

East Anglia THREE  
Offshore Windfarm

East Anglia THREE

# Written Summary of Oral Submissions (Applicant, DCO)

Document Reference – Deadline 4/ DCO ISH/  
Hearing Written Summary of Oral Submissions  
(Applicant's Response)

Question to:		Question:
<b>Applicant's Written Responses: DCO Issue Specific Hearing, 8 September 2016</b>		
<b>RAA</b>	<b>Revisions and Drafting Changes Arising from the Applicant</b>	
RAA1	ExA	<p>Applicant's review of the substantive changes made in the latest version of the dDCO, and the ExA's questions arising (including agenda item 7 on compulsory acquisition and temporary possession provisions, and agenda item 8 on Requirement 36 in respect of the relationship between the application proposal and the consented EA ONE project).</p> <p>Discussion of proposed changes.</p>
RAA1	Applicant's response	<p><u>General points</u></p> <p>The Applicant has reviewed and updated the draft Order in light of the recent appointment of the new Secretary of State for Business, Energy and Industrial Strategy.</p> <p>The Applicant proposes to submit a 'Plan of Plans' to show the relationships between the documents specified in the draft Order, and how these are secured by the draft Order at Deadline 5.</p> <p><u>Interpretation</u></p> <p>Article 2 has been amended so that "connection works" refer to Work No. 5B instead of Work No. 4B. The word "inclusive" has also been added for clarity.</p>

Question to:	Question:
	<p>The Applicant has given further consideration to the definition of "commence", and has amended this to refer to section 155 of the Planning Act 2008, in line with the definition contained in the East Anglia ONE Order.</p> <p><u>Private Rights</u></p> <p>The Applicant has considered Article 18 in the context of the wording adopted by the Secretary of State in the Hornsea 2 Order. The Applicant has updated Article 18 to follow the wording adopted in the Hornsea 2 Order, save in respect of references which are specific to the Hornsea 2 project.</p> <p><u>Compulsory acquisition</u></p> <p>The purpose of Article 23(8)(a) is to make clear that as well as exercising temporary powers over the land listed in Schedule 7 the Applicant may exercise powers to compulsory acquire rights over those plots at any time in the process, but only to the extent that the plots listed in Schedule 7 are also listed in Schedule 5. Article 23(8)(a) has been amended to clarify the Applicant's intention in this regard.</p> <p>The Book of Reference lists "not used" plots. The purpose of this is to ensure transparency to stakeholders by ensuring that the East Anglia ONE and East Anglia THREE plot references remain consistent across both projects. Where plots are additional to those referred to in the Book of Reference for East Anglia ONE, the plot number is followed by a letter. The "not used" plots do not need to be referred to within the schedules to the draft Order, as no rights or powers are sought over those plots for the East Anglia THREE project. Amendments have been made to Schedule 5 of the draft Order accordingly.</p> <p><u>Crown rights</u></p> <p>The Applicant is currently in discussions with The Crown Estate as to whether Article 37 should be</p>

Question to:	Question:
	<p>amended in line with the wording contained in the Hornsea 2 Order. The Applicant intends to update the ExA further at the next DCO hearing.</p> <p><u>Requirements</u></p> <p>At Requirement 3(8) the Applicant has included parameters for each offshore phase if the project is constructed in two offshore phases. The ExA asked whether it was necessary to include parameters if the project was constructed in a single offshore phase. The Applicant does not consider it necessary to do so because this is already apparent from the description of Work Nos. 1 and 2.</p> <p>The reference to the number and location of kiosks has been deleted in Requirement 12. This is because the number and location of kiosks is dependent on the number and location of jointing bays. This amendment was made to the East Anglia ONE Order as part of the non material change order. At the first draft DCO issue specific hearing the Local Authorities confirmed that they were content with this and did not consider that it gives rise to any concern. In arriving at this conclusion, the Local Authorities noted that they would still be required to approve the scale and appearance of the kiosks, and that the Applicant had made a commitment to locate kiosks, where possible, close to field boundaries and hedgerows to assist in visual screening. This is secured in the OLEMS. The Applicant has also reviewed the use of the term "may" and has amended this as considered appropriate.</p> <p>The Applicant has reviewed and amended Requirement 13 to include reference to future inspection and maintenance of the landfall works.</p> <p>The Applicant has reviewed Requirement 14 and amended it to ensure that the landscape management scheme must also deal with soil retention, handling and protection.</p> <p>Although Requirement 22 does not expressly refer to the CEMP, this is referred to within the OCoCP which is itself referred to in Requirement 22. The reference to the OCoCP in Requirement 22</p>

