and ConocoPhillips' interests and infrastructure.
2. By way of update, the Applicant can confirm that these discussions have resulted in an agreed set of principles, which will form the basis of a commercial agreement between the parties to provide for the protection of ConocoPhillips' interests and infrastructure in relation to the Radar Early Warning System ("REWS").
3. For immediate purposes, however, ConocoPhillips have agreed to withdraw their objection to the Project, subject to the inclusion of the following wording as a requirement in the draft DCO:

   (1) No construction of any wind turbine generator forming part of the authorised development shall commence until the Secretary of State having consulted with the Operator is satisfied that appropriate mitigation will be implemented and maintained for the life of the authorised development.

   (2) For the purposes of this requirement—

   "appropriate mitigation" means measures to mitigate any adverse impacts which the operation of the authorised development will have on the ability of the Operator's Radar Early Warning System to ensure the safety of its Saturn, Mimas and Tethys offshore platforms during the life of the authorised development;

   "Operator" means ConocoPhillips (U.K.) Limited incorporated under the Companies Act (00524868) whose registered office is Portman House, 2 Portman Street, London, W1H 6DU.

"Radar Early Warning System means the radar early warning system used to monitor and track vessels proximate to the Operator's offshore facilities via radio and network links. It comprises primarily of radars fitted on a number of Operator's offshore platforms. It provides a multi-site, multi-sensor integrated marine surveillance system with logistic and emergency response co-ordination facilities.

(3) The undertaker shall thereafter comply with all obligations contained within the appropriate mitigation for the life of the authorised development.

4. The Applicant confirms that this requirement has been included as new Requirement 27 of Version 8 of the draft DCO (see Appendix A of the Response).

7.	The ExA welcomes the willingness by E.ON E&P Ltd and the Applicant to adopt a pragmatic approach, as recommended in National Policy Statement EN-3, to resolve the issue of co-existence between Hornsea Project 2 and E.ON E&P Ltd interests in North Sea Block 48/3. For the Applicant this is set out in REP5-008, paras 4.28-4.30. E.ON's approach is set out in REP5-034, paras 1.56-1.66. The ExA also notes the draft Protective Provisions, and especially Figure 2, provided by E.ON in Appendix 2 of the same reference. In this context, and given, for example, (i) the small percentage of the Hornsea Project 2 site which E.ON state that they need for co-existence with the Hornsea Project 2 project; (ii) the possibilities of directional drilling; and (iii) the implications of the removal of the 5MW WTG option (see 3 above), the ExA believes that there appears to be clear scope for co-existence. The ExA strongly encourages the two parties to find common ground as soon as possible before the close of this examination. This may be expressed in a Statement of Common Ground and/or in Protective Provisions. In the event that agreement is not reached, each party should set out its views on how the issues should be taken forward for consideration by the ExA in making its recommendation to the Secretary of State.	E.ON E&P Ltd, Applicant

<u>The Applicant's position</u>

1. The parties have made good progress towards the identification of a commercial solution. Earlier today (10 December 2015) they agreed to progress to negotiation of a co-existence agreement based on heads of terms proposed by the Applicant, which are acceptable in principle to E.ON E&P, subject to agreement of full contract terms. Agreement of those contract terms would allow E.ON E&P to fully withdraw its objections. The parties are endeavouring to reach full agreement before the close of the examination and

will update the Ex. A as soon as possible. In the interim and in response to this question, the Applicant has set out its views on how matters should be dealt with in this DCO process in the event that a commercial agreement has not been reached prior to a decision being made.

