



## **East Anglia ONE North Offshore Wind Farm and East Anglia TWO Offshore Wind Farm**

### **Agendas for Issue Specific Hearings 3 (ISHs3): Biodiversity and Habitats Regulations Assessment**

**Date:** **Tuesday 19 January 2021**

**Arrangements Conference:** **9.20am**

*Participants must join the Arrangements Conference in order to register and be permitted access to the virtual Issue Specific Hearing.*

**Hearing start time:** **10.00am**

**Venue:** **Virtual hearings via Microsoft Teams**

*Full instructions on how to join online or by phone will be sent to parties registered to attend, shortly before the hearings.*

**Hearings Guidance:** Please see Annex A of these Agendas.

**Invited Participants:**

The ExAs invite participation by:

- the Applicants;
- Natural England (NE);
- Marine Management Organisation (MMO);
- Suffolk County Council (SCC);
- East Suffolk Council (ESC);
- Suffolk Wildlife Trust (SWT);
- The Wildlife Trusts (TWTs);
- Royal Society for the Protection of Birds (RSPB);
- Whale and Dolphin Conservation (WDC);
- Substation Action Save East Suffolk (SASES);
- Suffolk Energy Action Solutions (SEAS); and,
- Save Our Sandlings (SOS).



Invitees have been requested to attend to participate in hearings on the basis that their representations raise important and relevant issues bearing on the positions of others, which can be most efficiently and fairly addressed by round table involvement. The challenges posed to participation by the current public health controls are acknowledged. The ExAs will manage participation with flexibility, taking careful account of the additional care responsibilities that some invitees will have.

In relation also to hearing participation, whilst the ExAs have prepared Examination processes that flexibly enabled physical hearings in the later part of the Examinations should these have proven to be possible, the current public health position is such that it must be anticipated that all remaining hearings will be virtual. Participants who may have been considering their involvement on the basis of a preference for later involvement in physical hearings should note the ExAs view that all remaining hearings are most likely to be conducted virtually.

Invitees are requested to contact the Planning Inspectorate by **noon on Wednesday 13 January 2021** to confirm their attendance.



## Agendas for ISHs3 – Tuesday 19 January 2021

<b>9.20am</b>	<b>Arrangements Conference</b>
	Registration by the case team

<b>10.00am</b>	<b>Issue Specific Hearings 3</b>
<b>1.</b>	<b>Welcome, introductions and arrangements for these Issue Specific Hearings 3</b>
<b>2.</b>	<p><b>Effects on offshore ornithology (including HRA considerations)</b></p> <p><i>a. Red-Throated Diver of the Outer Thames Estuary Special Protection Area (SPA)</i></p> <ul style="list-style-type: none"> <li>i. Update on the status of agreement between the Applicants and nature conservation bodies.</li> <li>ii. The Applicants’ Deadline 3 Red-Throated Diver assessment for East Anglia ONE North [REP3-049] and offshore order limits reduction [REP3-052], [REP3-073].</li> <li>iii. Elaboration of Natural England’s response to [REP3-049] and [REP3-052], as summarised in [REP3-113] and [REP3-117], and any additional comments submitted at Deadline 4.</li> <li>iv. The Applicants’ response to the position of Natural England.</li> <li>v. Best practice protocol for minimising disturbance to Red-Throated Diver [REP3-074] and Deadline 4 responses to it.</li> <li>vi. Offshore In-Principle Monitoring Plan [REP3-040; REP3-041] and Deadline 4 responses to it.</li> </ul> <p><i>b. Kittiwake, Gannet, Guillemot, Razorbill and seabird assemblage of the Flamborough &amp; Filey Coast SPA</i></p> <ul style="list-style-type: none"> <li>i. Update on the status of agreement between the Applicants and nature conservation bodies.</li> <li>ii. Elaboration of Natural England’s response to [REP2-006], as summarised in [REP3-116] and [REP3-117], and any additional comments submitted at Deadline 4.</li> </ul>



