



THE PLANNING ACT 2008  
THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)  
RULES 2010

HORNSEA PROJECT THREE OFFSHORE WIND FARM

Planning Inspectorate Reference: EN10080

**Annex B: Natural England's detailed comments on the  
Development Consent Order and Deemed Marine Licenses**

7 November 2018

## 1. Introduction

- 1.1. Natural England submitted Relevant Representations on 20<sup>th</sup> July 2018 where we stated that further work was required with regards to a number of issues. Since the submission of the Relevant Representations we have engaged in discussions with the MMO regarding these documents to discuss areas of shared concerns.
- 1.2. Natural England also worked with the Applicant to achieve agreement on specific points, where possible. These discussions are reflected in the Applicant's All Other Matters Statements of Common Ground (SoCG). However, the number of points included in the present Annex indicates that there are still areas where further discussions and work are required. Natural England would welcome further engagement with the Applicant and the MMO during the examination period.
- 1.3. On further consideration of the thematic issues since the Relevant Representations, Natural England has identified several additional points of concern within the DCO/DML that we now bring to the Examining Authority's attention in this Written Representation.
- 1.4. Natural England proposes the inclusion of a new requirement within Schedule 1 part 3 of the DCO. The purpose of this new condition would be to require the undertaker to provide confirmation that all construction activities were completed and that the project has entered the full operational phase. It would also confirm that no further major installation work may take place.
- 1.5. A requirement needs to be added within the In-Principle Monitoring plan to re-run the Collision Risk Modelling as the first step in the post construction monitoring of ornithological impacts. The monitoring conditions within Schedules 11 and 12 may need to be updated to reflect they cover monitoring and modelling of impacts.
- 1.6. In relation to Schedule 11, Part 2, condition 15 (b) (i). An additional condition needs to be added to the during construction monitoring to ensure that the monitoring report is submitted within 6 weeks of the fourth pile that is monitored and that in the event of major issues works will pause until sufficient mitigation is in place to prevent unacceptable impacts to marine mammals.
- 1.7. Natural England proposed the following wording be added to schedule 11:

*Condition 15 (b) (iv) The results of the initial noise measurements monitored in accordance with sub-paragraph (i) must be provided to the MMO within six weeks of the installation of the first four piled foundations of each piled foundation type. The assessment of this report by the MMO will determine whether any further noise monitoring is required. If, in the opinion of the MMO in consultation with Natural England, the assessment shows significantly different impact to those assessed in the ES or failures in mitigation all piling activity must cease until an update to the MMMP and further monitoring requirements have been agreed.*

The reason for this proposed change is that recent reports received on constructing Round 3 offshore wind farm developments have cast doubt over the efficacy of the soft start mitigation measure. It has also highlighted that the standard condition, as drafted, may not be sufficient to ensure piling stops in a situation where the monitoring confirms there is a significant issue. The wording above makes it clear that if the monitoring highlights such failures the undertaker is required to stop until measures are agreed to address any critical failures in modelling or mitigation. This is vital when considering the location of the development in relation to the Southern North Sea cSAC/SCI and the potential for significant impacts on harbour porpoise.

- 1.8. Natural England's comments are provided without prejudice, and with the understanding that any suggested wording for changes to the DML has not been agreed with the MMO as to exact wording.
- 1.9. Table B1 of this document contains additional detailed comments that were not included in Natural England's Relevant Representation.
- 1.10. Table B2 provides detailed comments on the additional submission by the Applicant that was accepted by the Examining Authority and published on the Infrastructure Planning Portal on 27 July 2018:
- Relationship Between Design Parameters Draft Development Consent Order and Environmental Statement.
- 1.11. Table B3 provides a record of discussions with the Applicant on the issues that were raised in the Relevant Representations.
- 1.12. DCO/DML comments raised in the Relevant Representations where Natural England has achieved agreement with the Applicant since are captured in the Applicant's All Other Matters SoCG.

Table B1: Further comments not included in Natural England's Relevant Representations.

DCO reference	Natural England's comments
<b>DCO, interpretations, Articles and Schedule 1</b>	
Part 1, 2, Page 5	The interpretation of 'cable circuit' included states that for HVAC a cable circuit may be one or three cables, bundled together or installed separately. However, table 3.38 of the ES project description (page 31) shows that offshore it will only be one cable, under this definition three separate offshore cables could be installed. While this would be limited by the maximum length of export cable it should be made clear that the maximum number of export cables offshore is six as per ES Project Description table 3.44 (page 36).
Schedule 1, Part 1, 1 Works no 2 and 3(d) page 29/30	There are two offshore cable options, one for HVDC and one for HVAC. As HVAC has more cables I have used it as the example, but the issue applies to both descriptions. This is described as up to six cables circuits between works No 2 and 3, 3 and 5. Using the interpretation of cable circuits provided within the DCO this means six circuits each consisting of up to three separate cables (18 export cables).
Schedule 1, Part 1, Work no 2 and 3(d)	Works No 2 and 3 include one or more cable crossings. The ES project description assesses up to 44 cable crossings, the maximum number of crossings should be included. This is important as cable crossings all include deposition of cable protection and the DCO should ensure that the maximum limits are adhered to both for the entire project and for each individual crossing.
Schedule 1, Part 1, work no 2 (e) Page 30	This states up to eight horizontal direction drilling (HDD) exit pits, however, there are only six cables assessed as the maximum scenario. Natural England therefore questions the need for two more exit pits. Additionally works No 3 for HVAC cable installation do not include any HDD exit pits. Natural England is unclear if this an oversight or whether it is anticipated that HVAC not require HDD noting that the project description states that intertidal installation for both types would be the same.

