Written Submission

for the

Royal Society for the Protection of Birds

Response to the Examining Authority's Second Written Questions (ExQ2)

Submitted for Deadline 4

3 February 2025

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

Contents

1. Introduction

1.1. The RSPB's response to the Examining Authority's Second Written Questions (ExQ2) are set out in the table below.

ExQ1	Question to:	Question	RSPB response
HOE Habitats and Onshore Ecology, including Onshore Ornithology			
HOE 1.12	The Applicant RSPB	**Impacts on the RSPB's Frampton Marsh and Freiston Shore reserves** Please provide an update on the RSPB's intention [REP1-047] to provide the applicant with a plan of the water supply pipeline and the applicant's commitment in response [REP3-038] to update the crossing plan and schedule in order to avoid any damage to the pipeline as a result of the Proposed Development.	The RSPB has provided the Applicant with a plan of the water supply pipeline and receipt has been acknowledged by the Applicant along with confirmation that the applicant's crossing schedule will be updated accordingly. This is to facilitate the Applicant's commitment "to trenchless crossing for the underground cable route corridor at this location and for the enabling access point to the south, a protective method will be in place, e.g., a steel plate at the access to ensure that the below-ground services will not be impacted by construction traffic."
HOE 1.13	RSPB	**Lincolnshire Wash Landscape Recovery Project** Please provide the RSPB's review of the applicant's OLEMS [REP3-028] in relation to alignment with the Landscape Recovery Project as indicated in the RSPB's Written Representation [REP1- 047].	Having now reviewed the relevant section in the OLEMS, the RSPB is in broad agreement with the Applicant's assertion in the statement of common ground that 'The measures contained within the OLEMS are considered sufficient'. The RSPB is engaging in ongoing discussions with the Applicant over the Landscape Recovery Project that, so far at least, are consistent and in line with the OLEMS.

ExQ1	Question to:	Question	RSPB response
HRA Habitats Regulations Assessment (HRA) - Derogation Case and Compensation Measures			
Q2 HRA 1.3	**The Applicant** **Natural England** **MMO** **RSPB**	**The Applicant's Mid Examination Principal Issues Tracker** The applicant's deadline 3 Mid Examination Principal Issues Tracker [REP3-052] would seem to be at odds with the position of NE in its latest Risk and Issues Log Deadline 3 [REP3-074] in that in [REP3-052] there are no matters that are colour coded as red (ie the interested party / parties and the applicant are unable to align their positions) whereas in [REP3-074] there are a number of issues that are still colour coded as red, particularly in relation to offshore ornithology compensation. The ExA notes that the criteria for a colour coding of red varies between that applied by NE and that used by the applicant. NE uses a red colour coding where it considers that it is not possible to ascertain beyond reasonable doubt that there would not be an effect on the integrity of an SAC/SPA/Ramsar site or to highlight where there is a significant risk that an issue will not be sufficiently addressed within the examination timescales. However, the applicant's definition of a red colour coding in [REP3-052] is that "The Interested Party / Parties are unable to align their positions." Whilst an amber colour coding is where "The Interested Party / Parties are in discussions to discern whether positions can be aligned." **To applicant**: To what degree is there consistency between the colour coding system that has been	The RSPB agrees that the issues are under discussion with the Applicant regarding predicted impacts on the seabird features of the Flamborough and Filey Coast Special Protection Area and associated compensation packages. The RSPB will be in a better position to advise the Examining Authority on whether the Applicant is painting an overly-optimistic picture of the likelihood of these issues being resolved once it has been able to review the Applicant's updated habitats Regulations Assessment and compensation documents due to be submitted at Deadline 4 to reflect predicted impact changes due to the offshore restricted build area (ORBA). This will be central to our understanding of the likely scale of impacts on the species referred to in our Relevant Representation and thereby the scale of compensation likely to be required and the Applicant's ability to secure compensation measures with a reasonable guarantee of success.

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		applied respectively in, for example, [REP3-074] and [REP3-052] and if there is inconsistency then how can the ExA or any interested parties usefully compare between the two sets of documents? **To the applicant, NE, RSPB and MMO:** Based on the colour codings used and their definitions, is the applicant painting an overly-optimistic picture in [REP3-052] in regard to the outstanding disagreements with organisations such as NE, RSPB and the MMO and the likelihood of these matters being resolved during the remaining course of the Examination? If not, then please explain why?	
Q2 HRA 2.1	**Natural England** **RSPB**	**Assessment of the amount of guillemot and razorbill compensation** In its deadline 3 submission Guillemot and Razorbill: Compensation Quanta [REP3-049] the applicant has expressed serious concerns about the multiplier effects that would give rise to what it considers to be a significant degree of over-precaution. In the Executive Summary of [REP3- 049] the applicant contends that using NE's preferred approach would require the delivery of compensation for guillemot "… at a scale in line with 17% of the English breeding population and to deliver compensation for razorbill at a scale in line with the global population" and that "…a compensation calculation method that returns requirements at this scale cannot be considered fit	The RSPB describe below (Q2 OR1.2) why the Applicant's characterisation of the Natural England displacement analysis for Guillemot and Razorbill is inappropriate. However, we would also highlight the considerable degree of uncertainty in efficacy of the proposed compensation measures for these species and there is a considerable risk that they simply will not work. This uncertainty must be matched, under correct application of the precautionary principle, with a proportionate degree of precaution. As a result, the RSPB believe that the amount of precaution advocated by Natural England is appropriate.

