

Hornsea Offshore Wind Farm

Project Two

Response to the RSPB's Deadline V submission

Appendix C to the Response submitted for Deadline VI

Application Reference: EN010053

26 November 2015

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The Applicant's response to the RSPB's response to Deadline V

The Applicant notes that within the RSPB's response to Deadline V they have provided the following:

- A summary of the points made at the Issue Specific Hearing on the 27 October 2015;
- A response to other Parties' Deadline IV submissions;
- The RSPB's comments on Furness (2015); and
- The RSPB's comments on Cleasby *et al* (2015).

The Applicant has addressed each of these matters sequentially below.

A summary of the points made at the Issue Specific Hearing on the 27th October

- 1.1 In response to Section 2 'Summary of Oral Submissions made at the Issue Specific Hearing on 27 October 2015' of the RSPB's submission at Deadline V, the Applicant would make the following comments.

CL: Construction Onshore and Intertidal

- 1.2 The RSPB made the following comment in relation to Item 3.4 of the Agenda (Update on the Intertidal Access Management Plan):

The RSPB notes the Applicant's statement at the hearing that the Intertidal Access Management Plan will not be drawn up until after the Secretary of State's decision on this application. As no detail is available now it is therefore not possible for the RSPB to comment further and see whether it may address our concerns."

- 1.3 The Applicant would highlight the purpose of the Intertidal Access Management Plan (IAMP) is to address Natural England's concerns in relation to access routes through the SAC into the intertidal and that this requirement has been agreed with Natural England.
- 1.4 The Applicant would highlight that the approach to drafting the Intertidal Access Management Plan post consent, prior to the commencement of works is in line with a number of other pre-commencement plans required under the draft DCO and DMLs. Furthermore, this approach has been agreed with Natural England.
- 1.5 In relation to Agenda Item 9, the RSPB state that they are continuing to discuss the draft intertidal construction conditions with the Applicant. The Applicant would highlight to the Ex. A, however, that all intertidal conditions have been agreed with Natural England.
- 1.6 With respect to the RSPB's comment on the assessment of the effects on the intertidal zone from carrying out ducting over three years (i.e. that it considers that it is possible for the work to be completed in two years), the Applicant would refer back to its response to Question EL18 at Deadline IV whereby the Applicant confirmed that the ES has assessed a maximum adverse scenario of the installation of ducts (between the transition joint bay (TJB) on the seaward side of the sea wall to the intertidal area) for a duration of three years, as outlined in paragraph 3.3.11 and Figure 3.42 of Volume 1, Chapter 3: Project Description of the ES (Doc ref No 7.1.3), Appendix O of the Applicant's

response to Deadline I and at paragraph 4.1 of Appendix I of the Applicant's response to Deadline III. To confirm, this assessment concluded no adverse effect on the features of the Humber Estuary SPA and Ramsar site and no significant effect in EIA terms on intertidal ornithological receptors.

- 1.7 The other points raised by the RSPB in relation to Agenda Item 9 are dealt with in more detail below in response to the RSPB's comments on the draft DCO.

EOO – Offshore Ornithology

- 1.8 The Applicant notes the RSPB's final positions on each of the key HRA species (gannet, kittiwake, guillemot, razorbill and puffin). The Applicant refers the Ex. A to Appendix CC of the Applicant's response at Deadline V (SoCG with Natural England in relation to Ornithology matters) which details the Applicant's position and agreement with Natural England on the conclusions of the assessment for the HRA species. The Applicant also refers the Ex. A to Appendix F of its response to Deadline VI, which further refines the in-combination collision assessment for the kittiwake feature of the Flamborough and Filey Coast pSPA and the Flamborough Head and Bempton Cliffs SPA.
- 1.9 The Applicant notes the RSPB awaits further submission from the Applicant with regard to the migratory collision risk modelling, this information can be found in Appendix V of the Applicant's response at Deadline V. The Applicant also refers the Ex. A to Appendix CC of the Applicant's response at Deadline V (SoCG with Natural England in relation to Ornithology matters) and paragraph 3.2.13 where it is agreed between the Applicant and Natural England there are no remaining concerns with regard to the migratory collision risk modelling.