Schedule 1, Part 3, 2 (1) Page 33	The wording here gives two scenarios for the design. One is when 160 turbines or less are built, max height is 325 m and rotor diameter is 265 m. The second is for when exactly 300 turbines are built. There is no scenario describing a maximum of greater than 160 turbines or less than 300, therefore Natural England assumes that is not being consented. Confirmation of this should be requested.
Schedule 1, Part 3, 6, Page 35	This requirement is for the developer to provide a written scheme to the MMO and local planning authorities outlining all phases of construction. The relevant SNCB should be consulted on this as we may have some comments to make both on and offshore. For example monitoring of Phase 1 may be impacted by the construction of a Phase 1 etc. This requirement should be amended to note that the relevant SNCB will also be consulted.
<b>Schedule 11 (all issues raised here also apply to the corresponding condition in schedule 12, where such conditions exist)</b>	
Part 1, 2 (g) Page 128	This simply states site preparation works, but gives no details of the maximum scope. Within the definition of offshore site preparation works is boulder relocation and sandwave levelling. The maximum extent on both should be provided. Additionally, it should be noted for sandwave levelling both maximum volume and maximum area must be stated on the licence. This is due to previous experience where a wind farm developer considered the volume as the limiting factor and impacted on approximately nine times the area assessed. It is vital that when designing the project these limitations are clear in the consent.
Part 1, 6, Page 129	Condition stating the offshore preparation works will not be considered commencement. See Relevant Representations comment 5.15. This condition needs to be removed.
Part 2, 4, Page 131	It is noted that the DML doesn't included J-Tube cleaning and maintenance for the array, but does include this for the transmission assets. Given that all wind turbines have J-tubes and there have been cases where marine growth around the J-Tube has been a problem, Natural England questions if this is an oversight. It might be worth asking if there is a reason why the generation licence does not need J-Tube maintenance.

Table B2: Detailed review of the issues related to DCO vs ES values.

Issue noted in Natural England's review of the Application	Applicant's response to ExA section 51 advice 8 June 2018	Updated Natural England's comments
<p>DCO, Page 31, schedule 1 Part 1, work no 15.</p> <p>Disposal total volume provided here is 3,563,133 m<sup>3</sup>. Schedules 11 and 12 split this to 1,344,318 m<sup>3</sup> for generation and 2,218,816 m<sup>3</sup> for transmission. There is a 1 m<sup>3</sup> discrepancy between the total of the two DMLs and the DCO. Within the Dredge and Disposal site characterisation report table 2.2 page 9 lists disposal of 2,289,137 m<sup>3</sup> in the array area and 1,467,956 m<sup>3</sup> in the export cable, this totals 3,757,093 m<sup>3</sup> of disposal significantly more than within the DCO. Clarification of these figures is essential so we understand exactly what is included in the disposal aspects. Natural England suspects there may be an error in the site characterisation report where they have included all HVAC and HVDC structures at the same time.</p>	<p>Table 1.1 Page 2</p> <ul style="list-style-type: none"> <li>• Sandwave clearance in Hornsea Three array area (Table 3.4 of Volume 1, Chapter 3: Project Description);</li> <li>• Sandwave clearance in Hornsea Three offshore cable corridor (Table 3.5 of Volume 1, Chapter 3: Project Description);</li> <li>• Spoil volume for turbine foundations (Table 3.10 of Volume 1, Chapter 3: Project Description);</li> <li>• Spoil volume for offshore transformer substation foundations (Table 3.11 of Volume 1, Chapter 3: Project Description);</li> <li>• Spoil volume for surface offshore HVAC booster station foundations (Table 3.12 of Volume 1, Chapter 3: Project Description);</li> <li>• Spoil volume for offshore accommodation platform foundations (Table 3.15 of Volume 1, Chapter 3: Project Description); and</li> <li>• HDD exit pit excavated material (Table 3.52 of Volume 1, Chapter 3: Project Description).</li> <li>• The maximum design parameter has been calculated for the HVAC transmission scenario from: Being <math>1,202,956 \text{ m}^3 + 71,150 \text{ m}^3 + 1,225,692 \text{ m}^3 + 735,000 \text{ m}^3 + 245,000 \text{ m}^3 + 63,335 \text{ m}^3 + (2,500 \text{ m}^3 * \text{eight}) = 3</math></li> </ul>	<p>Within their response, the Applicant totals up the details in the ES project description, which matches the DCO (assuming the 1 m<sup>3</sup> is a rounding error). However, the document fails to address at all the fact that the site disposal characterisation report assessed around further 200,000 m<sup>3</sup> than presented within the ES or the DCO. This discrepancy needs to be explained as it is important, the full figures for disposal are assessed and consented, or it will lead to the potential need for variation or additional consents at a later date.</p> <p>In their reply to the ExA the Applicant has provided a breakdown of the figures that add up to the total disposal volume. Although stated to be part of the aggregate disposal figure, boulder clearance has not been included as part of the breakdown. Natural England considers boulder clearance to be an act of disposal, and therefore request that these figures be included. Natural England also requests that the disposal volumes are clearly stated within the DML so that there is a maximum volume of sand, boulders, drill arising etc. individually presented and not just a single overarching volume.</p>
<p>DCO, Page 33 schedule 1 Part 3, 3 (1)</p>	<p>Page 5</p>	<p>In their response to the ExA the Applicant only refers to table 3.9. However, the DCO</p>

