



**NORTH FALLS**

*Offshore Wind Farm*

## **Statement of Common Ground**

Royal Society for the Protection of Birds

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## Glossary of Acronyms

Defra	Department for Environment, Food & Rural Affairs
FFC	Flamborough and Filey Coast
HPAI	Highly Pathogenic Avian Influenza
NFOW	North Falls Offshore Wind Farm Limited
PEIR	Preliminary Environmental Information Report
RIAA	Report to Inform an Appropriate Assessment
SoCG	Statement of Common Ground
SPA	Special Protection Area
RSPB	Royal Society for the Protection of Birds

## Glossary of Terminology

The Applicant	North Falls Offshore Wind Farm Limited (NFOW).
The Project Or 'North Falls'	North Falls Offshore Wind Farm, including all onshore and offshore infrastructure.

# 1. Introduction

## 1.1 Background

1. This Statement of Common Ground (SoCG) has been prepared by North Falls Offshore Wind Farm Limited (NFOW) (the Applicant) and the Royal Society for the Protection of Birds (RSPB). It identifies areas of North Falls Offshore Wind Farm (hereafter 'the Project' or 'North Falls') where matters are agreed, not agreed or that remain under discussion between the parties.
2. The Applicant has had regard to the Planning Inspectorate (2024) guidance regarding Statements of Common/Uncommon Ground for Hearings and Inquiries when compiling the SoCG.
3. This SoCG has been structured to reflect topics of the application which are of interest to RSPB.
4. Table 1.1 presents the topics included in the SoCG with the Applicant and RSPB.

**Table 1.1 Topics included in the SoCG**

Topic/Chapter	DCO Document Reference
Offshore Ornithology Environmental Statement	APP-027
Offshore Ornithology Report to Inform Appropriate Assessment	APP-178
Offshore Ornithology Compensation	APP-184 to APP-195

5. Topic specific matters agreed, not agreed, and matters that remain under discussion between the Applicant and RSPB are included within this SoCG. Matters that are not yet agreed will be the subject of ongoing discussion between the Applicant and RSPB to reach agreement on each matter wherever possible or refine the extent of disagreement between parties.
6. It is the intention that this SoCG provides the Planning Inspectorate with a clear overview of the level of common ground between both parties. This document will be updated if any additional points are identified or any positions change during the course of the Examination.

## 1.2 Consultation with RSPB

7. The Applicant has engaged with the RSPB on the Project during the pre-Application process, both in terms of informal non-statutory engagement and formal statutory consultation carried out pursuant to Section 42 of the Planning Act 2008.
8. During statutory consultation, the RSPB provided comments on the Preliminary Environmental Information Report (PEIR) by way of letter dated 14 July 2023.

9. Further to the statutory consultation, several meetings were held with the RSPB. These are detailed throughout this SoCG and in the Consultation Report [APP-215], Environmental Statement Chapter 13 Offshore Ornithology [APP-027] and Annex 1A Habitats Regulations Assessment Compensation Consultation [APP-185].

### 1.3 Summary of Agreed, Not Agreed and In Discussion

10. In order to easily identify whether a matter is 'agreed', 'not agreed', or 'in discussion', the position status colour coding system set out in Table 1.2 is used in the SoCG.

11. Details of specific topics that are 'agreed', 'not agreed', or 'in discussion' between the Applicant and RSPB are presented in Table 2.2.

**Table 1.2 Position status key**

Position Status	Position Colour Coding
<b>Agreed.</b> The matter is considered to be agreed between the parties.	<b>Agreed</b>
<b>Not Agreed- no material impact</b> The matter is not yet agreed between the parties however the outcome of the approach taken by either the Applicant and RSPB is not considered to result in a material impact to the assessment conclusions and the matter is considered to be closed for the purposes of this SoCG. Discussions on these matters have concluded.	<b>Not Agreed- no material impact</b>
<b>Not Agreed- material impact</b> The matter is not agreed between the parties and the outcome of the approach taken by either the Applicant and RSPB is considered to result in a materially different impact to the assessment conclusions. Discussions on these matters have concluded.	<b>Not Agreed- material impact</b>
<b>In discussion</b> The matter is neither 'agreed' nor 'not agreed' and is a matter where further discussion is required between the parties (e.g. where the documents are yet to be shared with RSPB).	<b>In discussion</b>

## 2. Statement of Common Ground

12.A summary of the consultation undertaken to date with the RSPB and the matters agreed or not agreed between the Applicant and the RSPB (based on discussions and information exchanged between the Applicant and the RSPB to date) are set out below for each of the SoCG topic areas in Table 1.1.

