

East Anglia THREE
Offshore Windfarm

East Anglia THREE

Applicant's Comments on Responses to Deadline 7

Document Reference – Deadline 8 / Comments on
Deadline 7 Responses / Applicant

Author – Royal HaskoningDHV
East Anglia THREE Limited
Date – December 2016
Revision History – Revision A

Table of contents

1	Introduction	3
1.1	Anglian Water	1
1.2	Eni	1
1.3	Historic England	2
1.4	Ipswich Borough Council	5
1.5	LPAs	5
1.6	Marine Management Organisation	7
1.7	National Grid	11
1.8	Natural England	11
1.9	The Crown Estate	13
1.10	The Wildlife Trusts	17
1.11	Whale and Dolphin Conservation	18

1 Introduction

1. This document contains the Applicant's comments on responses to Deadline 7 (8th December 2016). This includes interested parties comments on the Examining Authority's (ExA) Rule 17 letter, ExA's draft Development Consent Order (DCO) and Report on the Implications for European Sites (RIES), all of which were published on 17th November 2016.

1.1 Anglian Water

ID	Comment and Applicant's response
ExA Comment	The ExA requested general Comments on Schedule 8, Part 1 of their draft DCO
Anglian Water response	<p>Anglian Water had previously sought amendments to the wording of the Applicant's Draft DCO to allow the developer to undertake any necessary works at Anglian Water's election (upon Anglian Water giving the developer reasonable notice).</p> <p>The amended wording as agreed with the applicant has been included in Schedule 8 Part 1 (Protective Provisions) of the Examining Panel's Consultation Draft DCO which would provide the flexibility which we had sought. On this basis we are supportive of the Consultation Draft DCO as proposed and wish to withdraw our previous comments relating to this issue.</p>
Applicant's response	The Applicant welcomes confirmation from Anglian Water that this matter is now agreed and has no further comment.
ExA's Original Question	The ExA notes that a conclusion of no adverse effects on the integrity of the Outer Thames Estuary Special Protection Area (SPA) (and its red-throated diver qualifying feature) is stated in the Statement of Common Ground (SoCG) between the Applicant and Natural England (NE) [REP2-053] to be " <i>agreed by both parties</i> ". However, it is also noted that NE's previous position (recorded in both the SoCG and its Relevant Representation [RR-003]) indicated that this conclusion is based on best practice vessel operations.
Anglian Water response	We note that the Examining Panel has requested further information relating to the Thames Estuary Special Protection Area from Natural England, Marine Management Organisation and the Applicant. Anglian Water has no comments relating to these questions as this issue falls outside our remit as a water company.
Applicant's response	The Applicant has nothing further to add.

1.2 Eni

ID	Comment and Applicant's response
ExA's Original Question	<p>The ExA seeks views from the Applicant, Eni UK Ltd and the MMO on the utilisation and scope of arbitration provided for under Art 33.</p> <p>Arbitration may be used as a means to resolve any dispute about the interface between the application proposal and oil and gas licences benefiting Eni UK Ltd. If arbitration was to be used in such specialist circumstances, there is an argument that a Panel of arbitration might be appointed, containing oil and gas and offshore wind generation expertise. Further detail of this proposal is set out in Annex A to this document.</p>
Eni Response	Eni's preference would be for an arbitrator, as opposed to the MMO, to be the decision-maker in respect of any dispute. The arbitration regime should be incorporated into the PP.

ID	Comment and Applicant's response
Applicant's response	Protective provisions have now been agreed with Eni and have been included in the final dDCO submitted at Deadline 8.
ExA's Original Question	<p>Protective provisions</p> <p>In addition to the provisions set out in Schedule 8, the ExA has proposed balanced protective provisions as an option to address the interface between the application proposal and oil and gas licences benefiting Eni UK Ltd. As such provisions did not form part of the Applicant's Version 4 of the DCO they are included as Annex A to this document. Views are sought from the Applicant, Eni UK Ltd and the MMO, taking the detail provided in Annex A into account.</p>
Eni Response	Eni's position remains that an appropriately-worded PP is critical in ensuring that the rights of the licensees under Licence P.1965 are, to the extent practicable, protected.
Applicant's response	Protective provisions have now been agreed with Eni and have been included in the final dDCO submitted at Deadline 8.
Original Question	<p>Additional provisions: Art 39</p> <p>As an alternative means to address the interface between the application proposal and oil and gas licences benefiting Eni UK Ltd, the ExA has also considered the option of enabling the preparation of a 'proximity plan', to be approved by the MMO, under a headline power in a new Article 39 and a new Schedule included as Annex A to this document. Views are sought from the Applicant, Eni UK Ltd and the MMO, taking the detail provided in Annex A into account.</p>
Eni Response	Eni's preference would be for an arbitrator, as opposed to the MMO, to be the decision-maker in respect of any dispute. The arbitration regime should be incorporated into the PP.
Applicant's response	Protective provisions have now been agreed with Eni and have been included in the final dDCO submitted at Deadline 8.

1.3 Historic England

ID	Comment and Applicant's response
ExA's Original Question	N/a
Historic England Response	<p>We note from the draft DCO (East Anglia THREE Consultation Draft Development Consent Order for the proposed East Anglia THREE Offshore Wind Farm, Examining Authority Version for Comment Based on the Applicant's Version 4: 8 November 2016) that the Applicant has not made changes based on these comments. It is therefore our advice that the MMO and the Applicant should consider whether the draft DCO should now be amended to include a four month timeframe for submission prior to commencement of licensed activities so that it is sufficient:</p>

ID	Comment and Applicant's response
	<ol style="list-style-type: none"> 1. to capture necessary archaeological investigations to inform necessary mitigation, such as evaluation and excavation of archaeological sites of significant heritage value; 2. to accommodate timely consultation with the MMO and any referral by the MMO to Historic England on a number of elements related to the proposed development and its direct or indirect interaction with the historic environment; 3. to provide the developer with a clear understanding of the seabed environment, inclusive of the historic environment, as necessary to inform the final design of this proposed project should consent be obtained; and 4. to provide the MMO with the ability to take real enforcement action should an agreeable WSI not be forthcoming in the timescale specified. <p>Consequently we seek clarification from the Applicant and the MMO why a timeframe of six months has not been included within Schedule 10 and 11 (Generation Assets), Schedule 12 and 13 (Transmission Assets) and Schedule 14 and 15 (Interconnection), Part 2, paragraph condition 13.-(1)(h).</p>
Applicant's response	<p>The Applicant has liaised further with Historic England and the MMO on this point and it has been agreed that the DMLs should be amended to require the WSI to be submitted for the MMO's approval (in consultation with Historic England) at least 6 months prior to commencement of licensed activities. The final dDCO submitted at Deadline 8 has been amended to reflect the agreed wording for condition 13(1)(h) as well as an updated reference to 13(4).</p>
ExA's Original Question	<p>The definition of 'commence' and the need for pre-commencement works</p> <p>The ExA has raised concerns with the Applicant through the examination process that pre-commencement works, specifically those relating to archaeological assessment and protection, but also extending to hedgerow, boundary, fencing and some demolition and clearance works, should not be authorised to proceed prior to or with the effect of being premature in relation to the submission of relevant plans provided for in Requirements. The form of words in this draft has been proposed by the Applicant as a means of addressing these concerns. The ExA seeks views on whether it has done so as clearly and effectively as might otherwise be achievable.</p> <p>The ExA seeks observations from the Applicant and Local Planning Authorities (LPAs) on whether a notification requirement is sufficient to address these concerns and if it is appropriate to limit it to certain works, as the Applicant has done here. Might another and simpler means of achieving the same objective be to define 'pre-commencement works', list these and to provide (in appropriate requirements) that these must be undertaken in accordance with the relevant outline plans that would be certified documents? If additional content in outline plans is required to support this approach, this could be submitted at Deadline 7 and commented on at Deadline 8.</p> <p>The notification requirement as currently proposed permits the relevant local planning authority (the LPA) to consider whether individual works proposed constitute commencement and to make a decision on this. The Applicant intends that the notification procedure will give the LPA the opportunity to consider if it requires any plans to be prepared before the works take place. If the LPA</p>