<p>The maximum number of offshore platforms is given here as 21. However, within the ES project description the maximum number of offshore structures is listed as 319. Broken down as 300 turbines, 12 offshore transformers, 4 offshore HVDC converter stations or 4 offshore HVAC booster stations and 3 accommodation platforms (table 3.9 on page 19). The number of platforms permitted should reflect the maximum number of platforms assessed in the ES.</p>	<p>The maximum design parameters are outlined in Table 3.9 of Volume 1, Chapter 3: Project Description.</p>	<p>schedule 1, part 3, 3(1) says max 21 structures and table 3.9 says 19. Clarification is still required as this question has not been answered.</p>
<p>DCO Page 35 Schedule 1, Part 3, requirement 4</p> <p>The maximum scour protection volume given is 2,709,673m<sup>3</sup> however the total of scour protection allowed under the 2 DMLs is 2,952,873m<sup>3</sup>. Clarification on the figures should be requested. Schedule 11 has 2,418,473m<sup>3</sup> of scour protection total for turbines and accommodation platforms. Schedule 12 has 534,400m<sup>3</sup> for generation platforms which I assume is incorrect, even when adding the volumes for HVDC and HVAC platforms together the total volume is only 385,600m<sup>3</sup>.</p>	<p>Page 33</p> <ul style="list-style-type: none"> <li>• Scour protection volume for offshore transformer substation foundations (Table 3.11 of Volume 1, Chapter 3: Project Description); and</li> <li>• Scour protection volume for offshore HVDC collector substation foundations (Table 3.14 of Volume 1, Chapter 3: Project Description).</li> <li>• The maximum design parameter has been calculated for the HVDC transmission scenario from: <ul style="list-style-type: none"> <li>• Being 182,400 m<sup>3</sup> + 108,800 m<sup>3</sup> = 291,200 m<sup>3</sup>.</li> </ul> </li> <li>• On review, Schedule 12, Part 2, 2(9) should be updated to state: "The volume of scour protection material for offshore electrical installation foundations must not exceed 291,200 cubic metres." This modification to the wording will be made at the next iteration of the Draft DCO as part of the examination process.</li> </ul>	<p>The Applicant has confirmed in their response to the ExA that they got the figures wrong on schedule 12 transmission DML and that the correct scour volume there should be 291,200 m<sup>3</sup>. We are satisfied that the total within the ES is accurate and therefore once the dML is corrected then no further action is required.</p>

	<ul style="list-style-type: none"> <li>The HVDC transmission option results in the maximum design scenario. To calculate the HVAC scenario, exchange the scour protection volume from Table 3.14 for the equivalent in Table 3.12 of Volume 1, Chapter 3: Project Description. This leads to a smaller value than that generated by the HVDC scenario and therefore is not considered the maximum design scenario.</li> </ul>	
<p>DCO Page 35, Schedule 1 Part 3 requirements 5 (2) and (3)</p> <p>The length of array cables is given as 830 km. However in schedule 11 the generation DML covers cables of up to 1055km. It appears the 225km of interconnector cables, included in the ES but not anywhere on the DCO/DMLs, has been added to the array cables. However, this is not explained, it also appears the 225km have been simultaneously added to the export cables. The DCO and Schedule 12 both state 1371km but the ES project description gives 1,146km table 3.45. Clarification on this should be required and the DCO and DML values should reflect the ES project description.</p>	<p>Page 22 For Schedule 11</p> <ul style="list-style-type: none"> <li>Total length of array cables (Table 3.31 of Volume 1, Chapter 3: Project Description); and</li> <li>Total length of offshore interconnector cables (Table 3.49 of Volume 1, Chapter 3: Project Description).</li> <li>Rock protection volume of array cables (Table 3.33 of Volume 1, Chapter 3: Project Description); and</li> <li>Rock protection volume of offshore interconnector cables (Table 3.50 of Volume 1, Chapter 3: Project Description).</li> <li>The length of cables in Work No.1(c) and Work No.2(c) has been calculated from: <ul style="list-style-type: none"> <li>Being <math>830 \text{ km} + 225 \text{ km} = 1,055 \text{ km}</math>.</li> </ul> </li> <li>The volume of cable protection in Work No.1(c) and Work No.2(c) has been calculated from: <ul style="list-style-type: none"> <li>Being <math>830,000 \text{ m}^3 + 225,000 \text{ m}^3 = 1,055,000 \text{ m}^3</math></li> </ul> </li> </ul> <p>Page 34 For Schedule 12</p>	<p>The Applicant has confirmed that the discrepancy in cable length is because the interconnector cable is included on both DMLs. This is not ideal, as it could allow for additional cable protection to be installed, exceeding the maximum volumes assessed as the WCS in the ES.</p> <p>Natural England requests that there be a requirement to provide notice pre construction on whichever DML the interconnector cables are being built under, thus reducing the maximum cable and cable protection that can be used under the other DML. This would also require the DMLs to state separately the volume of cable protection required for the interconnector. This needs to be made clear, as currently it is not, and secured through improved wording.</p>

