

**Response of the RSPB to draft Statement of Common Ground (HRA) dated 17 August 2012 between
Able UK, Natural England, Marine Management Organisation and Environment Agency**

1. The Following Chapters are mostly agreed but where necessary we have included some suggested changes to those chapters, in tracked changes

Chapter 1: Introduction

Chapter 2: Roles and Responsibilities

Chapter 3: Screening (3.1 & 3.2)

Section 4.3 Mitigation Measures

Table 4.2 Appropriate Assessment SPA

Effects on intertidal mudflat

‘Cannot confirm the continued use of NKHP as a roost site by waders from NKM, particularly black-tailed godwit, once mudflats at NKM lost. Adverse effect assumed as a precaution and effect cannot be mitigated.’

2. Areas of disagreement

Para 3.1.2 includes reference to In-Combination assessment

This para actually describes the possible cumulative and inter-relationship effects were a number of different aspects of a single application may together cause a likely significant effect or adverse effect. This is a distinctly different requirement to the consideration of other plans and projects that may too be effecting the European and Ramsar sites. Reference to an in-combination assessment is completely absent from this SoCG.

Para 3.3

The Habitat Regulations require a step by step process by which applications are considered and assessed therefore it is inappropriate to include a section entitled *Embedded Mitigation* before the initial consideration of possible effects arising from the application on European and Ramsar sites – the *likely significant effect* stage.

Para 3.3.2, bullet point 1 management and monitoring measures

The management and monitoring measures needed to be provided by the Applicant so ensure that they could have been considered and if necessary comments made by interested parties in their written

representations or response documents for the Examining Authority to take account of during its consideration of the issues.

bullet point 2 benthic surveys.

The benthic survey of the intertidal mudflats at NKM and CCS is a baseline data requirement and not a mitigation measure.

bullet point 6 Monitoring to remove uncertainty.

It is not clear what this refers to, but should include reference to the monitoring leading to agreed additional measures if the monitoring results show that to be necessary since existing mitigation is not working.

Para 3.4.1

The gain of saltmarsh would always be at the expense of another intertidal habitat within the SPA/SAC. If saltmarsh accretion was exacerbated by the port, it should be viewed as a negative effect.

The gain of saltmarsh would only be positive on managed realignment, and even then only if the requisite area of sustainable intertidal mudflats were also secured.

Table 3.1

It is not clear if this refers to combined effects on SPA/SAC/Ramsar.

Permanent loss of estuarine habitat

It is not clear if the figures in Table 3.1 refer to the SAC or SPA. Annex II of the RSPB's submission of 3 August 2012 highlighted the inconsistencies between the application documents and Supplementary Environmental Information. Of the latter, the Applicant's document EX11.24 identified a 29.5ha direct loss of SPA intertidal mudflats and a 11.6ha functional loss, giving a total of 41.1ha to be compensated at a ratio of 2:1.

Effect of compensation site at CCS on the hydrodynamics of the estuary

The RSPB considers that the creation of 100ha of managed realignment would have a likely significant effect.

Erosion at breach location on the compensation site

The earlier point identifies that the immediate area of the breach is likely to lose function as a result of soft sediments being removed by the re-alignment/RTE water velocities.

3. Comments

Table 3.2

Permanent direct loss of intertidal mudflat

This should also be in the SPA Table 3.3.

Permanent direct loss of saltmarsh

If, as stated, there is a Likely Significant Effect, therefore should be included within the Appropriate Assessment for this application.

Indirect effects on estuarine habitats

As mentioned above (in relation to para 3.4.1) gain of saltmarsh will be at the expense of another intertidal habitat and therefore should be viewed as a likely significant effect and therefore a negative and for it be included within the Appropriate Assessment.

Table 3.3

This should include the severance of NKHP roosting site from NKM feeding grounds (see comment on Table 3.2 above).

Para 3.6.2

Bullet point 3

Please could you provide a list of the species that are included within this category as no species have been identified.

Bullet point 5

It is stated that there are no species listed where the number affected were considered to be insignificant (<1%) but there are a few species which are above 1% of SPA on either NKM or NKHP which one could identify from Annex E of the sHRA i.e. Teal (0.5% NKM or 1.6% NKHP), Mallard (0.6% NKM, 1.6% or 3.4% NKHP), Shoveler (7.5% NKM, 20% or 42.1% NKHP), and therefore - these should be identified at this stage as a possible likely significant effect.

Para 3.6.5

All recorded species should be included in Table 3.3 and Para 3.6.2.

Para 3.8 In-combination

As mentioned above the description of the in-combination assessment does not reference other plans and projects that may also be effecting the European and Ramsar sites and therefore as with para 3.1.2 para 3.8 should be renamed as cumulative and inter-relationships effects assessment and a separate in-

combination assessment section include to set out the other plans and projects assessment that has been carried out.

In addition the conclusion that due to the application or part of it, having an effect on its own negates the need for an in-combination/cumulative/inter-relationship assessment is inappropriate since the main purpose of these assessments is to ensure that all possible effects are identified and if possible mitigation measures provided to reduce those effects.

Para 3.8.3

See comment on Para 3.6.2 above.

Para 3.9.1. SPA

Bullet point 2.

Effects of the use of NKHP as a roost should be included in SPA Table 3.3.

Table 5.1

Permanent loss of intertidal mudflat

The Examining Authority does not have a RTE scheme before it for consideration at this stage. The Applicant has submitted a Second Interim Report which includes some initial modelling, but no formal plans have been submitted. This Report acknowledges (Para 6.3.1) that there are a number of environmental issues associated with the RTE scheme that have not been assessed in the Environmental Statement.

Uncertainty remains over the deliverability of sustainable intertidal mudflats in the long term and whether that intertidal mudflat can provide the functional equivalent of that lost at NKM and NKHP. Even if the use of a RTE scheme was accepted, it would still fail to provide the quantum of intertidal mudflat required after 5 years.

The RSPB do not accept that RTE will hold roosting birds. The roost sites shown on Fig 33 of the Second Interim Report are not within the RTE.

No information has been provided on the re-establishment of the 'former roost' immediately to the west of the RTE. This would appear to be saltmarsh and unsuitable for a Black-tailed godwit roost. This site also lies outside the red line DCO site boundary.

In Annex IV of its response of 3 August 2012, the RSPB sought to demonstrate that the scheme proposed for Old Little Humber Farm (the Applicant's Supplementary document EX28.2) would not deliver wet grassland that would provide a roosting and foraging area for Black-tailed godwits.

Para 6.1

Bullet point 3. This appears to contradict the statement in Para 4.4.2, which states that it is not the role of signatory organisations to assess alternative solutions or to determine whether IROPI has been demonstrated.

Bullet point 4.

The RSPB strongly disagrees with the statement that the compensation package will provide the necessary compensation measures and functional value to replace the habitats and fauna lost. There is no scientific certainty or confidence that the current package, or a RTE scheme from the Second Interim Report will be able to deliver suitable compensation for the loss of the best Black-tailed godwit roosting site on the Humber estuary.