



**Application by East Anglia ONE North Ltd for East Anglia ONE North Offshore Wind Farm  
Application by East Anglia TWO Ltd for East Anglia TWO Offshore Wind Farm**

**The Examining Authorities’ Commentaries on the draft Development Consent Orders (dDCOs) (May Version)**

**Issued on 20 May 2021**

The following table sets out the Examining Authorities’ (ExAs’) commentaries on the draft Development Consent Orders (dDCOs) for both applications. It is based on the most recent tracked versions of the dDCOs available in the Examinations which are:

- Additional Submission of 22 April 2021: **East Anglia ONE North dDCO version 6** – tracked [[AS-110](#)]; and
- Additional Submission of 22 April 2021: **East Anglia TWO dDCO version 6** – tracked [[AS-110](#)]

This document is a parallel document applicable to both Examinations. Each individual matter, issue or question raised indicates the Examination(s) it is applicable to as follows.

- 1** A yellow icon with a black **1**: the matter, issue or question is applicable to the East Anglia ONE North Examination.
- 2** A blue icon with a white **2**: the matter, issue or question is applicable to the East Anglia TWO Examination.
- 1 2** Both icons: the matter, issue or question is applicable to both Examinations.

Column 2 of the table indicates which Interested Parties (IPs) and Other Persons each matter, issue or question is directed to. The ExAs would be grateful if all persons named could address / comment on the matters, issues or questions directed to them, providing a substantive response, or indicating that the matter is not considered to be relevant to them for a reason. This does not prevent an answer being provided on a matter, issue or question by a person to whom it is not directed, should it be relevant to their interests.

Each matter, issue or question has a reference to the relevant draft provision in one or both version 6 tracked dDCOs [AS-110]. When you are answering a question, please start your answer by quoting the provision reference. If you need to distinguish your response as applying only to East Anglia ONE North you can add **(1)** to the end of the reference (eg ‘Art 4(1) **(1)**’) and if you need to distinguish your response as applying only to East Anglia TWO you can add **(2)** to your reference on the same basis.

If your responses contain material that relates to both Examinations, you should copy them to both Examination mailboxes, as a copy will be published in both Examination Libraries. If your responses uniquely relate to one of the two Examinations, send your response to the mailbox for that individual Examination.

If you are responding on a small number of matters, answers in an email or a letter will suffice. If you are responding more broadly, it will assist the ExAs if you use a table based on this one to set out your responses. An editable version of this table in Microsoft Word is available on request from the Case Teams. Please contact the following email addresses and include 'East Anglia OWFs dDCOs Commentaries (May Version)' in the subject line of your email: [EastAngliaOneNorth@planninginspectorate.gov.uk](mailto:EastAngliaOneNorth@planninginspectorate.gov.uk) and/ or [EastAngliaTwo@planninginspectorate.gov.uk](mailto:EastAngliaTwo@planninginspectorate.gov.uk).

Responses are generally due by **Deadline 11 in both Examinations: 7 June 2021**.

### **Interpretation and Abbreviations used**

The following abbreviations relevant to statutory drafting are used:

<b>Art</b>	Article – a numbered provision in the body of the dDCO
<b>dDCO</b>	draft development consent order
<b>made DCO</b>	a development consent order for another development as made by the relevant Secretary of State and in force
<b>DML</b>	Deemed Marine Licence under the Marine and Coastal Access Act 2009 ('the 2009 Act'), found in these dDCOs as Schs and 14
<b>Sch</b>	Schedule – a numbered provision for a specific technical purpose which may also contain:
Para	Paragraphs – containing the main provisions (but see also Requirements)
Pt	Part – a main part of a schedule, typically subdivided into paragraphs or requirements
R	Requirements – in Sch 1 Pt 3
<b>SoS</b>	the Secretary of State for Business, Energy and Industrial Strategy. A reference to SoS with further designatory letters is to the SoS for another department.

Other terms used:

<b>NSIP</b>	Nationally Significant Infrastructure Project
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**NPPF** National Planning Policy Framework

Other terms are used as found in the draft dDCOs and can be interpreted with reference as necessary to Arts 2 (Interpretation) in both dDCOs. Legislation is given its full title unless already defined in Arts 2(1) of the dDCOs, in which case it is referred to using the abbreviated form in the drafts: for example, “the 2008 Act” means the Planning Act 2008, and “the 2009 Act” means the Marine and Coastal Access Act 2009.