	<ul style="list-style-type: none"> <li>• Total length of offshore export cables (Table 3.45 of Volume 1, Chapter 3: Project Description); and</li> <li>• Total length of offshore interconnector cables (Table 3.49 of Volume 1, Chapter 3: Project Description).</li> <li>• Rock protection volume of offshore export cables (Table 3.46 of Volume 1, Chapter 3: Project Description); and</li> <li>• Rock protection volume of offshore interconnector cables (Table 3.50 of Volume 1, Chapter 3: Project Description).</li> <li>• The length of cables in Work No.2 and Work No.3 has been calculated from:</li> <li>• Being 1,371 km + 225 km = 1,371 km.</li> <li>• The volume of cable protection in Work No.1(c) and Work No.2(c) has been calculated from:</li> <li>• Being 1,146,000 m<sup>3</sup> + 225,000 m<sup>3</sup> = 1,371,000 m<sup>3</sup>.</li> <li>• The length of cables in Work No.5 is outlined in Table 2.14 of Volume 2, Chapter 2: Benthic Ecology.</li> </ul>	
<p>DCO page 35 Schedule 1, Part 3 requirements 5 (4) and (5)</p> <p>The volume of cable protection is given as 2,201,000m<sup>3</sup> excluding cable crossings. Cable crossings cable protection is listed as 784,875m<sup>3</sup>. This is significantly below the details given in the ES project description (see below) Schedule 11 includes 1,055,000m<sup>3</sup> of cable protection. Schedule 12 includes</p>	<p>As above, plus Page 15</p> <ul style="list-style-type: none"> <li>• Pre-lay cable/pipe crossing volume for array cables (Table 3.33 of Volume 1, Chapter 3: Project Description);</li> <li>• Post-lay cable/pipe crossing volume for array cables (Table 3.33 of Volume 1, Chapter 3: Project Description); and</li> <li>• Cable/pipe crossings volume for offshore export cables including operation (Table 3.48 of Volume</li> </ul>	<p>The Applicant's response has not explained the discrepancies found between the DCO and DML values recorded. This may be caused by a mixture of the double licencing of the interconnector cables (i.e. they have double licenced the protection volumes) and the Applicant not including the cable protection for cable crossings in the DMLs which would need correcting. Additionally, within the ES project description table 3.48 is misleading as it</p>



<p>1,371,000m<sup>3</sup> to total 2,426,000m<sup>3</sup>. Neither consent mentions if this includes cable protection from crossings, if it does then this totals significantly below the DCO, if not then it is significantly above the volumes of the DCO.</p> <p>The ES project description,  Export cable=1,146,000 table 3.46  Cable Crossings=1,146,000 table 3.48  Array cables=830,000 table 3.33  Interconnectors=225,00 table 3.50  Total=3,347,000m<sup>3</sup></p> <p>Additionally, the cable protection area figures do not match the ES project description. DCO totals 2,288,200m<sup>2</sup> and the ES project description totals 2,342,900m<sup>2</sup>.</p>	<p>1, Chapter 3: Project Description). • Cable/pipe crossings total impacted area for array cables (Table 3.33 of Volume 1, Chapter 3: Project Description); and</p> <ul style="list-style-type: none"> <li>• Cable/pipe crossings total impacted area for offshore export cables (Table 3.48 of Volume 1, Chapter 3: Project Description).</li> <li>• The volume of cable protection associated with cable crossings has been calculated from:</li> <li>• Being 21,875 m<sup>3</sup> + 70,000 m<sup>3</sup> + 693,000 m<sup>3</sup> = 784,875 m<sup>3</sup>.</li> <li>• The footprint of cable protection associated with cable crossings has been calculated from:</li> <li>• Being 87,500 m<sup>2</sup> + 660,000 m<sup>2</sup> = 747,500 m<sup>2</sup></li> </ul>	<p>has the figures for total rock protection which match that used for the export cable, however it is not appropriately labelled as such. This needs clarification, but may explain the discrepancy between the ES project description and the DCO total values.</p>
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Table B3: Progress on the discussions on the issues raised in the Relevant Representations.

Page/ issue	Comment in the Relevant Representation	Ørsted Response/draft SoCG	Current Status
10 4.3.2	<p>The wording of the project description associated with this application is confusing and the description of activities provided in subsequent chapters does not always tally with the overarching project description chapter and figures presented within the Development Consent Order (DCO) and/or Deemed Marine Licences (DMLs). This lack of clarity around the parameters of the project means that the activities that are to be undertaken are undoubtedly open to interpretation. Given this level of uncertainty, Natural England is unable to advise appropriately on the significance of the nature conservation and landscape impacts.</p>	<p>Not responded to this comment, have however responded to the specific detailed comments on various aspects.</p>	<p>Partially resolved but many matters are still an issue, see A.2 below.</p>
13 5.1.1	<p>Natural England notes that the Applicant has included a condition in both DMLs that requires all post-consent documentation to be signed off within 8 weeks of a report being submitted. It is our view, that such condition is extremely restrictive and leaves no room for potential discussions that may be required post-consent. The DMLs also state that failure to reply on time could lead to the developer submitting the matter to arbitration.</p>	<p>The Applicant wishes to ensure an efficient and expeditious approval process for the discharge of conditions. However, we note Natural England’s concerns, and propose the following compromise, which would require the amendment of condition 12 of the generation assets DML:</p> <p><i>“12.—(1) Each programme, statement, plan, protocol or scheme required to be approved under condition 11 must be submitted for approval at least four months prior to the intended commencement of licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.</i></p> <p><i>(2) The MMO shall determine any application for <b>approval consent</b> made under <b>condition 11</b> <del>this article</del> within a</i></p>	<p>The proposed resolution is mostly acceptable. However it should be noted that Natural England has asked for an extension to the four month period.</p>