	Question to:	Question:
		<p>therefore secures works to be undertaken in accordance with the CEMP.</p> <p>The Applicant has considered whether it is appropriate to amend Requirement 23 to refer to the guidance contained in 'Bats and Lighting in the UK (Bat Conservation Trust (BCT) and Institute of Lighting Engineers (ILE) 2009'. Incorporating lighting sensitive to bats, in accordance with this guidance, is secured through the OLEMS. However, as part of preparation of the 'Plan of Plans' further consideration will be given to whether this should be referred to specifically within Requirement 23.</p> <p>The drafting of Requirement 25 follows the approach adopted on East Anglia ONE. The Local Authorities confirmed that they were content with the drafting and did not anticipate that it would give rise to any issues in practice. The Applicant and the Local Authorities expressed a preference to retain the current drafting given it followed the wording of the corresponding requirement contained in the East Anglia ONE Order.</p> <p>Requirement 36 has been amended so that if any East Anglia ONE temporary works are proposed to be retained, the scheme submitted to the Local Planning Authority must include details of the date of the transfer of those temporary works under Article 5 of the East Anglia ONE Order. The Applicant does not consider it necessary to define 'temporary works' within Requirement 36 of the draft Order. The extent of any temporary works will be defined by the scheme to retain certain temporary works in situ, as submitted by East Anglia ONE under Requirement 28 of the East Anglia ONE Order, to the extent that those works are then proposed to be re-used by East Anglia THREE and therefore included in the scheme submitted under Requirement 36 of the draft Order. In addition, the expression is widely understood and is used in, for example, Article 23(1)(c) and 23(4) (temporary use of land for carrying out the authorised project) and Article 24(1)(b) and 24(5) (temporary use of land for maintaining authorised project). It is also referred to in Part 2 paragraph 1(c) (Ancillary works).</p>

Question to:		Question:
<b>ROP</b>	<b>Revisions and Drafting Changes Arising from the Other Hearing Participants</b>	
ROP1	ExA	Revisions and drafting changes to the latest version of the dDCO, arising from other hearing participants.
ROP1	Applicant's response	<p>Some additional changes to the draft DMLs have been agreed with interested parties and these will be incorporated in the version of the draft Order submitted at Deadline 4. Broadly speaking, the additional changes cover the following points:</p> <ul style="list-style-type: none"> <li>• Additional wording to clarify maximum amounts of scour protection (requested by the MMO);</li> <li>• Additional wording to deal with pre-construction surveys and potential impact on offshore heritage (requested by Historic England);</li> <li>• Proposals for monitoring cables and cable protection during operation (requested by the MMO);</li> <li>• A parameter for maximum hammer energy (requested by Natural England);</li> <li>• Restrictions on licensed activities at Site 30 (requested by MMO).</li> </ul> <p>In addition, references to the disposal site will need to be added to the DMLs. Disposal will be licensed by the DMLs (see Part 1, Paragraph 2(d)) and Condition 11(5) of the DMLs sets restrictions on licensed disposal. The location of the proposed disposal site is set out in the Site Characterisation Report, which was submitted as part of the East Anglia THREE application documents. It is anticipated that the additional disposal references for inclusion in the DML will be available by the next DCO hearing.</p>
<b>PPS</b>	<b>Protective Provisions</b>	