**The Examination Libraries**

References in these questions set out in square brackets (eg [AS-110]) are to documents catalogued in the Examination Libraries. The Libraries have been catalogued so that parallel documents in the Examination Libraries for East Anglia ONE North and East Anglia TWO both share the same reference number. Where a document is unique to one Examination, the reference number will only be used in that Examination Library. The same number in the other Examination Library will be marked as ‘reference not in use’. The Examination Libraries can be obtained from the following links:

- East Anglia ONE North  
<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010077/EN010077-001607EA1N%20Examination%20Library%20PDF%20Version.pdf>
- East Anglia TWO  
<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010078/EN010078-001676East%20Anglia%20Two%20Examination%20Library.pdf>

The Examination Libraries are updated as the examinations progress.

**Citation**

Matters, issues or questions in this table should be cited referencing the ‘ExA’s dDCO Commentaries (May Version)’ and then the specific draft statutory provision referred to and, if they apply to East Anglia ONE North alone, with the suffix **(1)** or to East Anglia TWO alone, with the suffix **(2)** applied.

### **Relationship to Issue Specific Hearings on the dDCOs**

Matters, issues and questions identified in this document may be raised as part of relevant agenda items in DCO Issue Specific Hearings (dDCO ISHs). The purpose of their being raised here is to secure in principle responses in writing by named individual parties at **Deadline 11**, whereas the purpose of their discussion in a dDCO ISH is to explore the possible interaction between the positions of multiple parties on the same point. If needs be, response to this document may cross-refer to written statements of oral case submitted at a relevant deadline after a dDCO ISH, or vice versa.

### **Relationship to the ExAs' Third Written Questions – ExQs3**

There are common topics addressed between these dDCO Commentaries and the ExQs3. In responding to the ExQs3 please focus on the relevant planning issues and provide your in-principle response. In responding to the matters, issues and questions in these commentaries, please focus on the way in which relevant provisions in the dDCOs are or might be drafted, bearing in mind that the ExAs' objective in publishing these commentaries is to ensure that it is able to frame the best available dDCOs. Responses to these commentaries will be taken as being expressed without prejudice to views expressed elsewhere (including in responses to ExQs3) about the planning merits of the proposed developments.

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<b>dDCO Commentaries</b>				
	For the attention of:			Matter, Issue or Question:
	<b>General observations</b>			
Matter raised in previous commentaries [PD-031]  Both dDCOs	The Applicants	<b>1</b>	<b>2</b>	<p><b>Adaptation Provisions</b></p> <p>In its February 2021 Commentaries [PD-031] the ExAs noted the potential relationship between the non-array elements of the proposed developments and policy change in relation to onshore transmission system connections, as indicated in Energy White Paper and subject to potential change in the BEIS Offshore Transmission Review. The Applicants have responded to this point making clear that they do not consider that changes to the dDCOs to address issues and risks around possible policy change are warranted. This point has been extensively ventilated. The Applicants and Interested Parties (IPs) are aware of it and have had an adequate opportunity to put their positions to the ExAs.</p> <p>The ExAs note that it remains possible that further detail of relevant changes in policy direction might be signalled before the closure of these Examinations. Should that occur, the ExAs will endeavour to place that material before the parties and seek comments.</p>
Both Explanatory Memoranda	The Applicants	<b>1</b>	<b>2</b>	<p><b>Revised Final Explanatory Memoranda</b></p> <p>A thorough justification should be provided in <b>Deadline 12</b> Explanatory Memoranda (EM) for every Article and Requirement in each dDCO, explaining why the inclusion of the power is appropriate in the specific case. The extent of justification should be proportionate to the degree of novelty and/ or controversy in relation to the inclusion of that particular power. Relevant reference should be made to equivalent provisions in made DCOs, recognising that the Infrastructure Planning (Model</p>

<b>dDCO Commentaries</b>			<b>For the attention of:</b>	<b>Matter, Issue or Question:</b>
				Provisions) Order (the MPO) is not a binding source and that the model provisions set out there are now old – practice has evolved.
Matter raised in previous commentaries [PD-031]  Both dDCOs	The Applicants, bodies discharging consents (MMO, SCC, ESC)			<p><b>Deemed consent provisions</b></p> <p>There is precedent for the inclusion of deemed consents in DCOs in circumstances where approvals are required under Articles or Requirements but are not forthcoming in a defined time period. The justification for such an approach rests on the desirability of providing a unified consent under a made DCO and on specific risks to the timely and economic delivery of a nationally significant infrastructure project (NSIP) that it is in the public interest to maintain. It follows that deemed consent provisions are not universally appropriate in all circumstances where a consent is sought. Equally, in assessing the reasonableness of a duration after which a deemed consent comes into force, regard must be had to the technical and institutional complexity of the matters to be decided and whether a decision could reasonably be made in the time-period allowed, prior to the operation of the deemed consent.</p> <p>The reasonableness of deemed consent provisions and the time-period for the grant of deemed consent under a number of provisions remain unagreed between the Applicants, ESC and SCC. Discussions are ongoing. Please provide a latest statement of position ensuring that agreed positions are documented and unagreed positions are clear and enabling the ExAs to adjudicate unagreed positions. Refer specifically to:</p> <p>a) Street authority consent under Arts 12;          b) Highway authority consent under Arts 13 and 15;</p>

