



THE PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES

2010

East Anglia TWO Offshore Wind Farm

**Appendix A22 to the Natural England Deadline 11 Submission**

**Natural England's Representation to East Anglia ONE (EA1) Non-Material  
Change to DCO Application**

For:

The construction and operation of East Anglia TWO Offshore Wind Farm, a 900MW wind farm which could consist of up to 75 turbines, generators and associated infrastructure, located 37km from Lowestoft and 32km from Southwold.

Planning Inspectorate Reference: EN010078

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7<sup>th</sup> June 2021



## **Natural England's Representation to East Anglia ONE (EA1) Non-Material Change to DCO Application**

This document is applicable to both the East Anglia ONE North (EA1N) and East Anglia TWO (EA2) applications, and therefore is endorsed with the yellow and blue icon used to identify materially identical documentation in accordance with the Examining Authority's (ExA) procedural decisions on document management of 23rd December 2019. Whilst for completeness of the record this document has been submitted to both Examinations, if it is read for one project submission there is no need to read it again for the other project.

### **Introduction**

This document provides a copy of Natural England's representation to the East Anglia ONE (EA1) Non-Material Change to DCO application submitted to the Planning Inspectorate on the 1<sup>st</sup> June 2021.

Within this document we provide generic advice regarding NMC and the implications for legally securing headroom for the East Anglia ONE offshore wind farm. Our concern is that wind farm projects cannot rely on NMC from another project when assessed in combination to free up headroom . If approved for East Anglia ONE, this may potentially result in setting a precedence for NMC for other wind farm developments and we seek further review by the Department for Business, Energy and Industrial Strategy (BEIS) on this matter.

Natural England request this should be taken into consideration by both the EA1N and EA2 windfarm applications.

Date: 01 June 2021  
Our ref: 1618 348670  
Your ref: East Anglia ONE (EA1)



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**BY EMAIL ONLY**

Dear Sir / Madam

The East Anglia One Offshore Wind Farm Order 2014 – Application for a Non-Material Change 2021

Thank you for your consultation dated 30 March 2021 The following constitutes Natural England's formal statutory response.

**Development Consent Order Non-Material Change**

Natural England understand that East Anglia ONE Limited (EAOL) is seeking to amend the Development Consent Order (DCO) to reduce the maximum number of turbines to reflect the 102 turbines installed for the project. We agree that the proposed amendments should be considered as a non-material change (NMC), as they are fully within the consented Rochdale Envelope and the adverse impacts will be no worse than those assessed in the original environmental statement (ES) and Habitats Regulations Assessment (HRA) for EA ONE.

However, Natural England questions whether such a NMC (if granted) provides the legal certainty required to rely on the as-built parameters for the purposes of HRA, including the use of 'as built' values from e.g. collision modelling in an in-combination assessment.

Below Natural England sets out our initial analysis of this issue, including some concerns that in our view require further consideration before 'as built' values based on a NMC can be adopted in in-combination assessments. We consider it would be prudent for BEIS to seek legal advice on these matters:

1. Under the Planning Act 2008, the Secretary of State (SoS) has the power to change or revoke a DCO for up to four years following substantial completion of the development. However, this time limit does not apply in relation to non-material changes, i.e. those changes that the SoS is satisfied are not material.
2. The legislation does not define what amounts to either a material or non-material change, but Government guidance on the subject confirms the following:
  - a. A change should be treated as material if it would require an updated Environmental



- Statement (ES) (from that at the time the original DCO was made) to take account of new, or materially different, likely significant effects on the environment as a result of the change.
- b. A change is likely to be material if it would invoke a need for a Habitats Regulations Assessment (HRA). Similarly, the need for a new or additional licence in respect of European Protected Species (EPS) is also likely to be indicative of a material change.
  3. The Applicant believes the Application amounts to a NMC because it would not require an updated EIA or HRA. Specifically, the Applicant states that the as-built parameters are fully within the Rochdale Envelope originally consented and that the adverse impacts are no worse than those assessed in the EIA or HRA accompanying the original DCO. The Applicant has also stated that the Application meets other criteria for NMC applications concerning compulsory acquisition, land rights and the local population.
  4. There is no legal time limit on making non-material changes to DCOs. As such, there would be nothing to prevent the developer in this case from making a further NMC application in the future to increase the number and size of turbines specified for this windfarm. So long as the adverse impacts of the change being requested were no worse than the worst-case scenario assessed in the EIA or HRA accompanying the original DCO (and other criteria concerning compulsory acquisition, land rights and the local population were met), there is the risk that such an NMC application could be granted and thus that additional and/or larger turbines could be installed in the future.
  5. In view of the above, even if the NMC is granted, we question whether it would be appropriate to rely on as-built parameters for HRA purposes in-combination assessments. This is because the developer could, in theory at least, keep on amending the project via NMC applications up to the limit of the Rochdale Envelope.

Natural England recognises the desirability of establishing environmental 'headroom' in order to facilitate further offshore wind development, and is keen to ensure this is achieved in a legally robust manner. We would be pleased to have further discussions with BEIS regarding this matter if that would be helpful.

### **Supporting Statement – Collision Risk Modelling Update**

Natural England has reviewed the Collision Risk Modelling Update in Appendix A of the Supporting Statement. The following aspects of Appendix A require clarification:

1. We note that the revised values were calculated using species specific avoidance rates with Band Model Option 1 for gannet, kittiwake, lesser black-backed gull and herring gull, and Option 2 for great black-backed gull. However, it is not clear how the site specific proportion of birds at collision height (PCH) used for Option 1 have been calculated, i.e. from boat-based estimates, or by using the relative size of the bird using digital aerial survey methods. This detail should be included in Appendix A for clarity. Natural England also advise that outputs from both Option 1 and Option 2 for all species are presented.
2. Natural England's general advice is that Option 2 i.e. generic flight height information should be used in Collision Risk Modelling unless it can be demonstrated that robust, site-specific datasets are available, so it is important that Option 2 outputs are provided by the Applicant.
3. We also seek clarity on the different reference points for the turbine parameters (i.e. mean high water spring (MHWS) vs mean sea level (MSL) in terms of draught height). We question why Appendix A refers to the draught heights to MSL, but the main section of report refers to draught height at MHWS.



4. Natural England's understanding is that the hub height entered in the Band (2012) spreadsheet should be referenced to Highest Astronomical Tide (HAT) – Band (2012) states:

*'Normally, the hub height of wind turbines is measured from Highest Astronomical Tide (HAT), to help ensure navigational clearance requirements are satisfied. However, bird flight heights are measured relative to sea level, which may be 2-3 metres or more lower. Mean sea level (Z0) and HAT are normally stated relative to Chart Datum (CD). The calculation allows for a tidal offset to be added to the hub height, to allow for this additional height above mean sea level.'*

5. In the main report there is reference to draught height being increased from 22m MHWS to 28m MHWS (Table 2.1), whereas Appendix A seems to be suggesting it is being increased from 22m MSL to 30.8m MSL. Perhaps a correction that accounts for the change going to 28m MHWS vs 30.8m MSL has been applied, but it is not clear why both the report and Appendix A state 22m MHWS/MSL. We seek clarification on this point, as this could potentially affect the CRM predictions.

Please be advised that if this is eventually an accepted route for as built project values to come forward, the full assessment using Natural England's advised values and parameters must be made available and a best practice approach agreed across the industry.

If you require further information please contact me on the details included within the below signature.

Yours faithfully

Helen Mann  
Marine Lead Adviser (Major Casework) – Norfolk and Suffolk Team