Question to:		Question:
PPS1	ExA	Applicant's review of all requests for protective provisions and progress made in settling these.
PPS1	Applicant's response	<p><a href="#">Eni's request for protective provisions</a></p> <p>The Applicant has been in correspondence with Eni and the preceding licence block holders JETEX since February 2013 with regard to their respective plans. The Applicant made contact with Eni in April this year with a view to updating on their respective plans and projects, and following a telephone conference call in May the Applicant submitted to Eni a draft Statement of Common Ground to document the consultation which had taken place with Eni and a commitment to future liaison as respective proposals were firmed up.</p> <p>Eni responded in June 2016 indicating "<i>we are at a stage of the engagement process at which it is premature to sign a document in the nature of the draft. Our preference would be, as appropriate, to enter into a detailed cooperation/coordination agreement at a later stage in order to address specific interface matters (such as practical coordination of our respective activities)</i>". An update meeting was then suggested for mid-July but this meeting has not taken place.</p> <p>Eni then submitted their written representation dated 27 July which went further than leaving matters open until a coordination agreement had been entered into. In particular they proposed that protective provisions should be included in the DCO.</p> <p>The Applicant's position with regard to Eni's written representation is as follows:</p> <ul style="list-style-type: none"> <li>• The Applicant welcomes Eni's view that Eni's proposed oil and gas activities can safely coexist with the East Anglia THREE project.</li> <li>• The Applicant agrees with Eni that it is unlikely to be possible to conclude a coordination</li> </ul>

Question to:	Question:
	<p>agreement in the short term. This is because the agreement will first need to address "specific interface matters" and will first need to take account of how the "parties' activities continue to evolve", on such matters as positioning of wells and oil and gas installations, seismic surveys and support operations for oil and gas activities and any programming of exploration and development. However it is not yet known how, if at all, the turbines, cabling or safety zones might limit such matters as well positioning, drilling rig access, platform and sub-sea structure positioning, pipeline and umbilical routing, ability to undertake large scale seismic surveys for known prospects or general support act operations for installations.</p> <ul style="list-style-type: none"> <li>• As yet Eni have not provided any detail of why any coexistence agreement may be required at all, how the licensed plots are to be progressed, whether such progress would run concurrently with the project and how, if at all, any exploitation of its licensed interests might coincide with the applicant's programme for construction and operation of the wind farm. Until this detail is provided and "specific interface matters" can be clarified in greater detail, it is not possible to draw up a suitable coordination agreement.</li> <li>• It would therefore be inappropriate to include any protective provisions in the DCO as Eni have suggested. This is for a number of reasons: primarily though, it is not yet known what assets or plans these provisions would be designed to protect.</li> <li>• Any form of protective provisions would alter the balance of any discussions envisaged by NPS EN-3 paragraphs 2.6.180–181. The Applicant has engaged with Eni during the development phase and it has been agreed that the conclusion of any coordination agreement to address specific interface matters will come at a later stage. The Applicant is committed to seeking solutions during the life of the development "that [as stated in NPS EN-3] allow offshore wind farms and other uses of the sea to successfully coexist". The guidance in NPS EN-3 does however recognise the possible need for stakeholder engagement to continue post consent.</li> </ul>

Question to:	Question:
	<ul style="list-style-type: none"> <li>• Eni's proposal fails to recognise the purpose of protective provisions which is the protection of an undertaker's apparatus or clearly defined proposals. In the present case there is no identifiable apparatus to protect and there are no clearly defined proposals which have been communicated to the Applicant. Although Eni cite the Hornsea 2 Order, in fact only protective provisions relating to oil and gas interests which relate to existing oil and gas infrastructure were included in the Hornsea 2 Order. The draft protective provisions put forward in the case of E.ON related to programmes that were significantly further developed with potential development areas and likely development concepts.</li> <li>• Eni's proposal does not recognise the balance of any discussions envisaged by the DECC guidance on the oil and gas clause in Crown Estate leases which suggest that for a coexistence or coordination agreement to be entered into it first needs to be clear that there may be a conflict; a number of clear parameters are then needed for the bilateral discussions to take place; and any agreement will need where possible, to balance the needs of both parties having regard to alternative locations, options for coexistence and assessment of technical solutions, with a view to minimising any potential conflict.</li> </ul> <p>The Applicant currently takes the view that negotiations on a coexistence or coordination agreement, if required at all, should take place at a later stage and only at a stage where it is clear that there may be a potential conflict and when parameters such as alternative locations, options for coexistence and technical solutions can be more clearly defined. In this regard the Applicant notes, and welcomes, the comment in the Eni written representation dated 27 July 2016 that:</p> <p style="margin-left: 40px;">"(a) <i>Eni believes that its proposed oil and gas activities under United Kingdom Petroleum Production Licences P.1964, P.1965 and P.2251 ("Licences") can safely and successfully coexist with the Project.</i></p> <p style="margin-left: 40px;">(b) <i>To this end, Eni has commenced early discussions with the Applicant in relation to the interface between its proposed activities and those of the Applicant. The ultimate aim of these discussions will be to conclude a fully termed coordination agreement to</i></p>

