

From: [Andrew Dodd](#)
To: [East Anglia ONE North](#); [East Anglia Two](#)
Subject: RSPB Deadline 1 submission for East Anglia ONE North and East Anglia TWO examinations
Date: 02 November 2020 15:46:49
Attachments: [RSPB Response EA1N EA2 Deadline 1 submission.pdf](#)

Dear Sir/Madam

Planning Inspectorate refs [EA ONE North; EA TWO]: EN010077; EN010078
RSPB Registration Identification refs [EA ONE North; EA TWO]: 20024733; 20024734

Please find attached the RSPB's joint written submission for Deadline 1 of the examinations into the East Anglia ONE North and East Anglia TWO offshore windfarm proposed development consent orders. We have provided a single submission as it applies equally to both proposals.

We will submit a summary of this submission as soon as practicable and well in advance of Deadline 2.

With kind regards

Andrew Dodd
Head of Casework
RSPB



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**Written Representations
for the
Royal Society for the Protection of Birds**

Submitted for Deadline 1

2 November 2020

Planning Act 2008 (as amended)

In the matter of:

**Application by Scottish Power Renewables for an
Order Granting Development Consent for the
East Anglia ONE North/East Anglia TWO Offshore Windfarms**

Planning Inspectorate Ref: EN010077/EN010078

Registration Identification Ref: 20024733/20024734

1 Introduction

- 1.1 This representation applies jointly to the development consent order applications by Scottish Power Renewables (the Applicant) for the East Anglia ONE North (EA1N) and East Anglia TWO (EA2) offshore windfarms (collectively “the applications”).

The RSPB

- 1.2 The Royal Society for the Protection of Birds (the RSPB) was set up in 1889. It is a registered charity incorporated by Royal Charter and is Europe’s largest wildlife conservation organisation, with a membership of 1.1 million (RSPB, 2020). The principal objective of the RSPB is the conservation of wild birds and their habitats. The RSPB therefore attaches great importance to all international, EU and national law, policy and guidance that assist in the attainment of this objective. It campaigns throughout the UK and in international fora for the development, strengthening and enforcement of such law and policy. In so doing, it also plays an active role in the domestic processes by which development plans and proposals are scrutinised and considered, offering ornithological and other wider environmental expertise. This includes making representations to, and appearing at, public inquiries and hearings during the examination of applications for development consents.

The RSPB’s interest in offshore wind development

- 1.3 Faced with the threats of climate change to the natural world the RSPB considers that a low-carbon energy revolution is essential to safeguard biodiversity. However, inappropriately designed and/or sited developments can also cause serious and irreparable harm to biodiversity and damage the public acceptability of the necessary low-carbon energy transition technologies.
- 1.4 The UK is of outstanding international importance for its breeding seabirds, including northern gannet for which the UK supports over 50% of the world population and around 10% of the world populations of kittiwake and puffin. The UK is also of international importance for its non-breeding seabirds and waterbirds, including red-throated diver. As with all Annex I and regularly migratory species, the UK has particular responsibility under the Birds Directive¹ to secure the conservation of these birds.

¹ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (codified version) (the Birds Directive).

- 1.5 The available evidence suggests that the main risks of offshore wind farms for birds are collision, disturbance/displacement, barriers to movement (e.g. migrating birds, or disruption of access between the breeding areas and feeding areas), and habitat change particularly with associated changes in food availability and the cumulative and in-combination effects of these across multiple wind farms.
- 1.6 Such impacts are avoidable, and the RSPB has spent considerable time working with stakeholders in the UK offshore wind industry to ensure that decisions about deployment of renewable energy infrastructure take account of environmental constraints and seek to avoid or minimise impacts wherever possible. The RSPB therefore strongly advocates the use of rigorous, participative environmental assessments to inform the development of projects.

Scope of Written Submission

- 1.7 This Written Submission covers the following:
- Protected Sites and Species
 - Legislation and Policy Background
 - Offshore Ornithology
 - Onshore Ornithology
- 1.8 The RSPB has been working with the Applicant on two Statements of Common Ground (SOCG) covering offshore and onshore ornithology matters. We are close to reaching agreement on the onshore ornithology SOCG (see section 5). However, due to the serious resource constraints referred to in our Relevant Representation we have not made as much progress regarding the offshore ornithology SOCG. We provide a brief update on progress with this in section 4.