2. The Applicant's position is that its proposed protective provisions (submitted at Appendix I of its response to Deadline VI) should be included within the DCO for the protection of E.ON E&P.
3. The Applicant refers the Examining Authority to Appendices H, I, J, K and L of its response to Deadline VI which set out in detail its position on coexistence with E.ON E&P including its submissions on its proposed form of protection for E.ON E&P. For ease of reference –
    a. Appendix H contains the Applicant's response to E.ON E&P's Deadline V submission with regards to the EIA assessments in the Environmental Statement;
    b. Appendix I contains the Applicant's proposed set of protective provisions for the benefit of E.ON E&P, and Appendix J contains a comparison of those proposed protective provisions against the protective provisions submitted by E.ON E&P at Deadline V;
    c. Appendix L sets out in detail the Applicant's position with regards to the proper application of policy and consenting processes to deal with the potential interactions between the parties, and provides a commentary on its proposed form of protective provisions. Appendix K, an extract from the speech given by the Secretary of State on 18 November 2015, forms part of that policy discussion.
4. The Applicant also refers the Examining Authority to its response to Question 8 of the Rule 17 Letter at Part 1 of the Response which sets out how policy support for both offshore wind development and oil and gas activities in the East Inshore and East Offshore Marine Plans can be appropriately accounted for in the DCO through these protective provisions.
5. As more fully explained and justified in Appendix L of its response to Deadline VI, the Applicant has based these protective provisions on those provided by E.ON E&P at Deadline V, with some very important differences:
    a. inclusion of a duty on E.ON E&P to act reasonably in considering any request for approval of works within the protected area. The Applicant considers that it would be inequitable if E.ON E&P were allowed at their absolute discretion to refuse consent;
    b. inclusion of a definition of Protected Area and the application of the protective provisions to the Protected Area if E.ON E&P or its development partner has obtained the consents it requires for apparatus in that Protected Area. The Applicant considers that the purpose of these protective provisions is to achieve co-existence and to deal appropriately with any potential interactions. There is no prospect of interaction unless and until E.ON E&P have the consents they require to operate within the Protected Area; and
    c. deletion of E.ON E&P's proposed exclusion of the Applicant's right to compensation (which may otherwise flow from the oil and gas consent process if the oil and gas clause requires to be implemented and the Secretary of State applies the Ministerial Statement). E.ON E&P should not be allowed to subvert these other processes. The protections within these other processes flow from the Applicant's Agreements for Lease

and not the DCO which is the subject of this Application. The Applicant has inserted drafting at paragraph 3(4), again to make clear that the protective provisions are not intended to affect these other processes.

6. The Applicant considers that the protective provisions which it has proposed provide substantial protection to E.ON E&P whilst also preserving the regulatory mechanisms already in place through the oil and gas clause and the Ministerial Statement. The Applicant considers this to be the appropriate approach for the Examining Authority, and ultimately for the Secretary of State, to take in the current consenting process, and in any DCO which may be granted. See also paragraph 17 below in relation to a plan to accompany the protective provisions.

Consents to be granted to E.ON E&P

7. E.ON E&P in its Deadline VI submission continued to state that it had all of the consents which it required for its exploration activities. The Applicant continues to maintain that this is not the case.
8. Whilst E.ON E&P have been awarded the rights under licence to search and bore for and get hydrocarbons in the block 48/3 area, that licence is granted subject to specific conditions and the relevant model terms for the 28th round are set out in The Petroleum Licencing (Production) (Seaward Areas) Regulations 2008. By way of example, condition 19 of the model terms clearly requires that E.ON E&P obtains the consent of the Secretary of State to the drilling of any well and the Secretary of State may impose conditions when granting that consent.
9. When E.ON E&P applied for its production licence it will have been fully aware that further consents are required. By way of example, the following guidance which is set out in DECC's 2014 "Applications for production licences – general guidance" document (see Appendix Y of the Response) at paragraph 57 is very clear on the point:

   "A Production Licence does not grant carte blanche to carry out all petroleum-related activities from then on. Some activities, such as drilling, are subject to further individual controls by DECC, and a licensee of course remains subject to controls by other bodies such as the Health and Safety Executive."

10. In addition to the consent to drill a well mentioned at paragraph 8 above, there are a range of additional environmental and health and safety related consents that may apply to E.ON E&P's proposed activities. The guidance document "DECC Other Regulatory Guidance, Feb 2014"[1] (see Appendix Z of the Response) sets out helpful guidance from DECC on this topic. It notes that:

    "It is the responsibility of anyone planning oil and gas activity on the UKCS to familiarise themselves with and comply with all the regulatory requirements that relate to it, and we strongly advise early consultation with all interested organisations. Failure to do so may result in the activity being delayed, or *even prevented altogether."*

[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/274943/28R_other_regulatory_issues.pdf

11. There are a number of environmental consents set out in this document that may apply. These include confirmation that a licensee:

    a. may not prospect or carry out geological surveys, or drill for the purpose of obtaining geological information, except with prior consent granted under the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (SI 2001/1754); and
    b. may not drill a well except with prior approval granted under the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999.

12. We are not aware of any evidence confirming that E.ON E&P has sought such consents in relation to any proposed activities in block 48/3.