The RSPB response to other Parties Deadline IV responses

Responses to the Ex. A's 2nd questions

- 1.10 The RSPB have commented on the Applicant's responses to the Ex. A's second set of questions. The RSPB are still in disagreement over the tailpiece wording to Condition 20(3) of draft DMLs A2/B2 (now Condition 18(3) of Version 7 of the draft DMLs). As previously stated by the Applicant, any attempt to rely on this tailpiece wording would be subject to the restrictions contained within Condition 18(2) of the draft DMLs (now Condition 16(2) of Version 7 of the draft DMLs) and would therefore not allow for the subsequent approval of any works that are not in accordance with the principles and assessments set out in the ES. The Applicant's position on the need for this tailpiece is as set out in paragraph 9.4 of Appendix G of its Response to Deadline V (with reference to its response to EL17 at Deadline IV).
- 1.11 In relation to EL17 which refers to the tailpiece in Condition 20(3) of DML A2 and B2, the RSPB cites from the MMO's response to EL17 stating that it supports this position:
- “Whilst the MMO is content with the current wording of the condition, if the applicant considers that such a proposal is likely then it would be more beneficial if this could be resolved prior to determination.”*
- 1.12 The Applicant submits that the very reason this tailpiece is required is in order to cover unforeseen circumstances. The very nature of “unforeseen”

circumstances is that they are not anticipated or expected and means that this is not something that can be resolved prior to determination of the Application.

- 1.13 It is noted that the MMO and Natural England are both in agreement with the wording of this condition and the Applicant would further highlight that the tailpiece requires approval from the MMO in consultation with Natural England and so considers there to be sufficient safeguards in place.
- 1.14 In relation to the RSPB's comments on the Applicant's response to CL26, the Applicant would refer back to its own response to CL26 at Deadline IV and would further note that Natural England have confirmed they are happy with the provisions of the CoCP as drafted.

Comments on RSPB's Response on Version 5 of the draft DCO

Requirement 7, Ecological Management Plan

- 1.15 RSPB state that "*the provisions in relation to the Ecological Management Plan are still mute on the issue of monitoring*".
- 1.16 The Applicant would highlight that the outline Ecological Management Plan (EMP) submitted into the Examination includes details of monitoring (including a whole section on monitoring) at Section 8 and Requirement 6 (previously Requirement 7) of the draft DCO requires the final EMP to be based on the outline EMP. In addition, the final EMP must be approved by the local planning authority in consultation with Natural England. There are therefore sufficient controls in place to ensure that the final EMP deals with monitoring and there is no need to include reference to monitoring on the face of the draft DCO requirement. The Applicant would further highlight that the wording of Requirement 6 largely follows Model Provision 17 and has precedent in other orders including the Hornsea Project One, Dogger Bank Creyke Beck and East Anglia One Orders. In addition, both the wording of the requirement and the content of the outline EMP have been agreed with Natural England.

Requirement 8, Code of Construction Practice

- 1.17 RSPB state that "*the provisions in relation to the Code of Construction Practice still make no reference to ecology*".
- 1.18 The Applicant would highlight that the outline Code of Construction Practice (CoCP) submitted into the Examination includes a section on ecology (see paragraphs 4.2.40 to 4.2.137) and Requirement 7 (previously Requirement 8) of the draft DCO requires the final CoCP to be based on the outline CoCP. There are therefore sufficient controls in place to ensure that the final CoCP covers ecology and there is no need to include reference to ecology on the face of the draft DCO requirement. The Applicant would further highlight that the wording of Requirement 7 is based on Model Provision 18 and has precedent in other orders including the Hornsea Project One. In addition, both the wording of the requirement and the content of the outline CoCP have been agreed with Natural England.
- 1.19 The RSPB have also requested the inclusion of a requirement for all of the ducts to be installed during the first phase of construction.

- 1.20 The Applicant does not agree that such a requirement is necessary or appropriate. It has already been noted that the undertaker may not carry out any works under the draft DCO which are outside the scope of the assessment. Further, the Applicant would note that the CoCP will regulate the proposed construction programme and requires to be submitted to the local planning authority for approval prior to the commencement of the works. As such, the Applicant considers sufficient control is already secured within the draft DCO (the Applicant would further refer to its response to CL26 at Deadline IV and to paragraphs 4.1 and 4.2 of Appendix I of its response to Deadline III for its submissions on this point).