	<ul style="list-style-type: none"> <li>iii. Implications for the East Anglia ONE North and East Anglia TWO assessments of the Secretary of State’s decision<sup>1</sup> to grant development consent for the Hornsea Project Three Offshore Wind Farm project.</li> <li>iv. Natural England and the MMO’s position on the wider applicability of the approach to securing HRA compensation measures in the made Hornsea Three Offshore Wind Farm Order 2020<sup>2</sup>, specifically Article 45 and Schedule 14, should they be required.</li> </ul> <p><i>c. Lesser Black-Backed Gull (LBBG) of the Alde-Ore Estuary SPA</i></p> <ul style="list-style-type: none"> <li>i. Update on the status of agreement between the Applicants and nature conservation bodies.</li> <li>ii. Drawing on the Applicants’ response [section 1.4 of REP3-070] to Natural England’s comments [section 1 of REP2-052] on the apportioning methodology for LBBG of the Alde-Ore Estuary SPA, and any further position from Natural England submitted at D4.</li> </ul> <p><i>d. The Applicants’ ‘without prejudice’ HRA derogation cases and compensatory measures</i></p> <ul style="list-style-type: none"> <li>i. Drawing on Deadline 3 submissions [REP3-053] [REP3-054]<sup>3</sup> and any responses to them at Deadline 4.</li> <li>ii. Approaches to securing ‘without prejudice’ compensation measures within the draft DCO/DMLs (notwithstanding the Applicants’ intention to provide further detail on compensation at Deadline 5).</li> </ul> <p><i>e. Any other offshore ornithological matters</i></p> <p><i>The Applicants, Natural England, RSPB, the Marine Management Organisation and any other relevant participants will be invited to comment.</i></p>
<p><b>3.</b></p>	<p><b>Effects on subtidal and intertidal benthic ecology</b></p> <p><i>Outer Thames Estuary Special Protection Area (SPA) as a supporting habitat for qualifying features</i></p>

<sup>1</sup> Decision made 31 December 2020 <https://infrastructure.planninginspectorate.gov.uk/projects/eastern/hornsea-project-three-offshore-wind-farm/>

<sup>2</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010080/EN010080-003266-EN010080%20Hornsea%20Three%20-%20Development%20Consent%20Order.pdf>

<sup>3</sup> Noting that these documents are submitted separately for EA1N and EA2 examinations and contain different information for each project



	<ul style="list-style-type: none"><li>a. The Applicant and Natural England to set out their position on HRA findings and any work on going to address areas of disagreement</li><li>b. Natural England to set out their position on the Applicant's D3 Clarification Note: Effects on Supporting Habitats of Outer Thames Estuary SPA [REP3-059] and whether the submission addresses concerns raised that sandwave levelling is likely to have a significant effect on the interest features of the Outer Thames Estuary SPA.</li></ul> <p><i>Sabellaria Reef</i></p> <ul style="list-style-type: none"><li>c. The Outline Sabellaria Reef Management Plan [REP1-044] including, but not limited to, the options in section 1.7.2 and what the implications would be if all of these options were exhausted.</li></ul> <p><i>The Applicants, Natural England, the Marine Management Organisation and any other relevant participants will be invited to comment.</i></p>
<p><b>4.</b></p>	<p><b>Effects on marine mammals (including HRA considerations)</b></p> <ul style="list-style-type: none"><li>a. <i>Harbour porpoise of the Southern North Sea SAC</i><ul style="list-style-type: none"><li>i. Update on the status of agreement between the Applicants and the MMO and nature conservation bodies.</li><li>ii. Elaboration of Natural England's comments [REP3-118] on the Applicant's Marine Mammals Addendum [REP1-038] in relation to project-alone HRA findings and any related submissions (including the Applicants' response) at Deadline 4.</li><li>iii. Underwater noise implications of the inclusion of monopile foundations for offshore platforms: Section 3 of the Applicants' Deadline 3 Project Update Note [REP3-052] and any Deadline 4 responses to it, particularly from Natural England and the MMO.</li><li>iv. Inclusion of Unexploded Ordnance (UXO) clearance activities within the DMLs: latest positions of the MMO and the Applicants.</li></ul></li><li>b. <i>In-Principle Site Integrity Plans</i><ul style="list-style-type: none"><li>i. Content of the version 2 In-Principle Site Integrity Plans [REP3-044] and any Deadline 4 responses to them.</li></ul></li></ul>