ID	Comment and Applicant's response
	<p>determines that the works constitute commencement, then the Applicant would be in breach of the relevant requirement if they undertook these works before the plans had been approved. Subject to the reservations expressed above, this approach appears to be practical, but comments are sought on its operability. Comments are requested to pay specific attention to the following issues:</p> <ul style="list-style-type: none"> - Five days is a short amount of time for the LPA to consider a notification. Is this practical? - Drafting which includes operational procedure within a definition is not widely used. Ideally, operational procedure around notification should be included as amendments to the Requirements to which it relates and not be set out here.
Historic England Response	<p>With regard to the definition of “commence” on page 6 of the draft DCO we consider that it is currently unsatisfactory, as a range of survey programmes could be completed, precommencement, without benefiting from having an agreed archaeological Written Scheme of Investigation in place, to inform how these surveys are planned and commissioned. Therefore with regard to the National Policy Statement for Renewable Energy (EN-3) we are aware paragraphs 2.6.141 and 2.6.142 make specific reference to how the assessment exercises, inclusive of geotechnical or geophysical surveys, identify “any beneficial effects on the historic marine environment, for example through improved access or the contribution to new knowledge that arises from investigation” (the National Policy Statement for Renewable Energy (EN-3), July 2011, Paragraph 2.6.142).</p> <p>However, any such identified benefits could be compromised if defined precommencement and commencement phases fail to guarantee that a Consent Holder fully coordinates their survey programmes with production of the project-relevant WSI. Furthermore, in the absence of specific instruction that secures a coordinated approach, it's possible that data acquired in terms of the areas subject to survey; its quality and resolution; and appropriate sampling and storage of geotechnical materials, also fail to inform adequate measures of mitigation. We therefore recommend the DCO is not formalised until this definition has been confirmed and suitable wording is provided that would address these concerns.</p>
Applicant's response	<p>As set out above, the Applicant has liaised further with Historic England and the MMO and it has been agreed that the DMLs should be amended to require the WSI to be submitted for the MMO's approval (in consultation with Historic England) at least 6 months prior to commencement of licensed activities. The final dDCO submitted at Deadline 8 has been amended to reflect the agreed wording for condition 13(1)(h). Historic England has confirmed that the amendment agreed to condition 13(1)(h) satisfies its concerns in relation to the definition of “commence”, and that it is not seeking any changes to this definition.</p>
Original Question	N/A
Historic England Response	<p>Furthermore, to support the matters we have identified herein, that 13(1)(h) is amended to:</p> <p>“A written scheme of archaeological investigation in relation to the offshore Order limits seaward of mean low water in accordance with the outline written scheme of investigation (offshore), industry good practice, published research frameworks and in consultation with the statutory historic body to include – ”</p>

ID	Comment and Applicant's response
Applicant's response	The Applicant considers that it is not appropriate to refer to "published research frameworks" in condition 13(1)(h). The Applicant considers that this additional wording is too vague and is not sufficiently clear or precise to be included in the DML. Following further discussions, it has been agreed with Historic England that it is not appropriate to include this wording in the final dDCO to be submitted at Deadline 8.

1.4 Ipswich Borough Council

ID	Comment and Applicant's response
ExA's Original Question	Possible missing requirement – Skills Strategy Since the discussion of this issue in the examination process, there is now a formal written representation from Ipswich Borough Council which seeks extension of the East Anglia ONE skills strategy. The Applicant and LPAs are asked to comment on this request and indicate whether or how and in what terms security for an extended skills strategy might be provided.
Ipswich Borough Council response	Following our submission at Deadline 6, I have met with Suffolk County Council (SCC) and had discussions with both Scottish Power Renewables (SPR) and the Project Manager for Nationally Significant Infrastructure Projects and have been reassured that a new Skills Strategy is not necessary for EA3. I have now seen the joint statement signed by SCR and SCC with regards to the development of the existing skills strategy which has clarified the position of the key stakeholders involved in the strategic direction and delivery of the skills agenda across the County. This has reassured me that the existing skills strategy will be expanded to align with existing skills plans and training initiatives that are meeting the needs of the wider energy sector and the regional economy
Applicant's response	The Applicant welcomes Ipswich Borough Council's confirmation that a skills strategy Requirement in the dDCO is not necessary..

1.5 LPAs

ID	Comment and Applicant's response
ExA's Original Question	The definition of 'commence' and the need for pre-commencement works The ExA has raised concerns with the Applicant through the examination process that pre-commencement works, specifically those relating to archaeological assessment and protection, but also extending to hedgerow, boundary, fencing and some demolition and clearance works, should not be authorised to proceed prior to or with the effect of being premature in relation to the submission of relevant plans provided for in Requirements. The form of words in this draft has been proposed by the Applicant as a means of addressing these concerns. The ExA seeks views on whether it has done so as clearly and effectively as might otherwise be achievable. The ExA seeks observations from the Applicant and Local Planning Authorities (LPAs) on whether a notification requirement is sufficient to address these concerns and if it is appropriate to limit it to certain works, as the Applicant has done here. Might another and simpler means of achieving the same objective be

