

East Anglia THREE
Offshore Windfarm

East Anglia THREE

Statement of Common Ground

Whale and Dolphin Conservation

Document Reference – Deadline 2 / SoCG / WDC
and Applicant

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1 Introduction

1.1 Introduction

1. This Statement of Common Ground (SoCG) has been prepared with the Whale and Dolphin Conservation (WDC) to show where agreement has been reached with East Anglia THREE Limited (EATL) during the pre and post Development Consent Order (DCO) application consultation.
2. This SoCG comprises an agreement log which has been structured to reflect topics of interest to WDC on the East Anglia THREE DCO application (the **Application**).
3. The position with respect to each relevant issue is presented in a tabular form.
4. Throughout this document points of agreement and disagreement between EATL and WDC, are clearly indicated.
5. A glossary is provided in Appendix 1

1.2 The Development

6. The Application is for development consent to construct and operate up to 172 wind turbine generators and associated infrastructure, with an installed capacity of up to 1,200 MW (the **Project**).
7. The DCO, if made, would be known as the East Anglia THREE Offshore Wind Farm Order. It will comprise the following elements:
 - Up to 172 offshore wind turbines and associated foundations, with an installed capacity of up to 1,200 MW;
 - Up to two meteorological masts and foundations;
 - Up to twelve buoys;
 - Up to six offshore electrical stations;
 - Up to one offshore platform housing accommodation facilities;
 - Subsea inter-array cables between the wind turbines and offshore electrical stations;
 - Up to four subsea export cables to transmit electricity from the offshore electrical stations to shore;
 - Up to four interconnector cables between the East Anglia ONE and East Anglia THREE Projects;
 - Scour protection around foundations and on inter-array and export cables as required;
 - Landfall at Bawdsey with onshore transition bays to join the offshore and onshore cables;
 - Up to four onshore underground circuits (each containing up to three cables) pulled through existing ducting to be laid by East Anglia ONE or directly laid, running for approximately 37km from landfall to the connection point at Bramford, Suffolk, with jointing pits, to transmit electricity to up to two new onshore substations;

- Up to two onshore substations at Bramford, Suffolk, to connect the offshore windfarm to the National Grid;
- The permanent and / or temporary compulsory acquisition (if required) of land and / or rights for the proposed Project;
- Overriding of easements and other rights over or affecting land for the proposed Project;
- The application and / or disapplication of legislation relevant to the proposed Project including inter alia legislation relating to compulsory purchase; and
- Such ancillary, incidental and consequential provisions, permits or consents as are necessary and / or convenient.

8. The Application was submitted to the Planning Inspectorate on 18th November 2015 and accepted for examination on 15th December 2015.

1.3 Consultation with WDC

1.3.1 Pre-Application

9. EATL engaged with WDC on the Project during the pre-application process, both in terms of informal non-statutory engagement and formal consultation carried out pursuant to section 42 of the Planning Act 2008.
10. A meeting was held between EATL and WDC on 7th July 2014.
11. During formal consultation, WDC provided comments on the Preliminary Environmental Information (**PEI**) by way of email dated 21st July 2014 (the **Consultation Response**). This letter is attached at Appendix 2 to this SoCG.

1.3.2 Post-Application

12. WDC made a relevant representation to the Planning Inspectorate on 3rd March 2016 (the **Relevant Representation** attached at Appendix 3). Following a meeting on 16th of May 2016 and subsequent communication with WDC agreement was reached on certain matters previously raised by WDC.

2 Agreement Log

13. Within the sections below the different topics for areas of agreement between WDC, and EATL are set out.

2.1 Marine Mammals

14. The Project has the potential to impact upon Marine Mammals; WDC is commenting only on issues relating to cetaceans and not pinnipeds. Chapter 12 of the East Anglia THREE ES (Document 6.1.12 of the DCO Application) provides an assessment of the significance of these impacts in relation to Environmental Impact Assessment (EIA) while the Information for the Habitats Regulations Assessment Report (Document 5.4 of the DCO Application) provides an assessment with regard to the potential for likely significant effects on European sites as a result of the proposed East Anglia THREE Project. Management and mitigation measures are provided within the following documents of the DCO Application; 6.8 Schedule of Mitigation (Offshore), 8.12 In Principle Monitoring Plan (IPMP) and 8.15 Draft Marine Mammal Mitigation Protocol (MMMP). Table 1 below provides areas of common ground that have been reached regarding the findings reported within that chapter and identifies areas where agreement is still to be reached.

