

**Response to the Examining Authority's second round of written questions and requests for information  
for  
The Royal Society for the Protection of Birds**

**20 October 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**



Question to:		Question:
<b>EOO</b>	<b>Ecology offshore: ornithology</b>	
EOO16	applicant, NE, RSPB	<p>Please provide an update on the positions reached in the most recent SoCG on the effects of Hornsea Project 2 on Special Protection Areas (SPA) populations of kittiwake, gannet, guillemot, razorbill and puffin, for the project alone and in combination. Relevant data should be presented in tabular form.</p> <p>This should include in particular the issues around kittiwake, including Flamborough Head Bempton Cliff and Flamborough and Filey Coast (FHBC/FFC) population trends, and additional clarification on kittiwake apportioning.</p>
<p>The RSPB and the Applicant agreed a Statement of Common Ground in relation to Offshore Ornithology (SOCC)(submitted as Appendix Z of the Applicant’s Deadline III response).</p> <p>Within that offshore SoCG the RSPB has agreed the following points with the Applicant:</p> <ul style="list-style-type: none"> <li>• The methods used to establish the bird densities in the project area and associated buffers are appropriate to inform the CRM and displacement analysis (SOCC, para 3.2.3);</li> <li>• The Applicant’s Appendix J of Deadline I has partially addressed the RSPB’s concerns over the handling of uncertainty in the CRM and the results presented in Appendix J account for the uncertainty arising from variability in flight height and density (SOCC, para 3.2.4);</li> <li>• The Applicant’s PVA (Appendix M of its Deadline IIa response) has addressed all issues raised by the RSPB in its relevant and written representations, and is appropriate for determining the potential effects of the project on the species of the Flamborough Head and Bempton Cliffs SPA and the Flamborough and Filey Coast pSPA (SOCC, para 3.2.5);</li> <li>• The Applicant has provided all the relevant information on apportioning to enable the RSPB to draw conclusions on the potential effects of the Project on the Flamborough Head and Bempton Cliffs SPA and the Flamborough and Filey Coast pSPA (SOCC, para 3.2.6);</li> <li>• The Applicant has provided all the necessary information to enable the RSPB to draw conclusions on potential displacement effects, both alone and in combination (SOCC, para 3.2.7);</li> <li>• Although the RSPB would prefer a larger range of buffer sizes to be considered, the 2km used is suitable for the displacement assessment (SOCC, para 3.2.8).</li> </ul>		

**Question to:****Question:**

The RSPB and the Applicant do not agree over the apportioning in relation to kittiwake, guillemot, razorbill or puffin. Our respective positions are set out in Table 3.4 of the SoCG, reproduced here. The RSPB agrees with the Natural England approach to apportioning

Species	The Applicant's Position	The RSPB's Position
Kittiwake	38%	94.6%
Guillemot	12.1%	46.3%
Razorbill	37%	48.2%
Puffin (part of the seabird assemblage)	5.8%	38%

In addition, the RSPB continues to disagree with the Applicant over:

- The use of site specific flight height data and the use of the Extended Band Model to assess impacts upon gannet and kittiwake (SOCG, para 3.4.1 and Table 3.1);
- The avoidance rates used by the Applicant, which do not reflect the advice for gannet and kittiwake set out in *Cook et al 2014* (SOCG, Table 3.2).

The RSPB is also continuing to discuss the Applicant's partial reliance on PBR within its assessment and the cumulative and in-combination assessment (SOCG, para 3.3.1).

In order to reach its conclusions on the effects of Hornsea Project 2 on the SPA species the RSPB has relied on the figures presented below. These figures are derived from the Applicant's own calculations (Appendices N to R of the response submitted to Deadline 2A) the mortality figures presented by Natural England (Submissions to Deadline 3) and PVAs calculated by the RSPB, but tuned to match those presented by the Applicant (Appendices 3 to 6 of written submissions to Deadline 3). More detailed figures are given in the RSPB Deadline 4 Submission.

The RSPB are broadly in alignment with Natural England in their calculations of mortality arising from the project alone and in-combination, (Natural England's Appendices 3 to 6 of written submissions to Deadline 3). The points of difference between the RSPB and Natural England are:

**Question to:****Question:**

- the avoidance rate for the breeding season for gannet (98 as opposed to 98.9%)(See explanation in the RSPB Deadline 4 Submission).
- The displacement mortality shown is considered by NE to be the upper limit of the considered range, the RSPB consider this to be a reasonable figure, not necessarily at the upper limit.

