



**Written Representation  
for the  
Royal Society for the Protection of Birds  
Summary of Written Representation**

**Submitted for Deadline 1**

**24 October 2024**

**Planning Act 2008 (as amended)**

**In the matter of:**

**Application by Outer Dowsing Limited for an Order  
Granting Development Consent for the Outer Dowsing Offshore Wind Farm**

**Planning Inspectorate Ref: EN010130**

**RSPB Registration Identification Ref: 20049053**

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## 1. Summary of the RSPB's Written Representation

### The RSPB

- 1.1. 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 over 1.1 million<sup>1</sup>. 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 internationally 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

- 1.2. Faced with the threats of climate change to the natural world the RSPB considers that a low-carbon energy revolution to reach net zero 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. The RSPB recognises the significant role that offshore wind will play in decarbonising our energy systems and the renewed urgency with which this must happen. Installing this technology at the scale and pace needed is no easy task: there are significant challenges rooted in the planning frameworks and the state of our seas which threaten both nature *and* our ability to reach net zero.
- 1.3. 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. 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

- 1.4. This Written Submission covers the following:
- The nature conservation importance of the seabirds affected by the Outer Dowsing wind farm scheme.
  - Nature conservation legislation and policy background.

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<sup>1</sup> <https://www.rspb.org.uk/about-us/annual-report> Accessed 14 October 2024.

- Onshore ornithology.
- Derogation case: the RSPB's approach to evaluating compensation measures under the Conservation of Habitats and Species Regulations 2017 (as amended).
- RSPB comments on the Applicant's specific compensation proposals.

#### *Offshore ornithology matters*

- 1.5. The RSPB has noted the Examining Authority's Rule 8 letter (dated 17 October 2024) on issues arising from the Applicant's proposal in respect of its Offshore Restricted Build Area (ORBA). Given the significance of these changes for the RSPB's understanding of the offshore ornithology impacts of the Outer Dowsing scheme, the RSPB is deferring its Written Representation on offshore ornithology matters until Deadline 2 (27 November 2024).
- 1.6. However, we have, as far as practicable, made comments in relation to compensation measures arising from the Applicant's response to the RSPB's Relevant Representation.

## 2. The nature conservation importance of the seabirds affected by the Outer Dowsing offshore wind farm scheme

### Introduction

- 2.1. The UK is of outstanding international importance for its breeding seabirds. As with all Annex I and regularly occurring migratory species, the UK has particular responsibility under the Birds Directive<sup>2</sup> to secure the conservation of these important seabird populations.
- 2.2. As set out in our Relevant Representation (RR-056), the RSPB is particularly concerned regarding the impacts on the following designated sites:
  - Flamborough and Filey Coast Special Protection Area (SPA).
  - North Norfolk Coast SPA.
  - Greater Wash SPA.
- 2.3. Natural England has referred to the conservation advice for each of the designated sites listed above in Table 5.1 in Natural England's Relevant Representation (RR-045) including Conservation Objectives and Supplementary Advice on Conservation Objectives.

### *Conservation objectives*

- 2.4. The Conservation Objectives for the SPAs generally follow the same format i.e.:

“...to ensure that, subject to natural change, the integrity of the site is maintained or restored as appropriate, and 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 populations of each of the qualifying features
  - The distribution of the qualifying features within the site.”
- 2.5. It is vital to consider whether an SPA and its qualifying features meet the attributes and targets set by Natural England when considering whether the SPA's conservation objectives to maintain or restore site integrity can be met and the SPA achieve favourable conservation status throughout the lifetime of the development and any subsequent period where its impacts continue to affect the SPA features.

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<sup>2</sup> 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).

### 3. Nature conservation legislation and policy background

- 3.1. There is a statutory duty to comply with the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations)(as amended) which offer protection for protected sites (Ramsar, SPA, SAC) and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (Offshore Habitats Regulations)(as amended)<sup>3</sup>. The Habitats and Offshore Habitats Regulations set out a sequence of steps to be taken by the competent authority (here the Secretary of State for Energy Security and Net Zero (DESNZ)) when considering authorisation for a project *likely to have an effect* on a European site and its species before deciding to authorise that project.
- 3.2. We set out a series of related matters to be considered in this context, including:
  - SPA and SAC conservation objectives
  - Appropriate assessment;
  - In-combination effects and compensation for other schemes;
  - Habitats Regulations General Duties;
  - Environmental Impact Assessment.

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<sup>3</sup> The Conservation of Habitats and Species Regulations 2017: <https://www.legislation.gov.uk/uksi/2017/1012/contents>. The Conservation of Offshore Marine Habitats and Species Regulations 2017 are also relevant - <https://www.legislation.gov.uk/uksi/2017/1013/contents>.

#### 4. Onshore ornithology – Export Cable Corridor

- 4.1. The export cable route passes close to a number of national and international protected areas, as well as the RSPB's Frampton Marsh and Freiston Shore reserves and land within the Defra-funded Lincolnshire Wash Landscape Recovery Project (formerly known as the Greater Frampton Vision Landscape Recovery Project) and therefore has potential wildlife impacts.