Table 1. SoCG - Marine Mammals

Issue	EATL position	WDC Position
Environmental Impact Assessment		
Description of baseline conditions on Marine Mammals.	The ES adequately characterises the baseline relevant to Marine Mammals. Zone and project specific surveys which have been completed in the region have been used to inform the existing environment section of the chapter. These surveys are: <ul style="list-style-type: none"> • The Crown Estate Enabling Actions high-definition video aerial surveys of Zone 5. November 2009 – March 2010, completed by HiDef Aerial Surveying Ltd; • EAOW boat based surveys of the East Anglia ONE site, May 2010 – April 2011, completed by The Institute of Estuarine and Coastal Studies (IECS); • EAOW aerial digital surveys of the East Anglia ONE site 	WDC acknowledges that the assessment has been based on the best available evidence. However, we are concerned there are gaps in the data on cetaceans in the area. e.g. the SCANS data are only one seasonal snapshot in time, with a 10 year gap between collection of datasets. It is not therefore appropriate to be used for assessing the baseline for marine mammals. We are therefore concerned there is insufficient baseline data to characterise the environment. WDC are concerned by the lack of boat based surveys in EA3 area. The assessment was based on based surveys for East Anglia ONE offshore wind farm; these surveys covered East Anglia ONE wind farm site plus a 4km buffer only, and did not extend to East Anglia THREE site. The methodology used to survey

Issue	EATL position	WDC Position
	<p>(plus 4km buffer), April</p> <ul style="list-style-type: none"> • 2010 – October 2011, completed by APEM Ltd; • EAOW aerial digital surveys of the East Anglia Zone, April 2010 – October 2011, completed by APEM Ltd; and • EAOW aerial digital surveys of the East Anglia THREE site (plus 4km buffer), September 2011 – August 2013, completed by APEM Ltd (Appendix 12.2). <p>In addition, existing data sets (e.g. SCANS, SCANS II were used for context, listed in Table 12.16 of the ES)</p> <p>To address issues of positive identification of animals from aerial survey a precautionary approach was used whereby all unidentified small cetaceans in the aerial survey data were used in the estimation of harbour porpoise density.</p> <p>The approach to the impact assessment has been consulted on and agreed with Natural England in the Marine Mammals Expert Topic Group as part of the Evidence Plan process</p>	<p>marine mammals was designed for surveying seabirds in relation to offshore wind farms. Marine mammal surveys that are developed as an add-on to boat based bird surveys are inadequately designed monitoring programmes that cannot provide robust data to fully assess the population of marine mammals that could be impacted by pile-driving.</p> <p>WDC agree that the applicant has taken a precautionary approach to aerial surveys by assigning any unidentified cetaceans as harbour porpoise. We believe this is the best approach as it is well known it is hard to identify marine mammals to species level from high definition aerial surveys.</p> <p>The difficulty of identifying marine mammal at species level from aerial surveys causes us to be cautious about the results of the survey and using these without a correlating boat-based surveys to obtain accurate baseline data</p>
<p>Results of the assessment of impacts on Marine Mammals.</p>	<p>The ES accurately assesses the potential impacts upon Marine Mammals.</p> <p>In the ES all potential impacts have been assessed for harbour porpoise and a precautionary approach has been undertaken, including for cumulative impacts, for example, worst-case scenarios were used in all assessments; all unidentified small cetaceans in the aerial survey data were used in the estimation of harbour porpoise density.</p> <p>The conclusions of the impact assessment has been consulted</p>	<p>As detailed above, WDC are concerned that the baseline data is not robust enough to provide an accurate baseline on which to accurately assess impacts on cetaceans, in particular harbour porpoises.</p> <p>WDC have strong concerns that the ES does not adequately assess the impacts on harbour porpoises, from either the development of the EA3 or cumulatively.</p>