Requirement 27, Intertidal Access Management Plan

- 1.21 As noted above, the purpose of the IAMP is to set out details of the access route(s) to the intertidal, the methods for accessing the intertidal, expected number of vehicles that will be accessing the intertidal and the expected number of vehicle trips to the intertidal in order to address Natural England's concerns in relation to accessing the intertidal. This plan is not intended to deal with construction works on the intertidal as such activities will be controlled by other plans, such as those under Condition 8(2) (previously Condition 10(2) of DMLs A2 and B2, together with the restrictions contained in Condition 18 (previously Condition 20). The Applicant has agreed with Natural England the approach, content and timing of the IAMP and the method by which it is to be secured within the DCO.

DMLs A2 and B2, Condition 10(2)(b)

- 1.22 The RSPB have requested that the "*provisions on the Code of Construction Practice are modified to either incorporate the detailed construction methods and timings or for it to form part of the DML requirements*".
- 1.23 The Applicant submits that it is not appropriate to include the detailed construction methods and timings on the face of the DMLs and that this will form the content of the pre-construction plans and documentation required to be submitted under Condition 8(2) (previously Condition 10(2) (for example, Condition 8(2)(a) requires a construction and monitoring programme to be submitted for approval which must include details of the proposed construction start date and proposed timings for mobilisation of plant, delivery of materials and installation works, among other things, and Condition 8(2)(b) requires a construction method statement to be submitted which must include details of circuit installation and both of these plans must be approved by the MMO in consultation with Natural England).
- 1.24 It is further noted that these conditions are agreed with the MMO and Natural England.

DMLs A2 and B2, Condition 20(3)

- 1.25 The Applicant would refer to paragraph 9.4 of Appendix G of its response to Deadline V for its submissions on this matter.

DMLs A2 and B2, Condition 20(4)

- 1.26 The Applicant would refer to paragraphs 9.1 and 9.2 of Appendix G of its response to Deadline V for its submissions on this matter.

Appendix P – In principal monitoring plan

- 1.27 The Applicant notes the RSPB has provided a lengthy submission in relation to the IPMP. The Applicant has addressed key points from the submission (where deemed appropriate) in the subsequent paragraphs.
- 1.28 The Applicant notes that the RSPB suggests that the Applicant has not identified the areas or indeed timing of monitoring that should be undertaken. This is not the case, as the IPMP clearly identifies what are considered to be the key receptors and effects that will be considered when establishing a suitable monitoring programme. In addition, the IPMP clearly identifies those phases of the Project where these key effects are of most concern for these receptors.
- 1.29 The Applicant notes that the RSPB wishes to see the inclusion of intertidal monitoring. The Applicant does not agree that this is merited. The Applicant has agreed a suite of onerous restrictions associated with construction and maintenance activity within the intertidal that are sufficiently precautionary to give the SNCB the comfort that there is no potential for an adverse effect on the integrity of the Humber Estuary SPA and Ramsar to occur either from the Project alone or in-combination. As a result there is no uncertainty relating to a potential significant effect, and therefore, no justification for monitoring. The Applicant notes that Natural England is in agreement that intertidal monitoring for ornithological receptors is not required.
- 1.30 The Applicant notes that the RSPB consider the CoCP and EMP should further set out the precise detail of ornithological monitoring at this stage. The Applicant does not consider this necessary. The Applicant has made the commitment to undertaking offshore ornithological monitoring as set out within Conditions 8(2)(k), 13(2)(b) and 15(2)(a) of Version 7 DMLs A1 and B1 (previously Conditions 10(2)(k), 15(2)(b) and 17(2)(a) and also within the IPMP. The Applicant would like to highlight to the Ex. A that it has agreement on the approach to ornithological monitoring and CoCP and EMP content with both Natural England and the MMO.
- 1.31 The Applicant notes that the RSPB have suggested that construction phase monitoring should be committed to for ornithological receptors and cites paragraph 2.5.51 of NPS EN-3 as the justification for this. As stated by the Applicant at the Issue Specific Hearing on the 27th of October, monitoring should be focussed and involve a tailored approach to address key issues and species. The Applicant considers, for the Project, the key effects relate to the operation phase and therefore, it is correct that this should form the focus of any site specific monitoring. They should also ensure any change can be detected, through appropriate methodological design of surveys and analysis. The Applicant considers that this approach is in keeping with the overarching aims of the post consent monitoring review (MMO, 2014). It is also noted that monitoring resources are finite and therefore, it is important to ensure that these are applied to addressing the key effects/uncertainties in detail rather than attempting to address all effects/uncertainties at a higher level.