The metric we have the greatest confidence in the Counterfactual of Population Size after 25 years, as derived from density independent PVA modelling. This is the predicted percentage difference in the population size after the lifetime of the project due to mortality attributable to that project, alone and in combination with other projects. The Applicant has preferred the use of outputs from density dependent models, however as discussed in more detail in the RSPB Deadline 4 Submission and at the last ISH, the means by which this has been calculated is not adequately justified by the Applicant, and in alignment with Natural England, the RSPB believe that in the absence of reliable information on the form and magnitude of density dependence, density independent models must be relied upon. While use of the counterfactual metric that considers change in population growth rate is useful to a degree, the RSPB considers that greater reliance should be placed on the Counterfactual of Population Size, as this later metric incorporates data over the lifetime of the project. The RSPB considers that, in light of the Conservation Objectives for designated sites possibly adverse effects to the integrity of the designated sites will be sustained if populations of the seabirds for which it was designated are diminished, even to a small degree, by a wind farm, compared with what they would otherwise have been (this is set out in more detail in the RSPB Deadline 4 Submission).

The Counterfactuals of Population Size, for each species, for the project alone and in combination, are presented in Table 2 below.

	Hornsea Project 2 Alone	In Combination
Gannet	5%	25.5%
Kittiwake	3.5%	12.5%
Guillemot	8.1%	33.8%
Razorbill	10.9%	34.2%
Puffin	14.7%	48.2%

Table 2 the predicted percentage difference in the population size after the lifetime of the project due to mortality attributable to that project,

**Question to:**

**Question:**

alone and in combination with other projects.

**Gannet**

The contextual reasoning underpinning our assessment is presented in the RSPB Deadline 4 Submission. PVA modelling predicts a decrease in population size of 5% with the Project alone, and of 25.5% in combination. As such, the RSPB is unable to rule out the possibility of an adverse effect on site integrity and therefore

- **Maintains its objection on the grounds of potential impact on the gannet pSPA population through the project alone; and**
- **Maintains its objection on the grounds of potential impact on the gannet pSPA population through the project in combination with other projects.**

**Kittiwake**

The contextual reasoning underpinning our assessment is presented in the RSPB Deadline 4 Submission. PVA modelling predicts a decrease in population size of 3.5% with the Project alone, and of 12.5% in combination. As such, the RSPB is unable to rule out the possibility of an adverse effect on site integrity and therefore

- **Maintains its objection on the grounds of potential impact on the kittiwake pSPA population through the project alone; and**
- **Maintains its objection on the grounds of potential impact on the kittiwake pSPA population through the project in combination with other projects.**

**Guillemot**

The contextual reasoning underpinning our assessment is presented in the RSPB Deadline 4 Submission. PVA modelling predicts a decrease in population size of 8.1% with the Project alone, and of 33.8% in combination. As such, the RSPB is unable to rule out the possibility of an adverse effect on site integrity and therefore

- **Maintains its objection on the grounds of potential impact on the guillemot pSPA population through the project alone; and**
- **Maintains its objection on the grounds of potential impact on the guillemot pSPA population through the project in combination with other projects.**

**Razorbill**

The contextual reasoning underpinning our assessment is presented in the RSPB Deadline 4 Submission. PVA modelling predicts a decrease in population size of 10.9% with the Project alone, and of 34.2% in combination. As such, the RSPB is unable to rule out the possibility of an adverse

Question to:	Question:
--------------	-----------

effect on site integrity and therefore

- **Maintains its objection on the grounds of potential impact on the razorbill pSPA population through the project alone; and**
- **Maintains its objection on the grounds of potential impact on the razorbill pSPA population through the project in combination with other projects.**

**Puffin**

The contextual reasoning underpinning our assessment is presented in the RSPB Deadline 4 Submission. PVA modelling predicts a decrease in population size of 14.7% with the Project alone, and of 48.2% in combination. As such, the RSPB is unable to rule out the possibility of an adverse effect on site integrity and therefore

- **Maintains its objection on the grounds of potential impact on the puffin pSPA population through the project alone; and**
- **Maintains its objection on the grounds of potential impact on the puffin pSPA population through the project in combination with other projects.**

EOO17	applicant, NE, RSPB	Please provide an update on the positions reached in SoCG on the effects of Hornsea Project 2 on EIA species (including lesser black backed gull, and greater black backed gull). Relevant data should be presented in tabular form.
-------	---------------------	--

The RSPB is continuing to discuss the Applicant’s reliance on PBR within its assessment on EIA species for the cumulative and in-combination assessment (SoCG, para 3.3.1). The RSPB does not accept the use of PBR as a means of assessing the impacts on projects on bird populations in either a HRA or EIA context. As such, it is our view that reliance cannot be placed on the environmental assessment carried out by the Applicant, and its conclusions on likely impacts of the project on birds, within its Environmental Statement should not be considered as reliable or precautionary.