Issue	EATL position	WDC Position
	<p>on and agreed with Natural England in the Marine Mammals Expert Topic Group as part of the Evidence Plan process</p>	
Habitats Regulations Assessment		
<p>The results assessment of effects upon current designated sites and effects which require consideration in HRA.</p>	<p>Based upon the full screening exercise there is no potential for Likely Significant effect (LSE) on any site currently designated for harbour porpoise.</p>	<p>WDC agree that there is currently no potential for the development to negatively impact currently designated sites for harbour porpoises.</p>
<p>The results assessment of effects upon future designated sites and effects which require consideration in HRA.</p>	<p>At the time of the submission of the Application there is insufficient information available to undertake a meaningful assessment of the Southern North Sea possible Special Area of Conservation (pSAC).</p> <p>When sufficient information is available EATL will undertake further assessment. It is anticipated that this assessment will be undertaken prior to the Planning Inspectorate drafting the Report on the Implications for European Sites (RIES)</p>	<p>East Anglia 3 is within the Southern North Sea pSAC for harbour porpoises is. Guidance from SNCBs state that application should be undertaken using the draft Conservation Objectives provided in the pSAC consultation documents.</p> <p>WDC appreciate that the details of the Southern North Sea pSAC were not available at the time of submission, and that the management and conservation objectives for the site are still in draft form. However, it must now be treated as a material planning consideration and an HRA will have to be conducted.</p> <p>The plans for EA3 are highly likely to affect conservation and management objectives of the pSAC for harbour porpoises, therefore the current HRA is not sufficient and will need to be revised. We believe that significant changes will be needed once the site boundaries and conservation and management objectives are known. We recommend that the current HRA is treated as a temporary assessment until the site boundaries and conservation and management objectives of the pSAC are available, at which point a full and robust HRA must be undertaken.</p> <p>The HRA must consider not only the project independently, but also cumulatively taking into</p>

Issue	EATL position	WDC Position
		account other plans and projects that will impact the harbour porpoise at both a site and population level.
Management measures		
<p>Mitigation proposed to address the impacts on Marine Mammals as set out in the Schedule of Mitigation (Offshore), IPMP and draft MMMP.</p>	<p>Based on draft ES chapters the Impacts are expected to be low for harbour porpoise and that additional mitigation (beyond embedded mitigation) is not necessary. At the time of writing the draft MMMP, Marine Licence conditions for other offshore wind farms required that the MMMP <i>“provide suitable mitigation measures to prevent injury to marine mammals”</i>.</p> <p>EATL confirms their ongoing support of strategic initiatives and will continue to work with other developers, Regulators and SNCBs in order to understand and reduce cumulative impacts where possible and improve the evidence base.</p> <p>As stated in Section 12.3.2 of the ES: <i>“The MMMP would be developed in the pre-construction period and will be based upon best available information and methodologies at that time in consultation with the relevant authorities.</i></p> <p><i>EATL will continue to review the development of alternative foundation installation (through industry and academic studies) and more efficient mitigation options for marine mammals.”</i></p> <p>No additional mitigation is necessary for shipping noise.</p> <p>No additional mitigation is necessary for other noise inducing impacts.</p>	<p>WDC strongly disagrees that the impacts are expected to be low for harbour porpoise. Reactions of harbour porpoises to pile driving has been recorded at distances up to 15 km from the piling site is loud enough to be audible by harbour porpoises beyond 80 km from the source and could mask communication at 30 – 40 km. Taking into account importance of the site for harbour porpoises, we are concerned that the conclusion of ‘low impact’ is not at all adequate.</p> <p>WDC has concerns about the accuracy of the noise modelling identified in the ES. WDC note that Southall et al. (2007) has been used for noise modelling in the ES. Whilst currently this is the only model available to developers, there are many limitations to this modelling approach (acknowledged in the Southall paper itself), and they are extensive. WDC are concerned that by using this model, and not taking into account current research noted above, that the impact ranges identified by the applicant are inaccurate and misleading.</p> <p>We also strongly disagree that no additional mitigation measures are required, particularly during the construction phase. The draft MMMP does not mention disturbance, just injury we also believe mitigation is required to minimise cumulative impacts.</p> <p>WDC notes that the JNCC guidance has been detailed in the ES, however we do not consider these to be adequate mitigation measure to ensure there are no</p>