		<p>period of <b>four months</b> <del>eight weeks</del> commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.</p> <p>(3) Where the MMO is minded to refuse an application for <b>approval</b> <del>consent</del> made under condition 11 and notifies the undertaker accordingly, or the Secretary of State fails to determine the application for consent under this article within the period prescribed in paragraph (2), the undertaker may refer the matter for determination in accordance with article 36 (arbitration) of the Order.</p> <p>(4) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 11, unless otherwise agreed in writing by the MMO.”</p> <p>The similar amendments would also be required to condition 13 of the transmission assets DML.</p> <p>The effect of the amendments would be that applications to discharge conditions are submitted no later than four months before commencement and those applications must be determined within that four month period, unless an extension of time is agreed between the parties.</p>	
13 5.1.2	<p>With regard to the arbitration provision in the DCO, arbitration conditions in the DMLs and the arbitration rules schedule, Natural England does not believe the provision made for arbitration within this DCO is appropriate. Natural England’s expert advice is given pursuant to its statutory duties. It cannot be bound by the findings of another organisation or individual if that contradicts its expert opinion. Natural England is, therefore, unable to agree to a mechanism which compels it to</p>	<p>The Secretary of State (SoS) has previously considered who should be a party to arbitration provisions in a DCO. In respect of both the Triton Knoll Offshore Wind Farm Order 2013 and the Burbo Bank Extension Offshore Wind Farm Order 2014, Natural England submitted that it should be excluded from those provisions on the basis that the exercise of NE’s statutory powers should not be subject to arbitration. In both cases, the SoS did not agree.</p> <p>At para 7.3 of the Triton Knoll decision letter the SoS states: “The Panel also asked the Secretary of State to consider whether SNCBs should be removed from the provisions for arbitration covered by Article 12 of the draft</p>	<p>No Change. This response does not adequately address Natural England’s concerns, or seek to address them. The arbitration article proposed is significantly different to the cases referenced. Natural England refers to the comments made in our Relevant Representation.</p>

	<p>abide by an outcome which it does not believe is appropriate in its expert opinion.</p>	<p>Order at Appendix E (headed “Arbitration”) [ER 5.11.20]. To maintain consistency with other offshore wind farms approved under the Planning Act 2008 since the close of the Panel’s Examination, the Secretary of State has decided that the arbitration provisions should apply to SNCBs and has therefore modified the article in the Order accordingly.”</p> <p>The outcome in Triton Knoll was noted by the ExA in its report on Burbo (as noted in para 7.45 and 7.46 of the Report): “This draft article provides for the appointment of an arbitrator if a dispute arises in respect of any provision of the DCO. Early draft DCOs excluded Natural England from the operation of the provision, pursuant to an opinion provided by Natural England to the Triton Knoll Offshore Wind Farm Examining Authority that the exercise of its statutory powers should not be subject to arbitration and should only be adjudicated upon by the court. However, the Secretary of State in the Triton Knoll decision decided not to exclude Natural England from the arbitration provision in that DCO, on the basis that all issues and parties should be equally subject to arbitration on the same basis [emphasis added]. I proposed to delete the exclusion of Natural England from the arbitration provision in my draft DCO. The applicant and Natural England did not object to this revision which was sustained in the applicant's draft DCO Version 6 [APP-099]. I am content with the current drafting of this article.” The SoS endorsed the ExA’s conclusion in the made Order.</p> <p>Therefore, Examining Authorities and the SoS have already opined on this point as highlighted above and concluded that “all issues and parties should be equally subject to arbitration on the same basis”. The argument advanced by Natural England that it should be excluded from those provisions on the basis that the exercise of</p>	
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		Natural England's statutory powers should not be subject to arbitration, has been rejected by the SoS at least twice in the Triton Knoll and Burbo DCOs.	
13 5.1.3	It is also noted that, within this provision, an award of costs may be made against Natural England. While it is acknowledged that the wording used is reasonably standard for arbitration agreements, Natural England considers that it is inappropriate for a Statutory Body to be subject to additional outside costs while performing its statutory function.	The costs provisions are fair and are similar to those found in other appeal related costs awards. Paragraph/provision 6(4) states that "the Arbitrator will award recoverable costs on the general principle that costs follow the event, having regard to all material circumstances, including such matters as exaggerated claims and/or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party". This affords the arbitrator the discretion to award costs, or not, having regard to matters set out above.	As per arbitration, this does not adequately address our concerns.
13 5.1.4	In relation to the confidentiality clause of the arbitration schedule: Natural England is subject to the requirements of the Freedom of Information Act 2000 ('FOIA') and the Environmental Information Regulations 2004 ('EIR'). Therefore Natural England may be obliged to release documents in response to an FOIA or EIR request including any file notes. In respect of any FOIA or EIR request, Natural England is responsible for determining at its absolute discretion whether any information it holds, whether commercially sensitive information or otherwise, is exempt from disclosure in accordance with the provisions of the FOIA or the EIR or is to be disclosed in response to a request for information. Natural England cannot therefore guarantee confidentiality or agree to be bound by such a requirement.	The applicant accepts that this could be amended to allow disclosure to enable a party to comply with disclosure obligations under legislation, e.g. the Freedom of Information Act 2000.	This is an acceptable resolution, subject to the provision and review of updated wording.