##### *The Wash Special Protection Area/Ramsar site and the Greater Wash SPA*

- 4.2. Further to the additional winter bird survey data submitted as part of the Applicant's response to Section 51 advice (AS1-108), the RSPB has reviewed this data and agrees that the assessment of significant effects in the EIA and the conclusion on adverse effects on site integrity in the RIAA, in relation to onshore ornithology, have not changed. Therefore, the RSPB can confirm it has no further concerns in relation to this aspect of the project.

##### *Impacts on the RSPB's Frampton Marsh and Freiston Shore reserves*

- 4.3. The Applicant has acknowledged the RSPB concern in relation to the potential for the construction of the cable route to affect the mains water supply to the RSPB Frampton Marsh reserve, as the route of the cable, and the works access route, crosses the pipe carrying the water supply.
- 4.4. The Applicant has indicated that as can be seen on the Crossing Schedule (APP-143), all assets in this part of the Order Limits will be crossed using trenchless techniques, and that it is likely that the pipeline will be crossed by the Project's access track at AC-40, where the access enters the field to the north of Wyberton Road (APP-089, Figure 3.4.41).
- 4.5. Based on our investigations, it appears that there is no 'as-built plan of the pipeline' as requested by the Applicant but the RSPB will provide the Applicant with an indicative plan of the pipeline, which is located along the north side of Wyberton Road, so that it can be transposed onto the Applicant's works plans in order to avoid any damage to the supply pipe during any future works. Any further update will be provided via the draft Statement of Common Ground.

##### *Impact on the Lincolnshire Wash Landscape Recovery Project (LWLRP)*

- 4.6. The RSPB will review the applicant's Outline Landscape and Ecological Management Strategy (PD1-054) in respect of how mitigation may be aligned to the plans for the Landscape Recovery Project and will provide further updates via the draft Statement of Common Ground.

## 5. Derogation case: the RSPB's approach to evaluating compensation measures under the Conservation of Habitats and Species Regulations 2017 (as amended)

- 5.1. This section sets out the RSPB's approach to evaluating compensation measures. It includes our general approach to assessing compensation proposals and the level of detail we consider is required in order to evaluate compensation proposals as part of the examination process, before drawing out some general issues raised by the Applicant's proposals.
- 5.2. The RSPB has reviewed both the EC<sup>4</sup> and Defra<sup>5</sup> guidance on compensatory measures. This review also draws on the RSPB's over 20 years experience evaluating and negotiating compensation proposals under the Habitats Regulations by developers across various sectors. As the EC Guidance is fuller, we have used that as our primary reference, while drawing out any additional points made in the Defra guidance since it is UK focused.
- 5.3. The RSPB will use the EC's criteria and its experience to evaluate the various compensation measures where sufficient detail is available:
  - Targeted;
  - Effective;
  - Technical feasibility;
  - Extent;
  - Location;
  - Timing;
  - Long-term implementation;
  - Additionality.
- 5.4. In addition, we have set out the level of detail we consider is required in any proposed compensation measures, and have gone on to identify generic issues raised by the Applicant's proposals:
  - Lack of specific proposals and locations for compensation measures;
  - Scale of compensation;
  - Lead-in times for compensation;
  - Lifetime of compensation in relation to damage.

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<sup>4</sup> EC (2018) Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC (21/11/18) C(2018) 7621 final.

<sup>5</sup> Defra (2021) <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>. Accessed October 2024.



## 6. RSPB comments on the Applicant's specific compensation proposals

6.1. Section 6 sets out the RSPB's views on the following compensation measures put forward by the Applicant:

- Kittiwake
- Guillemot and razorbill

6.2. As set out above, the RSPB's key and most critical concern is that the Applicant has failed to put forward detailed, proven and location specific compensation measures for any impacted species.

6.3. The RSPB's current assessment of the Applicant's proposed measures is summarised below:

- **General issue:** request for detailed timetable and scope of proposed updates to Examination on the various compensation measures.
- **Kittiwake – offshore ANS:**
  - further information required on matters relating to identification of risks associated with site selection, engineering, manufacturing, supply chain and logistics and impact on lead-in times;
  - further information on the risks posed to implementation by the interaction of the post-consent Crown Estate strategic process with any post-consent Project-level process, especially in relation to selection of oANS locations outside the control of the Applicant.
- **Guillemot and razorbill:**
  - **Scale of compensation:** ongoing uncertainty over scale of compensation required pending full evaluation of ORBA information;
  - **Plemont predator control** – further information needed on:
    - Causes of historic declines of guillemot and razorbill populations in Jersey and relative contribution of mammalian predation;
    - Evidence of mammalian predation on breeding seabirds (especially razorbill) at Plemont, and assessment of potential threats to the recovery of seabirds at Plemont that provides fuller context of relative risk posed by mammalian predation and the benefits of the proposed predator control;
    - Applicant's public opinion survey of the proposed predator control measures (including detailed methodology and results);
    - Ongoing concerns over the lack of robust evidence of connectivity of guillemots and razorbills bred in the Channel Islands to the UK National Site Network for each species.
  - **Other measures:** further information required on the impact of recreational disturbance on guillemot and razorbill breeding success at the sites surveyed by the Applicant and assessment of the effectiveness of any proposed measures on measurably increasing breeding success.