	<ul style="list-style-type: none"><li>i. The inclusion of project-alone effects within Site Integrity Plans, drawing on concerns raised by the MMO [REP3-109], Natural England [REP3-118] and TWT [REP3-148].</li><li>ii. DCO/DML security [REP3-011].</li></ul> <p><i>c. Marine Mammal Mitigation Protocols</i></p> <ul style="list-style-type: none"><li>i. Content of the updated draft Marine Mammal Mitigation Protocols [REP3-042] and any Deadline 4 responses to them.</li><li>ii. DCO/DML security [REP3-011].</li></ul> <p><i>d. Cessation of piling</i></p> <ul style="list-style-type: none"><li>i. Amended Condition 21(3) of the generation assets DMLs and Condition 17(3) of the transmission assets DMLs [REP3-011], [REP3-013]: views of MMO, Natural England and The Wildlife Trusts.</li></ul> <p><i>e. Any other marine mammal matters</i></p> <p><i>The Applicants, Natural England, Marine Management Organisation, The Wildlife Trusts, WDC and any other relevant participants will be invited to comment.</i></p>
<b>5.</b>	<b>Effects on fish and shellfish ecology</b> <ul style="list-style-type: none"><li><i>a. Outstanding effects of concern on fish and shellfish ecology</i><ul style="list-style-type: none"><li>i. Underwater noise implications, including those arising from the inclusion of monopile foundations for offshore platforms: Section 3 of the Applicants.' Deadline 3 Project Update Note [REP3-052] and any Deadline 4 responses to it, particularly from Natural England and the MMO.</li><li>ii. Seasonal restrictions.</li><li>iii. Other effects.</li></ul></li><li><i>b. Means of security</i></li><li><i>c. Any other fish and shellfish matters</i></li></ul>



	<p><i>The Applicants, the Marine Management Organisation Natural England and any other relevant participants will be invited to comment.</i></p>
<p><b>6.</b></p>	<p><b>Effects on terrestrial ecology</b></p> <p><i>Nightjar and Woodlark of the Sandlings SPA</i></p> <ul style="list-style-type: none"><li>a. The Applicant and Natural England to provide an update on the status of outstanding areas of disagreement in relation to the Sandlings SPA crossing and to provide an understanding of positions on this matter.</li><li>b. Matters in relation to the crossing solutions and the Outline Crossing method Statement [REP1-043].</li><li>c. Update on the status of discussions and any work ongoing to address outstanding areas of disagreement in relation to the crossing of the Hundred River.</li><li>d. Natural England to provide clarification on whether the Applicant’s D3 Outline Watercourse Method Statement [REP3-048] and whether this addresses its outstanding areas of concern.</li></ul> <p><i>Outline Landscape and Ecological Management Strategy</i></p> <ul style="list-style-type: none"><li>a. The Applicant’s D3 Outline Landscape and Ecological Management Strategy [REP3-030] including, but not limited to:<ul style="list-style-type: none"><li>i. Outline Ecological Management Plan</li><li>ii. Pre-construction surveys</li><li>iii. Embedded and additional mitigation for badger, bats, Great Crested Newts and reptiles</li><li>iv. Ecological enhancement</li></ul></li></ul> <p><i>The Applicants, Natural England, the Councils, interest groups and any other relevant participants will be invited to comment.</i></p>



<b>7.</b>	<b>Update to the Habitats Regulations</b>  Defra has published a policy paper on the changes to the Habitats Regulations, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019: <a href="https://www.gov.uk/government/publications/changes-to-the-habitats-regulations-2017/changes-to-the-habitats-regulations-2017">https://www.gov.uk/government/publications/changes-to-the-habitats-regulations-2017/changes-to-the-habitats-regulations-2017</a>  The Applicant and Natural England will be invited to comment on the extent to which the changes to the Regulations may have implications for their position on HRA matters.
<b>8.</b>	<b>Any other business relevant to the Agenda</b>  The ExAs may raise any other topics bearing on biodiversity and HRA as is expedient, having regard to the readiness of the persons present to address such matters.  The ExAs may extend an opportunity for participants to raise matters relevant to the topic of these hearings that they consider should be examined by the ExAs.  If necessary, the Applicants will be provided with a right of reply.
<b>9.</b>	<b>Procedural decisions, review of actions and next steps</b>  The ExAs will review whether there is any need for procedural decisions about additional information or any other matter arising from Agenda items 2 to 8.  To the extent that matters arise that are not addressed in any procedural decisions, the ExAs will address how any actions placed on the Applicants, Interested Parties or Other Persons are to be met and consider the approaches to be taken in further hearings, in the light of issues raised in these hearings. A written action list will be published if required.





<b>10.</b>	<b>Closure of the hearings</b>
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## Annex A

### Guidance about participating in Issue Specific Hearings

#### Joining as a speaker

The speakers invited to each session of each hearing are listed on page 1 of this Agenda.

If your name is listed for a hearing, please join the Arrangements Conference for that hearing, at the time specified on page 1 of the Agenda. This enables arrangements to be explained and hearings to make a prompt start. If any speakers have specific requests for arrangements to respond to public health controls (for example relating to their timing of their availability), these should be raised in the Arrangements Conference. The ExAs may make reasonable adjustments to procedural arrangements.

You will receive instructions on how to join the hearing in a separate email, in advance of the event (at least 48 hours). This email will also explain what to do if you have difficulties getting connected.