**Therefore, the RSPB maintains its objection to the project on the grounds of possible effects of Hornsea Project 2 on the following EIA species: gannet, kittiwake outside the breeding season, lesser black-backed gull and great black-backed gull.**

EOO18	applicant, NE	Please provide an update on discussions between the applicant and NE on migratory bird collision risk.
-------	---------------	--

The RSPB is currently content with the information on predicted level of migratory bird collision risk, and its position on this aspect of the

Question to:	Question:
--------------	-----------

assessment work is reflected in the responses above. We may comment further in light of the results of any further discussions between the Applicant and NE.

EOO19	applicant, NE and RSPB	<p>Given the paucity of recent data on Offshore Windfarm (OWF) ornithological impacts, and the importance noted in NPS EN-3 of improving the evidence base, can the applicant please:</p> <p>a) set out the Project approach to the monitoring of offshore ornithological impacts (not limited to the pre- and post- construction surveys); and</p> <p>b) indicate where the approach will be secured in the DCO/DMLs.</p>
-------	------------------------	--

The RSPB notes that although consent Conditions 15 (Pre-construction monitoring and surveys) and 17 (Post construction) (DML A1 and B1 (Schedules H and J of the Draft DCO)) make reference to

“any ornithological monitoring required by the ornithological monitoring plan submitted in accordance with Condition 10(2)(k)”

there is no such requirement during the construction stage (Condition 16, Construction monitoring): The RSPB considers that a similar provision should be inserted into Condition 16. This would help comply with para 2.6.51 of NPS EN-3 (*Renewable Energy Infrastructure*).

The RSPB considers that Condition 10(2)(k) does not adequately secure a monitoring regime, stating solely

“An ornithological monitoring plan setting out the circumstances in which ornithological monitoring will be required and the monitoring to be carried out in such circumstances”.

The RSPB recommends the inclusion of a Condition based upon Condition 22(2)(c) in Schedule 8, the Dogger Teesside A and B Offshore Wind Farm Marine Licence 1: Project A Offshore Generation – Work Nos. 1A and 2T, of 2015, which states:

“The detailed construction and monitoring programme referred to in Condition 16(b) must be submitted at least 4 months before the commencement of any survey works and provide the agreed reports in the agreed format in accordance with the agreed timetable. The

**Question to:****Question:**

survey proposals must be in accordance with the principles set out in the offshore in principle monitoring plan and must specify each survey's objectives. The construction surveys must comprise –

(c) appropriate surveys of ornithological activity inside the areas within the Order limits in which it is proposed to carry out construction works, and any wider areas where appropriate, dependent on the outcomes of the pre-construction surveys, as agreed by the MMO in consultation with the relevant statutory nature conservation body.”

The RSPB consider that this provision reflects the requirements of NPS EN-3 para 2.6.51 and that the ExA should consider requiring the applicant to undertake monitoring during construction in order to measure and document the effects of the development.

EOO20	NE, MMO and RSPB	Further to the submission of 'Notes of NE/RCUK Post Consent Monitoring Seminar (March 2015)' to Deadline 3 (REP3-032), can NE, MMO and RSPB please advise on potential good practice for project specific, and strategic, ornithological impacts monitoring?
-------	------------------	--

The RSPB welcomes natural England providing notes on its discussions with RCUK since the RSPB was not invited to attend the Post Consent Monitoring Seminar. The current lack of empirical evidence of the scale of impact on bird populations from offshore wind farms means the high levels of uncertainty in the conclusions of predicted population level impacts used for the decision making process remain. Post consent monitoring will help address and reduce these uncertainties for future deployment of offshore renewables.

There is a requirement for two main elements, strategic monitoring at a large spatial scale (eg biogeographic, regional or country-level) and project level monitoring, although there will be significant overlap between activities needed to deliver these elements. An RSPB key priority is securing the long term protection and conservation of the internationally important seabird populations found in UK waters.

The resources required must be made available for this monitoring and should be directed to two main tasks, surveillance (to observe and react to population scale impacts) and targeted monitoring (aimed at investigating focused questions, understanding impacts and their mitigation (and whether that migration is effective) and informing future planning).