2 Protected Sites and Species

- 2.1 The RSPB considers the projects have the potential to impact a number of Special Protection Areas (SPAs), classified under the EU Birds Directive². Below we provide a brief summary of each affected SPA and the relevant qualifying features.

The Flamborough and Filey Coast SPA

- 2.2 The Flamborough Head and Bempton Cliffs SPA was designated under Article 4(2) of the Birds Directive as a SPA in 1993 due to the presence of 83,370 pairs of black-legged kittiwake. The site was reclassified in August 2018 as the Flamborough and Filey Coast SPA (the FFC SPA) following changes to the designated site boundary including extending it to cover part of the Filey Coast (hence the change in its name) and changes to the numbers of qualifying species. This new site was formally designated in August 2018³, incorporating the Flamborough Head and Bempton Cliffs SPA.
- 2.3 The FFC SPA qualifies by regularly supporting internationally important numbers of breeding black-legged kittiwakes, northern gannet, common guillemot and razorbill and an assemblage of European importance of over 20,000 breeding seabirds. Black-legged kittiwake, northern gannet, common guillemot and razorbill are all main components of the assemblage and present in internationally important numbers. However, northern fulmar is also present in sufficient numbers to warrant being listed as main component species of the assemblage, since numbers exceed 2,000 individuals (10% of the minimum qualifying assemblage of 20,000 individuals). In addition, Atlantic puffin, herring gull, European shag and great cormorant are also part of the breeding seabird assemblage.
- 2.4 Since this site was originally designated as a SPA, the national populations of both kittiwake and some assemblage species have suffered substantial declines. For example, the UK breeding kittiwake population has reduced by 70% since 1986 (State of the UK's Birds, 2017⁴). Within the SPA there has been a reduction from the 83,370 breeding pairs of kittiwakes (at time of designation, 1993) to 51,535 pairs in 2017; a c.38% decline.

² And implemented domestically within reg 15, Conservation of Habitats and Species Regulations 2017

³ Flamborough and Filey Coast SPA citation: <http://publications.naturalengland.org.uk/file/4690761199386624>

⁴ Hayhow D.B., Ausden M.A., Bradbury R.B., Burnell D., Copeland A.I., Crick H.Q.P., Eaton M.A., Frost T., Grice P.V., Hall C., Harris S.J., Morecroft M.D., Noble D.G., Pearce-Higgins J.W., Watts O., Williams J.M. (2017) State of the UK's Birds 2017. The RSPB, BTO, WWT, DAERA, JNCC, NE and NRW, Sandy, Bedfordshire. <https://www.bto.org/research-data-services/publications/state-uk-birds/2017/state-uk-birds-2017>

2.5 The current SPA citation does not reflect this substantial decline in the population of breeding kittiwake or other seabird species included under the assemblage feature. However, Natural England's Supplementary Advice on the Conservation Objectives for the Flamborough and Filey Coast SPA⁵ sets out targets for each of the qualifying features necessary for the SPA to meet its conservation objectives. For kittiwake the target is to "Restore the size of the breeding population at a level which is above 83,700 breeding pairs, whilst avoiding deterioration from its current level as indicated by the latest mean peak count or equivalent".

The Alde-Ore Estuary SPA

2.6 The main feature of the Alde-Ore Estuary SPA affected by the Applications is the breeding lesser black-backed gull population, the majority of which breed at Havergate Island (which is a RSPB reserve) and Lantern Marshes on Orfordness (a National Trust reserve).

2.7 The Alde-Ore Estuary SPA was classified in 1996⁶ on the basis of supporting an average of 14,070 lesser black-backed gull Apparently Occupied Nests (AONs) between 1994 and 1998, or 12% of the biogeographic population. Following classification, the lesser black-backed gull population experienced a rapid increase in the late 1990s, peaking in 2000. This is reflected in the population of 21,700 pairs described in the Alde-Ore Estuary SPA site account in the JNCC UK SPA Review 2001⁷).