#### Joining as an observer

If you are an Interested Party (IP) and you asked to observe, you will receive:

- a link to a livestream to watch the hearings in real time; or
- a link to the recordings of the hearings after they have concluded.

Members of the public can view and listen to the hearings on the National Infrastructure Planning Website using a livestream or a recording after they have concluded.

#### Frequently Asked Questions

To help you participate effectively, we have published frequently asked questions (FAQs) on virtual events. This includes an explanation as to why these hearings are being held virtually in light of the Coronavirus public health provisions:

- [Frequently Asked Questions](#) v3.0

These provide information about Microsoft Teams (the system used by the Planning Inspectorate to conduct hearings over the internet) and the digital devices and phones that can be used to join the hearing. Please read the FAQs before you join your hearing as they will help you to prepare and get the best out of your participation. Particular attention is drawn to the FAQ advice 'How do I protect my privacy in Virtual Events' and to Annex H to the Rule 6 Letters, which varies the Planning Inspectorate's National Infrastructure Privacy Policy for virtual events.

#### Participation, conduct and management of Issue Specific Hearings

##### *Participation by speakers*



The business of an ISH is limited to the matters identified in the Agenda. Oral submissions on other subject matters or from persons who are not IPs may only be heard at the discretion of the ExAs. It is strongly preferable that any such issues arising from IPs are brought to an Open Floor Hearing (OFH) where there is no subject matter Agenda and IPs may raise any important and relevant matter.

Any IPs or Other Persons who are not listed as invitees to an ISH but who wish to participate in it should contact the Planning Inspectorate by **noon on Wednesday 13 January 2021**. A request to be heard should outline the items on this agenda on which they wish to speak and provide a summary of the issues that they wish to raise.

Participation is subject to the ExAs' power to control the hearings. Hearings will be managed in the interests of ensuring that the submissions of invited persons are fully heard within the allotted time.

Participants may be legally represented if they wish, but the hearings will be conducted to ensure that legal representation is not required. Parties may attend with expert advisers relevant to matters covered within these agendas, but may equally participate without expert advice if they so wish.

### *Management of ISHs*

Guidance under the Planning Act 2008 (as amended) (PA2008)<sup>4</sup> and the Infrastructure Planning (Examination Procedure) Rules 2010 provides that the ExAs will probe, test and assess the evidence through direct questioning of persons making oral representations at hearings. Questioning at the hearings will be led by the ExAs.

Cross-questioning is regulated by the ExAs and is only seldom employed at hearings. Cross questioning of a person giving evidence by another person will only be permitted if the ExAs decide it is necessary to ensure that representations are adequately tested or to ensure a person has had a fair chance to put their case.

The agendas may be amended by the ExAs at the start of the hearings. Furthermore, the ExAs may wish to raise matters arising from oral submissions, and Relevant Representations (RRs), and pursue lines of inquiry in the course of the discussions which are not listed on the agendas.

The hearings will run until the ExAs are content that all matters on the agendas have been addressed. To avoid virtual event fatigue, session breaks will be provided after approximately 90 minutes of business, subject to ExA discretion. We anticipate closing ISHs<sup>3</sup> by approximately 1.00pm.

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<sup>4</sup>'Planning Act 2008: Guidance for the examination of applications for development consent', (DCLG March 2015).

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418015/examinations\\_guidance-final\\_for\\_publication.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418015/examinations_guidance-final_for_publication.pdf)



All participants are advised that any new evidence presented orally at these hearings should be included in post-hearing submissions including written submissions of oral case and submitted at the next relevant deadline for the application to which it relates, in order to ensure that it has been recorded accurately.

### *Contingencies*

If a hearing is unable to proceed for technical reasons, then the ExAs may adjourn incomplete business to reserved hearing time on Monday 1 or Tuesday 2 February 2021 (morning, afternoon or evening). Notice of any adjournments will be provided in the banners on the National Infrastructure Planning Website for each Application. If the hearings proceed without disruption, then these reserved hearings will not proceed.

### *Relationship between ISHs for East Anglia ONE North and East Anglia TWO*

ISH3 for the East Anglia ONE North application is being held at the same time, date and place as ISH3 for the East Anglia TWO application. The two hearings will take place as a single event and a single agenda has been prepared to cover both hearings.

Should the ExAs need to hear evidence relating to only one or other of the applications, this can be managed during the course of proceedings.

More information about how the ExAs are managing the relationship between the application for East Anglia ONE North and the application for East Anglia TWO can be found in our [Frequently Asked Questions](#).