<b>dDCO Commentaries</b>			
	For the attention of:		Matter, Issue or Question:
			c) Water discharge approval under Arts 16; and d) Authority to survey and investigate the land onshore under Arts 17.
	<b>Contents</b>		
Pages 1 - 3	The Applicants	<b>1</b>	<b>2</b> <b>Further Review</b> To the extent that changes in drafting have been made since Deadline 7, the Applicants are requested to review any additions to the structure of both dDCOs ensuring that the numbering and titling of all provisions remains consistent and is reflected in the Table of Consents for each, with a submission at Deadline 12.
	<b>Preamble</b>		
Pages 3 - 4		<b>1</b>	<b>2</b> No remaining matters.
	<b>Articles</b>		
Arts 2	The Applicants	<b>1</b>	<b>2</b> <b>Interpretation</b> <i>Art 2(1) definitions: authorised development</i> The definition of 'authorised development' includes "any other development authorised by this Order...."  The "authorised project" definition includes 'ancillary works' in addition to the 'authorised development'.  The effects of this drafting can be argued to require an amendment to Schs 1 Pt 2 (see below) to provide that those provisions do not



<b>dDCO Commentaries</b>			
	For the attention of:		Matter, Issue or Question:
			authorise works that constitute development for the purposes of s32 of the 2008 Act. Please respond.
Arts 2	The Applicants East Suffolk Council Suffolk County Council The Marine Management Organisation	<b>1</b>	<b>2</b> <i>Art 2(1) definitions: grid connection works and transmission works</i> Definitions of "grid connection works" and "transmission works" include 'any related associated development'.  a) Are Schs 1 Pt 1 sufficiently clear about what the related associated development is? b) The latest version of the <a href="#">Norfolk Boreas dDCO</a> submitted at D18 in that Examination refines this drafting as follows to say: ' <i>and any related further associated development in connection with those works</i> '. This appears to add useful precision. Comments on the adoption of this drafting are sought.
Arts 2	All Interested Parties	<b>1</b>	<b>2</b> <i>Art 2(1) definitions: maintain</i> This definition is wide, a matter raised at ISHs6, but is expressly limited 'to the extent assessed in the [ESs]'. Parties' concerns in relation to this matter are noted.
Arts 2	All Interested Parties	<b>1</b>	<b>2</b> <i>Art 2(1) definitions: relevant to onshore substation design</i> Reference to the "substations design principles statement" certified document are noted, and the operation of the substations design process will be discussed further at ISHs16 and 17.
Arts 2	The Applicants Any Statutory Undertaker IPs, NDA and/ or Magnox Ltd.	<b>1</b>	<b>2</b> <i>Art 2(1) definitions: statutory undertaker</i> In this definition, " <i>statutory undertaker</i> " means any person falling within section 127(8) of the 2008 Act and a public communications provider as defined in section 151 of the 2003 Act...'.  

<b>dDCO</b>				
<b>Commentaries</b>	For the attention of:			Matter, Issue or Question:
				a) Does this definition entrain the Nuclear Decommissioning Authority (NDA) and or Magnox Ltd. in relation to the decommissioning of Sizewell A Nuclear Power Station? b) If not, is there any need for it (or another definition) to do so, or for further protections to be provided for NDA and/ or Magnox Ltd.  See also Arts 28.
Arts 12	The Applicants ESC, SCC (Street Authorities)	<b>1</b>	<b>2</b>	<b>Temporary stopping up of streets</b> A general question about the appropriateness and timescale for a deemed consent provision has been raised above and should be addressed in relation to this provision.
Arts 13	The Applicants SCC (Highway Authority)	<b>1</b>	<b>2</b>	<b>Access to works</b> A general question about the appropriateness and timescale for a deemed consent provision has been raised above and should be addressed in relation to this provision.
Arts 15	The Applicants SCC (Highway Authority)	<b>1</b>	<b>2</b>	<b>Highway Alterations</b> A general question about the appropriateness and timescale for a deemed consent provision has been raised above and should be addressed in relation to this provision.
Arts 16	The Applicants The Environment Agency Suffolk County Council	<b>1</b>	<b>2</b>	<b>Discharge of water</b> Suffolk County Council (SCC) as lead local flood authority was not content with these provisions as drafted. It sought the inclusion of a provision equivalent to Art 16(7) providing that land drainage consent under the Land Drainage Act 1991 for works to ordinary watercourses is