It is crucial that the questions to be answered are clearly defined from the start. This will allow debate as to the practicality of different means of answering the questions and in particular:

## Question to:

## Question:

- **Focus effort to make efficient use of limited resources.** A tailored approach is required to single out specific species and/or impacts. This is in preference to generic monitoring across all receptors;
- **Ensure change can be detected.** Power analysis should be undertaken to gauge level of effort against likelihood of detecting an effect; and
- **Align methodologies to gain consistency and comparability.** Consistency of approach will build the empirical dataset and enable analysis at regional and bio-geographic scales to detect population level effects. Seeking early dialogue between developers, government, agencies and stakeholders (including the RSPB) is recommended to define approaches.

It is the RSPB's view that Government should ultimately hold responsibility but that an independent body should lead and facilitate the establishment of consistent approaches across projects and monitoring activities. A scientific steering group should be established as early as possible, and input from the Marine Renewables Ornithologists Group sought. In many ways, this process will have similarities with that of the ORJIP (Offshore Renewables Joint Industry Programme) projects, and reference should be made to lessons learnt through that process.

### *Strategic Monitoring*

In those instances where the expected impact is collision (and therefore direct mortality) monitoring, notably of breeding adults, should be possible through annual colony counts. More detailed information about individual mortality events may be provided for example by regular abundance estimates through the breeding season (which would be akin to observing nest desertions in productivity monitoring).

In those instances where displacement or barrier effects from the windfarm footprint and buffers zones are expected, the population level impact will derive from poorer foraging success and reduced breeding productivity, through for example reduced clutch sizes or fledging success. Productivity monitoring will therefore be required for these populations.

### *Project Level Monitoring*

Beyond strategic monitoring, project level monitoring is needed to understand the impact pathways, test hypotheses that have been used in planning decisions, such as avoidance and collision rates, to seek approaches to mitigate impacts and to improve marine planning for future applications.

Novel approaches may be required to address these questions. As a first step there must be discussion, justification and decisions made on the study objectives and the most appropriate methods of data collection. These approaches themselves will likely require testing and validation.

**Question to:****Question:**

Operators with suitable expertise will be required to deliver the most effective studies.

The focal issues and species have been identified during baseline data collection. The main topics for post-construction monitoring and research are collision risk and displacement/barrier effects. Studies will benefit from before/after comparison, whilst data collection during construction is also helpful to identify whether construction per se is the cause of observed changes and whether effects persist during the operational phase. Reference site(s) help to interpret any changes observed in the wind farm. Gradient studies enable assessment of the effects of increasing distance away from wind turbines.

Post-construction studies need to be of sufficient duration to permit the distinction between short-term and longer-term effects attributable to the presence of the wind farm. Reviews at pre-determined time intervals will enable decisions to be taken with respect to any necessary refinements of the study methods (bearing in mind the problems associated with changing methodology), as well as reviewing the results and whether there are indications of adjustments in behaviour.

<b>EOMM</b>	<b>Ecology offshore: marine mammals</b>	
EOMM26	applicant	The ExA wishes to draw the applicant's attention to the Habitats Regulations Assessment (HRA) undertaken by the Secretary for State (SoS) for the Dogger Bank Teesside Offshore Wind Farm. The SoS chose to include the Southern North Sea draft SAC for harbour porpoises in this assessment, even though this was at the early stages of consideration for possible future designation with approval and final consultation to follow. In light of this, and given the possible inclusion of the application within the dSAC, please could the applicant, in consultation with NE, update their HRA report to assess effects on this relevant harbour porpoise dSAC?

The RSPB welcome the ExA's request that the Applicant update their HRA report, in consultation with Natural England, to assess the effects on the Southern North Sea dSAC for harbour porpoise.

The RSPB notes that the Wildlife Trusts does not view the EIA already undertaken will be sufficient to inform a site integrity test for a new SAC (as set out in the Wildlife Trusts' summary of its oral case, submitted for Deadline 3). We support the Trusts' view that there is a material

Question to:	Question:
--------------	-----------

distinction between the protection afforded under the European Protected Species requirements and that bestowed upon the features of a Natura 2000 site.

The RSPB defers to the Wildlife Trusts' expertise on the particular details relating to marine mammals. However, the RSPB reserves the right to make further comments on the adequacy of the revised HRA and any legal issues associated with it, once further information is made available.

EOMM27	NE	What is the basis in international law for extending the Wash pSPA beyond the limit of the territorial sea?
--------	----	---

The basis is provided by Part V of the United Nations Convention on the Law of the Sea, which permits the declaration of an exclusive economic zone of up to 200 nautical miles, which the UK has done. And as the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (SI 2007 No. 1842) recognise and include the provisions of the Birds and Habitats Directives must be applied to this zone including identifying and designating Natura 2000 sites.