- 1.32 The Applicant notes that the RSPB have provided lengthy submissions as to their preferred approach to strategic and site specific monitoring. The Applicant notes that both strategic and site specific monitoring will be considered at the appropriate time (as set out within the IPMP). As set out by the Applicant (and agreed with the SNCB) the Project does not consider it the appropriate time to undertake this exercise at this juncture. The evidence base relating to some of the key effects and or receptors will change between now and drafting of the plans and there may be further project level design optimisation that may influence the merit in adopting a particular monitoring approach over another. Therefore the way in which the monitoring commitment has been made by the Applicant is considered the most appropriate and it does not intend to revisit that or its agreed position with the SNCB.

Appendix BB- HRA Screening and Integrity matrices

- 1.33 The Applicant notes the RSPB's response to the HRA Screening and Integrity matrices and that these relate to the possible Greater Wash SPA screening report, the Applicant has responded to the RSPB's comments below.

Appendix FF- Possible Greater Wash SPA Shadow HRA screening

- 1.34 The Applicant notes the RSPB's comments on the Greater Wash shadow HRA screening report, the Applicant would highlight that the Project site is located 55 km away from the proposed boundary of the SPA and therefore the assessment has focussed on the Project export cable route using the data provided by Natural England to propose the SPA designation.
- 1.35 There is already a high level of vessel traffic within the proposed SPA which suggests a certain level of habituation to disturbance from vessels. At this stage the Applicant cannot confirm which port would be used during the construction or operational phase. However, the Applicant has updated the Possible Greater Wash SPA Shadow HRA screening report (Appendix N of its response to Deadline VI) making the assumption that the worst case for potential for vessel disturbance of wintering red-throated diver and common scoter, therefore, is considered to arise if vessels were routed from ports located in the Wash. The Applicant would like to highlight to the Ex. A that the contents and the assessment provided in the updated Greater Wash screening report has been agreed with Natural England (paragraph 3.2.22 of Appendix M of its response to Deadline VI).

RSPB's comments on Furness (2015)

- 1.36 The Applicant acknowledges RSPB's commentary on the scope of Furness (2015). With respect to kittiwake phenology, RSPB detailed the months defined for this species but also omit the following key text:

“Apart from the breeding season, two seasonal BDMPS periods are considered to be appropriate for black-legged kittiwake: ‘Autumn’ (post-breeding) migration BDMPS (August-December); and ‘Spring’ (pre-breeding) migration BDMPS (January-April)”.

- 1.37 As described in multiple Applicant submissions (e.g. Appendix DD submitted at Deadline IV), the assessment of Hornsea Project Two has defined kittiwake seasons based on the likely origin of birds present at the Project site, with the breeding season taking definitions from Furness (2015) and indicated where impacts may disproportionately affect the breeding population at Flamborough and Filey Coast pSPA.
- 1.38 With respect to Table 15.1 of Furness (2015) and the blank space given for FFC pSPA site condition, RSPB state that: “*This does not infer any judgement on the status of the population, or degree of uncertainty around it*”. The RSPB therefore clearly overlook the considerable ongoing debate about the accuracy of a 1987 count at the pSPA which is the primary (or only) driver behind assertions that the kittiwake feature may be in unfavourable condition. This uncertainty is expressed in detail in both Coulson (2011) and through the expert evidence given by the author of Furness (2015) with respect to this issue during the examination of Hornsea Project One¹.
- 1.39 The RSPB suggest that a ‘*thorough assessment*’ of the site condition for the pSPA with respect to kittiwake was undertaken by Natural England as part of their Deadline IV submission (which was updated after criticism from the Applicant on a previous submission by Natural England at Deadline III). The Applicant has outlined their disagreement on this submission and strongly disputes that a ‘*thorough assessment*’ of kittiwake site condition has been presented. Key excerpts of the Applicant’s submission are as follows:

“...the information included in Appendix 2 of Natural England’s response to Deadline III, Figure 1 is highly misleading. It is our understanding that the trends shown in Figures 1b – 1e are not specific to the colonies indicated, but rather are simply transposed from 1a, which represents a more general UK population index. There is no reason to assume, based on the data presented, that the populations at Bempton Cliffs, nor Filey 1, 2 and 3, have tracked this index in the way shown. In fact, in figures 1b – 1e, the index has had to be “fitted” to accommodate those site-specific data.