<b>dDCO</b>				
<b>Commentaries</b>	For the attention of:	Matter, Issue or Question:		
				<p>not overridden. The Applicants have not adopted this proposed amendment.</p> <p>Art 16 in its current form uses well-established drafting (see for example the made Hornsea 2 DCO Art 15). It is an underlying principle of DCO drafting that as close to a unified consenting mechanism as possible should be provided. If consent under the Land Drainage Act 1991 is to be excepted from the general granting of consent under these provisions, then the consent provided by Art 16(1) to <i>'use any watercourse ... for the drainage of water in connection with ... the authorised project'</i> is potentially circumscribed by the need for multiple individual consents and potentially becomes of quite limited application.</p> <p>a) SCC is asked to describe the specific concerns about works to ordinary watercourses that underlie its request to retain this consenting power?</p> <p>b) Are there any mechanisms other than the determination of individual applications under the Land Drainage Act 1991 for each instance of such works that could be used to ensure that the works are delivered appropriately?</p> <p>c) A general question about the appropriateness and timescale for a deemed consent provision has been raised above and should be addressed in relation to this provision.</p>
Arts 17	The Applicants East Suffolk Council Suffolk County Council	1	2	<p><b>Authority to survey and investigate the land onshore</b></p> <p>A general question about the appropriateness and timescale for a deemed consent provision has been raised above and should be addressed in relation to this provision.</p>

<b>dDCO Commentaries</b>			
	For the attention of:		Matter, Issue or Question:
Arts 28	The Applicants Any Statutory Undertakers and specifically NDA and/ or Magnox Ltd.	<b>1</b>	<b>2</b> <b>Statutory undertakers</b> See Arts 2(1) (definitions of "statutory undertaker").  a) Are NDA and/ or Magnox Ltd. considered to be statutory undertakers? b) If not, given the NDA's conclusion of a SoCG and response to R17QD suggesting that there are no outstanding matters, is there any need for them to be or for any alternative (protective) provisions be included?
<b>SCHEDULE 1 – Authorised project</b>			
Pt 3 R12	The Applicants Suffolk County Council East Suffolk Council	<b>1</b>	<b>2</b> <b>R12: Detailed design parameters onshore: 'overall design and layout plans'</b> The ExAs R17QE has requested the production of 'overall design and layout plans' for the main development scenarios and asked whether and if so, how such plans might be secured and whether it would be appropriate that development should be required to be in general accordance with a submitted plan. Please comment on the following possible means of providing for and securing the production of the plans and ensuring that development is in general accordance with a submitted plan.  a) The 'overall design and layout plans' are submitted before the close of the Examinations and form part of the substations' design principles statement' and/ or the 'outline landscape and ecological management strategy'. In this case, is anything then necessary to be done to amend the dDCOs to secure the drawings? Can R12 as currently drafted can be argued to be sufficient?

<b>dDCO</b>			
<b>Commentaries</b>	For the attention of:		Matter, Issue or Question:
			<p>b) The 'overall design and layout plans' are submitted to the relevant local planning authority. In that case, does R12 require amendment to ensure that the relevant drawing is submitted and approved and then forms part of the 'substations design principles statement', or the 'outline landscape and ecological management strategy', or is a free-standing document required (a new paragraph to R12 would be required to achieve this); and</p> <p>c) A provision that no stage of the relevant works (indicatively Works Nos. 30, 33, 38, 41 – [and any other Works?]) may commence until an overall design and layout plan has been submitted to and approved by the relevant planning authority.</p>
Pt 3 R12	The Applicants East Suffolk Council NGET SASES		<p><b>R12: Defining onshore operational land for purposes of the 1990 Act</b></p> <p>Concerns have been expressed about the extent of operational land that would benefit from substation permitted development rights under the Town and Country Planning (General Permitted Development) Order 2015, Schedule 2, Part 15, Class B (a), (d) or (f). ESC has submitted that the potential adverse effects of permitted development could be such that removal of those rights would be justified. The Applicants in turn have submitted that removal of operationally normal permitted development rights for a substation would unduly burden the proposed substation facilities once operational and would not be justified. In this context, a possible alternative mechanism is to provide that the extent of onshore operational land benefiting from substation permitted development rights is reduced to the minimum necessary and clearly defined. An 'onshore operational land plan' is a potential mechanism whereby that could be achieved.</p>