ID	Comment and Applicant's response
	<p>to define 'pre-commencement works', list these and to provide (in appropriate requirements) that these must be undertaken in accordance with the relevant outline plans that would be certified documents? If additional content in outline plans is required to support this approach, this could be submitted at Deadline 7 and commented on at Deadline 8.</p> <p>The notification requirement as currently proposed permits the relevant local planning authority (the LPA) to consider whether individual works proposed constitute commencement and to make a decision on this. The Applicant intends that the notification procedure will give the LPA the opportunity to consider if it requires any plans to be prepared before the works take place. If the LPA determines that the works constitute commencement, then the Applicant would be in breach of the relevant requirement if they undertook these works before the plans had been approved. Subject to the reservations expressed above, this approach appears to be practical, but comments are sought on its operability. Comments are requested to pay specific attention to the following issues:</p> <ul style="list-style-type: none"> - Five days is a short amount of time for the LPA to consider a notification. Is this practical? - Drafting which includes operational procedure within a definition is not widely used. Ideally, operational procedure around notification should be included as amendments to the Requirements to which it relates and not be set out here.
LPA response	We are content that the notification process is currently working well for the EA1 project and that we have the option to send a holding response if unable to respond within 5 days. We support the wording of the Applicant's proposed new Requirement 37.
The Applicant's response	The Applicant welcomes confirmation from the Local Authorities that this matter is now agreed and has no further comment.
ExA's Original Question	<p>The definition of 'maintain'</p> <p>The Applicant has amended this definition to reflect the approach taken in the made East Anglia ONE Order and (addressing issues raised in the examination process) has limited removal, reconstruction and replacement to ancillary works. The ExA has further removed the term 'maintain' from the definition to accord with the most recent drafting practice in made Orders. Comments are sought from the Applicant, LPAs and the Marine Management Organisation (MMO) on the changes that have been made.</p>
LPA response	We are content with the Applicant's suggestion on wording – including the word "upkeep"
The Applicant's response	The Applicant welcomes confirmation from the Local Authorities that this matter is now agreed and has no further comment.
ExA's Original Question	<p>Detailed design parameters onshore: commencement and kiosk details</p> <p>The form of words 'each stage of the connection works must not commence until...' is used here, whereas in equivalent drafting in other Requirements, the form of words 'no stage of the connection works may commence until...' is used. The second form of words appears clearer and less vulnerable to misunderstanding or dispute. Should it be used here as well? The views of the Applicant and the LPAs are sought.</p>
LPA response	We have no objection to the ExA's suggested new form of words

ID	Comment and Applicant's response
The Applicant's response	The Applicant welcomes confirmation from the Local Authorities that this matter is now agreed and has no further comment.
ExA's Original Question	Included documents Should a Project Environmental Management Plan (PEMP) (as referred to in the Outline Code of Construction Practice (OCoCP)) be secured by inclusion in the list of plans in this provision? Views are sought from the Applicant, the MMO and LPAs.
LPA response	We agree that it would be beneficial to add a Project Environmental Management Plan to the list of plans in the provision
The Applicant's response	The Applicant has included reference to a Project Environmental Management Plan in Requirement 22(1)(k) to the final dDCO submitted at Deadline 8.
ExA's Original Question	Possible missing requirement – Skills Strategy Since the discussion of this issue in the examination process, there is now a formal written representation from Ipswich Borough Council which seeks extension of the East Anglia ONE skills strategy. The Applicant and LPAs are asked to comment on this request and indicate whether or how and in what terms security for an extended skills strategy might be provided.
LPA response	We are content with the approach agreed in the position statement on skills between SPR and SCC. We have now met with colleagues at IBC who are also content with this approach.
The Applicant's response	The Applicant welcomes confirmation from the Local Authorities that this matter is now agreed and has no further comment.

1.6 Marine Management Organisation

ID	Comment and Applicant's response
ExA's Original Question	The ExA has requested MMO comments on the securing of best practice vessel operations in the DCO/DML
MMO response	The MMO advises that best practice vessel operations could be captured within the Construction Method Statement and, if required, this can be carried through into the Environmental Monitoring Plan to cover the operational period of the project. It should be noted that the MMO defers to Natural England (NE) as the Statutory Nature Conservation Body with regards to appropriate mitigation but is content with the applicant's proposal. The applicant has recently provided the MMO with further information regarding best practice in the management of vessel operations and the MMO is content with the proposed approach.
Applicant's response	The Applicant welcomes confirmation from the MMO that this matter is now agreed and has no further comment. The wording agreed to condition 13 of the DML has been incorporated in the final dDCO submitted at Deadline 8.

ID	Comment and Applicant's response
ExA's Original Question	<p>The definition of 'maintain'</p> <p>The Applicant has amended this definition to reflect the approach taken in the made East Anglia ONE Order and (addressing issues raised in the examination process) has limited removal, reconstruction and replacement to ancillary works. The ExA has further removed the term 'maintain' from the definition to accord with the most recent drafting practice in made Orders. Comments are sought from the Applicant, LPAs and the Marine Management Organisation (MMO) on the changes that have been made.</p>
MMO response	<p>The MMO is content with the revised definition of 'maintain' as the link to the Environmental Statement (ES) and assessment remains valid.</p>
Applicant's response	<p>The Applicant welcomes confirmation from the MMO that this matter is now agreed and has no further comment.</p> <p>The revised wording as presented in the Applicant's comments on the ExA's draft DCO (REP7-016) has been included in the final dDCO submitted at Deadline 8.</p>
ExA's Original Question	<p>The ExA asked for comment on: DCO Article 33 (arbitration); Article 38 (protective provisions); and Article 39 (other provisions – proximity plan); Annex A Page ii (proposals 1,2 and 3)</p>
MMO response	<p>The ExA has requested MMO views on the detail provided in Annex A of the ExA draft Development Consent Order (DCO) and comments on which aspects of the options are supported. The MMO has considered the three proposals presented and has no objection to the adoption of either proposal 1 and/or 2 into the DCO. However, the MMO has significant reservations, particularly given its proposal relatively late in the examination stage, regarding the adoption of proposal 3, which would add a new article to the DCO and a new offshore oil and gas exploitation provisions schedule. This would require the preparation and submission of a proximity plan to the MMO for approval prior to any works commencing in the area of crossover. We are not currently involved in the approval and regulation of oil and gas projects, and consider that the Secretary of State, as a policy and decision maker for both oil and gas and renewable projects, is in a better position to make this determination. Without prejudice to the above position, should the ExA/Secretary of State, decide that the MMO is the appropriate body to undertake this role then the relevant article should be within the Deemed Marine Licence (DML) rather than the DCO. Furthermore, the proposal includes the need to refer back to Article 33 (Arbitration) if the MMO is unable to approve the proximity plan. If proposal 3 is adopted with MMO as approver then the MMO would request that the arbitration clause detailed under proposal 1 is also adopted.</p>
Applicant's response	<p>Protective provisions have now been agreed with Eni and have been included in the final dDCO submitted at Deadline 8.</p>
ExA's Original Question	<p>Crown rights and consent</p> <p>The ExA seeks views from the Applicant, the MMO and the Crown Estate (TCE) on the drafting of Art 37. The word 'take' in (1)(a) appears to be superfluous as long as drafting as proposed in the addition to paragraph (2)</p>