<b>EL</b>	<b>Ecology – onshore and intertidal</b>	
-----------	---	--

EL16	applicant	Please provide an update on the discussion with NE and RSPB regarding the applicable tide height above chart datum (CD) at Grimsby and working tide height at the cable landfall area, including revisions to DML A2 and B2 Condition 20(4).
------	-----------	--

The Applicant and the RSPB have been discussing information provided to the RSPB on 13 October 2015. The RSPB and the Applicant are currently considering revisions to this information. The RSPB and the Applicant will discuss the issue further ahead of the next series of Issue Specific Hearings.

EL17	applicant	Similarly, please provide an update on the RSPB proposal that the tailpiece on Condition 20(3) of DML A2/B2, which allows winter working with the agreement from MMO and NE be removed. Have the potential effects of
------	-----------	---

Question to:		Question:
		this tailpiece on the Condition been assessed in the HRA?
<p>The RSPB considers it necessary to delete from the DCO the provision in DML A2 and B2 (reg 20(3)) which would allow intertidal work outside the April – September window (D2, Appendix 1, para 14), as such an approach has not been assessed in the ES or HRA. As set out in the RSPB’s Oral Summary submitted for Deadline III, we have reviewed the ES and HRA and the following paragraphs appear to confirm that working outside the April to September window has not been fully considered in either document, for example:</p> <ul style="list-style-type: none"> <li>• HRA, para 5.9.52 states: “The seasonal restriction on works schedules at the landfall (April to September inclusive) when numbers of estuarine birds are lower, will also reduce the potential for adverse effects on waterbird species.”</li> <li>• HRA, para 5.9.128 states: “In relation to impacts on birds using the intertidal and coastal areas in the vicinity of the export cable landfall, simultaneous work on Project One and Project Two would result in an increased spatial extent and frequency of disturbance between April and September. This is outside the winter period when the highest numbers of estuarine birds are present, but overlaps with the spring and autumn passage periods during which some VORs are present in large numbers. Nevertheless, disturbance to the intertidal area would be intermittent rather than continuous, with periods of no or minimal disturbance between periods of construction activity.”</li> <li>• ES, Intertidal Ornithology, Table 4.15: “Works at the export cable landfall will be undertaken outside of the winter period when the largest numbers of birds are present in the Humber Estuary. Works would be completed between April and September inclusive. <b>Justification:</b> To minimise impacts of likely disturbance to wintering and migratory birds utilising the adjacent SPA habitats.”</li> <li>• Similar information is set out in the Project Description (ES Chapter 3) at paragraphs 3.3.11 and 3.5.32 to 3.5.35.</li> </ul> <p>However the Applicant has offered to provide clarity on this issue and we may need to comment further following that review</p>		
EL19	RSPB	When the Phillips66 Sealine Replacement pipeline was installed, was working restricted to the months of June, July and August?
<p>The working period for the Phillips66 Sealine Replacement pipeline ran from March to August inclusive (compared with the April to September period currently envisaged for Hornsea Project 2) and was not restricted to the months of June, July and August only.</p> <p>The Phillips66 project originally had a DML condition that restricted high tide working, but this was removed with the RSPB’s agreement after careful scrutiny of the Phillips66 project and a review of RSPB data which showed that the pipeline working area was used by far fewer birds</p>		

Question to:		Question:
<p>than the landfall area for Hornsea Project 2. In addition, the RSPB data showed that the greatest usage of the area around the Phillips66 pipeline was at low tide, which is the opposite to the bird usage of the Hornsea Project 2 area.</p>		
EL20	RSPB	How close is the Hornsea Project 2 cable land fall to the high tide roost at Tetney?
<p>The cable corridor and buffer zones for both Hornsea Project 1 and Project 2 pass through an area of shoreline between Northcoates Point (TA 369040) and Horseshoe Point (TA 382019) (shown in Figure 4.1a Cable Landfall Survey Area and Development Area, <i>Intertidal Ornithology</i>, ES, Vol.3, Ch.4, p4-14) that provides high tide roosts for the SPA species, particularly dunlin and knot. However, the Project 2 cable corridor and buffer zone lies within 100m of an area of upper shore within the SPA that supports large numbers of SPA birds, particularly oystercatcher, bar-tailed godwit, grey plover, dunlin and knot). The intertidal works for Hornsea Project 2 increase the risk of disturbance as SPA birds congregate there on the rising tide.</p>		
EL21	applicant, NE	<p>Please provide in tabular form the NE/applicant conclusions about the effects of Hornsea Project 2, (i) alone and (ii) in combination, on features of:</p> <ul style="list-style-type: none"> <li>a) the Humber Estuary SPA;</li> <li>b) the Humber Estuary Ramsar site; and</li> <li>c) the Humber Estuary SAC.</li> </ul>
<p>The RSPB is awaiting this information and may wish to comment in the light of that information.</p> <p>At the Issue Specific Hearings the RSPB stated that it does not consider it possible to conclude that Project 2 will avoid adverse effects on the integrity of the Humber Estuary SPA due to disturbance of SPA birds during the construction of Project 2 both alone and in combination with Project 1.</p>		
EL22	applicant	Please provide a HRA screening matrix for the Greater Wash dSPA.