13. In its submissions into this Examination, the Applicant has consistently maintained that the package of relevant policy and consenting regimes should be applied at the relevant times to ensure co-existence is achieved as and when the potential for conflict develops. As set out below the Applicant submits that the protective provisions which it has offered for the protection of E.ON E&P interests ensures effective co-existence as between the Applicant's activities to be authorised under the DCO and E.ON E&P's proposals. The DCO should not, however, be used to disapply or nullify other relevant processes. For example, the DECC guidance on the oil and gas consenting regimes referred to in the paragraphs above (DECC Other Regulatory Guidance, Feb 2014) recognises the part which oil and gas developers must play in developing their plans and achieving viable co-existence. The Applicant recognises that E.ON E&P are at an early stage in this process but that makes it all the more important that the checks and balances under its own consenting process remain intact. This is the only way to ensure that any restriction on offshore wind operations are objectively justified if and when proposals are developed and sufficient information from the oil and gas developer therefore becomes available. Relevant excerpts from the DECC guidance to oil and gas developers is set out below (see Note 4 on pages 6 and 7 of Appendix Z of the Response):

    "Applicants should be aware that areas within certain blocks may be the subject of plans or proposals for the development of windfarms or other renewable energy projects, e.g., the area may have been leased by The Crown Estate for a wind farm development, or an application has been submitted to The Crown Estate for such a lease and is awaiting agreement. A map of these leased areas, as currently known to DECC, can be accessed from the home page to this Licensing Offer – see link for "The Crown Estate interests". In the case of the Round 3 development zones, the zone developers have obligations to bring forward proposals in due course for new wind farms in specific areas within their zones.

    The Government believes that the renewables industry and the oil and gas industry can successfully co-exist to ensure the nation's energy needs are met. This is no less so in areas where oil and gas licenses and proposed or actual wind farm sites exist and overlap. However, we advise that potential applicants on such blocks should make early contact with the holders of any relevant wind farm lease or Agreement for Lease (AfL), or the relevant zone

developer(s), and establish in good time a mutual understanding of the respective proposals and time frames envisaged (acknowledging that not all aspects of the future plans of either side will necessarily be definitively decided at that time).

In the very unlikely event that it proves impossible to access an oil or gas find without an adjustment to an existing or proposed wind farm, this would be a matter for commercial negotiations between the companies involved. In exercising or performing functions and duties arising under the Petroleum Act 1998 or related environmental legislation (such as considering an application for drilling, the conduct of seismic surveys or the construction of field development infrastructure including the laying of pipelines), the Secretary of State may have regard to existing and proposed windfarm developments, and in doing so would expect to take into account whether there had been effective discussions between the parties and whether a reasonable commercial solution (including the provision of compensation) had been proposed to the wind farm owner. Provisions in wind farm lease or Agreement for Lease enable the determination (i.e. removal) of all or part of the lease or Agreement for Lease area where this is necessary to enable an oil or gas development to proceed. The Ministerial Statement of 12 July 2011 sets out the circumstances in which the Secretary of State would ask The Crown Estate to determine the lease or Agreement for Lease and is available at:

http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110712/wmstext/110712m0001.htm.

However, we would expect that with good planning, including taking advantage of early windows of opportunity before any potentially conflicting constructions or activities take place, the respective activities can be phased and coordinated so that both can proceed with minimal compromise and without determining any part of an existing lease or Agreement for Lease."

Response to specific points raised by the Examining Authority

14. The Applicant notes the Examining Authority's comments on (i) the small percentage of the Project's site which E.ON E&P state that they need for co-existence with the Project (ii) the possibilities of directional drilling; and (iii) the implications of the removal of the 5MW WTG option. The Applicant has considered these three points in turn below:

    i. E.ON E&P submitted at Figure 1 of Appendix 2 to its Deadline V submission a plan to accompany its proposed form of protective provisions. That plan identified an area coloured green within Subzone 2 for E.ON E&P's activities. A small part of the coloured area appears to be outside of E.ON E&P's licence block 48/3. E.ON E&P stated at paragraph 1.57 of its Deadline V submission that the coloured area represents 20% of the overlapping area of interests including two 500m pipeline exclusion zones. The Applicant notes however that the coloured area does not include the eastern pipeline exclusion zone. If the eastern exclusion zone and the coloured area are considered together, combined they represent closer to 26% of the overlapping area of interests. When combined with the area of E.ON's E&P licence block outwith the overlapping interests, this constitutes approximately 42% of the total area of Block 48/3.