ID	Comment and Applicant's response
	above is included. The drafting in general terms should reflect the requirement in s.135(1) PA 2008 that a DCO can only include provision of an interest held otherwise than or on behalf of the Crown if the appropriate Crown authority has given unconditional consent.
MMO response	The MMO has no comment to make regarding the amendments to Article 37 and defers to The Crown Estate with regard to the wording of this Article.
Applicant's response	The Applicant's comments with regards to Article 37 are summarised in its comments to TCE's response set out below.
ExA's Original Question	<p>Detailed offshore design parameters: 70% of turbines...</p> <p>Whilst this issue has previously been raised by the ExA during the examination process, views are sought from the Applicant the MMO and Natural England (NE) on whether this drafting is sufficiently clear, certain and enforceable, having regard to the potential for build-out under the generation assets Deemed Marine Licences conditions 1(2) where it is not specified how much of the 70% must be in each licence. Would it be clearer if a number of turbines was specified?</p>
MMO response	The MMO refers to its Deadline 6 response with regard to the proposed increase to turbine draught height and can now confirm that wording has since been agreed with the applicant (on 01/12/16) that ensures enforceability of this DML condition through the use of a specific number of turbines. The MMO would also like to reiterate its previous comment that while NE has welcomed the proposal for additional mitigation, they have not requested it. The MMO defers to NE on the appropriateness of ornithological mitigation, and the necessity for it to be enforced through the DML.
Applicant's response	<p>The Applicant notes that the MMO defers to NE on this matter.</p> <p>The agreed wording is included as part of the Applicant's dDCO submitted at Deadline 8. As set out above, the wording has been agreed with NE, the RSPB and the MMO.</p>
ExA's Original Question	Should a Project Environmental Management Plan (PEMP) (as referred to in the Outline Code of Construction Practice (OCoCP)) be secured by inclusion in the list of plans in this provision? Views are sought from the Applicant, the MMO and LPAs.
MMO response	The MMO notes the ExA question regarding the inclusion of a Project Environmental Management Plan (PEMP) under the Code of Construction Practice. The MMO is content that offshore works are adequately secured under DML condition 13(1)(d) and the PEMP referred to under DCO Requirement 22 appears to relate to onshore works, therefore the MMO defers to the local planning authorities in this regard.
Applicant's response	The Applicant concurs that this point relates to onshore matters but in any event, as set out in the Applicant's response to the LPA's comments, this is now included in Requirement 22(1)(k) of the dDCO submitted at Deadline 8.
ExA's Original	The ExA requested comments on Schedule 8 Part 7

ID	Comment and Applicant's response
Question	
MMO response	<p>The MMO refers the ExA to our response at 2.2 above. The MMO has no objection to the inclusion of Proposal 2 within the DCO. However, the MMO would also like to reiterate that it is not currently involved in the approval and regulation of oil and gas projects, and the MMO believes that the Secretary of State, as a policy and decision maker for both oil and gas and renewable projects, is in a better position to undertake this role.</p>
Applicant's response	<p>Protective provisions have now been agreed with Eni and have been included in the final dDCO submitted at Deadline 8.</p>
ExA's Original Question	<p>Proposal 3 questions</p> <p>The Applicant, Eni UK Ltd, the MMO and TCE are asked to consider the following in relation to proposal 3.</p> <p>Are there circumstances in which provision needs to be made for circumstances in which the MMO fails to determine a plan, or the Applicant or Eni UK Ltd do not consider the provisions of a plan to be operable, or where either party might seek arbitration on the terms of a plan? If so, such a provision would be incorporated here. Views are sought on its terms.</p> <p>Would it assist the MMO in such circumstances to be able to appoint expert assessors (with oil, gas and wind energy expertise) to assist their consideration of a plan?</p> <p>Should, and if so how, the costs of such work be recoverable from the Applicant and Eni UK Ltd by the MMO?</p> <p>Would it be appropriate for the MMO to refer any outstanding dispute on the terms of the plan to arbitration under Article 33, and if so, is any special provision needed to frame the terms of such a reference?</p>
MMO response	<p>As stated above (point 2.2), the MMO does not consider it is the most appropriate organisation for approval and regulation in relation to oil and gas. However, if proposal 3 is adopted with MMO as approver then the MMO would request that the arbitration clause proposed under Article 33 is also adopted.</p>
Applicant's response	<p>Protective provisions have now been agreed with Eni and have been included in the final dDCO submitted at Deadline 8.</p>
MMO response	<p>Additional MMO comment</p> <p>The MMO would like to restate a point raised at Deadline 5 in regard to paragraph 48 of the Site Integrity Plan (SIP) and subsequently included in the Statement of Common Ground (SoCG) between the applicant and the MMO.</p> <p>The practicalities involved in successfully and proportionally scheduling pile driving between multiple projects should be carefully considered. Further consideration is required as to the appropriate authority to undertake this assessment and determination. Difficulties may arise by the fact that several of these potential projects have been consented but have no corresponding requirement within their consent orders making implementation of any such scheduling problematic and potentially disproportionate against East Anglia THREE.</p>

ID	Comment and Applicant's response
Applicant's response	The Applicant notes this comment but has nothing further to add.

1.7 National Grid

ID	Comment and Applicant's response
National Grid Comment	<p>As a responsible statutory undertaker, National Grid's primary concern is the maintenance of its equipment and the requirement to ensure that any authorised development within the vicinity of its equipment is undertaken without impacting upon its undertaking.</p> <p>National Grid has been in negotiations with the Applicant and can confirm that an agreement has been reached subject to completion of legal formalities. The Applicant has executed the engrossments and, having been received by National Grid's lawyers on 5 December 2016, they are now with National Grid for execution.</p> <p>National Grid expects to complete the agreement with the Applicant shortly. However, until such agreement is formally completed, National Grid cannot withdraw its objection as, National Grid, as a responsible statutory undertaker, must ensure that any authorised development within the vicinity of its equipment is undertaken without impacting upon its undertaking. In the unforeseen worst case that the agreement does not complete for any reason then provisions should be included to prevent the undertaker from interfering with National Grid's equipment without having first obtained consent from National Grid to any such interference. While National Grid does not object to the proposal in principle, it is essential that such protection is secured for National Grid as a statutory undertaker.</p>
Applicant's response	Agreement has been reached with National Grid on the form of protective provisions to be included in the dDCO. The agreed form of protective provisions have been included within the dDCO submitted at Deadline 8.

1.8 Natural England

ID	Comment and Applicant's response
ExA's Original Question	<p>Rule 17</p> <p>The ExA notes that a conclusion of no adverse effects on the integrity of the Outer Thames Estuary Special Protection Area (SPA) (and its red-throated diver qualifying feature) is stated in the Statement of Common Ground (SoCG) between the Applicant and Natural England (NE) [REP2-053] to be "agreed by both parties". However, it is also noted that NE's previous position (recorded in both the SoCG and its Relevant Representation [RR-003]) indicated that this conclusion is based on best practice vessel operations.</p> <ol style="list-style-type: none"> 1. Could NE and the Applicant comment on what these best practice vessel operations entail and how these have been secured. 2. Could NE and the Applicant also comment on whether any amendments are required to the Development Consent Order (DCO) or Deemed Marine Licences