### 2.1 Offshore Ornithology

**Table 2.1 Summary of Consultation with RSPB regarding Offshore Ornithology.**

Date	Contact Type	Topic
Pre-Application		
19 <sup>th</sup> July 2021	Expert Topic Group (ETG) meeting (video call)	ETG to introduce the Project and to summarise the information in the Environmental Impact Assessment (EIA) Scoping Report.
27 <sup>th</sup> March 2023	ETG meeting (video call)	Preview of PEIR and draft Report to Inform an Appropriate Assessment (RIAA) for key bird species.
13 <sup>th</sup> November 2023	ETG meeting (video call)	Project updates and discussions on key Preliminary Environmental Information Report (PEIR) feedback.
11 <sup>th</sup> April 2024	ETG meeting (video call)	Project updates and Project level compensation.
Post-Application		
9 <sup>th</sup> December 2025	ETG meeting (video call)	Lesser black-backed gull compensation
15 <sup>th</sup> January 2025	ETG meeting (video call)	Project level compensation.
1 <sup>st</sup> May 2025	ETG meeting (video call)	Lesser black-backed gull compensation – Gedgrave Marshes

**Table 2.2 Topics agreed, in discussion or not agreed in relation to Offshore Ornithology**

ID	The Applicant Position	RSPB Position	Position Summary
1	<p>The Applicant considers that the data sources used for characterising the baseline environment as set out in Section 13.5 of ES Chapter 13 Offshore Ornithology [APP-027] are appropriate.</p> <p>The Applicant provided a response to the RSPB Relevant Representation on this matter at Deadline 1 in the Applicant's Responses to Relevant Representations Received from Statutory Consultees and Non Prescribed Consultees ([REP1-0145], Section 2.17, Applicant's Ref RSPB-06).</p>	<p>The RSPB are content that digital aerial surveys can provide useful data, however full methodological detail needs to be provided alongside the outputs.</p> <p>In particular there is:</p> <p>Insufficient consideration of potential biases in the survey and analysis methods.</p> <p>No consideration of potential response of birds to disturbance arising from the survey activity itself, such as flight take off rate or diving rate, that would have implications for the accuracy of the assessment.</p> <p>Insufficient detail provided as to how spatial autocorrelation has been evaluated and if necessary accounted for. The assessment should explicitly demonstrate an analysis of the data showing whether spatial auto-correlation is present or not.</p> <p>No rationale provided as to why a transect rather than grid survey design has been used.</p> <p>No detail given of any independent validation of identification and detection rates. This validation is carried out as part of the internal quality assurance procedures, but no independent external quality assurance appears to have been carried out.</p>	<p><b>In discussion</b></p>
2	<p>The Applicant believes that adequate consideration has been given to the potential influence of Highly Pathogenic Avian Influenza (HPAI) within the assessments.</p> <p>The Applicant provided a response to the RSPB Relevant Representation on this matter at Deadline 1 in the Applicant's Responses to Relevant Representations Received from Statutory Consultees and Non Prescribed Consultees ([REP1-0145], Section 2.17, Applicant's Ref RSPB-10).</p>	<p>The current H5N1 strain of Highly Pathogenic Avian Influenza (HPAI) has affected UK wild bird populations on an unprecedented scale since it was first recorded, with seabirds and waterfowl particularly affected. The extent of reported mortalities attributed to HPAI in the UK and across Europe in 2022 demonstrated that HPAI had become one of the biggest immediate conservation threats faced by multiple seabird species, including some for which the UK population is of global importance. It is currently unclear what the ultimate population scale impacts of the outbreak will be, but it is likely that they will be severe. This scale of impact means that seabird populations will be much less robust to any additional mortality arising from offshore wind farm developments. It also means that there may need to be a reassessment of whether Special Protection Area (SPA) populations are in</p>	