Question to:	Question:
--------------	-----------

The RSPB welcomes this request. It is important note that this is a particularly large proposed SPA and at this early stage there is no information available to the RSPB on the distribution of the species for which the proposed SPA is being considered. However, it is known that both the cable route and boat traffic to and from Hornsea Project 2 will pass through the proposed area.

The RSPB has set out detailed comments in relation to the proposed Greater Wash SPA in Section 2 of its Deadline 4 Submission.

<b>CL</b>	<b>Construction – onshore and inter-tidal</b>	
-----------	---	--

CL25	applicant, NE, RSPB	With regard to the Intertidal Access Management Plan, please advise on: a) progress made; and b) how the plan is secured?
------	---------------------	---

The Applicant has informed the RSPB that a draft Intertidal Access Management Plan is currently being prepared and we will be given the opportunity to comment upon it. At present though the RSPB is unable to comment upon how the Plan is to be secured.

CL26	RSPB, NE	Are the RSPB and NE satisfied with the scope of contents of the Code of Construction Practice (CoCP), including how the role of the Ecological Clerk of Works (ECOW) is secured?
------	----------	--

The RSPB has reviewed the Outline Code of Construction Practice (January 2015) again since the Issue Specific Hearings in September. This was the version upon which we based our comments for Deadline II, the hearing and Deadline III. We note that the Applicant has suggested that because the role of the ECOW will be approved by the MMO in consultation with Natural England at the relevant time prior to construction that no further detail is required to be included in the DCO (SMartWind, Deadline III, Appendix I, para 4.20). The RSPB disagrees with this due to the issues we have identified that would clearly benefit from clarity in this role and consider that it is entirely proper that these are set out within the DCO. For ease of reference we have set out below our concerns as set out in those submissions since they still stand.

**Question to:****Question:**

For the avoidance of doubt, the RSPB has confined its consideration to issues relation to the inter-tidal area.

The RSPB is concerned with the scope of contents of the Outline CoCP due to the following reasons:

1. The bird related aspects of the Outline CoCP are set out in paragraphs 4.2.130 to 4.2.132 - the RSPB considered these, and our proposed modification to them, as set out in our Appendix 1 to our Deadline II response. To summarise briefly, the original CoCP proposed to restrict work to April to September except with the consent of the MMO (4.2.130 and 4.2.131), and introduce tidal restrictions if Projects 1 and 2 are constructed at the same time (4.2.132). We are concerned due to the proposed extension to the Project 2 works to 5 years from 2 years originally suggested during the Examination of Project 1. This extension to the period of works in the intertidal zone is such that we can no longer be confident that harm to the SPA and its species will be avoided. To mitigate against these possible effects the RSPB have suggested additional restrictions (set out in Appendix 1 of our Deadline 2 response, as corrected by the RSPB's Correction Note submitted at Deadline III) need to be introduced namely:
  - restricting intertidal work within 1km of the sea wall two hours either side of a 6.5m tide (Chart Datum at Grimsby);
  - restricting the months of operation to June, July and August;
  - the amendment of regulation 20(3) in DMLs A2 and B2 (Schedules I and K of the draft DCO) to remove the provision allowing exceptional working outside of the agreed working window; and
  - giving the ECOW a Watching brief to permit the temporary suspension of works if there is a risk of significant disturbance to wading birds at high tide.
2. The role of the ECOW - the RSPB has considered carefully how this is to be secured in the Outline CoCP. We have also carefully considered whether the information provided within the Outline Environmental Management Plan (EMP) could help to address our concerns. We consider that the Outline CoCP does not adequately secure the role of the ECOW, and the Outline EMP does not provide sufficient details to help overcome this problem.
  - The Outline CoCP refers to the intertidal role of the ECOW in only 3 paragraphs (4.2.50, 4.2.134 and 4.3.7). Only two of these may cover impacts on birds but without further specific requirements added in this is not clear at present. Para 4.2.134 requires the ECOW to ensure all intertidal work is restricted to the convergence zone and temporary working corridor, and 4.3.7 reiterates this provision. There is no mention of measures to protect birds within the intertidal zone.