ID	Comment and Applicant's response
	<p>(DMLs) to ensure that these measures can be relied upon for a conclusion of no adverse effects on the integrity of the Outer Thames Estuary SPA and its red-throated diver qualifying feature.</p> <p>3. The MMO may also wish to comment on the securing of such measures in the DCO/DMLs as referred to in question 2 above.</p> <p>4. NE has referred, in its post-hearing submission [REP4-029], following the first Environmental Matters Issue Specific Hearing (ISH) on Wednesday 7 September 2016 to Defra's April 2012 Habitats Regulations review (the Report of the Habitats and Wild Birds Directives Implementation Review). Could NE please submit a copy of this report as an Examination document by Deadline 7.</p>
Natural England response	<p>Following publication of the Rule 17 letter by PINS on the 17th of November 2016, Natural England has worked with the Applicant on an agreement for vessel best practice in designated sites where red throated diver are a feature (Outer Thames Estuary SPA and Greater Wash pSPA).</p> <p>1. The Applicant will submit an outline of mitigation measures to avoid impacts on red throated diver at Deadline 7. Natural England supports these measures.</p> <p>2. Natural England support the Applicant's suggested amendments to the DML, specifically to DML schedule condition: 13(1)(c)(v) vessels and vessels transit corridors, which minimises disturbance to red throated diver; and 13(1)(d)(vi) procedures to be adopted within vessels transit corridors to minimise disturbance to red throated diver.</p> <p>3. The Applicant has been in discussions with the MMO to develop the proposed amendments to the DML.</p> <p>4. The Report of the Habitats and Wild Birds Directives Implementation Review can be downloaded from the following link: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69513/pb13724-habitats-review-report.pdf</p> <p>A copy of the report is also attached to the email containing this submission.</p>
Applicant's response	<p>The Applicant welcomes confirmation from Natural England that this matter is now agreed and has no further comment.</p> <p>The agreed wording regarding vessel best practice is included in the dDCO submitted for Deadline 8.</p>
ExA's Original Question	<p>Rule 17</p> <p>The following questions on the consultation Draft DCO are relevant to Natural England:</p> <p>1. DCO Requirement 2 (detailed offshore design parameters) question to the Applicant, the MMO and Natural England (NE).</p> <p>2. Generation Assets DMLs (Schedules 10 and 11) Parts 2, Conditions 1 (design parameters) question to the Applicant, the MMO and NE.</p>
Natural England response	<p>Both questions pertain to draught height design parameters, Natural England's position is as follows:</p> <p>Natural England agree with the ExA that DCO Requirement 2 would be clearer if the number of turbines permitted to be developed at the 22m draught height were specified rather than a percentage limit.</p> <p>Natural England has consulted with the MMO on this issue. The MMO and the</p>

ID	Comment and Applicant's response
	Applicant have reached a proposed condition wording on turbine draught height for submission at Deadline 7 and we support the proposed condition.
Applicant's response	The Applicant welcomes confirmation from Natural England that this matter is now agreed and has no further comment. The agreed draught height parameter is included in the dDCO submitted at Deadline 8
ExA's Original Questions	Natural England's Comments on the updated HRA Report for the Harbour Porpoise pSAC, Submitted at Deadline 6 and the Site Integrity Plan (SIP)
Natural England response	HRA Report for the Harbour Porpoise pSAC Natural England has reviewed the latest version of the HRA Report as submitted by the Applicant at Deadline 6. Natural England has no further comments to make on this version of the HRA report and is satisfied that our previous comments have been addressed in this version. Our only small point is that the figure in paragraph 162 should be 5.5% rather than the 5.8% shown (the Applicant are aware of this error and will make amendments in the final version of the HRA report).
Applicant's response	The Applicant welcomes confirmation from Natural England that they have no further comment on the HRA for harbour porpoise. The Applicant notes the error highlighted by NE in paragraph 162 and agrees that the reference to 5.5% should be to 5.8% as stated by NE. It should be noted that this minor error does not change the conclusions of the assessment.
Natural England response	Following Deadline 6 Natural England has provided comments to the Applicant on the SIP. Our only suggested changes to the SIP were adding the potential for seasonal restrictions as an amendment to the piling schedule in paragraph 47. We have informed the Applicant of these suggested changes and they have agreed to make these changes and re-submit the SIP at Deadline 7.
Applicant's response	The Applicant welcomes confirmation from Natural England that this matter is now agreed and has no further comment.
Natural England response	Natural England is in agreement with the Applicant on the latest version of the SoCG. We signed the document to this effect on the 5th of December 2016 and the Applicant will submit the updated SoCG at Deadline 7.
Applicant's response	The Applicant thanks Natural England for its support in finalising the SoCG and has no further comment.
Natural England response	Report on the Implications for European Sites (REIS) Natural England has reviewed the REIS published by PINS on the 17 th of November 2016. We consider that the REIS has accurately captured our submissions on the Examination of East Anglia Three and do not have any further submissions to make at this time.
Applicant's response	The Applicant provided comments on the REIS at Deadline 7 (REP7-017) and has nothing further to add

1.9 The Crown Estate

ID	Comment and Applicant's response
----	----------------------------------

ID	Comment and Applicant's response
ExA's Original Question	<p><u>Crown rights and consent</u></p> <p>The ExA seeks views from the Applicant, the MMO and the Crown Estate (TCE) on the drafting of Art 37. The word 'take' in (1)(a) appears to be superfluous as long as drafting as proposed in the addition to paragraph (2) above is included. The drafting in general terms should reflect the requirement in s.135(1) PA 2008 that a DCO can only include provision of an interest held otherwise than or on behalf of the Crown if the appropriate Crown authority has given unconditional consent.</p>
The Crown Estate's Response	<p>DCO Article 37 (Crown rights)</p> <p>The following "Crown rights" wording should be included as Article 37 of the draft development consent order:</p> <p style="padding-left: 40px;">"37(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee •</p> <p style="padding-left: 40px;">(a) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary) •</p> <p style="padding-left: 80px;">(i) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;</p> <p style="padding-left: 80px;">(ii) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or</p> <p style="padding-left: 80px;">(iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or</p> <p style="padding-left: 40px;">(b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act}.</p> <p style="padding-left: 40px;">37(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically."</p> <p>We do not consider the word "take" in Article 37(1)(a) to be superfluous and this has been incorporated in all Crown rights wording in recent development consent orders.</p> <p>The Crown Estate Commissioners are of the view that section 135(1) of the</p>