2.8 Natural England's Supplementary Advice on the Conservation Objectives for the Alde-Ore Estuary SPA⁸ has determined that the target population of the SPA is 14,074 pairs of lesser black-backed gulls if the SPA is to meet its conservation objectives. Since the site was classified, the population has experienced a severe decline, such that the 5-year mean (2015-2019) is just 1,842 pairs, c.87% below its target population.⁹

⁵ Supplementary Advice on the Conservation Objectives for the Flamborough and Filey Coast SPA, Natural England, 13 March 2020:<https://designatedsites.naturalengland.org.uk/Marine/SupAdvice.aspx?SiteCode=UK9006101&SiteName=&SiteNameDisplay=Flamborough+and+Filey+Coast+SPA&countyCode=&responsiblePerson=>

⁶ Alde-Ore Estuary SPA citation: <http://publications.naturalengland.org.uk/file/6296068417388544>

⁷ Stroud, DA, Chambers, D, Cook, S, Buxton, N, Fraser, B, Clement, P, Lewis, P, McLean, I, Baker, H & Whitehead, S (eds). 2001. The UK SPA network: its scope and content. JNCC, Peterborough.

⁸ Supplementary Advice on the Conservation Objectives for the Alde-Ore Estuary SPA, Natural England, 13 September 2019: <https://designatedsites.naturalengland.org.uk/Marine/SupAdvice.aspx?SiteCode=UK9009112&SiteName=alde-ore&SiteNameDisplay=Alde-Ore+Estuary+SPA&countyCode=&responsiblePerson=&SeaArea=&IFCAArea=&NumMarineSeasonality=8>

⁹ See [RSPB Written Submission \(1 September 2020\) for Deadline 15 of the examination into the Norfolk Boreas offshore windfarm](#)

2.9 The Alde-Ore Estuary is the only SPA for lesser black-backed gull on the east coast of England. As such it plays an important role with respect to the UK population of this species. Even at its now much reduced size the most recent population estimate represents 1.64% of the UK population of 112,000 AON (JNCC, 2019¹⁰).

Outer Thames Estuary SPA

2.10 The main feature of the Outer Thames Estuary SPA affected by the Applications is the non-breeding red-throated diver population. The SPA was originally classified in 2010 on the basis that it supported an internationally important population of 6,466 individual wintering red-throated divers, the SPA was reclassified in 2017 following changes to the designated site boundary and the addition of breeding common and little terns to its qualifying features.

2.11 Subsequent surveys of the site have revealed that it currently supports significantly higher numbers e.g. just under 20,000 individual red-throated divers in winter¹¹.

Sandlings SPA

2.12 The Sandlings SPA is located on the Suffolk coast between the Deben Estuary and Leiston. It is affected by the onshore cable route for the two projects which passes alongside and through the SPA, resulting in potential for disturbance and temporary loss of habitat. The Sandlings SPA is an area of acid grassland and heather heathland along with some conifer forest blocks. The heathland habitats were formerly much more extensive and have been subject to fragmentation caused by afforestation and conversion to agriculture and succession due to lack of appropriate management. The remnant heathland habitats and recently felled forest areas are important for breeding woodlark and nightjar, and as such, the site was classified as a SPA in August 2001.

2.13 In 1992, the Sandlings supported 109 breeding male nightjars, or 3.2% of the GB population and 154 breeding pairs of woodlark, representing 10.3% of the UK population. Natural England's Supplementary Advice on the Conservation Objectives for the Sandlings SPA¹² has set targets to

¹⁰ Latest population trends: lesser black-backed gull, JNCC, Published 17 April 2019: <https://jncc.gov.uk/our-work/lesser-black-backed-gull-larus-fuscus/>

¹¹ Recent surveys have estimated the current SPA population at 18,079 overwintering individuals (peak mean 2012/3 – 2017/18) (HiDef Aerial Surveying Limited, 2018), <https://designatedsites.naturalengland.org.uk/Marine/MarineSiteDetail.aspx?SiteCode=UK9020309&HasCA=1&NumMarineSeaSonality=3&SiteNameDisplay=Outer%20Thames%20Estuary%20SPA#suppadvice>