dDCO Commentaries	For the attention of:	Matter, Issue or Question:
		<p>The Applicants responded to the February 2021 Commentaries [PD-031] highlighting their view that it was not possible to submit an onshore operational land plan during the Examinations but set out its view that the operational land could be limited in extent and identifying that R12 could be amended to ensure that such a plan could be provided after the relevant operational areas had been commissioned.</p> <p>On that basis, the ExAs have proposed amendments to R12 to secure the production of an onshore operational land plan after commissioning and a new R44 providing that permitted development rights can only be exercised within the land defined as operational land on the plan.</p> <p>a) Does the proposed amendment set out below and at R44 add sufficient certainty about the extent of onshore operational land and clarify that the exercise of permitted development rights on that land would be appropriate?</p> <p>b) Are the correct Works within scope?</p> <p>c) If not, what alternative measures should be provided for?</p> <p>Add the following paragraphs to R12 after current paragraph (21)</p> <p>(22) The undertaker must submit a plan for approval by the relevant planning authority showing the extent of the completed works that comprises operational land onshore for the purposes of the 1990 Act ('the onshore operational land plan') no later than three months from the completion and commissioning of {Work No. 30, Work No. 38 or Work No. 41}.</p> <p>(23) The extent of the operational land shown on the onshore operational land plan provided by the undertaker pursuant to paragraph (22) must accord with the substations design principles statement and be within the Order limits.</p>

<b>dDCO</b>				
<b>Commentaries</b>	For the attention of:			Matter, Issue or Question:
				<p>It should be noted that the timescale for approval and circumstances where the relevant planning authority did not approve a submitted onshore operational land plan would be matters addressed or capable of being resolved under Schs 16.</p> <p>See also R44 (proposed).</p>
Pt 3 R16	The Applicants Suffolk County Council	<b>1</b>	<b>2</b>	<p><b>R16: Highway accesses</b>                      Please comment on how SZB might be consulted on highway access written details submissions relating to Works Nos. 10, 11 and 15.</p>
Pt 3 None – additional requirement R44	The Applicants East Suffolk Council			<p><b>Additional Requirement (R44) – Onshore Operational Land Plan</b>                      See R12 above.</p> <p>The Commentary on R12 above proposes the preparation of and provides security for an onshore operational land plan. One of the purposes of that plan is to clarify where substation permitted development rights might be enjoyed. Please comment on the ExAs' proposed drafting below:</p> <p><b>44.</b> Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order), no development shall be carried out under Schedule 2, Part 15, Class B (a), (d) or (f) other than on land shown as onshore operational land on the onshore operational land plan.</p>
Pt 3 None – missing requirement	The Applicants Natural England, East Suffolk Council	<b>1</b>	<b>2</b>	<p><b>Missing Requirement – Ecosystem Services for Sandlings SPA</b>                      The February 2021 Commentaries identified that Natural England had sought a requirement to ensure that proposed SPA mitigation measures in the form of planting must be in functioning condition/ providing</p>

dDCO		
Commentaries	For the attention of:	Matter, Issue or Question:
		<p>ecosystem services as nesting habitat, before works can commence within the boundary of the SPA.</p> <p>The Applicants responded saying that they <i>'do not consider it to be necessary or appropriate for a requirement to be added which prevents construction of the Projects until the proposed SPA mitigation measures (Work No. 12A) must be in functioning condition. The functionality of the habitat is outside the Applicants control as in reality, the habitat could be prepared to an optimum standard, but avian species simply chose not to use the area prior to construction.'</i></p> <p>The ExAs observe that the matters to be fairly included in any requirement should sensibly relate to the management and condition of habitat in broadly floristic terms. It should not require the presence of mobile/ avian species which may choose not to use the land for reasons beyond the Applicants' control. However, it remains our understanding drafting on this point is needed to ensure the avoidance of an adverse effect on integrity (AEoI) as asserted by NE in D5 submissions [REP5-084] at page 2 and then again at D8 [REP8-162].</p> <p>To ensure that there is a need for a requirement on this point (on the basis that it relates to feature of the SPA), NE are requested to check their records:</p> <ul style="list-style-type: none"> <li>a) to confirm whether this request relates to the nightjar (an SPA feature) or the nightingale (an SSSI feature); and</li> <li>b) to advise on the need for and extent of security based on the outcome of this check.</li> </ul>