Question to:		Question:
		<p><i>enable both parties' activities to interface safely and successfully."</i></p> <p>The Applicant reiterates that it is willing to engage in any discussions as may be needed with a view to concluding a coordination agreement but only at the appropriate stage, and without the need for any specific protective provisions which would in any event not properly balance the respective positions of the interested parties.</p>
<b>IRM</b>	<b>Implications for the Draft DCO Arising from Recently Made DCOs</b>	
IRM1	ExA	What are the Applicant's views on the differences between the Hornsea Two DCO and the EA THREE draft DCO?
IRM1	Applicant's response	<p>Matters relating to Private Rights and Crown Rights are dealt with above. The Applicant has also considered the Secretary of State's approach with regard to securing mitigation in respect of the Southern North sea pSAC. The Applicant's approach is explained further below.</p> <p><u>Southern North Sea pSAC</u></p> <p>The Applicant has included separate conditions in the DMLs which deal, firstly, with mitigation requirements in relation to mortality and injury to marine mammals (the Marine Mammal Mitigation Protocol) and secondly the avoidance of significant disturbance of harbour porpoise in relation to the pSAC site conservation objectives.</p> <p>DML conditions 13(2)–13(4) will specifically capture a pSAC Site Integrity Plan. This plan will outline project related measures to ensure the avoidance of significant disturbance of harbour porpoise in relation to the pSAC site conservation objectives and hence allow the conclusion of no adverse effect</p>

Question to:	Question:
	<p>on the pSAC.</p> <p>Condition 13(f) will capture the Marine Mammal Mitigation Protocol and will reflect the purpose of the MMMP which is to set out mitigation requirements in relation to mortality and injury (but not significant disturbance) to marine mammals.</p> <p>Any requirements relating to mitigating acoustic disturbance in relation to European Protected Species (EPS) will be captured through the EPS licensing process.</p> <p>Both the MMMP and EPS Licensing cover any marine mammals which may be present, and not just harbour porpoise.</p> <p>In drafting conditions 13(2)–13(4) the Applicant has had regard to the drafting of conditions 8(6)–(10) of the DMLs in the Hornsea 2 Order but has made a number of refinements to those conditions in consultation with the MMO and Natural England and other interested parties. These refinements are explained below.</p> <p>In drafting condition 13(f) the Applicant has had regard to the drafting of condition 8(e) of the DMLs in the Hornsea 2 Order but has omitted any listing of potential mitigation measures (since these are set out in the submitted draft MMMP which will be a certified document in the draft East Anglia THREE DCO) and has deleted the reference to "and/or significant disturbance" since this is not a purpose of the MMMP. These amendments have been made in consultation with MMO and Natural England.</p> <p><u>Condition 8 of the Hornsea 2 Order</u></p> <p>Conditions 8(6)–(10) of the DMLs in the Hornsea 2 Order read as follows</p> <p>"8(6) <i>In the event that driven or part-driven pile foundations are proposed to be used, the MMO must not approve the plan referred to in paragraph (1) or the code referred to in paragraph (2) unless the MMO is satisfied, after consulting such persons as the Secretary of State may</i></p>