¹² Supplementary Advice on the Conservation Objectives for the Sandlings SPA, Natural England, 6 March 2019: <http://publications.naturalengland.org.uk/file/5201677619822592>

restore the nightjar population to a level consistently above 109 breeding males and to restore the woodlark population to a level which is consistently above 154 breeding pairs. Key targets needed to achieve these include minimising human disturbance, restoring connectivity between habitats, instigating active and ongoing conservation management and restoring open habitats.

Site conservation objectives

2.14 Natural England has set site conservation objectives for each of the four SPAs as follows:

“Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;

- *The extent and distribution of the habitats of the qualifying features,*
- *The structure and function of the habitats of the qualifying features,*
- *The supporting processes on which the habitats of the qualifying features rely,*
- *The population of each of the qualifying features, and,*
- *The distribution of the qualifying features within the site.”*

2.15 In addition, Natural England has set Supplementary Advice on the Conservation Objectives for both the FFC SPA, the Alde-Ore Estuary SPA and the Sandlings SPA. These should be read in conjunction with the high-level site conservation objectives.

3 Policy and Legislation Background

Introduction

- 3.1 The suite of Energy National Policy Statements (NPSs) set out the Government's approach to ensuring the security of energy supplies and the policy framework within which new energy infrastructure proposals are to be considered. The presumption in favour of granting consent, as identified in NPS EN-1, *Overarching National Policy Statement for Energy*¹³, is subject to the tests set out below in section 104 of the Planning Act 2008¹⁴ (see NPS EN-1 paragraphs 4.1.2 and 1.1.2).
- 3.2 Section 104 of the Planning Act provides that an application for development consent for energy infrastructure must be decided in accordance with the relevant NPS except where in doing so it would lead to the UK:
- being in breach of its international obligations;
 - being in breach of any statutory duty that applies to the Secretary of State;
- or would:
- be unlawful;
 - result in adverse impacts which would outweigh the benefits; or
 - be contrary to regulations about how decisions are to be taken.
- 3.3 The statutory duties include the Conservation of Habitats and Species Regulations 2017¹⁵ (the Habitats Regulations) (NPS EN-1 paragraph 4.3.1) and the wider objective of protecting the most important biodiversity conservation interests (see NPS EN-1 section 5.3 generally). It notes the Habitats Regulations' statutory protection for important sites including Ramsar sites, listed under the Ramsar Convention¹⁶, SPAs designated under the Birds Directive and Special Areas of Conservation (SACs) designated under the Habitats Directive¹⁷.

¹³ Overarching National Planning Policy Statement for Energy (EN-1): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/47854/1938-overarching-nps-for-energy-en1.pdf

¹⁴ Planning Act, 2008: <http://www.legislation.gov.uk/ukpga/2008/29/contents>

¹⁵ The Conservation of Habitats and Species Regulations 2017: <https://www.legislation.gov.uk/uksi/2017/1012/contents/made>

¹⁶ The Convention on Wetlands of International Importance 1971. Para 5.3.9 of the NPS EN-1 confirms that for the purposes of considering development proposals affecting them, listed Ramsar sites should also, as a matter of policy, receive the same protection.

¹⁷ Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

3.4 NPS EN-3, *National Policy Statement for Renewable Energy Infrastructure*, specifically identifies birds as a biodiversity concern to be taken into account (paragraph 2.6.59 and 2.6.68). Whilst it is stated that the designation of an area as a protected European site does not necessarily restrict the construction or operation of offshore wind farms (paragraph 2.6.69), the legislative requirements identified above are still to be met. The protection afforded by legislation, to which the 2008 Act and the NPSs refer, are addressed briefly below.

[The Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017](#)

3.5 SACs and SPAs are protected as “European sites” in inshore waters (up to 12 nautical miles from the baselines) under provisions within the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations); and in offshore waters (i.e. from 12-200 nautical miles) under provisions within the Conservation of Offshore Marine Habitats and Species Regulations 2017 (Offshore Regulations).