13 5.15	Additional to the concerns on arbitration, Natural England cannot agree to the definition of 'offshore preparation works' as currently provided within the draft DCO and DMLs. The definition allows works such as sandwave levelling and boulder clearance to be conducted without any regulatory oversight or control of the methodology. These works form a significant part of the impact of the project, including a significant part of the impact to designated sites, and must be subject to appropriate regulatory review and sign off prior to any works commencing.	The Applicant has reflected on this point, and given the control in Condition 11 of the DMLs (as highlighted in bold below) are happy to ensure that "commence" captures offshore site preparation works:  <i>11.—(1) The licensed activities or any phase of those activities must not commence until the following (<b>insofar as relevant to that activity or phase of activity</b>) has been submitted to and approved in writing by the MMO</i>	This is an acceptable solution, subject to the provision and review of an updated definition of commence.
24 5.5.2	The maximum hammer energy assessed in the Environmental Statement (ES) should be detailed within the design parameters on the Development Consent Order (DCO) and/or Deemed Marine Licences (DMLs). This is the best available metric to ensure the noise generated from piling does not exceed that assessed within the project envelope. Given the discussions and amendments that have been requested on other projects, this needs to be included on the face of the consent to ensure this important maximum parameter is only amended through an appropriate variation process.	The Applicant has reflected on this matter and can confirm that it will include reference to the maximum hammer energy (5,000kJ) in the DML and this will be reflected in the updated version that will be submitted at Deadline 1.	This is an acceptable solution, subject to the provision and review of the wording.
24 5.5.3	The DMLs have proposed the inclusion of a mitigation condition for harbour porpoise in the Southern North Sea cSAC/SCI similar to that included in Hornsea Project Two. Natural England notes that a Marine Mammal Mitigation Protocol will be provided to remove	The Applicant welcomes Natural England's acknowledgement of the measures that it has put in place with regard to the SNS SCI and the MMMP.  The Applicant agrees that it is necessary to provide sufficient information to the regulatory authority (prior to the commencement of construction) to establish the risk to	This is mostly acceptable, subject to provision and acceptance of an outline SIP. The wording of the licence conditions must be updated to reflect the

	<p>the risk of potential death and/or injury to marine mammals. In addition, the Project should have a Site Integrity Plan – a live document, which needs to be updated prior to construction to inform the relevant authority’s Appropriate Assessment of disturbance to harbour porpoise.</p>	<p>site integrity once final design and precise nature of other activity taking place within the SCI at that time, is clear.</p> <p>However, it is noted that in practice, under the existing Condition (11/12 (4, 5 and 6) the undertaker will come forward (prior to commencement of works) and demonstrate whether there is a risk to integrity of the SCI or not based on the final scheme design and precise knowledge of what other projects (within proximity to the SCI) are undertaking activities at the same time. The documentation produced to evidence this has (in practice (for example Hornsea Project One)) been in suitable form to inform a regulatory AA.</p> <p>It will therefore, serve the same function as a SIP document. The Applicant is willing to cite a SIP in the existing condition on the understanding that it will not duplicate the reporting requirements.</p>	<p>inclusion of a SIP and the function the SIP will take.</p> <p>The advantage of the SIP is that it actually requires the applicant to put forward a plan which clearly demonstrates that they are not adversely affecting the site. The current condition effectively says the MMO shouldn’t approve if it is not content that there will be no adverse effect on the SAC. The condition also states that the decision is to be based on the construction plan only, while a large part of the information to decide if the works have an acceptable impact will come from a wide range of other documents (construction schedule, construction methodology, MMMP etc). If all this information is collated within the final SIP this makes for an easier post consent process. Additionally a SIP has a timetable of resolution, which for East Anglia Three started a year before construction and Natural</p>
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			England would advise that a similar timetable needs to be included in any outline SIP.
<b>Relevant Representation Annex A</b>			
A.1	Unexploded Ordnance (UXO) detonations are mentioned within Vol. 1 Ch. 3 Project Description, however, no maximum number or size is given and no mention of UXO is made within the DCO/DML. We note that UXO is therefore not part of the consent and a separate Marine Licence and potentially a European Protected Species (EPS) licence will therefore be required.	The Applicant confirms that a separate UXO clearance licence will be sought prior to the commencement of construction activity, once it is known how many (if any) and what nature any UXO within the areas within which construction activity will take place, requires clearance.	Noted.
A.2	We note that similar to other parts of the application submitted the figures for total offshore platforms, cable length, cable protection, scour protection and disposal volumes do not add up between the DCO, DMLs and the Environmental Statement (ES) project description. Additionally the cable protection related to cable crossings does not seem to be included in either of the two DMLs. The applicant needs to ensure the ES project description, DCO and DMLs all total the same volumes and quantities.	The Applicant's response to the Planning Inspectorate on the 25 July 2018 outlines the relationship between the Draft DCO and Volume 1, Chapter 3: Project Description of the Environmental Statement (Document A6.1.3). This document is located at <a href="https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010080/EN010080-000802-20180723_HOW03_S58_Attach02_PDESTable.pdf">https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010080/EN010080-000802-20180723_HOW03_S58_Attach02_PDESTable.pdf</a> It should be noted that Schedule 11, Part 2, Condition 3(1) includes the volume of cable protection, excluding cable protection required for cable crossings, in Work No.1(c) (i.e. the array cables) and Work No.2(c) (i.e. interconnector cables) and Schedule 12, Part 2, Condition 1 includes the volume of cable protection, excluding cable protection required for cable crossings, in Work No.2 (i.e. interconnector cables and export cables) and Work No.3 (i.e. export cables). In order to clarify that Schedule 11, Part 2, Condition 3(1) and Schedule 12, Part 2, Condition 1	We note that most matters remain unresolved, requiring further clarification. Please refer to table B2 above for detailed comments on the said document.