Question to:	Question:
	<p><i>specify in relation to the plan or the part of the code specified by the Secretary of State (in addition to the persons with whom consultation is otherwise required under this Condition), that either the plan or code (or both of them) provides such mitigation as is necessary to avoid adversely affecting the integrity (within the meaning of the 2007 Regulations) of a relevant site, to the extent that marine mammals are a protected feature of that site.</i></p> <p>(7) <i>The mitigation referred to in paragraph (6) may include (without limitation) –</i></p> <p>(a) <i>seasonal restrictions to piling;</i></p> <p>(b) <i>scheduling of piling, having regard to previous, ongoing and future piling associated with other offshore developments, based on an updated assessment of cumulative impacts;</i></p> <p>(c) <i>subject to the terms and conditions of this licence, changing the location of wind turbine generators;</i></p> <p>(d) <i>the use of alternative foundation methodologies, such as jacket foundations (suction piles) or gravity base foundations;</i></p> <p>(e) <i>the use of noise reduction at source technologies;</i></p> <p>(f) <i>the use of other relevant technologies or methodologies that may emerge in the future.</i></p> <p>(8) <i>[Definition of "relevant site"]</i></p> <p>(9) <i>[Treatment of the pSAC as a European offshore marine Site]</i></p> <p>(10) <i>[Definitions of "2007 Regulations", "disturbance", "European offshore marine Site",</i></p>

Question to:	Question:
	<p data-bbox="757 347 1780 379"><i>"European Site", "Southern North Sea possible Special Area of Conservation"</i></p> <p data-bbox="638 411 1317 443">Conditions 8(6) – (10) set out an approach whereby:</p> <ul data-bbox="689 483 1944 1121" style="list-style-type: none"> <li data-bbox="689 483 1944 579">• In 8(6) it is the plan referred to in paragraph (1) (i.e. the plan setting out details of the authorised scheme) or the code referred to in paragraph (2) (i.e. the Code of Construction Practice) which must not be approved by the MMO unless they provide suitable mitigation</li> <li data-bbox="689 619 1944 715">• In 8(6) the MMO must be satisfied that either the plan or code (or both of them) provides such mitigation as is necessary to avoid an adverse effect on integrity of a relevant site (as defined) to the extent that marine mammals are a protected feature of that site</li> <li data-bbox="689 754 1944 882">• In 8(6) before the MMO satisfies itself as to the suitability of the mitigation it must consult <i>"such persons as the Secretary of State may specify in relation to the plan or the part of the code specified by the Secretary of State (in addition to the persons with whom consultation is otherwise required)"</i></li> <li data-bbox="689 922 1944 1018">• In 8(7)(a)–(f) examples of mitigation are set out. In the case of Hornsea 2 it was thought helpful to specify examples of mitigation measures in order to give some certainty to the Secretary of State that the mitigation was achievable.</li> <li data-bbox="689 1058 1944 1121">• "Relevant site" is defined at 8(8), provisions as to the treatment of the pSAC as a European offshore marine site are set out at 8(9) and other definitions are set out at 8(10).</li> </ul> <p data-bbox="638 1161 1160 1193"><u>Refinements to the Hornsea 2 Condition</u></p> <p data-bbox="638 1225 1944 1289">A number of refinements have been made to the Hornsea 2 condition in conditions 13(2)–13(5) of the draft East Anglia THREE Order.</p>

Question to:		Question:
		<ul style="list-style-type: none"> <li>• Rather than linking approval to details of the authorised scheme or Code of Construction Practice (or in the case of the East Anglia THREE draft Order, the design and the construction programme or the construction method statement), condition 13(2) requires the submission of a freestanding Site Integrity Plan (SIP) for approval by the MMO to accord with an in principle SIP which would in turn be a certified document in the DCO. An in-principle SIP has been consulted on with the MMO and Natural England and the opportunity to comment on this has been given to other interested parties.</li>   <li>• There is no requirement for the MMO to consult with such persons as the Secretary of State may specify. It is considered that the in principle SIP sets out with sufficient clarity the potential mitigation measures available and the way in which the MMO approval process would operate. Interested parties will have had the opportunity to comment on the in-principle SIP in the course of the examination. Once adopted as a certified document in the DCO the MMO will then approve any final SIP in accordance with the process set out in the in-principle SIP. The MMO have confirmed that they favour this approach rather than the approach put forward in the Hornsea 2 condition.</li>   <li>• Potential mitigation measures are not set out on the face of the condition. These are set out more fully in the in-principle SIP while allowing scope for refinement of the measures through consultation once final conservation objectives and management measures are available for the pSAC and once final construction methods for the project have been confirmed. This will enable use of the most appropriate project related measures to be confirmed based on best knowledge, evidence and proven available technology at the time of construction. This approach will also remove the need to revise the DML wording should the proposed measures change between the time of consent and construction. The MMO have confirmed that they favour this approach rather than the approach put forward in the Hornsea 2 condition.</li>   <li>• Certain mitigation measures set out in the Hornsea 2 condition 8(7) are not in any event</li> </ul>