Issue	EATL position	WDC Position
		<p>significant impacts especially for developments in close proximity to important and critical habitat areas. Consideration of real-time mitigation measures should include noise reduction, such as acoustic barrier methods and other techniques that have been proven in recent demonstration scale trial studies - Wilke (2012) and Diederichs et al., (2013).</p>
	<p>The European protected Species (EPS) licence will be applied for after the DCO application is consented, prior to the onset of construction, once more detailed design work has been carried out and is available to inform the licence application, and in consultation with the relevant stakeholders .</p> <p>EATL has offered to informally consult WDC on the EPS licence however, it is a matter for the consenting authority of the EPS licence to determine whether to formally consult WDC.</p>	<p>WDC are aware that the EPS licence will be applied for if consent is given, and prior to construction. We request to be involved and give feedback on these documents.</p>
	<p>It is agreed that the draft MMMP will be developed post consent in consultation with stakeholders</p> <p>EATL has offered to informally consult WDC on the MMMP, however, it is a matter for the the MMO as consenting authority to determine whether to formally consult with WDC.</p>	<p>WDC are pleased to see a draft MMMP is already available to comment upon. We accept that the details of the MMMP cannot be determined until closer to construction. Given the importance of the MMMP, we would like to be consulted as it develops, and are currently in discussions with EATL to achieve this.</p>

Signing box: The undersigned agreed to the provisions within this SoCG - WDC

Signed	
Printed Name	Vicki James
Position	Stop Whaling and Science Officer
On behalf of	Whale and Dolphin Conservation
Date	22/07/2016

Signing box: The undersigned agreed to the provisions within this SoCG – EATL

Signed	
Printed Name	Keith Morrison
Position	East Anglia THREE Senior Project Manager
On behalf of	East Anglia THREE Limited
Date	22/07/2016

Appendix 1: Glossary

DCO	Development Consent Order
DML	Deemed Marine Licence
EATL	East Anglia THREE Limited
EIA	Environmental Impact Assessment
EPS	European Protected species
ES	Environmental Statement
HRA	Habitats Regulations Assessment
IPMP	In Principle Monitoring Plan
LSE	Likely Significant Effect
MMMP	Marine Mammal Mitigation Protocol
MMO	Marine Management organisation
MW	Megawatt
PEI	Preliminary Environmental Information
SoCG	Statement of Common Ground
WDC	Whale and Dolphin Conservation

Appendix 2: Pre-application Response

-----ORIGINAL MESSAGE-----

FROM : vicki.james@whales.org

Dear Sir/ Madam,

I have recently signed up for updates for East Anglia 3 offshore wind farm, and I am aware that my colleague Sarah Dolman met with you earlier this month to discuss marine mammals and the development.

She has passed me the notes from the meeting and I would like to ensure that WDC are further consulted on this development, and that you contact me as I am responsible for our work on offshore renewable developments in English waters; Sarah works on Scottish offshore renewables.

My understanding is the next time we can comment is when the ES is produced, can you confirm this and let me know when this will be?

Best wishes

Vicki

[WDC - Whale and Dolphin Conservation]<<http://www.whales.org/>>

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Appendix 3: Post-application Relevant representation and response

Vicki James
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 38 St Paul Street
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 Wiltshire
 SN15 1LJ

FREEPOST RSTC-EJEY-RKRX
 1 Atlantic Quay,
 45 Robertson Street,
 4th Floor,
 Glasgow, G2 8JB

2016-06-01

Dear Vicki,

Planning Act 2008

East Anglia THREE Limited

The Proposed East Anglia THREE Offshore Wind Farm Order

Relevant Representation reply letter (Appendix to the SoCG between Whale and Dolphin Conservation and EATL)

East Anglia THREE Limited (EATL) would like to thank you for taking the time to provide a relevant representation to the development consent order application made by EATL for the East Anglia THREE offshore wind farm.

In this letter we provide a reply to all the comments you have made in your relevant representation. In order to do this in a clear and transparent manner this is in the form of a tabulated response.

This letter will form an appendix to the final Statement of Common Ground (SoCG) between Whale & Dolphin Conservation (WDC) and EATL.