The Applicant notes that a minimum relinquishment of acreage at the end of the initial term (4 years) is a condition of most licences and that this is typically 50% of their licensed area. On this basis, and contrary to the submissions which E.ON E&P have made, the solutions proposed by E.ON E&P do not represent a significant compromise on their part. The Applicant has made detailed submissions previously on the speculative nature of potential development in the wider Block 48/3 and the weight which should be applied on that basis. It is also important to remember that E.ON E&P are not proposing that the oil and gas clause mechanism to determine part of the Applicant's lease arrangements be restricted or disapplied – just that the Applicant's right to seek compensation be restricted if the oil and gas clause mechanism is triggered. E.ON E&P are therefore not conceding the ability to develop any part of the overlap area – they are, however, attempting to utilise the DCO process to restrict the operation of other policy and consenting regimes as they may apply to them.

ii. The oil and gas DECC guidance quoted above characterises as "*very unlikely"* the prospect that it would prove impossible to access an oil or gas find without an adjustment to an existing or proposed wind farm. Directional drilling is considered by the Applicant to be technically feasible and a way of minimising interactions.

iii. The removal of the 5MW wind turbine option from the Project's design envelope does not reduce the area required for the wind farm itself and therefore no reduction to the generation asset boundary is justified on the basis of the removal of a turbine category option or reduced maximum turbine numbers. If a larger wind turbine is selected, the spacing between the turbines would normally be increased commensurately to ensure the Project operates productively and efficiently. Any reduction in the area removes flexibility for layouts which is required to avoid construction and operational constraints and to achieve an optimal energy yield. Any restriction on flexibility could therefore impact on cost and yield.

Next steps

15. The Applicant has presented a number of commercial offers to E.ON E&P which it considers would achieve a fair and workable co-existence. Discussions have taken place on a confidential basis and so the Applicant cannot provide details of the respective positions on the offers actually put. The Examining Authority will be aware that E.ON E&P have specifically sought to exclude the prospect of any compensation in their proposed set of protective provisions. This runs contrary to the position anticipated by the DECC oil and gas guidance quoted above. The Applicant has summarised its position in relation to protective provisions in lieu of a commercial agreement below.

16. As summarised above and as set out fully in the Applicant's previous submissions, the Applicant's position is that the Examining Authority and the Secretary of State should include its proposed protective provisions for the protection of E.ON E&P in any DCO granted. For the avoidance of doubt the

Applicant's proposed form of protective provisions were submitted at Appendix I of the Applicant's response to Deadline VI and have been incorporated as Part 13 of Schedule L in version 8 of the draft DCO (Appendix A of the Response).

17. The Applicant has considered the plan submitted by E.ON E&P at Figure 1 of Appendix 2 to its Deadline V submission carefully and, notwithstanding the comments above, has concluded that it can accommodate protections for E.ON E&P in the form of the Applicant's proposed protective provisions within the area identified (and coloured green) on that plan. The Applicant has submitted its version of the plan to accompany the protective provisions, maintaining the same area coloured green, at Appendix X of the Response. For the avoidance of doubt the area shown coloured green on the plan at Appendix X of the Response does still include the small area outside of block 48/3 and includes the eastern pipeline exclusion zone referred to above at paragraph14(i). This compromise offer (in providing E.ON E&P with a Protected Area) has technical and commercial consequences for the Project. As noted at paragraph 14 (iii) above, any restriction in the area potentially available removes flexibility, constrains layouts and impacts on cost and yield for the Project. On that basis it is vitally important that the protective provisions which govern the Protected Area are in the form proposed by the Applicant and specifically that:
    a. Their application is justified by and contingent on E.ON E&P's own consenting processes (see paragraphs 7 to 13 above);
    b. They contain a requirement for E.ON E&P to act reasonably; and
    c. They do not interfere with the Applicant's existing obligations and protections flowing from its Agreement for Lease with the Crown and outside of the DCO process.
18. The Applicant considers that the protective provisions which it has proposed, incorporate substantial protections within a protected area previously acknowledged by E.ON E&P to be sufficient (and which the Applicant's experts have confirmed provide ample flexibility to achieve E.ON E&P's proposals). The Applicant therefore submits that the inclusion of these protective provisions within the DCO provides a pragmatic and robust solution to achieve successful co-existence. As more fully set out in Appendix L of the Applicant's Deadline VI submission the Applicant's protective provisions should be preferred to those proposed by E.ON E&P. The Applicant submits that the Applicant's proposed protective provisions address fully the remaining material concerns raised by E.ON E&P.