ID	The Applicant Position	RSPB Position	Position Summary
		Favourable Conservation Status. With such uncertainty as to the future of these populations, there is the need for a high level of precaution to be included in examination of impacts arising from the proposed development. This caution must also be applied to claims on the potential success of proposed compensation measures. The RSPB does not consider that these concerns have been adequately considered in the assessment.	
3	An adverse effect on the integrity of lesser black backed gull from the Alde Ore Estuary Special Protection Area (SPA) cannot be ruled out, as described in the RIAA Part 4 [APP-178].	Agreed	Agreed
4	<p>An adverse effect on integrity of red throated diver from the Outer Thames Estuary SPA can be ruled out for North Falls alone and in-combination, as described in the RIAA Part 4 [APP-178].</p> <p>The Applicant provided a response to the RSPB Relevant Representation on this matter at Deadline 1 in the Applicant's Responses to Relevant Representations Received from Statutory Consultees and Non Prescribed Consultees ([REP1-0145], Section 2.17, Applicant's Ref RSPB-09).</p>	<p>The RSPB considers that an adverse effect on site integrity cannot be ruled out for the impact of distributional change on the Red-throated Diver population, arising from vessel movement during construction, decommissioning and operations and maintenance.</p> <p>The numbers of Red-throated Divers, their distribution within the SPA and their ability to use all suitable habitat contained in the SPA are all relevant to the SPA conservation objectives but are not considered. If Red-throated Divers are displaced from part of the SPA which would otherwise be suitable for them, the effect is to reduce the functional size of the SPA, undermining the conservation objectives.</p>	<p><b>Not agreed - material impact</b></p> <p>It is unlikely agreement will be reached on this matter and discussions are now focussed on seeking to agree the without prejudice compensation proposals.</p>
5	In the RIAA Part 4 [APP-178] the Applicant concluded that due to the very low predicted mortality to kittiwake from the project alone apportioned to the Flamborough and Filey Coast (FFC) SPA (<1% of the predicted in combination collisions ([APP-178], Table 4.39), there would be no material contribution to any in-combination effect of OWFs on the SPA population. It is noted however, that in consenting Rampion 2 (R2), the SoS concluded that AEoI could not be ruled out beyond reasonable scientific doubt for kittiwake at the FFC SPA, the Applicant	The Applicant has screened out breeding season collision impacts on the Kittiwake population of the Flamborough and Filey Coast SPA, despite the colony being within the Mean Max Foraging Range + 1 Standard Deviation (300.6 km) and within the maximum range recorded at that colony (324 km). The Applicant has argued that tracking studies have not shown any overlap with the array footprint and therefore there is no connectivity with the colony. However, while tracking studies are extremely valuable, they are of relatively few birds in a relatively short temporal window and so absence of evidence from these studies of a spatial overall of foraging trips and the array should not be taken of evidence of no overlap. The RSPB therefore considers that an AEoI on kittiwake from FFC SPA cannot be ruled out.	Agreed