ID	Comment and Applicant's response
	<p>Planning Act 2008 ("the Act") permits the inclusion of provision in a development consent authorising the compulsory acquisition of third party interests in Crown land subject to the consent of the appropriate Crown body to the exercise of such rights.</p> <p>However and without prejudice to their position in relation to section 135(1), the Commissioners are in the process of agreeing with the Applicant a position which would provide the Commissioners with sufficient assurance as to the way in which compulsory acquisition powers of third party interests in Crown land forming part of the Crown Estate may be exercised. This would permit the Commissioners to provide their consent to the compulsory acquisition of the third party interests in the relevant plots for the purpose of section 135(1) of the Act and their consent to the provisions of the draft development consent order for the purpose of section 135(2) of the Act. On the provision of the Commissioners' consents:</p> <ol style="list-style-type: none"> 1. Article 37(1)(b) as referred to above would need to be deleted from the draft development consent order; and 2. A new paragraph would need to be added as Article 37(2) of the draft development consent order as follows: <p>"Paragraph (1) does not apply to the exercise of any right under this Order compulsorily to acquire an interest in any land that is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown."</p>
Applicant's response	<p>In relation to the Crown Rights article, the Applicant has included the revised wording (as set out in the Applicant's comments on the ExA's dDCO (Doc ref. Deadline 7/Comments on the ExA dDCO/Applicant)) within Article 37 of the final dDCO submitted at Deadline VIII. This wording has been agreed with TCE. The Section 135 consent letter is being finalised with TCE, and the Applicant reserves its right to comment on any further submissions from TCE.</p>
The Crown Estate's Response	<p>Schedule 8 prospective Part 7 (protective provisions), Annex A Page ii (options for protective or balancing questions) and Annex A Page viii (proposal 3)</p> <p>Such matters are ultimately for the Applicant and Eni UK Limited to resolve. However, the Commissioners encourage coordinated development of the seabed. We believe that developers have entered into co-operation agreements with oil and gas licensees in the past such that as far as we are aware protective provisions are generally not sought in such circumstances. The Commissioners are of the view that any co-existence of rights in such circumstances should be capable of being resolved between the relevant parties without the need for protective provisions.</p>
	<p>Protective provisions have now been agreed with Eni and have been included in the final dDCO submitted at Deadline 8.</p>
The Crown Estate's Response	<p>Other comments on the draft development consent order</p> <p>In addition to the questions in your letter, we note the inclusion of paragraph (7)(b) to Article 5 (Benefit of Order). The effect of this paragraph is to remove from the transferor or lessee liability for restrictions, liabilities and obligations associated with the transferred benefit at the date of transfer. The paragraph</p>

ID	Comment and Applicant's response
	<p>expressly provides that the original undertaker will remain liable for any restrictions, liabilities and obligations that occurred prior to the date of transfer but the draft development consent order is silent on the transferor's or lessee's position where it makes only a partial or temporary transfer of the benefit.</p> <p>In the case of a partial transfer , there may be restrictions, liabilities and obligations which in practice cannot be "ring-fenced" around the transferred benefit and in those circumstances the transferor should remain liable for overlapping restrictions, liabilities and obligations as well as those solely associated with the retained benefit.</p> <p>In the case of a temporary transfer, we believe the draft development consent order should make express provision for the resumption of liability for related restrictions, liabilities and obligations by the transferor or the lessee.</p> <p>Accordingly, in our view, paragraph (7)(b) to Article 5 should be removed from the draft development consent order or express provision made for the transferor's or lessee's liability where a partial or temporary transfer of benefit is made.</p>
Applicant's response	<p>Article 5(7)(b) provides that the transferred benefit resides with the transferee and is not enforceable against the undertaker (save as specified). The form of Article 5(7)(b) follows the approach in previous offshore wind DCOs and it is essential that paragraph (7)(b) of Article 5 is not deleted. Without this, it is not apparent on the face of the Order that the transferor is also passing to the transferee any related liability for breach of the benefit/obligations so transferred.</p> <p>The Applicant has agreed with the MMO and LPAs the form of wording for Article 5 as currently included within the dDCO. Article 5 was also discussed at length during the DCO examination hearings and was the subject of several questions raised by the ExA during the examination process. Given this, and following further discussions with The Crown Estate, the Applicant understands that The Crown Estate is content for paragraph (7)(b) of Article 5 to be included in the dDCO for East Anglia THREE and is writing to PINS to confirm this.</p>
The Crown Estate's response	<p>In paragraph 33(2)(b) of Part 3 of Schedule 1 should "MoD" be replaced with "Ministry of Defence" as MoD is not defined?</p>
Applicant's response	<p>The Applicant has amended the reference from "MoD" to "Ministry of Defence" in the dDCO submitted at Deadline 8.</p>
The Crown Estate's response	<p>Some of the point numbers for the listings of the grid coordinates appear to have gone awry with the sequence of points re-starting: Schedule 1 Part 1 paragraph 2, pages 37 and 38; Schedule 12 Part 1 paragraph 5, page 155; Schedule 13 Part 1, paragraph 5, pages 173 and 174; Schedule 14 Part 1 paragraph 5, page 155; Schedule 13 Part 1, paragraph 5, page 189; and Schedule 15 Part 1, paragraph 5, page 201.</p>
Applicant's response	<p>The Applicant has checked the grid coordinates included within the dDCO and confirms that they are accurate.</p>

1.10 The Wildlife Trusts

ID	Comment and Applicant's response
ExA's Original Question	Request to NE, The Wildlife Trusts (TWT), Whale and Dolphin Conservation (WDC) and MMO. NE, TWT, WDC and MMO are requested to comment at Deadline 7 (8 December 2016) on the updated version of the Applicant's Southern North Sea pSAC HRA report which the Applicant will be submitting at Deadline 6. In particular, any outstanding areas of disagreement should be highlighted. The Applicant is requested to provide a final response on these Deadline 7 comments at Deadline 8 (15 December 2016) together with updated SoCGs.
TWT Response	<p>Southern North Sea HRA report</p> <p>This response is focused on the spatial assessment now included in the HRA report. Please see our previous responses on the wider HRA at deadline 5.</p> <p>The Wildlife Trusts (TWT) is pleased to see that a spatial assessment for the pSAC has been undertaken. However, due to a lack of adequate formal guidance from the SNCBs, we cannot agree with the conclusions of no LSE for the impacts of pile driving noise alone and in-combination impacts (wintering area). It is critical for all future wind farm projects that guidance on noise disturbance management in relation to harbour porpoise pSACs is published and consulted upon with all interested parties as soon as possible.</p> <p>TWT welcomes the SIP as an approach to the delivery of mitigation and management measures to address the impact of the in-combination effects of pile driving noise on the Southern North Sea pSAC. However, again due to the lack of guidance from the SNCBs, we still cannot agree no AEOI from pile driving noise on the pSAC. We have concerns regarding the lack of mitigation which may be available in relation to disturbance from pile driving noise as a result of the spatial assessment, in particular in relation to the alone assessment and in-combination winter assessment. We believe further refinement of the HRA and SIP will be required once further information and advice is available from the SNCBs, and we are pleased to see that the applicant has reflected this in the SIP. TWT considers it important for the outcomes of the review of consents to be taken into account when developing mitigation for the in combination effects of pile driving noise as part of the SIP.</p>
Applicant's response	<p>The Applicant Notes TWT's comments but reiterates that the assessment was undertaken in line with guidance provided by Natural England and that Natural England have no comments on the final iteration of the assessment.</p> <p>The SoCG between the Applicant and Natural England states</p> <p><i>"It is agreed by both parties that the Information for the Habitats Regulations Assessment: Marine Mammal Assessment Southern North Sea pSAC is adequate and robust and that the conclusions are valid."</i></p>
TWT Response	We also believe that some work needs to be undertaken to understand the cumulative temporal in-combination impacts of pile driving noise e.g. what will be the impact over time on the number of areas which will be temporarily unavailable to harbour porpoise within the pSAC. We recognise that this is outside the scope of this project and should be undertaken at a strategic level.
Applicant's response	The Applicant notes this comment and concurs that this is outside of the scope of the assessment (which was undertaken within the bounds set by current Natural

ID	Comment and Applicant's response
	England guidance .
TWT Response	<p>Statement of Common Ground</p> <p>TWT has updated the Statement of Common Ground with the applicant and we are pleased that we have reached agreement for further consultation with TWT post-consent on the SIP. It has also been agreed that copies of the MMMP will be provided. However, we still seek confirmation that the MMO, as the Competent Authority, will consult with TWT on the final SIP and MMMP before approval is given. As stated in our previous responses, a precedent has been set from the Hornsea 2 project whereby TWT was named on the DCO as a consultee, allowing compliance with the Aarhus Convention (pillar 2 on public participation and decision making). We wish to pursue the same level of consultation here.</p>
Applicant's response	The Applicant thanks TWT for its support in finalising the SoCG and has no further comment.