3.6 The Habitats & Offshore Regulations set out the sequence of steps to be taken by the competent authority (here the Secretary of State for Business, Energy and Industrial Strategy (BEIS)) when considering authorisation for a project that may have an impact on a European site and its species before deciding to authorise that project. These are as follows:

- a. Step 1: consider whether the project is directly connected with or necessary to the management of the SPA and its species (regulation 63 (1)). If not –
- b. Step 2: consider, on a precautionary basis, whether the project is likely to have a significant effect on the SPA and its species, either alone or in combination with other plans or projects (the Likely Significance Test) (regulation 63 (1)).
- c. Step 3: make an appropriate assessment of the implications for the SPA and its species in view of its conservation objectives. There is no requirement or ability at this stage to consider extraneous (non-conservation e.g. economics, renewable targets, public safety etc) matters in the appropriate assessment (regulation 63 (1)).
- d. Step 4: consider whether it can be ascertained that the project will not, alone or in combination with other plans or projects, adversely affect the integrity of the SPA and its species, having regard to the manner in which it is proposed to be carried out, and any conditions or restrictions subject to which that authorisation might be given (the Integrity Test) (regulation 63 (6)).

- e. Step 5: In light of the conclusions of the assessment, the competent authority shall agree to the project only after having ascertained that it will not adversely affect the integrity of the SPA, alone or in combination with other plans or projects (regulation 63 (5)).
 - f. Step 6: only if the competent authority is satisfied that, there being no alternative solutions and the plan or project must be carried out for imperative reasons of overriding public interest (which, subject to (regulation 64(2)), may be of a social or economic nature), they may agree to the plan or project notwithstanding a negative assessment of the implications for the European site (regulation 64 (1)).
 - g. Step 7: in the event of the no alternative solutions and imperative reasons of overriding public interest tests being satisfied, the Secretary of State must secure that any necessary compensatory measures are taken to ensure that the overall coherence of the Natura 2000 network is protected (regulation 68).
- 3.7 It is important to add that in addition to the requirements set out above, in relation to both inshore area and the offshore marine area, any competent authority must exercise its functions so as to secure compliance with the requirements of the Habitats Directive and the Birds Directive; and in particular to take such steps as it considers appropriate to secure the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds¹⁸, having regard to the requirements of Article 2 of the Birds Directive.¹⁹ And for offshore SPAs and SACs regulation 26, Offshore Regulations requires competent authorities to exercise their functions (as far as possible) to secure steps to avoid the disturbance of species and the deterioration of habitats or habitats of species within those sites.

Appropriate assessment

- 3.8 As part of the assessment requirements, regulation 63, Habitats Regulations (regulation 28, Offshore Regulations) require the application of the precautionary principle. Meaning that if it cannot be excluded, on the basis of objective scientific information, that it is likely to have a

¹⁸ As required by Article 3, Birds Directive

¹⁹ See regulation 9(1) and 10(1)(2)(3) and (8) of the Habitats Regulations and regulation 6 of the Offshore Regulations. Article 2 Birds Directive imposes a requirement on Member States to maintain all wild bird populations at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or if necessary, to restore the population of these species to that level (Article 2).

significant effect on a SPA or SAC and its species an appropriate assessment will be required: see *Waddenzee*.²⁰

3.9 Following that appropriate assessment, a project may only be granted consent if the competent authority is convinced that it will not have an adverse effect on the integrity of the European site(s) and their species of concern, having applied the precautionary principle and taken account of the conservation objectives for those sites and their habitats and species. *Waddenzee* confirmed that where doubt remains as to the absence of adverse effects on the integrity of the site, approval should be refused²¹ (subject to the considerations of alternative solutions, imperative reasons of overriding public interest and the provision of compensatory measures as set out in regulations 64 & 68).