<b>dDCO</b>				
<b>Commentaries</b>	For the attention of:			Matter, Issue or Question:
				<p>If the matter at issues remains the need to secure the SPA against and AEOI and to achieve adequate security on this point, it would seem necessary for the relevant habitat values to have been provided and to be assessed to be in functioning condition, capable of accommodating relevant mobile/ avian species, before development commences. Such a requirement might provide as follows:</p> <p>{n}. Construction of {an appropriate extent of the onshore works defined with provisional reference to Works Nos. 11, 12, and 13} shall not commence until Work No. 12A has been agreed by the relevant planning authority in consultation with the relevant statutory nature conservation body to have been completed in accordance with the ecological management plan.</p> <p>Drafting changes should be submitted by both parties together with reasons for any outstanding differences.</p>
<b>SCHEDULES 13 &amp; 14 – Deemed licences under the 2009 Act – generation assets and offshore transmission assets (the DMLs)</b>				
	The Marine Management Organisation	<b>1</b>	<b>2</b>	<p><b>General</b></p> <p>The MMO's Deadline 10 submission [REP10-049] at section 4 indicates broad satisfaction with the state of drafting. The ExA understands that the MMO is not seeking further drafting changes to the DMLs. Is this understanding correct?</p>
	The Marine Management Organisation	<b>1</b>	<b>2</b>	<p><b>UXO Conditions (Schs 13 Conditions 16 and Schs 14 Conditions 12)</b></p> <p>The MMO [REP10-049] indicates at paragraph 4.1 that it is '<i>largely content with the wording</i>' of these conditions, which implies that there</p>

<b>dDCO</b>		
<b>Commentaries</b>	For the attention of:	Matter, Issue or Question:
		<p>may be some final matters remaining to be resolved. If there are any remaining drafting issues that are not resolved, these should be explained in ISHs17 or at Deadline 11.</p>
	<p>The Applicants, The Marine Management Organisation</p>	<p><b>Fish Spawning Conditions (Schs 13 Conditions 29 and Schs 14 Conditions 25)</b>            ExQ3.2.26 refers. There is apparent outstanding disagreement between the Applicants and the MMO in relation to the precision and enforceability of the current provisions. These define the herring spawning period as follows:</p> <p style="padding-left: 40px;">(2) The “herring spawning period” means a period of approximately 14 days between 1 November and 31 January to be confirmed in writing by the MMO following submission of a herring spawning report by the undertaker which analyses the International Herring Larval Survey data for the periods 1-15 January and 16-31 January for the preceding ten years in order to determine when the highest larval densities occur and which includes a methodology for the analysis.</p> <p>It should be noted that the MMO position remains that this drafting breaches the guidance on drafting of conditions found in <a href="#">NPPF</a> paragraph 55. They have proposed</p> <p style="padding-left: 40px;">(2) The “herring spawning period” means the period between 1 November and 31 January to be confirmed in writing by the MMO following submission of a herring spawning report by the undertaker which analyses the International Herring Larval Survey data for the periods 1-15 January and 16-31 January for the preceding ten years in order to determine when the highest larval densities occur.</p> <p>The Applicants do not accept this proposal and seek to retain their current drafting.</p>

<b>dDCO Commentaries</b>			
	For the attention of:	Matter, Issue or Question:	
			<p>Attention is drawn to a consultation of parties by the SoS on the <a href="#">Thanet Extension Offshore Windfarm dated 21 November 2019</a>. That consultation was conducted in circumstances in which there was an outstanding disagreement between parties on the drafting of a herring spawning condition. Paragraph 10 of that document seeks views on a draft condition which nominates specific and certain dates for the herring spawning period. The parties are referred to the approach proposed there by the SoS and are asked to note that it is most undesirable that this matter remains outstanding beyond the end of these Examinations.</p> <p>The Applicants and the MMO should note the ExAs' position that any condition should be enforceable, precise and reasonable in all other respects and that in principle the Applicants' current preferred drafting does not meet those tests. They are requested to respond to ExQ3.2.27 submitting either an agreed position or preferred drafts with reasons for differences, enabling the ExAs to adjudicate and recommend final drafting on this point.</p>
	<b>SCHEDULE 15 – Arbitration Rules</b>		
From Pages 160	The Applicants Interested Parties / Affected Persons potentially engaged by Arbitration	<b>1</b>	<b>2</b> <b>Level of detail</b> The ExAs have considered responses to matters raised in the February Commentaries. The Applicants have justified the highly specified and detailed approach to arbitration taken in the dDCOs as being preceded in the Hornsea 3 made Order at Sch 13. Reviewing the drafting of that made Order, there are similarities between it and these

<b>dDCO Commentaries</b>			<b>For the attention of:</b>	<b>Matter, Issue or Question:</b>
				<p>dDCOs. However, that Order does not contain all of the elements proposed to be provided for in the arbitration system in these dDCOs.</p> <p>a) Do the arbitration provisions of the made Hornsea 3 Order address the concerns about the lack of definition in arbitration processes in earlier made Orders? If not, what are the outstanding matters that the made Hornsea 3 Order has not addressed?</p> <p>b) Is there any reason why these dDCOs cannot be re-framed to follow the form and content of the arbitration provisions in that made Order?</p> <p>c) If so, what '<i>mischief and defect</i>' do these new provisions address that is not already adequately managed by established law and practice in existing made DCOs, including the Hornsea 3 Order?</p>
Para 6	The Applicants Interested Parties / Affected Persons potentially engaged by Arbitration			<p><b>Costs</b></p> <p>The ExAs have considered responses to matters raised in the February Commentaries. The Hornsea 3 DCO is argued by the Applicants as providing precedent for the form of the arbitration provisions in the dDCOs. Paragraph 6 (Costs) to Schedule 13 (Arbitration) of the made Hornsea 3 DCO applies the planning principle to an award of costs, which is that absent unreasonable behaviour, costs lie where they fall. In that DCO the recoverable costs of the Arbitrator are met by the parties '<i>on the general principle that each party should bear its own costs</i>'. However, the Applicants' drafting in these dDCOs remains different from the approach in Hornsea 3, on the basis that '<i>in arbitration, costs and expenses usually follow success and that is the rationale for this drafting.</i>'</p>