ID	The Applicant Position	RSPB Position	Position Summary
	concedes that the Competent Authority is likely to consider the contribution of North Falls to be material also. Thus, the proposed compensation for kittiwake at North Falls is no longer provided on a without-prejudice basis, and has been added to the draft DCO.		
6	The in combination assessment for kittiwake at FFC presented in the RIAA Part 4 [APP-178], (section 4.4.4.5.3.2) considers the in combination totals including and excluding the predicted collision mortality of kittiwake at OWFs that have been consented subject to compensation measures, so all relevant information is available in Examination.	At paragraphs 17 and 18 in APP-192 (Habitats Regulations Assessment Appendix 4, Kittiwake Compensation Document), the Applicant reduces the annual in-combination total of Kittiwake mortalities on the basis that consented offshore wind farms have been compensated for. It also presents compensated impacts as a separate scenario. The RSPB strongly disagrees with the approach of excluding “compensated for” projects from the in-combination assessment. The RSPB will provide further commentary on this in future submissions which will explain the reasons for this disagreement and include commentary on the CJEU ruling in C-164/17 Grace v Sweetman.	<b>Not agreed – no material impact</b>  It is unlikely agreement will be reached on this matter and discussions are now focussed on seeking to agree the compensation proposals.
7	The Applicant has followed guidance provided by Natural England during the Evidence Plan Process, which does not identify kittiwake as a species at risk of displacement effects from OWFs.	Only impacts arising through collision have been considered. It would be preferred if impacts arising through distributional responses, such as displacement and barrier effects, were also considered for this species. Consequently, the RSPB do not believe that the impacts on the Kittiwake population of the SPA have been adequately assessed, and therefore cannot come to conclusions with regard to any adverse effects on site integrity.	<b>Not agreed – no material impact</b>  It is unlikely agreement will be reached on this matter and discussions are now focussed on seeking to agree the compensation proposals.
8	An adverse effect on integrity of Northern Gannet from the FFC SPA can be ruled out for North Falls alone and in-combination, as described in the RIAA Part 4 [APP-178].  As stated in the Applicant’s Responses to Relevant Representations Received from Statutory Consultees and Non Prescribed Consultees ([REP1-045], Section 2.17, Applicant’s Ref RSPB-07), the Applicant has followed guidance provided by Natural England during the Evidence Plan Process,	The RSPB considers that an adverse effect on site integrity cannot be ruled out for the impact of combined collision and displacement mortality on the Northern Gannet population on the Flamborough and Filey Coast SPA. The application of a macro-avoidance correction factor to predicted Northern Gannet collision mortalities is a key concern of the RSPB. The Applicant has applied a reduction of 70% to the baseline densities inputted into the Northern Gannet collision risk modelling in order to account for macro-avoidance by amending the Avoidance Rates used in Collision Risk Modelling. This approach follows the scoping advice of Natural England, but is not recommended by NatureScot or the RSPB. The current evidence of a strong macro avoidance of wind farms by gannets, established from observed behaviour, is almost entirely derived from non-breeding birds (Cook 2021). The evidence for macro avoidance during the breeding season is limited with the exception of a German study. However, it is unclear from	<b>In discussion</b>

ID	The Applicant Position	RSPB Position	Position Summary
	<p>regarding the application of macro-avoidance for gannet.</p> <p>Natural England has further stated, in their response to the ExAQ1 [REP2-054], that at North Falls, reducing gannet densities considered in collision risk modelling was appropriate.</p>	<p>this study what the breeding status of the tracked birds was, or how their behaviour differed from what would have been expected pre-construction as two of the three wind farms were already operational during the first year of tracking. What the study does clearly show is that breeding Northern Gannets do fly through offshore wind farms, often showing no avoidance behaviour at all. As Northern Gannets can show macro avoidance it was suggested that this was applied to the baseline densities, and then collision risk modelling was carried out using an 'all gull' avoidance rate, so effectively applying avoidance twice. The RSPB does not agree with the approach. Firstly, it does not consider seasonal variation. Secondly, by basing the 'within wind farm' avoidance rate on the 'all gull' rate, it assumes that Northern Gannets will have the same 'within wind farm' reactive flight response as gulls. This assumption is very unlikely to be met. This will result in a lesser ability to make rapid reactions and consequently have a greater risk of collision. This should be reflected in the 'within wind farm' avoidance rate if any further changes are to be made. Any evidence of macro avoidance should also be seen in the context of recent work in Belgian offshore windfarms that has shown potential habituation to the presence of turbines. This effectively results in lower macro avoidance and so an elevated risk of collision. Consequently, the RSPB are concerned that the predicted Northern Gannet mortalities arising from collision are not robust, and therefore cannot come to any conclusions with regard to any adverse effects on site integrity.</p>	
9	<p>In the RIAA Part 4 SPA [APP-178], the Applicant concluded that due to the very low predicted guillemot mortality from the project alone apportioned to the FFC SPA and Farne Islands SPA, there would be no material contribution of North Falls to any in-combination effect of OWFs on the populations of these SPAs.</p> <p>It is noted however, that in consenting R2, the SoS concluded that AEoI could not be ruled out beyond reasonable scientific doubt for guillemot at the FFC and Farne Islands SPAs. The Applicant concedes that the Competent Authority is likely to consider the contribution</p>	<p>The RSPB considers there will be an adverse effect on the impact of mortality arising from distributional change on the Guillemot population on the Flamborough and Filey Coast SPA. Based on our initial conclusions the RSPB considers compensation measures would be required for guillemot.</p>	Agreed

