

**Response to Deadline 8 Submissions
for
The Royal Society for the Protection of Birds**

16 December 2015

Planning Act 2008 (as amended)

In the matter of:

**Application by SMartWind for an Order granting Development Consent for the
Hornsea Offshore Wind Farm – Project Two**

**Planning Inspectorate Ref: EN010053
Registration Identification Ref: 10031166**



1. The RSPB is grateful for the opportunity to comment upon the submissions made by other parties at Deadline 8. However, we respectfully observe that the 36 hours given for this purpose have, inevitably, limited our ability to provide detailed comments.
2. It is clear that there are a number of issues that the RSPB and the Applicant do not agree on. Consequently at this late stage we do not repeat them here. In this context, unless the RSPB expressly **agrees** with the Applicant's statement, the absence of a comment by the RSPB should be interpreted as a clear disagreement and restatement of our position as set out in the Overall Conclusions section of our Deadline 8 Submission (paras 74 to 98).
3. We offer the following comments:

The Applicant's Response to Deadline VIII

4. The RSPB notes the response of the Applicant in relation to Whale and Dolphin Conservation (WDC) (section 6) and The Wildlife Trusts (TWT) (section 7) in relation to the proposed southern North Sea draft Special Area of Conservation.
5. We respectfully direct the ExA to paras 41 to 49 of our Deadline 8 response in relation to the Applicant's comments on WDC's response, where it can be seen that our response clearly supports WDC's position.
6. The RSPB notes the Applicant's response to TWT's Deadline 7 response, and in particular the number of assumptions made by the Applicant in para 7.3. Given the number of assumptions, we question how the Applicant can have the necessary levels of certainty to characterise their approach as "a more realistic scenario". This is all the more important as they assume that "not all animals" will be displaced, that "where there are strong incentives to remain in the area ... it is likely that some (but not all) animals may continue to forage within the Hornsea Zone" and finally that "where there are long pauses between piling events, animals that were displaced may return to the area to forage." The RSPB contends that these statements, when taken together, do not satisfactorily reflect the requirements of the precautionary principle.

The Applicant's Response to the RSPB's submission to Deadline VII (Appendix B)

The Applicant's response to the RSPB's "Deadline 7 Submission for The Royal Society for the Protection of Birds"

7. The RSPB notes the Applicant's para 1. We confirm that all comments submitted in our Deadline 8 responses were based upon version 8 of the draft DCO (see para 61 of our Deadline 8 submission).

Appendix B: Response to TWT's Deadline V submission

8. Please see our comments in relation to the Applicant's Response to Deadline VIII above.

Appendix C: Response to the RSPB's Deadline V submission

9. The RSPB has considered the Applicant's detailed responses, but does not consider that they alter our position as set out at Deadline 7.

The UK's Birds of Conservation Concern and the Red List for Birds published on 4th December 2015

10. The RSPB notes the Applicant's comments in paragraph 20. The reason that the RSPB drew the changed conservation status of kittiwake and puffin to the Examining Authority's attention was because such information is crucial in informing decisions on such vulnerable populations given the huge amount of uncertainty surrounding the assessment.
11. The RSPB is a key partner in the production of this document. Dr Eaton (the lead author) is a Principal Conservation Scientist in the RSPB's Species Monitoring and Research section. We are fully cognisant that there are also species listed as green and amber. Although the RSPB had focussed on the Red list in our response we consider that it is helpful, as the Applicant has raised it, to consider the status of all the birds we have expressed concerns about:
 - Kittiwake – red listed (previously amber listed)
 - Gannet – amber listed
 - Guillemot – amber listed
 - Puffin – red listed (previously amber listed)
 - Razorbill – amber listed
 - Great black-backed gull – amber listed
 - Lesser black-backed gull – amber listed
12. The Examining Authority will note that none of these species is on the green list.
13. One of the key roles of the Birds of Conservation Concern Report is to highlight the overall population trends of the UK species. This information is particularly useful in understanding the conservation implications of losses within either an individual designated site or the wider biogeographic area. In particular it helps to highlight the level of caution that is required when reaching conclusions about the risk of harm to these species.

The RSPB's comments on Cleasby et al (2015)

14. The RSPB notes the Applicant's comments in paragraph 21. For the Cleasby *et al.*, (2015) study, 11 birds were fitted with barometric altimeters in 2011, and 5 in 2012. In one instance the same bird was fitted with the altimeter in both years, so there were 15 birds fitted with the tags. Furthermore the Applicant remains critical of the collision risk modelling carried out in the paper. The purpose of the modelling was to be illustrative of the potential implications of the key finding of the study. This is that boat based observers seriously underestimate the flight heights of gannets (and therefore probably all other birds) when compared with measured and validated flight height, and this will have serious implications for collision mortality predictions.
15. The RSPB notes the Applicant's comments in paragraph 23, but argue that the "best available information" was not used in the context of flight speed. For kittiwake this is the information presented in Masden (2015) which is based on 427 birds during the breeding season, rather than that used by the Applicant, which is from Alerstam *et al.*, (2007) based on 2 birds, both on migration. While the Applicant may not have been aware of Masden (2015) during the initial assessment, the numerous recalculations it has done would have given ample opportunity to use

these more robust data. The RSPB also note that the use of these most accurate flight speeds, which give a lower mean speed, would result in a higher predicted collision mortality.

Appendix D: Response to Natural England's Deadline V Submission

16. The RSPB notes the Applicant's comments in paragraph 30. For clarity, it should be re-emphasized that the RSPB is not advocating the use of anything other than the Band (2012) CRM. The work carried out by Masden (2015) simply demonstrates how to carry out the modelling in such a way as to properly account for variability and uncertainty.