<b>dDCO Commentaries</b>			
<b>Commentaries</b>	<b>For the attention of:</b>	<b>Matter, Issue or Question:</b>	
			<p>a) The ExAs ask again for the justification for what is still understood to be a novel approach in a provision for a planning arbitration, where costs are proposed to run with the event?</p> <p>b) Given the reliance placed on Hornsea 3 to justify the arbitration provisions more broadly, is there not an argument that the drafting in these dDCOs should follow the rationale in that Order, which is based on the generally applicable principle in planning proceedings that each party should bear its own costs?</p>
Para 9	The Applicants Interested Parties / Affected Persons potentially engaged by Arbitration	<b>1</b>	<p><b>2</b> <b>Emergency Arbitrator</b></p> <p>The ExAs have considered responses to matters raised in the February Commentaries. This is still understood to be a novel provision. The Hornsea 3 provisions referred to by the Applicants do not contain an equivalent provision and the Applicants have not referred to any other planning precedent or mounted a clear case justifying a change from recent planning practice.</p> <p>a) In responding to the question as to whether any specific mischief or harm occurred to an existing or proposed Offshore Wind Farm development attributable to the absence of such a provision, the Applicants have referred to the presence of such provisions '<i>in many of the leading arbitral institutional rules including the International Chamber of Commerce, the London Court of International Arbitration and the International Centre for Dispute Resolution</i>'. However, no specific instance of the use of or prospective need for such provisions in an Offshore Wind Farm or other equivalent made DCO has been referred to. Are there any such instances?</p> <p>b) The Applicants are again asked to clarify the basis and any precedent for the proposal to include this provision.</p>

<b>dDCO Commentaries</b>			
	For the attention of:		Matter, Issue or Question:
Generally	The Applicants	<b>1</b>	<b>2</b> <b>Arbitration Procedures affecting the Secretary of State</b> The ExAs note that the Secretary of State did not agree to undertake the procedures identified within the timescales provided in the dDCOs in the equivalent provisions in the Hornsea 3 made Order. Is there any reason why the provisions of these dDCOs bearing on the Secretary of State should be different from the equivalent provisions in that made Order?
<b>SCHEDULE 16 – Procedure for Discharge of Requirements</b>			
Paras 1	All Interested Parties Discharging authorities (see Arts 38)	<b>1</b>	<b>2</b> <b>Final Positions on Procedure for Discharge of Requirements</b> Are there any remaining issues about the form and structure of this Schedule or the adequacy of the processes provided by it?
<b>SCHEDULE 17 – Documents to be Certified</b>			
Generally	The Applicants	<b>1</b>	<b>2</b> <b>Table Format and Presentation</b> The formats of the table to Schs 17 Part 1 and parts of the table to Part 2 are such that the titles of documents in column 3 run together as continuous vertical text, making the documents hard to distinguish and the table hard to read. Other equivalent tables (for example to Schs11 Part 1) use horizontal ruled lines as a graphic device to separate individual items in a table and overcome this issue. The Applicants are requested to identify a similar solution for these tables, ensuring that any solution proposed meets the format requirements of the Statutory Instrument template and template checker process.  The tables list (amongst other documents) the outline and in-principle plans and strategies secured by Requirements. These are widely