ID	The Applicant Position	RSPB Position	Position Summary
	of North Falls to be material also. Thus, the proposed compensation for guillemot at North Falls is no longer provided on a without-prejudice basis, and has been added to the draft DCO.		
10	<p>An adverse effect on integrity of the FFC SPA can be ruled out for North Falls alone and in-combination, as described in the RIAA Part 4 [APP-178] with regards to razorbill.</p> <p>The Applicant responded on this matter at Deadline 1 in the Applicant's Responses to Relevant Representations Received from Statutory Consultees and Non Prescribed Consultees ([REP1-0145], Section 2.17, Applicant's Ref RSPB-13 and RSPB-14).</p> <p>The Applicant has provided without-prejudice compensation proposals for razorbill at the FFC SPA.</p>	The RSPB considers there will be an adverse effect on site integrity on the Flamborough and Filey Coast SPA including the impact of mortality arising from distributional change on the Razorbill population. The RSPB considers compensation measures would be required for razorbill.	<p><b>Not agreed material impact</b></p> <p>It is unlikely agreement will be reached on this matter and discussions are now focussed on seeking to agree the without prejudice compensation proposals.</p>
11	<p>Lantern Marshes could provide an appropriate location for lesser black backed gull compensation.</p> <p>The compensatory measure at Lantern Marshes will be additional in accordance with Department for Environment, Food &amp; Rural Affairs (Defra) (2024) guidance<sup>1</sup></p>	<p>The RSPB's position is that compensatory measures must be additional to measures necessary to site management of the affected SPA e.g. to restore a designated feature to favourable status (see paragraphs 5.7-5.8 of RSPB Written Submission (REP4-089)). The RSPB considers measures to restore the LBBG population of the Alde-Ore Estuary SPA should be considered as site management. This is consistent with its position on previous offshore wind farms adversely affecting the LBBG feature of the Alde-Ore Estuary SPA.</p> <p>Without prejudice to this overarching position, the RSPB remains in discussion with the Applicant as to the suitability of Lantern Marshes (and</p>	<p><b>In discussion</b></p>

<sup>1</sup> Defra (2024). Consultation on policies to inform updated guidance for Marine Protected Area (MPA) assessments. Available at: [https://consult.defra.gov.uk/offshore-wind-environmental-improvement-package/consultation-on-updated-guidance-for-environmental/supporting\\_documents/090224%20WEIP%20Consultation%20on%20updated%20policies%20to%20inform%20guidance%20for%20MPA%20assessments\\_.pdf](https://consult.defra.gov.uk/offshore-wind-environmental-improvement-package/consultation-on-updated-guidance-for-environmental/supporting_documents/090224%20WEIP%20Consultation%20on%20updated%20policies%20to%20inform%20guidance%20for%20MPA%20assessments_.pdf)