Appendix G: Tabular Review of EIA Conclusions in response to the amendments to the Project Design Envelope

17. The RSPB notes that this document has been updated. We confirm that we have referred to the revised version (Appendix R of Deadline 7) in our Deadline 8 responses.

Appendix N: Possible Greater Wash SPA Shadow HRA Screening – Version 2

18. The RSPB notes the Applicant's response.

19. In relation to the Applicant's assertion at para 35 that:

“It is the Applicant's understanding that the RSPB has identified this figure in relation to the potential disturbance effects of offshore wind farm structures and it is not clear how this relates to any effects that may arise from vessels.”

20. The RSPB contend that this misrepresents the available work on disturbance. Peterson et al (2007), the source for the 4km radius of disturbance stated:

“The reason for the change in avoidance of the wind farm area for divers, Common Scoter and Guillemot/Razorbill is unknown. Disturbance effects from the wind turbines are one possible reason. Disturbance from increased human activity associated with maintenance of the wind turbines could be another. However, changes in the distribution of food resources in the study area could potentially play a role too.”¹

21. It is clear from this text that it is not clear **what** the birds were avoiding, and that consequently the Applicant's assertion that this did not apply to vessels is incorrect.

22. The RSPB notes that a 4km radius circle has a diameter of 8km. Consequently a cable route would have a buffer of 8km (4km either side of the cable).

23. In relation to para 36, the RSPB does not accept that a Wash port is necessarily the worst case scenario. It is the frequency of boat traffic that will affect the distribution of divers, so any port that results in boats travelling through a currently undisturbed part of the pSPA will be a bad scenario.

¹ Peterson et al 2007 <http://www.ens.dk/sites/ens.dk/files/undergrund-forsyning/vedvarende-energi/vindkraft-vindmoeller/havvindmoeller/miljoepaavirkninger-3/Changes%20in%20bird%20habitat%20Horns%20Rev%20I.pdf>

The Applicant's response to the RSPB's "Final submission on alternative solutions under the Habitats Regulations for the Royal Society for the Protection of Birds"

24. The RSPB notes the Applicant's comments.
25. Paras 42 & 43: The RSPB refers the Examining Authority to its Overall Conclusions in its Deadline 8 response, and in particular paras 88 to 91.
26. Para 44: The RSPB has considered SMartWind's point about unconstrained need in its *Final submission on alternative solutions under the Habitats Regulations* submitted at Deadline 7 – please see para 50.
27. The RSPB notes the assertion by the Applicant that

"There are, in addition, numerous other issues with the analysis presented by the RSPB regarding the operation of the alternatives test in this case." (para 44)

But without further details as to what these issues are we cannot respond.

28. If the Secretary of State is minded to ask the Applicant to make submissions on the requirements of regulations 62 and 66 Conservation of Habitats and Species Regulations 2010 we would expect an opportunity to respond to those submissions as part of a post examination consultation. In the absence of such information at this stage the RSPB respectfully refers back to its own submissions and the pertinent points it includes that the Secretary of State would need to address when considering the regulation 62 requirements.

The Applicant's Response to Natural England's submission to Deadline VII (Appendix C)

Appendix C: The Applicant's response to Natural England's Deadline 7 Submission

29. The RSPB notes all the Applicant's comments in this appendix, but would point out that the Applicant's unresolved questions have been clarified in Natural England's Deadline 8 response. The RSPB has also not been provided with the review carried out by the BTO upon which Natural England's updated position is based, but note that the review was precipitated by, and as reported by Natural England, is in agreement with, previous analysis carried out by the RSPB.
30. The RSPB considers that all assessment work should be undertaken on the basis of the most up-to-date information available. This includes information relating to the best scientific methodologies to be used to identify and evaluate the likely impacts of development schemes.
31. It would be a substantial source of concern to the RSPB if Natural England had failed to review its position and had instead persisted in applying the methodology used at Hornsea Project 1 whilst aware that there was information which cast doubt on the reliability of that methodology.

Natural England's Written Submission for Deadline 8

Levels and thresholds: key principles

32. The RSPB welcomes the Written Submission from Natural England, and is in agreement with them that the use of specific or precise thresholds carries a significant risk of creating a 'false

precision'. We further agree on the importance of wider contextual information when arriving at an assessment decision.

Assessing impacts on the integrity of the Flamborough Head and Bempton Cliffs (FHBC) SPA and the Flamborough and Filey Coast (FFC) pSPA

33. The RSPB welcomes the summary of factors that Natural England considered when making their judgement on site integrity in paragraph 4.7. While we are in agreement with all of these, in making our own judgement, the RSPB would also consider not only the population trends specific to the site, but also in the wider regional, national and biogeographical context as these will have a high level of connectivity with the pSPA. The wider dramatic and well reported declines in kittiwake populations at these scales, which have been described with far less uncertainty and greater precision than those at FFC pSPA, lead us to conclude that an adverse effect on site and species integrity from Hornsea Project 2 alone and in-combination cannot be ruled out beyond scientific doubt.
34. The RSPB also note in relation to point 3 of paragraph 4.7 that we continue to believe an inadequate account for uncertainty has been provided by the Applicant, and that there are a number of aspects of their predicted impacts that we do not have a high level of confidence in, as detailed at length in our previous submissions.

Concluding remarks

35. The RSPB presented what it considered to be its final position in its Deadline 8 response. For the avoidance of doubt we confirm that nothing advanced by the Applicant or Natural England in their Deadline 8 submissions has altered this view.