Question to:	Question:
	<p>appropriate to East Anglia THREE and are not therefore included in the in-principle SIP. Seasonal restrictions to pile driving may be applicable to some projects in order to restrict the pile driving to a season in which harbour porpoise are less reliant on part of the pSAC. However the location of the East Anglia THREE project in relation to the summer and winter areas of the pSAC means that pile driving noise could radiate into both areas throughout the year. Similarly, changes in the location of wind turbine generators are not realistically achievable in the case of East Anglia THREE since the East Anglia THREE array is located entirely within the pSAC. As such it is not possible (as it is with Hornsea 2) to relocate wind turbine generators outside the pSAC, or to maximise distance of the wind turbine generators from the pSAC boundary.</p> <p><u>Other drafting points</u></p> <p>It is not considered appropriate for the Hornsea 2 condition 8(6), as a DML condition, to contain references to the Secretary of State, bearing in mind the intention to keep DMLs as essentially discrete freestanding documents controlled and enforced by the MMO. However assuming the express references to consultation are removed (see 3.1.2 above) this should no longer be an issue.</p> <p>A number of definitions are included in the Hornsea 2 condition. It is considered preferable for these definitions to be included with other definitions in Part 1 paragraph 1(1) of the DMLs.</p> <p>The Hornsea 2 conditions 8(6) and 8(9) refer to "marine mammals". Conditions 13(2) and 13(4)(b) below refer to "harbour porpoise" since harbour porpoise are the only marine mammal relevant to the pSAC.</p> <p><u>Proposed pSAC condition</u></p> <p>It is therefore proposed that conditions 13(2)–(4) should read as follows</p> <p><i>"13(2) In the event that driven or part driven pile foundations are proposed to be used, the licenced</i></p>

Question to:		Question:
		<p><i>activities, or any phase of those activities must not commence until an East Anglia THREE Project Southern North Sea pSAC Site Integrity Plan which accords with the principles set out in the In Principle East Anglia THREE Project Southern North Sea pSAC Site Integrity Plan has been submitted to the MMO and the MMO is satisfied that the Plan provides such mitigation as is necessary to avoid adversely affecting the integrity (within the meaning of the 2007 Regulations) of a relevant site, to the extent that harbour porpoise are a protected feature of that site.</i></p> <p><i>In paragraph (2) "relevant site" means –</i></p> <p><i>(a) a European offshore marine site;</i></p> <p><i>(b) a European site</i></p> <p>13(3) <i>For the purpose of paragraph (2)</i></p> <p><i>(a) the Southern North Sea possible Special Area of Conservation must be treated as a European offshore marine site until</i></p> <p><i>(i) that Area (or any part of it) becomes a European offshore marine site or a European site; or</i></p> <p><i>(ii) it is decided that no part of that Area should be a European offshore marine site or a European site; and</i></p> <p><i>(b) harbour porpoise must be treated as a protected feature of the Southern North Sea possible Special Area of Conservation</i></p> <p>[Definitions of "Relevant Site", "2007 Regulations", "European offshore marine site", "European site" and "Southern North Sea possible Special Area of Conservation" included with other definitions in Part 1 paragraph 1(1) of the DMLs]</p>
<b>SNC</b>	<b>Update on the Positions Regarding Standard Navigational Conditions</b>	
SNC1	ExA	A review of progress between the Applicant, the Marine Management Organisation, the Maritime and

Question to:		Question:
		Coastguard Agency and Trinity house on proposed changes to standard navigational conditions and the implications for draft DMLs.
SNC1	Applicant's response	Significant progress has been made in relation to the navigational conditions. The latest version of the draft Order has been amended to incorporate the position agreed to date. In summary, the amendments deal with changes to notice periods, the type of notice to be issued to mariners, and changes to frequencies of reports on availability of aids to navigation. Some further changes may be required to agree the final wording but it is anticipated that such further changes (if any) will be minimal and are unlikely to be contentious.