		does not include cable protection required for cable crossings, it is proposed that the Draft DCO is updated to state: "the volume of their cable protection (excluding cable crossings) [...]"	
A.3	Natural England is concerned that no figures for the maximum amounts of permitted sandwave levelling and boulder relocation are included anywhere within the DCO/DMLs, save as a potential aggregate within the disposal figures. It is our view that such approach is not appropriate, or adequate, to ensure the limits of the worst case scenario assessment are adhered to. For sandwave levelling it is important the licence states both the area of impact and the volume of impact.	<p>The volume of sandwave and boulder clearance are included in the Draft DCO (Document 3.1) as follows:</p> <ul style="list-style-type: none"> <li>- Schedule 1, Part 1, Requirement 1(c) includes for the removal of material from the seabed for the construction of Work Nos 1 to 5 and the disposal of up to 3,563,133 cubic meters of inert material of natural origin within the Order limits produced during [...] cable installation preparation such as sandwave clearance, boulder clearance [...].</li> <li>- Schedule 11, Part 1, Condition 2(f) includes for the disposal [...] of up to 1,344,318 cubic metres of inert material of natural origin produced within Work No. 1.</li> <li>- Schedule 12, Part 1, Condition 2(f) and (g) includes for the disposal [...] of up to 2,218,816 cubic metres of inert material of natural origin produced [...] within Work Nos. 2, 3, 4 and 5.</li> </ul> <p>The sandwave and boulder clearance material will be disposed of within the disposal site (specifically Works Nos. 1, 2, 3, 4 and 5) as outlined within the Draft DCO.</p> <p>The Applicant's response to the Planning Inspectorate on the 25 July 2018 (link provided above) provides further information on the relationship between the disposal volumes quoted in the Draft DCO and Volume 1, Chapter 3: Project Description of the Environmental Statement (Document A6.1.3).</p>	The response does not address Natural England's concerns, it merely repeats the same aggregate figures which we raised concerns about. The figures for all disposal should be broken down into the different types, giving volume and area so that the maximum of each activity is actually recorded on the licence and can be appropriately enforced. This is especially important when you note that we have raised concerns that the licence has less disposal recorded than the Disposal Site Characterisation report considers to be required.
A.4	Natural England does not agree with the proposed approach of removing the condition for submitting a design plan to the MMO if it 'is within the scope of the ES'. Given the	The Applicant has reflected on this matter further and will amend the condition so that a design plan is required to be submitted for approval by the MMO.	This is an acceptable solution, subject to submission and review of the amended wording.

	<p>number of times Natural England and the MMO have had a different opinion to that of the developer on what is within an approved project envelope, removing such a condition would be inappropriate, in our view. There is a potential risk of the envelope not being checked as no response is required, and it will mean Natural England is not even consulted on the design plan.</p>		
A.5	<p>The standard approach of all offshore wind farms is to conduct a pre-construction survey to ensure there are no habitats of ecological importance and where they are present every effort should be made to avoid impacting on them. The Generation DML also has no pre-construction or post construction monitoring requirement to identify any features of ecological importance.</p> <p>The DMLs do not include a requirement to micro-site around habitats of ecological importance outside of European designated sites (only reference to micro siting outside the sites relates to archaeological features). It is Natural England's view that the lack of micro-siting and monitoring requirements is not appropriate. We also question how the project intends to micro-site within a European site if no pre-construction survey to identify ecological features is proposed under the Generation DML. The lack of surveys outside of designated sites could also lead to</p>	<p>The Applicant does not agree that there is a standard approach to benthic monitoring within the offshore wind sector. However, and notwithstanding this, the Applicant can confirm that it will update the DML and IPMP to reflect a commitment to monitoring of key ecologically important features throughout the transmission and generation assets (both pre and where necessary post construction). The Applicant recognises that the DML wording relating to identification of designated features / annex I habitat that should be mitigated through micrositing can be improved and this will be updated within both the generation and transmission assets DML.</p> <p>The Applicant intends to extend the existing condition within the transmission assets DML (16(2) (ii) <i>details of a survey to determine the location, extent and composition of any Annex I reefs within SACs and/or biogenic or geogenic reefs outside SACs within the Order limits.</i>) to the generation assets and ensure that where necessary post construction monitoring is carried out under both DMLs.</p> <p>The micrositing commitment as part of the design plan (Condition 11/12(1)(a)(vi) will be expanded to capture Annex I habitat micrositing and will be linked updated pre-construction geophysical &amp; benthic survey conditions that</p>	<p>Natural England would consider a licence requirement that has been undertaken on most Round 2 and all subsequent developments to be a standard approach. However, the proposed resolution appears acceptable, subject to review and agreement on the final wording.</p>