Relevant Representation Comment	EATLs response
The North Sea offers a variety of rich cetacean habitats, and East Anglia THREE offshore wind farm lies within the Southern North Sea pSAC for Annex II species harbour porpoise (<i>Phocoena phocoena</i>). In particular, the development lies in an area of the pSAC where harbour porpoises are found throughout the year, and where key prey species for the harbour porpoise occur.	Noted.
The harbour porpoise is considered particularly vulnerable to disturbance, injury or death from the noise generated by pile driving, which is also potentially capable of damaging hearing of harbour porpoises and driving away key prey species.	Noted. All of these potential impacts have been assessed within the Environmental Impact Assessment and recorded in the Environmental Statement at Chapter 12 (Document Reference – 6.1.12) sections 12.6 and 12.7.
Research conducted so far has shown the potential for pile driving to be audible by harbour porpoises beyond 80 km from the source, cause behavioural changes in harbour porpoises up to 15 km from the piling site and could mask communication at 30 – 40 km. In many areas harbour porpoises left the area during construction and in some instances did not later return to their usual numbers. Even where areas have been recolonised, it is not clear if these are the same animals returning or new animals moving into the area.	The assessment has looked at both physical and behavioural effects upon harbour porpoise, using site specific data and modelling together with a full review of relevant information and studies. EATL have undertaken a precautionary assessment, the methodology and outcomes of which have been agreed with Natural England.
The construction of East Anglia THREE offshore wind farm has the potential to negatively impact the integrity of	At this time it is not possible to rule out LSE upon the integrity of the Southern North Sea pSAC, however at the time of the submission of the application there was

Relevant Representation Comment	EATLs response
<p>the Southern North Sea pSAC, not just in the immediate area, but also further ranging due to the distances at which harbour porpoises can be negatively impacted by noise generated during the construction period.</p>	<p>insufficient information available to undertake a meaningful assessment of the Southern North Sea pSAC. As further information becomes available EATL will undertake further assessment. Following advice from Natural England, it is anticipated that this assessment will be undertaken prior to the Planning Inspectorate drafting the Report on the Implications for European Sites (RIES).</p>
<p>WDC is concerned about the potential for cetaceans, in particular harbour porpoises, to be disturbed and displaced, including by the noise introduced into their environment. Noise will be produced throughout the life of the development, including construction, operation and decommissioning, and from associated vessel traffic. Marine renewables impact on cetaceans in ways ranging from collisions to habitat displacement due to the effects of noise and disturbance.</p>	<p>The EIA assessed noise impacts from all phases of the development, notwithstanding, the recognition that construction noise is likely to have the greatest effect. Sections 12.6.1.1 to 12.6.1.3 of the Environmental Statement records the assessment of impacts underwater: sections 12.6.2.1 to 12.6.2.3 considers the impacts of underwater noise during operation; section 12.6.3.1 considers impacts of underwater noise during decommissioning and section 12.7.1 considers cumulative impacts of underwater noise.</p>
<p>Noise pollution has the potential to displace animals and populations, interfere with normal behaviour and, at very high intensities, be physically damaging. All cetaceans are offered 'strict protection' under the Habitats Directive.</p>	
<p>The cumulative effects of these developments with other industries operating in the marine environment, such as other renewable developments, shipping and oil and gas exploration, are also largely unknown. Yet it is important that cumulative and in-combination impacts be adequately considered and our understanding developed.</p>	<p>EATL have produced a cumulative impact assessment (Section 12.7) that is intended to be comprehensive and precautionary. The assessment highlights the many areas of uncertainty and precaution involved when looking at both the effects and the likely scenarios of projects constructing and operating in future.</p>

We aim to reach agreement on all of the matters included in the table above and any other matters arising through the Statement of Common Ground with WDC.

If you wish to discuss the above, or any other issues in connection with the Project, please contact Keith Morrison, East Anglia THREE Senior Project Manager, ScottishPower Renewables, 4th Floor, Atlantic Quay, Glasgow G2 8JB or by email at Eastangliathree@scottishpower.com

Yours faithfully



Keith Morrison
Senior Project Manager

ScottishPower Renewables
Offshore Wind Development

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