**Question to:****Question:**

- By way of contrast, the role of the ECOW in relation to nesting birds onshore is clearly set out (paras 4.2.124, 4.2.126, 4.2.127, 4.2.128 and 4.2.129). The RSPB welcomes this detailed consideration for all nesting birds and requests that it be extended to include the birds using the important intertidal area (within the SPA) are to be treated and that the required specific details for those intertidal species are added into the Outline CoCP and role of the ECOW now to ensure these provisions are secured.
  - We do not consider that the requirement in 4.2.136 “to ensure that works are conducted in accordance with best environmental and ecological practice” is sufficient to address our concerns, particularly when contrasted with the birds nest provisions noted above.
  - The RSPB observes that much of the Outline CoCP and Outline EMP are furnished with sufficient detail to provide an operations “manual”. This is not the case in relation to birds in the intertidal zone.
  - The Outline EMP provides one key provision on the intertidal work of the ECOW – paragraph 5.3.8. As noted in our response to the first set of questions (RSPB Response to Deadline 2, CL10, para 2) this stipulates that “an ecological watching brief will be provided by the ECOW or appropriately experienced ecologist pre-approved by the ECOW.” As with our comments on the Outline CoCP we note that there is no clear guidance on protecting the birds utilising the intertidal area, but there is again detailed guidance on protecting nesting birds (paras 5.4.4, 5.4.5 and 5.4.6). All other general references in the Outline CoCP to the ECOW’s role apply equally to all species and habitats and give no clear direction on what the ECOW should be doing in the intertidal zone.
3. The Phillips 66 Ecological Clerk of Works (governed by Marine Licence Number L/2014/00193/1 and RPS, 2015. *Tetney Sealine Replacement Project. Ecological Clerk of Works Responsibilities*. RPS Group, Abingdon) - the RSPB wishes to draw attention to some key duties required for this project, although please note that recorded bird usage of the Phillips 66 working area was far lower than for the Hornsea Project 1 and 2 working area so the measures proposed were to reduce disturbance should birds use the Phillips 66 pipeline area, rather than because they regularly do. This means that the absence of similar provisions for Hornsea Project 2 is all the more serious.
4. The Phillips 66 ECW was required to advise on and monitor adherence to a number of planning conditions for the protection of birds. The Phillips 66 mitigation focused on avoiding disturbance prior to 16th May. If the Ecological Clerk of Works (ECW) considered that flocks of birds within 500m of the works site were being disturbed, or were likely to be disturbed, by certain works activities he was to advise that works should be suspended until the birds have moved away. Attention was given to the presence of any passage birds roosting within

**Question to:****Question:**

200m of the works site and if considered appropriate, the ECW was to advise the contractor to delay starting works until resting birds have moved away (RPS, 2015, pages 14-15).

5. The first condition below highlights that the tidal restriction that the RSPB seeks for Hornsea Project 2 has been used for individual schemes, rather than solely to address in-combination effects. The second elaborates on the “watching brief” of the Phillips66 ECW, whilst the last two are included to highlight possible conditions, based upon those applied to previous schemes on this part of the Humber Estuary, which the RSPB does not consider are necessary for Hornsea Project 2:
- The licence holder must ensure that ground works on the intertidal foreshore (including site preparation, excavation, post-lowering of the pipeline, backfill and re-instatement, but not including vessel movements nor works on, or seaward of, the temporary work platform) will be suspended 2 hours either side of high tide on predicted tides at Grimsby of more than 6.5m above Chart Datum (Newlyn). This restriction is to be applied during the project construction period 1 March to 15 May 2015. (condition 3.2.5).
  - The duties of the Ecological Clerk of Works (ECoW) must include:
    - Monitoring the use of the project area by roosting, feeding and breeding birds during construction;
    - Protocols for avoiding disturbance to birds during preparation, construction and decommissioning work;(condition 3.1.7 and RPS, 2015. *Tetney Sealine Replacement Project. Ecological Clerk of Works Responsibilities*. RPS Group, Abingdon);
  - If there is a break in ground works during this period [1 March to 15 May 2015], activities must not recommence until the Ecological Clerk of Works (ECoW) has confirmed that there are no flocks of birds present likely to be disturbed by re-starting activities (condition 3.2.5) and
  - The licence holder must ensure that if there are seven consecutive days of freezing temperatures, defined as a day on which the temperature remains below 0 C for more than eighteen consecutive hours, then all construction activity landward of the mean low water mark shall cease. For the purposes of monitoring this condition, temperature data will be sourced from the Meteorological Office’s coastal weather station at Donna Nook ([http://www.metoffice.gov.uk/weather/marine/observations/Donna\\_Nook\\_table.html](http://www.metoffice.gov.uk/weather/marine/observations/Donna_Nook_table.html)), backed up by data from Associated British Ports (Spurn Point/Immingham/Hull). During any period when such activity ceases due to cold weather, temperature data from these two sources shall continue to be monitored and work shall only recommence in accordance with the agreed Cold Weather Working Strategy. (condition 3.2.6)