<b>dDCO Commentaries</b>			
<b>Commentaries</b>	<b>For the attention of:</b>		<b>Matter, Issue or Question:</b>
			referred to in the Applications documents sets and submissions with abbreviated names. For example, the <i>Outline Code of Construction Practice</i> is referred to as the <i>OCoCP</i> . Where such usages exist, the Applicants are requested to follow the full name of the relevant document in the tables with a bracketed reference to the abbreviation in use. Again, for example, reference to the Outline Code of Construction Practice would be to the <i>Outline Code of Construction Practice (OCoCP)</i> .
Generally	The Applicants and all Interested Parties		<p><b>Certified documents audit</b></p> <p>The ExAs welcome the introduction of Schs 17. The content and effect of documents recorded in the schedule will be raised in ISHs17. The Applicants will be requested to undertake an audit of all certified documents to ensure that version control and citations are correct. This work is to be submitted at Deadline 11. Interested Parties may comment on it at Deadline 12, enabling the Applicants to provide any final correcting revisions at Deadline 13.</p>
Part 2	The Applicants and all Interested Parties		<p><b>Certified documents audit: approval and consultation processes</b></p> <p>The certified documents include outline and in-principle plans and strategies secured by Requirements and to which the relevant decision maker (normally the relevant local planning authority or the MMO) must refer when discharging Requirements.</p> <p>As part of the audit of certified documents, and with reference to the preferred draft DCOs, the Applicants are requested to prepare a table that identifies the following elements:</p> <ul style="list-style-type: none"> <li>• The name of each outline or in-principle plan and strategy;</li> </ul>

<b>dDCO Commentaries</b>		
For the attention of:		Matter, Issue or Question:
		<ul style="list-style-type: none"> <li>The name of any body consulted during its preparation;</li> <li>Whether and if so which provisions in the dDCOs are relied upon to secure a final or detailed version of the document;</li> <li>The identity of the body approving any final or detailed version of the document; and</li> <li>The identity of any consultees engaged in the preparation or approval of the final or detailed version of the document.</li> </ul>
	The Applicants, East Suffolk Council and Natural England	<p><b>Certified documents: approval and consultation processes</b>            Natural England has made the following requests in relation to outline and in-principle plans and strategies. The Applicant’s response and the comments of East Suffolk Council are sought.</p> <p>a) That NE be secured as a consultee on the final Code of Construction Practice (CoCP) (R22); and</p> <p>b) That the HDD Verification Clarification Note [REP6-024] should be updated once pre-construction surveys are complete and then become a certified document to be considered in the discharge of R13.</p> <p>In relation to item a), in R22 the means of security could be:</p> <p>‘... has been submitted to and approved by the relevant planning authority and the relevant statutory nature conservation body.’</p> <p>In relation to item b), in R13 the means of security could be:</p> <p>(a) <u>a detailed horizontal directional drilling verification note (which accords with the horizontal directional drilling verification clarification note);</u></p>



<b>dDCO Commentaries</b>			
	For the attention of:		Matter, Issue or Question:
			<p>(b) a landfall construction method statement for the construction of that part of Work No. 6 or Work No. 8 (which accords with the outline landfall construction method statement); and</p> <p>(c) a landfall monitoring plan (which accords with the outline landfall monitoring plan contained within appendix 2 of the outline landfall construction method statement).</p> <p>Please provide comments on the means of drafting.</p>
<b>SCHEDULE 18 – Offshore Ornithology Compensation Measures</b>			
Generally	The Applicants	<b>1</b>	<p><b>2</b> <b>Content Matters in ExQ3</b></p> <p>The ExAs have raised questions on the content of the Schedule in ExQs3 at 3.2.10 – 3.2.12.</p>
	The Applicants, The Marine Management Organisation		<p><b>Consultation on Schs 18 Measures</b></p> <p>In [REP10-049], the MMO maintains the view that a consultation period of six weeks should be specified within Schedule 18 for reasons set out in [REP8-156]. The Applicants’ positions remain [REP10-014] that this level of detail is inappropriate and that such details will be determined by the SoS at the relevant time post-consent. The ExAs consider that there is benefit in drafting a specific and certain provision (see <a href="#">NPPF</a> para 55).</p> <p>a) Do the Applicants continue to object to a six-week consultation period?</p> <p>b) If so, please propose an alternative period.</p> <p>c) If this matter remains unagreed, the MMO is requested to set out its final position at D12.</p>

<b>dDCO</b>			
<b>Commentaries</b>	For the attention of:		Matter, Issue or Question:
	Natural England and other Interested Parties	<b>1</b>	<b>2</b> <b>Form and Structure of the Schedule and Adequacy of Security</b> Are there any other remaining issues about the form and structure of this Schedule or the adequacy of the security provided by it?
	<b>Agreements and Obligations</b>		
MoU [REP10-028]	The Applicants, East Suffolk Council	<b>1</b>	<b>2</b> <b>Memoranda of Understanding (MoUs)</b> The signed Memoranda of Understanding (MoUs) [REP10-028] are between ScottishPower Renewables (UK) Limited and East Suffolk Council. ScottishPower Renewables (UK) Limited is not the Applicant in either instance. What locus does this company have in this process and what weight can the ExAs ascribe to the MoUs in these circumstances? To the extent that the MoUs manage matters to be delivered by the Applicants (East Anglia ONE North Limited and East Anglia TWO Limited), would it not be more appropriate for them to be signed by and binding on the Applicants?