1.11 Whale and Dolphin Conservation

ID	Comment and Applicant's response
ExA's Original Question	<p>Southern North Sea Possible Special Area of Conservation (pSAC) and Greater Wash potential Special Protection Area (pSPA)</p> <p>Request to NE, The Wildlife Trusts (TWT), Whale and Dolphin Conservation (WDC) and MMO. NE, TWT, WDC and MMO are requested to comment at Deadline 7 (8 December 2016) on the updated version of the Applicant's Southern North Sea pSAC HRA report which the Applicant will be submitting at Deadline 6. In particular, any outstanding areas of disagreement should be highlighted.</p>
WDC response	<p>WDC welcome the additional assessment made in the updated HRA submitted by the applicant for Deadline 6. We also appreciate the applicant's time to discuss with us these additions to the HRA and answer our questions.</p> <p>WDC are pleased to see the additional spatial assessment, recommended by the SNCBs, that has been undertaken by the applicant. We are pleased that this assessment is based on the proposed Southern North Sea (pSAC) boundary with a buffer of 26 km, and based on a worse-case scenario. We believe this is appropriate given that site based protection cannot be met by assessing the whole North Sea population, but only by assessing the impacts for the number of individuals that are supported by the site (Rees et al., 2015).</p> <p>Although the applicant has undertaken this additional spatial assessment, we still have some areas of concerns and disagreement on the HRA and the conclusions made.</p> <p>WDC appreciate that the details of the Southern North Sea pSAC for harbour porpoises are still in draft form, and that until the conservation objectives and management measures are finalised the assessment is likely to change. However, the plans for EA3 are highly likely to affect conservation and management objectives of the pSAC for harbour porpoise. Therefore, the current HRA is not sufficient and will need to be revised to ensure that the site integrity is maintained and there is no adverse impact on the population of harbour porpoise at the site. A paper analysing foraging rates in harbour porpoise found that they feed almost continuously to meet energy needs and are therefore highly sensitive to disturbance (Wisniewska et al., 2016). Given the importance of the East Anglia Three area and the pSAC for harbour porpoise, most likely due to being prime</p>

ID	Comment and Applicant's response
	<p>foraging areas, displacement from the area could be very significant, and we disagree with the applicant that that there is unlikely to be potential for likely significant effect (LSE) upon the site for the project alone, or that “there is no evidence that harbour porpoise displaced from windfarms, or by vessels, suffer any mortality as a consequence of displacement.”</p> <p>We believe that significant changes will be needed once the site boundaries and conservation and management objectives are known. We are pleased to see that this has also been acknowledged by the applicant and Natural England in the updated HRA.</p> <p>Despite the additional spatial assessment, the updated HRA still relies heavily on the assessment of harbour porpoises at the North Sea Management Unit level, as detailed above this is not appropriate for ensuring the integrity of the pSAC. 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>
Applicant's response	<p>The Applicant notes the comments of WDC, but would reiterate that the assessment was undertaken in line with guidance provided by Natural England and that Natural England have no comments on the final iteration of the assessment.</p> <p>The SoCG between the Applicant and Natural England states</p> <p><i>“It is agreed by both parties that the Information for the Habitats Regulations Assessment: Marine Mammal Assessment Southern North Sea pSAC is adequate and robust and that the conclusions are valid.”</i></p> <p>The Applicant acknowledges that the details of the Southern North Sea pSAC for harbour porpoises are still in draft form and as stated in paragraph 9 page 5 of the HRA submitted for deadline 6 (REP6-021):</p> <p><i>“Until final decisions have been made, the Conservation Objectives for each site remain as draft and management measures are yet to be confirmed. As such, the conclusions on the potential for Likely Significant Effects (LSE) from proposed East Anglia THREE project drawn in this report may be subject to change following further guidance from JNCC and Natural England.”</i></p> <p>As stated in the proposed updated Table 1 of the In-Principle Site Integrity Plan (SIP) in Comments on Responses of Other Parties to Second Written Questions (REP6-023):</p> <p><i>“When the southern North Sea pSAC final Conservation Objectives and Management measures are defined and/or further advice is provided and /or the site is adopted, the applicant will review the SIP to identify areas for revisions/updates once further guidance on the pSAC is received. If required the applicant will undertake consultation to ensure any required thresholds for disturbance or noise levels are captured in the Plan.”</i></p>
WDC response	<p>Despite the additional spatial assessment, the updated HRA still relies heavily on the assessment of harbour porpoises at the North Sea Management Unit level, as detailed above this is not appropriate for ensuring the integrity of the pSAC. We recommend that the current HRA is treated as a temporary assessment until the site boundaries and conservation and management objectives of the pSAC</p>