ID	The Applicant Position	RSPB Position	Position Summary
		other proposed sites lying within the Alde-Ore Estuary SPA) as a compensation location for LBBG.	
12	Gedgrave Marshes could provide an appropriate location for lesser black backed gull compensation	<p>The RSPB has commented on the suitability of Gedgrave Marshes as a compensation site in our Written Submission (see paragraphs 6.23-6.24 REP4-089). Briefly, we regard other proposed sites to have greater potential and lesser constraints.</p> <p>We consider more detail is required about the location, design, implementation, monitoring and review of any proposed compensatory measures in order to provide the Secretary of State with the necessary confidence as to whether those measures can be secured and implemented with a reasonable guarantee of success so as to protect the coherence of the National Site Network.</p>	<b>In discussion</b>
13	Outer Trial Bank could provide an appropriate location for lesser black backed gull compensation	The RSPB has raised concerns over the suitability of Outer Trial Bank as a compensation site in our Written Representation (see paragraphs 6.25-6.26 REP4-089). Considerable uncertainty remains over this location, both in terms of its suitability and the likely effectiveness of compensation measures there as well as their direct and indirect impacts on the wider environment, including designated sites.	<b>In discussion</b>
14	The Five Estuaries (VE2) site could provide an appropriate location for lesser black backed gull compensation in collaboration with Five Estuaries	<p>Without prejudice to the overarching position described in Row 11 above, the RSPB remains in discussion with the Applicant as to the suitability of VE2 as a compensation location for LBBG.</p> <p>We note NE's comments regarding project-led or collaborative delivery of compensation measures in the context of VE2 (see Ref 1, Table 4, REP4-060) and we support their comments.</p>	<b>In discussion</b>
15	The without prejudice compensation proposal for red-throated diver, including rafts and/or peatland habitat management in Scotland is appropriate.	The RSPB has set out in its Written Representation (see paragraphs 6.30-6.40, REP4-089) our position on these measures. We consider that more detail is required about the location, design, implementation, monitoring and review of any proposed compensatory measures in order to provide the Secretary of State with the necessary confidence as to whether those measures can be secured and implemented with a reasonable guarantee of success so as to protect the coherence of the National Site Network. The RSPB anticipates further information being submitted by the Applicant on these measures shortly.	<b>In discussion</b>

ID	The Applicant Position	RSPB Position	Position Summary
16	The compensation proposal for onshore artificial nesting sites is appropriate compensation for kittiwake collision risk.	We welcome the Applicant's acceptance that compensatory measures would be required for Kittiwake. However, we consider more detail is required about the proposed compensatory measures in order to provide the Secretary of State with the necessary confidence as to whether those measures can be secured and implemented with a reasonable guarantee of success so as to protect the coherence of the National Site Network.	In discussion
17	The compensation proposals for disturbance reduction at breeding colonies in the south-west is appropriate compensation for displacement of guillemot.	The RSPB has set out in its Written Representation (see paragraphs 6.9-6.17, REP4-089) our position on these measures. We consider that more detail is required about the location, design, implementation, monitoring and review of any proposed compensatory measures in order to provide the Secretary of State with the necessary confidence as to whether those measures can be secured and implemented with a reasonable guarantee of success so as to protect the coherence of the National Site Network.	In discussion
18	The without prejudice compensation proposal for disturbance reduction at breeding colonies in the south-west is appropriate compensation for displacement of razorbill.	As per row 17.	In discussion

### 3. Signatures

13. The above SoCG is agreed between the Applicant and RSPB on the day specified below.

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Job Title: \_\_\_\_\_

Date: \_\_\_\_\_

Duly authorised for and on behalf of the RSPB

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Job Title: \_\_\_\_\_

Date: \_\_\_\_\_

Duly authorised for and on behalf of North Falls Offshore Wind Farm Ltd

## 4. References

Planning Inspectorate (2024) Statements of Common/Uncommon Ground for Hearings and Inquiries. Available at: Statements of Common/Uncommon Ground for Hearings and Inquiries - GOV.UK





**NORTH FALLS**

*Offshore Wind Farm*



**RWE**

## **HARNESSING THE POWER OF NORTH SEA WIND**

*North Falls Offshore Wind Farm Limited*

*A joint venture company owned equally by SSE Renewables and RWE.*

*To contact please email [contact@northfallsoffshore.com](mailto:contact@northfallsoffshore.com)*

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