3.10 An appropriate assessment requires all aspects of the project which could affect the site, its species and its conservation objectives to be identified in the light of the best scientific knowledge in the field.²² The competent authority,

“taking account of the conclusions of the appropriate assessment of the implications...for the site concerned, in the light of the conservation objectives, are to authorise such activity only if they have made certain that it will not adversely affect the integrity of the site. That is the case where no reasonable scientific doubt remains as to the absence of such effects”²³.

3.11 Defra Circular 01/2005 states at page 20, that the ‘integrity of the site’ should be defined as ‘the coherence of the site’s ecological structure and function, across its whole area, or the habitats, complex of habitats and/or populations of species for which the site is or will be classified’.²⁴ A site can be described as having a high degree of integrity where the inherent potential for meeting site conservation objectives is realised, the capacity for self-repair and self-renewal under dynamic conditions is maintained, and a minimum of external management support is required. When looking at the ‘integrity of the site’, it is therefore important to take into account a range of factors, including the possibility of effects manifesting themselves in the short, medium and long-term”.²⁵

²⁰ CJEU Case-127/02; [2004] ECR-7405 at [45].

²¹ [56]-[57].

²² [61].

²³ [59].

²⁴ Please note the Defra Circular 01/2005 is also titled ODPM Circular 6/2005.

²⁵ See too the European Commission Guidance; Wind Energy Developments and Natura 2000, 2011, page 82-83, paragraph 5.5.3.

3.12 As is clear from the requirements of the Habitats and Offshore Regulations, the assessment of integrity is to be considered by reference to the impact of the project alone and in-combination with other plans and projects, taking account of the site(s) conservation objectives. As clearly set out in *Waddenzee*, para 61:

61 In view of the foregoing, the answer to the fourth question must be that, under Article 6(3) of the Habitats Directive, **an appropriate assessment of the implications for the site concerned of the plan or project implies that, prior to its approval, all the aspects of the plan or project which can, by themselves or in combination with other plans or projects, affect the site's conservation objectives must be identified in the light of the best scientific knowledge in the field.** The competent national authorities, taking account of the appropriate assessment of the implications of mechanical cockle fishing for the site concerned in the light of the site's conservation objectives, are to authorise such an activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects. (emphasis added)

Environmental Impact Assessment

3.13 The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017²⁶ state that development consent cannot be granted for Environmental Impact Assessment (EIA) development unless the decision-maker has taken into account environmental information including an environmental statement which describes the significant effects, including cumulative effects, of the development on the environment. This will include effects on all wild bird species whether SPA species or not.

3.14 Offshore wind farms have the potential to impact on birds through collision with rotating blades, direct habitat loss, disturbance from construction activities, displacement during the operational phase (resulting in loss of foraging/roosting area) and impact on bird flight lines (i.e. barrier effect) and associated increased energy use by birds for commuting flights between roosting and foraging

²⁶ The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017: <http://www.legislation.gov.uk/uksi/2017/572/contents/made>

areas. This is acknowledged in NPS EN-3²⁷. These potential impacts have been taken into account by the RSPB and its remaining concerns with the applications are set out below, in the context of the legislative provisions summarised above, in particular those relating to appropriate assessment.

²⁷ Paragraph 2.6.101; see paragraphs 2.6.100-110 and 2.6.58-71 generally. Effects on foraging areas outside a SPA are to be taken into account when assessing the effects on bird populations of the SPA: see *Hargreaves v Secretary of State for Communities and Local Government* [2011] EWHC 1999 (Admin), which concerned effects on pink-footed geese which commuted inland from their roosting sites in the SPA to feed on grain and winter cereal crops on fields adjacent to the proposed development site.

4 Offshore Ornithology

Introduction

4.1 The RSPB's position on offshore ornithology matters remains as set out in its Relevant Representation in relation to the following:

- Habitats Regulations Assessment matters
- Environmental Impact Assessment matters
- Other matters

4.2 The RSPB is in ongoing discussions with the Applicant on these matters as part of discussions under the draft Offshore Ornithology SOCG (the draft Offshore SOCG)(see section 1 above and the update section below). We will respond to relevant additional information submitted to the Examination by the Applicant with the aim of refining the draft Offshore SOCG in order to assist the Examining Authority.