If the disputed data from 1987 are excluded, the data on the breeding colonies at Bempton and Filey less clearly indicate a supposed decline (Figures 2 and 3) and, rather, follow the pattern suggested by MacArthur Green (2015) (Appendix M of the Applicant’s response to Deadline IIA):

Although there is some uncertainty about how the kittiwake population at Bempton has changed since the 1970s (<http://jncc.defra.gov.uk/page-2889>), it seems likely that the population has remained around 40,000 pairs for much of that time. This is close to the maximum size for colonies of this species, suggesting strong competition for resources and colony size limitation by density-dependence (Jovani et al. 2012). This would suggest that the population has been regulated at this size (i.e. the population has been at the carrying capacity of the environment for all of this time). This being the case the density dependent model would be expected to be the more reliable model on which to base predictions.”

¹<http://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010033/3.%20Post%20Decision%20Information/Other/Hornsea%20Offshore%20Wind%20Farm%20Final%20EA%20including%20HRA%20TA%20and%20AIUGI.pdf> – see paragraphs 2.21 to 2.22

RSPB's comments on Cleasby (2015)

1.40 The Applicant acknowledges RSPB's summary and commentary on Cleasby et al. (2015), a study co-authored by the RSPB. The Applicant detailed its concerns regarding the applicability of this study to the assessment of the Project within the second Issue Specific Hearing². The Applicant also notes that RSPB do not address the majority of the key concerns in their Deadline V submission, these comprise:

- (1) The sample sizes used in the study for flight height estimation are extremely small. Across the study period, 16 birds were fitted with pressure loggers to enable the calculation of flight height. Of these 16 birds, only 11 entered the wind farm areas of interest in the paper. When this is contextualized in terms of the total population of gannets at Bass Rock (150,518 individuals in 2014) it is questionable as to whether a representative sample of birds at Bass Rock has been achieved;
- (2) The sample size in Cleasby et al. (2015) is considerably lower than the sample size recommended by Natural England in previous offshore wind farm applications (100 birds) to calculate a PCH value from site specific data;
- (3) The results obtained in the paper are then extrapolated out across the entire breeding season for gannet (April to September). The foraging behaviour of gannets is known to change across the breeding season. Based on at sea surveys, the density of gannet is highest during the mid-summer period and therefore the extrapolation of data collected between mid-June to mid-August to the remainder of the breeding season may result in an overestimate of resulting collision risk;
- (4) Differences in foraging behaviour and therefore flight height may exist between different age classes and male and female birds. Cleasby et al. (2015) acknowledges that this may result in asymmetry in male-female collision risk. Cleasby et al. (2015) also indicates that there was significant variation in the flight heights of individual birds which may lead to considerable differences in the collision risk for individual birds. Cleasby et al. (2015) does highlight this limitation of the approach used: "*Further data are needed on all these factors in order to make a full assessment of the collision risks posed to gannets...*";
- (5) The data collected represent repeated samples over time from a small sample of birds. These data are therefore likely to be temporally correlated, a factor which does not appear to have been taken into account within the paper;
- (6) The collision risk window used to determine those flights at risk of collision does not appear to be consistent with that for the two wind farm projects considered in the paper. This is important as in order to conclude that collision risk estimates at the wind farm sites may be six to twelve times higher than previously predicted, comparisons should be made using equivalent parameters; and
- (7) The density data used by Cleasby et al. (2015) to represent the collision risk estimates obtained by previous assessments are not equivalent to those used for the two wind farm sites of interest in the paper. The paper represents a relative comparison and not an actual comparison which would

² <http://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010053/Events/Deadline%205%20-%202012-11-2015/Appendix%20G%20-%20Summary%20of%20Oral%20Case%20-%20ISH%2027-10-15.pdf>

incorporate identical data. It does not appear possible to replicate the collision risk estimates presented in the paper.

- 1.41 The Applicant believes that the paper suffers from an over extension of the proposed scope and a lack of clarity, with the focus primarily on tracking birds followed by rather broad assumptions leading to a calculation of collision risk and resulting conclusions for offshore wind farms.