8.	The ExA would welcome the views of the Applicant, E.ON E&P Ltd and the Marine Management Organisation (MMO) on how the policies within the Eastern Inshore and Offshore Marine Plan (particularly the OG and WIND policies and GOV3) are secured by the proposed Hornsea Project 2 with respect to potentially competing/conflicting developments of wind energy and oil and gas exploitation.	E.ON E&P Ltd, Applicant, MMO

1. The Applicant would refer to Appendix S of the Response for its response to this question.

9.	Can the Applicant please submit into the examination a copy of the Journal Of Applied Ecology article by Cleasby et al (2015) which was discussed in the Issue Specific Hearing on 27 October 2015?	Applicant

1. The Applicant has provided a copy of this paper at Appendix T of the Response.

10.	Will Natural England (NE) please provide clarification of the reasons for the differences in their assessment of project impacts, in combination, on kittiwakes, between Hornsea Project 1 and Hornsea Project 2?	NE

1. The Applicant notes this question is directed towards Natural England, but would refer the Ex. A's attention to Appendix E of its response to Deadline VI for its comments on the matter.

11.	The views are sought of NE and the Applicant on the submission by the Wildlife Trusts (TWT) for Deadline 5 in relation to marine mammals and the potential Southern North Sea draft Special Area for Conservation (dSAC) for harbour porpoise; in particular TWT suggestions that: • the Applicant's addendum to its Habitat Regulation Assessment (HRA), in relation to consideration of the dSAC is not able to conclude 'no adverse impact on integrity'; • it is fundamentally incorrect to assess the effect on site integrity by predicting whether the impact will affect the whole North Sea population; • there is enough doubt and uncertainty as to the population consequences of disturbance at either a site or population level; and • that a high level of impact would result from the scenario of pile driving with no guaranteed mitigation of reduction of noise at source.	NE, Applicant, any other relevant parties

1. The Applicant has considered each point raised in this question in turn and responded accordingly in the following paragraphs.

the Applicant's addendum to its Habitat Regulation Assessment (HRA), in relation to consideration of the dSAC is not able to conclude 'no adverse impact on integrity'

2. The Applicant has reached its conclusion of no adverse effect (alone or in-combination) on the basis of following an analogous approach to that undertaken by DECC for Dogger Bank Teesside A & B and also that of Tidal Lagoon Swansea Bay. The Applicant would further note that Natural England have agreed this is the most appropriate approach to the assessment at this stage of the Project (as reflected within Section C of Natural England's response to Deadline V). This approach was agreed in the absence of information on the conservation objectives of the dSAC (which will be released as part of the consultation package for the dSACs, currently anticipated to be published for consultation in early 2016).

   it is fundamentally incorrect to assess the effect on site integrity by predicting whether the impact will affect the whole North Sea population

   The Applicant considers that its Addendum to the HRA is based upon the best available information and using the guidance from the SNCBs on the most appropriate population against which to measure the effects. The Applicant reiterates that, in the absence of any site specific conservation objectives, the assessment and conclusions remain appropriate and robust.

   there is enough doubt and uncertainty as to the population consequences of disturbance at either a site or population level

3. The Applicant has recognised the potential for uncertainty with regard to the population consequences of disturbance and, alongside adopting a highly precautionary approach throughout each stage of the assessment (as detailed within the SoCG (submitted at Appendix XX of the Applicant's response to Deadline I) with Natural England at paragraphs 7.2.8 to 7.2.11), has drawn on various scientific studies to build up a sufficient evidence base to support the conclusions. Furthermore, as previously identified by the Applicant (in its response to Natural England's response to EOMM5 at Deadline I, as submitted at Deadline II) the outputs from the interim DEPONS model, which specifically focuses on the population consequences of disturbance for harbour porpoise, do not contradict the Applicant's conclusions that even for a worst case cumulative scenario (multiple piling across all wind farms), the population would recover, with no long-term effects.

   that a high level of impact would result from the scenario of pile driving with no guaranteed mitigation of reduction of noise at source.