ID	Comment and Applicant's response
	are available, at which point a full and robust HRA must be undertaken.
Applicant's response	The Applicant notes this comment but would highlight that the HRA uses both the new spatial assessment and the existing Management Unit level assessment to provide a) continuity between the iterations of the assessment and b) provide a comparison of assessment methodologies (one in terms of the area of the pSAC affected and the other in terms of numbers of individuals affected (taken from site specific data). Comparing results from the two methodologies shows that the conclusions are similar for both approaches, which the Applicant believes provides confidence in those conclusions.
WDC response	Our concerns about the accuracy of the modelling are detailed in WDC's written response. We would like re-iterate our concerns that Southall et al. (2007) has been used for noise modelling. 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 that the results are inaccurate and misleading.
Applicant's response	This review and consultation, including WDC, will include the latest guidance on using the Southall et al. (2007) and other criteria for the noise modelling assessment. It should be noted that Southall et al (2007) is only relevant to the North Sea Management Unit scale assessment, not the spatial assessment, and the use of this methodology was agreed with Natural England as part of the Evidence Plan (see updated SoCG with Natural England, REP7-023).
WDC response	<p>Mitigation methods</p> <p>WDC recognise that mitigation measures will be secured through the Marine Mammal Mitigation Protocol (MMMP) and the In-Principle Site Integrity Plan (SIP). WDC request to be consulted on these documents to ensure appropriate mitigation methods are taken.</p>
Applicant's response	<p>As outlined in the updated Table 1 of the updated SIP (REP7-030), the Applicant plans further consultation during the refinement and agreement of the SIP.</p> <p>The applicant also plans to conduct further informal consultation with WDC during the drafting of the MMMP post-consent.</p>
WDC response	As detailed further in WDC's written representation, we are concerned over the proposed mitigation measures. We understand that mitigation methods will be decided upon closer to construction to use the latest methods, and we believe this is appropriate. Due to the fact these mitigation measures are currently unknown, we disagree with the applicants conclusion that there will be no potential for any lethal effects or auditory injury, and that this risk to marine mammals can be reduced to within a few metres of the piling activity.
Applicant's response	The Applicant notes the comments from WDC, but highlights that " <i>Lethal effects and auditory injury from underwater noise during installation and operation</i> " were screened out from the HRA assessment (REP6-021 see Table 5.1.1) in agreement with Natural England. This follows the EIA which concluded that there would be no impact (i.e. no injury or lethal effect) once embedded mitigation was applied (APP-120, see Table 12.29).
WDC response	It is specified in the mitigation methods that soft-starts should be used; however, soft starts are only a reduction in sound source at the initiation of a piling event and have not been proven as a mitigation measure. We have concerns that the JNCC guidance for 500 m exclusion zones before commencing pile-driving is not adequate considering the potential impact range on harbour porpoise from the development. Whilst we appreciate that MMOs and PAM are going to be used, these are monitoring methods to detect animals rather than a mitigation measure.

ID	Comment and Applicant's response
Applicant's response	<p>The Applicant highlights that whilst the JNCC guidance does indeed state a minimum mitigation zone of 500m from source, the assessment in the EIA (APP 120) allows for a larger zone if required. Paragraph 285 states:</p> <p><i>“Using the 3,500kJ hammer energy, the maximum range of instantaneous PTS onset is less than 1km for harbour porpoise (and less than 500m in all other species). The establishment of a mitigation zone out to the maximum range of PTS onset in harbour porpoise (currently assessed as up to 1km using the 3,500kJ hammer) though the development of a MMMP, is included as embedded mitigation, and has been agreed during consultation The exact range of the mitigation zone will be confirmed during development of the MMMP post consent, once pile driving parameters have been refined within the project design envelope. The range may be less than 1km as currently assessed.”</i></p>
WDC response	<p>Only proven mitigation methods that have been shown to reduce noise should be included in the MMMP. Acoustic barrier methods and other technique have been proven in demonstration scale studies (Wilke, 2012; Diederichs et al., 2013). A recent study analysing the assessed the benefits of noise reduction to harbour porpoise during offshore wind construction found that if wind farms inside the Southern North Sea pSAC reduced their noise levels by the equivalent of around 8dB, the risk of a 1% annual decline in the North Sea porpoise population can be reduced by up to 66% (WWF, 2016). Such an approach is the only way to reduce the far reaching avoidance distances for small and large cetaceans.</p>
Applicant's response	<p>The Applicant points out that the MMMP is intended only to prevent injury (and therefore also lethal effects) not disturbance which is covered, for the pSAC, by the SIP.</p> <p>The mitigation measures that will be considered to minimise disturbance on the pSAC, as outlined in the SIP, currently include scheduling of piling, alternate foundation methodologies and noise mitigation systems, such as bubble curtain, hydro sound dampers, screens or tubes, and cofferdams. In addition, the SIP allows the consideration and assessment of other relevant technologies or methodologies that may emerge in the future. This will ensure that any new technologies or methods that may occur prior to construction can be used during construction of the project.</p> <p>Therefore the Applicant believes that the SIP, as drafted, is fully comprehensive.</p>
WDC response	<p>Cumulative assessment</p> <p>WDC is pleased to note the applicant has included a number of offshore developments in the in-combination assessment, including offshore wind farms, as well as other activities within and adjacent to the site, with the potential to disturb the harbour porpoise pSAC population. We are also pleased to see the assessment includes the summer and winter pSAC assessment using the worst-case scenario and an indicative scenario. We believe this is appropriate for the site and agree with the applicant's conclusion that “there is the potential for the in-combination effect of UK offshore wind farms in the North Sea MU (particularly in the worst-case scenario) resulting in significant disturbance to harbour porpoise, which may also prevent the species being a viable component of the site. As such there is the potential for an LSE based on the first and second draft Conservation Objectives for the Southern North Sea pSAC”.</p> <p>We would like to see included a temporal in-combination assessment including projects yet to be constructed as identified by the applicant. East Anglia Three, and the other developments identified have the potential to cause large areas of the pSAC to be unavailable to harbour porpoise for months at a time over a many years. As detailed further in WDC's written representation, harbour porpoise are</p>

ID	Comment and Applicant's response
	<p>short-lived compared to other cetaceans, therefore the potential temporal in-combination impact of pile-driving on the harbour porpoise population is likely to be very significant. An assessment on the impact of this to the integrity of the pSAC, and the harbour porpoise population of the site, should be included.</p> <p>WDC recognise that the in-combination assessment is based on currently available information; however as construction timetables of other developments used in the assessment are liable to change, the impacts on the harbour porpoise pSAC population may change. This is also recognised by the applicant. We therefore believe it is essential that a robust monitoring programme should be a requirement of consent to ground-truth any assessment conclusions</p>
Applicant's response	<p>The Applicant notes the comments of WDC, but would reiterate that the assessment was undertaken in line with guidance provided by Natural England and that Natural England have no comments on the final iteration of the assessment.</p> <p>The SoCG between the Applicant and Natural England states</p> <p><i>"It is agreed by both parties that the Information for the Habitats Regulations Assessment: Marine Mammal Assessment Southern North Sea pSAC is adequate and robust and that the conclusions are valid."</i></p> <p>It is the intention that the final SIP would take account of any projects that may cause in-combination effects at the time of construction of East Anglia THREE. As outlined in Table 1, the SIP commits to conduct the following, approximately 9 months prior to construction: <i>"Based on the final project design, an updated assessment will be undertaken if necessary, this will include consideration of in-combination effects."</i></p> <p>Ongoing work streams, such as the DEPONS projects and the interim PCoD will allow consideration of the biological fitness consequences of disturbance from underwater noise, and the conclusions of a quantitative impact assessment to be put into a population level context. The Applicant is supportive of these strategic initiatives, and will continue to work alongside other developers, Regulators and SNCBs in order to further understand the potential for significant in-combination impacts, and reductions in these impacts where appropriate.</p> <p>As outlined in Table 1 of the SIP, it is proposed that monitoring requirements will be drafted and consulted on a minimum of 12 months prior to commencement of pile driving. For further detail, please also see the Applicant's detailed response to ECMM15 in Comments on Responses of Other Parties to Second Written Questions (REP6-023).</p>

ScottishPower Renewables
Offshore Wind Development

Address: 4th Floor, 1 Atlantic Quay, Glasgow, G2 8JB

Eastangliathree@ScottishPower.com

