



Written Submission
for the
Royal Society for the Protection of Birds
Response to the Examining Authority's Second Written Questions
(ExQ2)

Issued on 30 May 2022

Submitted for Deadline 5
20 June 2022

Planning Act 2008 (as amended)

In the matter of:

Application by Hornsea Project Four Limited for an Order
Granting Development Consent for the Hornsea Project Four Offshore Wind
Farm

Planning Inspectorate Ref: EN010098
RSPB Registration Identification Ref: 20029909

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1. Introduction

- 1.1. The RSPB's responses to the Examining Authority's Second Written questions (ExQ2) are set out in the table below. Where helpful, we have cross-referred to relevant RSPB written submissions.
- 1.2. Due to the significant disruption to the RSPB's resource capacity caused by the need to respond to the urgent and ongoing outbreak of Highly Pathogenic Avian Influenza (Bird Flu) on the UK's seabirds, we have been unable to respond to two of the questions set for us. We apologise and hope the Examining Authority will understand. We will provide a response for Deadline 5a (4 July 2022) if that is acceptable.

Responses to the Examining Authority's Second Written Questions

ExQ1	Question to:	Question	RSPB response
Draft Development Consent Order (draft DCO)			
DCO.2.4	Natural England The Royal Society for the Protection of Birds (RSPB) The MMO	Drafting of the DCO. In your various written submissions, you have raised a number of concerns in relation to the general drafting of the DCO and Deemed Marine Licences (DMLs). Can you advise if these concerns have been addressed by the most recent version of the draft DCO submitted at D4 [REP4-050]	<p>In short, we are unaware of any changes to address our concerns being made within the latest draft DCO (having checked the tracked change version REP4-049).</p> <p>Therefore, in summary, the following points (as set out in more detail in REP2-089) remain unresolved:</p> <ol style="list-style-type: none"> 1. Whilst we appreciate the helpful roadmap to guide all as to where the relevant documents are, this does not address our comments on what the DCO should include (see our Written Representations (paragraphs 6.42-50) 2. The role of other UK consenting bodies for aspects of OWF applications (specifically the artificial nesting structures) remains a concern – namely certainty that consent can and will be granted and therefore confidence to be able to rely on it. 3. Noting the Secretary of State's ability to take action and restrict the operations (as included the Draft DCO, Schedule 16) should the compensation not work, but without certainty (ecologically or legally) both in terms of the ability to secure the land required and any consents needed as well as the ecological effectiveness of the compensation measures being proposed, the Secretary of State cannot and should not rely on these measures. It may be possible for Schedule 16 to include further

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			<p>restrictions within it, so that full consideration can occur once all necessary information is made available. However we continue to believe this may not be enough</p> <p>4. In our view “a restriction on the operation of the wind turbine generators” is not enough for the Habitats Regulations to be complied with as well as our concerns discussed above and below about the ecological effectiveness of the compensation measures with again full details being delayed until after the DCO has been granted, with the DCO still only committing the Applicant to producing compensation plans before construction starts not the implementation of actual measures.</p> <p>5. In addition we await a response to the following point made in paragraph 6.48 of the RSPB’s Written representation (REP2-089) and repeated at page 28 of our Deadline 4 submission (REP4-057), namely: “6.48....it is not entirely clear whether the provision of compensation outside the UK could properly be made a requirement of the DCO or deemed marine licence condition since outside the Secretary of State and/or the MMO’s jurisdiction. More critically, perhaps, is how any failure to fulfil DCO requirements could be enforced....”</p>
Habitats Regulations Assessment (HRA)			
HRA.2.2	Applicant Natural England The RSPB	Derogation case and alternatives In response to ExQ1 HRA.1.21, the Applicant [REP2-038] noted an intention to refine the Maximum Design Scenario for some parameters. As these were	Due to the significant disruption to the RSPB’s resource capacity caused by the need to respond to ongoing the outbreak of Highly Pathogenic Avian Influenza (Bird Flu) among the UK’s seabirds, we have been unable to

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		<p>downwards, the Applicant did not anticipate consequent implications for the HRA. Given the updates to the relevant baselines and assessments that have been submitted into the Examination subsequently, should the Applicant be considering and reporting on any further alternatives or mitigation options that might reduce any potential Adverse Effects on Integrity of European sites?</p>	<p>respond to this question at Deadline 5. Therefore, we will provide a response for Deadline 5a (4 July 2022).</p>
HRA.2.3	Natural England The RSPB	<p>Timing for the approval of any compensation measures</p> <p>In response to ExQ1 HRA.1.33, the Applicant noted [REP2-038] that the lead-in time for the submission of each ornithology compensation plan would be measure specific, and ‘subject to discussion’ with the Hornsea Four Offshore Ornithology Engagement Group (OOEG). Each implementation and monitoring plan would be submitted in accordance with a timetable, as “included in a plan for the work of the... OOEG”. Would you be content with this approach? If not, why not?</p>	<p>The Applicant’s response to ExQ1 HRA.1.33 (REP2-038) summarised in question HRA 2.3 relates to the issue of lead-in times such that the compensation measure is fully implemented and functioning before the relevant impact occurs.</p> <p>The RSPB addressed this issue in paragraphs 5.26-5.27 of its main Written Representation (REP2-089) and repeated below.</p> <p><u>Para 5.26</u> <i>As Natural England has noted in its relevant representation (page 10, Appendix C, RR-029) the Applicant proposes minimal lead-in times for its compensation measures: just 1 or 2 years prior to operation. The RSPB does not consider these lead-in times to be acceptable and would not meet the requirement for compensation measures to be functioning prior to damage occurring.</i></p> <p><u>Para 5.27</u> <i>These short lead-in times do not recognise basic seabird breeding ecology, for example kittiwakes do not breed until they are 4+ years old. Any</i></p>