<b>Question to:</b>	<b>Question:</b>
---------------------	------------------

<b>CS</b>	<b>Construction – offshore</b>	
-----------	--------------------------------	--

CS17	applicant, MMO and NE	Please provide an update on the progress between the applicant and the MMO/NE in resolving issues relating to the 'In Principle Monitoring Plan', including inclusion in the draft DCO.
------	-----------------------	---

The RSPB understands from the Applicant that a draft document is being prepared. We will make comments upon it when it is made available to us.

The RSPB has made detailed comments on monitoring in response to question EOO20 above, and would expect these issues to be reflected in the In Principle Monitoring Plan.

<b>DC</b>	<b>Draft Development Consent Order (DCO)</b>	
-----------	--	--

DC33	NE, MMO and local authorities	<p>a) Do NE, MMO and the local authorities consider that they have sufficient information on the principles and parameters to be used in drafting the Ecological Management Plan (EMP) to be confident that the submitted plan will be capable of approval?</p> <p>b) Do they consider that they have or will have sufficient information and assurances about monitoring to be confident that the submitted EMP will be monitored adequately?</p> <p>c) Do they consider that they will have sufficient information to be confident about the enforcement of the EMP?</p>
------	-------------------------------	--

Question to:	Question:
--------------	-----------

	<p>a) For the reasons advanced in our response to Question CL26 above, the RSPB does not currently consider that the information on the principles and parameters to be used in drafting of the EMP will make it capable of approval. Due to the insufficient detail it contains at present we do not consider it will be possible to discount the risk of harm to the Humber Estuary SPA and its species.</p> <p>b) In particular the limited scope of the Outline EMP in relation to bird impacts arising from the intertidal work as well as the EMP not including monitoring requirements for possible ornithological impacts on the intertidal zone mean we remain concerned. The RSPB considers that this needs to be addressed, and we will discuss with the Applicant what appropriate monitoring measures could be included as well as our further concerns set out above in answer to CL26.</p> <p>c) At present the ECOW's role within the Outline EMP does not permit works to be stopped. The controls on intertidal works and their potential impacts on the SPA species are extremely broad (see our response to Question CL26 above). Consequently we do not consider as presently drafted that the EMP specifically covers these needed controls and therefore it may not be possible to enforce in a way that would reduce instances of intertidal bird disturbance between April and September inclusive.</p>
--	--

DC34	NE, MMO and local authorities	<p>a) Do NE, MMO and the local authorities consider that they have sufficient information on the principles and parameters to be used in drafting the CoCP to be confident that the submitted code will be capable of approval?</p> <p>b) Do they consider that they have or will have sufficient information and assurances about monitoring to be confident that the submitted CoCP will be monitored adequately?</p> <p>c) Do they consider that they will have sufficient information to be confident about the enforcement of the CoCP?</p>
------	-------------------------------	--

	<p>a) For the reasons set out in our response to Question CL26 above, the RSPB does not currently consider that the information on the principles and parameters to be used in drafting of the Outline CoCP will make it capable of approval as we do not consider it will be possible to discount the risk of harm to the Humber Estuary SPA and its species.</p> <p>b) At present, due to the limited scope of the Outline CoCP in relation to bird impacts arising from the intertidal work, it does not propose to monitor ornithological impacts on the intertidal zone. The RSPB considers that this needs to be addressed, and we would welcome working with the Applicant in order to suggest appropriate monitoring measures.</p>
--	--

**Question to:**

**Question:**

- c) At present the controls on intertidal works and their potential impacts on the SPA species are extremely broad (see our response to Question CL26 above). Consequently we do not consider that there is currently any realistic scope for the Outline CoCP to be enforced in a way that would reduce instances of intertidal bird disturbance between April and September inclusive.