	disposal activities occurring affecting ecologically important habitats.	will serve inform the location and extent of any features that require micrositing.	
A.6	The generation DML Part 2 Condition 11 (2) (f) secures the monitoring requirements within pre-construction plans. However, this condition is linked to the standard pre-construction timing requirement of four months before commencement. Clearly this is inappropriate given monitoring will need to be conducted well in advance of this date.	The Applicant agrees that the monitoring plans will need to be submitted for approval an appropriate timescale in advance of that particular monitoring activity taking place and that the DMLs will be updated to reflect this.	This is an acceptable solution, subject to the submission and review of the updated wording
A.7	The DMLs both have a requirement for pre-construction plans under condition 11 or 12 to be submitted for approval four months before construction. Natural England notes that this timeline was set in place by Round 1 offshore wind farms. It no longer represents a sufficient amount of time for the Round 3 projects as the significant increase in size and complexity of these developments, in combination with the phased approach developers are taking, leads to a very high volume of documentation to review in a short space of time. It is our view that this should be extended to a minimum of six months, or potentially eight to give appropriate time for review of large complex plans, for comments to be made and for several iterations to be reviewed.	The Applicant notes that Ørsted always seeks to submit plans for approval as far in advance as reasonably practicable. However, as final scheme design and installation contractor appointment can happen quite late in the process there is a risk that bringing submission of plans forward risks the need to resubmit plans at a later date. A process which is counter productive for all parties. Four months is considered a well established and reasonably balanced timescale for this process. However, the Applicant recognises the resource constraints that Natural England is under and proposes to address those resource constraints through entering into a framework agreement with Natural England. The intention is that the framework agreement is similar to a planning performance agreement and would allow the Applicant and Natural England to plan in advance the necessary resource requirements and associated costs.	Natural England does not consider it appropriate to include a single hard deadline for all pre-construction documentation. Some documents take more resource and effort to review than others, and some documents have significantly higher risks of issue. As stated in our Relevant Representations the four month deadline was originally created for Round 1 projects where the developments were much smaller and the potential for issues with the documentation far less. For example the new SIP document which will likely trigger an HRA process, requiring assessment by the

			MMO and consultation on that assessment. Natural England is willing to discuss this issue with the applicant to see if an outcome that is beneficial to all can be reached.
A.8	<p>Post consent monitoring proposed in the DMLs is very limited in detail in relation to benthic, ornithology and marine mammals and there is insufficient detail provided in the In-Principle Monitoring plan. This should therefore be updated.</p> <p>Natural England also requests that timescales for provision of monitoring reports are defined in the DCO/DMLs. This is for the regulator and the SNCBs to be able to compare the site specific monitoring data against the worst case scenario impacts assessed in the ES. We propose that four months after completion of a survey presents a reasonable timeframe for submitting the monitoring report for review.</p>	<p>As identified above the Applicant will work with Natural England to update the IPMP and will also update the DMLs with regard to the monitoring commitments to ensure that pre- and post construction aspects are clear (notwithstanding the need to retain flexibility if strategic monitoring is taken forward for mammals and/or birds).</p> <p>The Applicant agrees that provision of monitoring reports four months following completion of each monitoring campaign is a reasonable request and will reflect this in the updated DML.</p>	Natural England is willing to work with the applicant to reach agreement on the timing. It should be noted that there is one exception to the provision of monitoring within four months and that is the during construction noise monitoring, which must be submitted six weeks after the monitoring has been conducted. This is a standard timeframe for this monitoring.
A.9	A condition requiring the developer to update the noise registry following works has not been included. This condition is a standard requirement to keep the noise registry updated and relevant. This is especially important for Schedule 11 given the significant number for foundations involved. However, the condition should be included on	The Applicant will include an updated condition to reflect this with its DMLs for piling (in line with the wording provided by the MMO). If and when the undertaker seeks a Marine Licence for UXO clearance then it is reasonable to assume that an equivalent condition will be included within that licence, but the Applicant does not intend to include such a condition within this DCO as UXO clearance does not form part of the licenced activities.	This is an acceptable solution, subject to the submission and review of updated DMLs.

	all DMLs where potential piling or UXO detonations are proposed.		
A.10	Natural England recommends inclusion of a new condition to allow for appropriate reporting on the location of all cable protection, including volumes of cable protection. This reporting is required to ensure the cable protection deployed is within the permitted levels and to inform the need for decommissioning of cable protection and cables in the future.	The Applicant will include an appropriate condition to this effect within the updated DMLs.	This is an acceptable solution, subject to the submission and review of updated DMLs.
A.11	We note that the DMLs and the DCO should not include any direct reference to Natural England, rather the official text should state 'relevant SNCBs' throughout the schedules.	Noted; this will be reflected within the updated DMLs.	This is an acceptable solution, subject to the submission and review of updated DMLs.