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			<p><i>implementation timetable must ensure that the compensation measure is in place and ecologically functional before the damage occurs. Factors that need to be taken in to account in developing the required timeline include:</i></p> <ul style="list-style-type: none"> • <i>The breeding ecology of the impacts [sic] species and timescales likely to be required for the agreed compensation measure to be ecologically effective;</i> • <i>The point at which the adverse effect is predicted to occur. This will depend on the nature of the impact e.g.:</i> <ul style="list-style-type: none"> ○ <i>For collision: it would be at the point the wind farm becomes operational;</i> ○ <i>For displacement: it would be at an agreed point relating to when the physical presence of the wind farm infrastructure (operational or not) is deemed to be giving rise to displacement that is impacting on the relevant seabird species' population.</i> • <i>That it is highly unlikely that the compensation will be delivering at the scale required before the impacts occur or during any period of colony establishment.</i> <p>At paragraph 7.17 of our REP2-089, we further noted:</p> <p><i>"...the lead-in times for each compensation measure must be based on a careful assessment of the affected species' population breeding ecology requirements and the timing of the damaging impact."</i></p>

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			<p>Therefore, in respect of the Applicant’s response to HRA.1.33, the RSPB agrees that the purpose of these DCO requirements is to ensure:</p> <p><i>“that the measures are implemented prior to the risk of any impact to kittiwake, gannet, guillemot or razorbill from the authorised development occurring.”</i></p> <p>As you will be aware, we argue that it should go further and ensure the compensation measures are both implemented <u>and</u> ecologically functional before the risk of any impact occurs in order to protect the coherence of the species’ National Site Network. This is what is behind the RSPB (and, we believe, Natural England’s) comments and concerns in relation to the Applicant’s proposed lead-in times.</p> <p>This means getting the timetable for the preparation and approval of any required “Plan of Work” and “Implementation and Monitoring Plan” right, such that it is <u>practically</u> possible to achieve the aim of implementing ecologically functional compensation measures before the risk of damage occurs. Due to the different impacts (collision and displacement) this relates both to the operation and construction phases.</p> <p>In this context, we further agree with the Applicant that this should be measure specific. As set out above, we consider it also needs to be species specific, taking full account of the breeding ecology of the impacted species and timescales likely to be required for the</p>

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			<p>agreed compensation measure to be ecologically effective for that species.</p> <p>This means that it is important that the DCO framework governing the timetable for the submission of each Plan of Work and associated Implementation and Monitoring Plan ties in to the:</p> <ul style="list-style-type: none"> • Timing of the risk of impact (distinguishing between collision risk and displacement impacts); and • The timing of when the relevant compensation measure is likely to be ecologically functional. <p>Therefore, while we agree that it will be for the Offshore Ornithology Engagement Group to devise a “plan of work” and to address relevant details in the “implementation and monitoring plan”, we consider it important that the relevant DCO Schedule is worded such that the timetable for the approval of those documents is capable of ensuring (in the Applicant’s words):</p> <p><i>“the measures are implemented prior to the risk of any impact to kittiwake, gannet, guillemot or razorbill from the authorised development occurring.”</i></p> <p>Therefore, we would be concerned if discussion and agreement on these key matters was left to the post-consent phase.</p> <p>We consider it would be helpful to the Examining Authority and Secretary of State in considering the drafting of the relevant DCO Schedule wording to be</p>

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			<p>informed on these matters. The aim would be to ensure the DCO Schedule can set out an appropriate timetable for the submission and approval of the relevant Implementation and Monitoring Plan, taking account of the timing of the risk of impact and the ecological functioning of the compensation measure.</p> <p>These concerns are directly linked to and underpinned by our concerns over the ecological effectiveness of each compensation measure and the ability of the Applicant to demonstrate each measure has been or certainly will be secured before the close of the Examination.</p> <p>This lack of detailed, relevant information now means we would recommend that certainty cannot be placed on the proposed measures and therefore no matter what the timing of plans being finalised we have an overarching concern about consent being granted relying on measures with no ability to be confident as to their ecological effectiveness nor the ability to secure each measure adequately.</p>
Marine and coastal bird ecology			
ME 2.8	Applicant Natural England The RSPB	<p>Re-run of MRSea and use of design-based estimates for seabird baseline</p> <p>To Natural England and RSPB: Please comment on the proposed scope of work provided by the Applicant at Deadline 4a [REP4a001] for the re-run of the MRSea analysis and the partially revised approach using design-based estimates for the assessment.</p>	Due to the significant disruption to the RSPB's resource capacity caused by the need to respond to the ongoing outbreak of Highly Pathogenic Avian Influenza (Bird Flu) among the UK's seabirds, we have been unable to respond to this question at Deadline 5. Therefore, we will provide a response for Deadline 5a (4 July 2022).

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		<p>To Applicant Please provide an update on the outcome of the sixteenth meeting of the Ornithology Technical Panel Meeting held on 25 May 2022 in relation to discussions about the re-run of MRSea or the use of design-based estimates for seabird baselines.</p>	