Habitats Regulations Assessment matters

4.3 The RSPB considers there are potential adverse effects on the integrity of the following sites and features.

Flamborough and Filey Coast SPA

- **Gannet:** alone and in-combination effects due to collision risk
- **Kittiwake:** in-combination effects due to collision risk
- **Guillemot:** in-combination effects due to displacement
- **Razorbill:** in-combination effects due to displacement
- **Seabird assemblage:** in-combination effects due to the combined effects of collision risk and displacement on the above species.

Alde-Ore Estuary SPA

- **Lesser black-backed gull:** in-combination effects due to collision risk.

Outer Thames Estuary SPA

- **Red-throated diver:** in-combination effects due to displacement.

Environmental Impact Assessment matters

4.4 The RSPB considers the cumulative (EIA) impacts are significant in respect of the following impacts on **the North Sea populations** of the following species:

- **Collision risk:** gannets, kittiwakes, great black-backed gulls, lesser black-backed gulls
- **Displacement:** red-throated divers, razorbills, guillemots

Other matters

4.5 Other matters raised in our Relevant Representation that are still under discussion include:

- Use of an avoidance rate of 98.9% for gannet
- Apportioning of lesser black-backed gull collision mortality to the Alde-Ore Estuary SPA
- Consented capacity of windfarms

Offshore Ornithology Statement of Common Ground update

4.6 The RSPB is in ongoing discussions with the Applicant on the draft Offshore SOCG. Due to the serious resource limitations referred to in our Relevant Representation, the RSPB was unable to provide comments to the Applicant on the latest iteration of the draft Offshore SOCG in time for Deadline 1.

4.7 As set out in our Relevant Representation, our aim is reduce significantly the areas that remain “In discussion” in order to provide clarity to the Examining Authority on those areas where we agree or do not agree with the Applicant.

4.8 Our key concern remains that the derogation tests under the Habitats Regulations are properly explored and tested through the Examination. Therefore, our main focus for future discussions with the Applicant, other stakeholders and through the Examination is on these matters, with particular emphasis on any compensation measure proposals put forward by the Applicant.

5 Onshore Ornithology

Introduction

5.1 Our comments in this section relate primarily to the following documents:

- Document 5.3 Habitat Regulations Assessment - Information to Support Appropriate Assessment Report [Ref. APP-043]
- Document 6.1.23 Environmental Statement - Chapter 23 – Onshore Ornithology [Ref. APP-071]
- Onshore Ornithology Statement of Common Ground between RSPB and SPR (to be submitted at Deadline 2)

5.2 The proposed cable route crosses land within the Sandlings SPA and runs close to both the eastern and western sides of that SPA at either side of this crossing point. The RSPB has therefore raised concerns about potential disturbance and loss of habitat affecting breeding woodlark and nightjar of the Sandlings SPA and turtle dove and nightingale populations associated with the Leiston-Aldeburgh Site of Special Scientific Interest (SSSI). The RSPB is grateful for constructive engagement during the pre- and post-application phase with the Applicant, during which we engaged in discussions and shared relevant data in order to understand and attempt to reduce the potential impacts. We are therefore pleased that the application includes mitigation proposals including a breeding season restriction on work at the crossing and location of the cable route away from the SPA boundary to reduce disturbance to breeding nightjar and woodlark of the Sandlings SPA and mitigation areas to providing breeding and foraging habitat for turtle doves and nightingales of the Leiston-Aldeburgh SSSI.

5.3 We have raised some remaining concerns during continued discussions with the Applicant about the potential for disturbance and habitat loss to affect SPA and SSSI species during the construction period (both as a result of the project alone and in-combination with other projects). Subsequently, the Applicant has provided further information and clarification regarding the proposed mitigation and timescales for the works; it is our understanding that these documents will be submitted to the Examination. Our detailed comments and updated position can be found in the onshore Statement of Common Ground with the Applicant, as submitted at Deadline 2. We therefore propose not to comment further on onshore issues throughout the Examination, but rather to focus our limited resources on covering our significant concerns with potential impacts relating to offshore ornithology (see section 4).