4. The Applicant highlights that mitigation will be applied to reduce the risk of injury from pile-driving (as secured through the MMMP commitment, provided at Condition 8 (2)(e) of the DMLs), but that due to the conclusion of no-long term effect from behavioural disturbance (as agreed with Natural England and evidenced at paragraphs 7.2.14 and 7.2.20 of the SoCG with Natural England, submitted at Appendix XX of the Applicant's response to Deadline I), there is no mitigation required to reduce the noise at source to mitigate for behavioural effects.

PART 2
The Applicant's response to the Second Rule 17 Letter

1.	Will the Applicant please ensure that all the documents referred to in Schedule M of the draft DCO [REP5-006] reference the most up-to-date version; incorporate all amendments agreed during the course of the examination and where appropriate are replaced with a consolidated version incorporating all agreed amendments and/or additions? In particular the Panel draws the Applicant's attention to: • The Book of Reference – Deadline VII version to be submitted. • Outline Code of Construction Practice – ensuring that all agreed amendments are incorporated into a consolidated version and a revision reference provided. • Outline Landscape Scheme and Management Plan – ensuring that any agreed amendments are incorporated in a consolidated version and a revision reference provided.	Applicant

1. The Applicant would refer to Appendix A of the Response, which provides Version 8 of the draft DCO. To confirm, Schedule M has been updated to ensure that the most recent versions of the referenced documents have been incorporated. The Applicant would refer to page 111 of the Schedule of Changes to the draft DCO (Appendix F of the Response), which sets out the updates to Schedule M.

2.	Will Natural England (NE) please identify a level of kittiwake mortality in-combination which it could accept would not have an adverse effect on the integrity of the Flamborough and Filey Coast pSPA and the Flamborough Head and Bempton Cliffs SPA?	Natural England

1. The Applicant notes this question is directed towards Natural England, but would refer the Ex. A to Table 1 of the MoU between the Applicant and Natural England submitted at Appendix Q of the Response, which sets out Natural England's in-combination conclusion for the kittiwake feature of the FHBC SPA and FFC pSPA.

3.	Please can the Applicant clarify whether there are there any other implications of the changes put forward by the Applicant on 4 December 2015? Your response should, as a minimum, include reference to the area of the seabed needed for the reduced number of turbines and the operations	Applicant

	proposed by E.ON E&P Ltd, and to navigation routes.	

1. The Applicant would refer to Appendix R of this Response, which provides a summary table to identify (for each relevant EIA parameter) the effect of the proposed refinements to the Project Design Envelope on each of the relevant EIA conclusions.
2. The Applicant can confirm that these changes will not affect the overall capacity of the Project (which remains as 1,800 MW), nor the overall Project boundary limits. The Applicant confirms the removal of the 5MW wind turbine option from the Project's design envelope does not reduce the area required for the wind farm itself and therefore no reduction to the generation asset boundary is justified on the basis of the removal of a turbine category option or reduced maximum turbine numbers. If a larger wind turbine is selected, the spacing between the turbines would normally be increased commensurately to ensure the Project operates productively and efficiently. Any reduction in the area removes flexibility for layouts which is required to avoid construction and operational constraints and to achieve an optimal energy yield. Any restriction on flexibility could therefore impact on cost and yield.
3. With particular regard to the Ex. A's query on the operations proposed by E.ON E&P and to navigation routes, as noted above, the proposed mitigations do not alter the Project's proposed boundaries.
5. As confirmed within Appendix R of the Response, the mitigation commitments do not increase the worst case scenarios presented within the Project's ES and HRA, nor alter the assessment conclusions presented therein. The Applicant can also confirm that the mitigation commitments will not result in the prediction of any significant effects where none had previously been identified.

4.	Please can the Applicant provide details of the underpinning assessment of the potential implications for offshore ornithology of the changes proposed on 4 December 2015	Applicant

1. As above, the Applicant would refer to Appendix R of the Response, which provides a summary table to identify (for each relevant EIA parameter) the effect of the proposed refinements to the Project Design Envelope on each of the relevant EIA conclusions. Specific to offshore ornithology, the Applicant would refer the Ex. A to pages 14 - 17 of Appendix R which considers the impact of the proposed mitigations on that particular receptor.
2. The collision risk has been re-modelled in both EIA and HRA terms and these were presented in Appendix B of the 4 December Submission.
2. The Applicant can confirm that the mitigation commitments do not increase the worst case scenarios presented within the Project's ES and HRA, nor alter the assessment conclusions presented therein. The Applicant can also confirm that the mitigation commitments will not result in the prediction of any significant effects where none had previously been identified.