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		for purpose and does not align with the appropriate use of the precautionary principle." Please comment on this and justify your approach to the calculation of compensation requirements in this context.	
OR Offshore and Intertidal Ornithology			
Q2 OR 1.2	**NE** **RSPB**	**Over-precaution and the application of the precautionary principle in relation to the assessment of collision and displacement effects** In its deadline 2 submission 'Levels of precaution in the assessment and compensation calculations for offshore ornithology' [REP2-057] and also in sections 3 and 4 of the Guillemot and Razorbill: Compensation Quanta [REP3-049] the applicant has set out what it considers to be a number of elements of methodological precaution. Whilst the applicant accepts the need for a precautionary approach, it contends that when taken together these layers of precaution would result in assessment outputs that are "unrealistic compared to the environmental risk in question" and which are "likely to result in a requirement for considerable over-compensation" due to the compounding of multiple precautions. " Please comment on the applicant's argument that has been set out in [REP2-057], and in particular justify the position that all the elements of precaution are required to be considered together in the assessment of potential impacts. Highlight any	The Applicant has argued why they consider that the Natural England recommended approach to assessment of offshore wind farm developments is overly precautionary. The RSPB disagrees and believes that the approach follows the correct application of the precautionary principle. As such we consider that the approach of Natural England is a measured and reasonable response to the considerable uncertainty inherent in the assessment procedure. The precautionary principle exists for situations where scientific data does not exist or is incomplete and therefore it is not possible to complete a full evaluation of the possible risks a plan, project or activity may cause to the environment, including possible danger to humans, animal or plant health, or to the environment in general. The European Commission's Precautionary Principle guidance[1] states that it should apply when a phenomenon, product or process may have a dangerous effect, identified by a scientific and objective evaluation, if this evaluation does not allow the risk to be determined with sufficient certainty. As such the

[1] [redacted]

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		available evidence to support the view that all of these levels of precaution are reasonably likely to be applicable at the same time? Furthermore, in section 2 of [REP3-049] the applicant has provided its interpretation of how the precautionary principle should be applied. Comment on this.	degree of precaution applied to an evaluation, or assessment, can be seen to be directly proportional to the extent of scientific uncertainty inherent in that assessment. As the guidance goes on to recommend, "*The implementation of an approach based on the precautionary principle should start with a scientific evaluation, as complete as possible, and where possible, identifying at each stage the degree of scientific uncertainty*." As there can be "*almost as many definitions of uncertainty as there are treatments of the subject*"[2], following Masden *et al.* (2015)[3], the RSPB defines it as a lack of knowledge, or incomplete information about a particular subject. Masden *et al.,* and subsequently Searle *et al* (2023)[4] identified a hierarchy of uncertainty in offshore wind farm assessment. This included not only the uncertainty arising from scientific knowledge, as argued by the Applicant, but uncertainty arising more strategically from the process of assessment itself, such as uncertainty within language and decision-making. Included within this process, uncertainty can be considered as anything that increases the difficulty in reaching firm and robust conclusions, including linguistic uncertainty such as where doubt is raised as to the robustness of the evidence underpinning the recommended assessment process.

[2] Argote, L. (1982). Input Uncertainty and Organizational Coordination in Hospital Emergency Units. *Administrative Science Quarterly, 27*(3), 420-434. doi:10.2307/2392320

[3] Masden, E. A., McCluskie, A., Owen, E., & Langston, R. H. (2015). Renewable energy developments in an uncertain world: the case of offshore wind and birds in the UK. *Marine Policy*, *51*, 169-172.

[4] Searle, K. R., S. H. O'Brien, E. L. Jones, A. S. C. P. Cook, M. N. Trinder, R. M. McGregor, C. Donovan, A. McCluskie, F. Daunt, and A. Butler. "A framework for improving treatment of uncertainty in offshore wind assessments for protected marine birds." *ICES Journal of Marine Science* (2023): fsad025.

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			Crucial to the understanding of the application of the precautionary principle to the assessment of offshore wind farms is the need for precaution to be proportional to the scientific uncertainty. As there is considerable uncertainty at each stage of the assessment process, so there is a need for a proportionate degree of precaution to be applied. The Applicant argues that because there is application of precaution at each stage of the assessment that this is multiplied throughout the stages of assessment. While it is true that precaution can be magnified by the process, if handled incorrectly, a framework of end-to-end uncertainty can overcome this problem, as advocated by Searle et al (2023). However, rather than adopt this approach, the Applicant focuses on criticising, and sometime misinterpreting, the scientific advice of Natural England. A key example of this is in the discussion of displacement. The Applicant highlights what they consider the overly precautionary nature of the displacement and mortality rates advocated by Natural England, but do not acknowledge that these are the upper limits of a range of impact scenarios. The reason for this range is the amount of uncertainty inherent in displacement analysis, and currently the most suitable means of incorporating this uncertainty is by using a range of values. Much of the uncertainty in displacement rates comes from the variability in recorded displacement rates, which a recent meta-analysis described for auks in multiple

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			studies as being between 0-70% (Lamb et al, 2024)[5] This range of values will be due to a number of factors, but it is likely the main driver will be the inherent dynamism of the marine environment. As such, reliance on studies carried out at a single site, should be avoided. For example, Trinder *et al*., (2024)[6] reported no displacement of auk species within a single site, Beatrice wind farm in the Moray Firth, whereas the above meta-analysis across 15 sites with auks present, reported that 65% of these studies detected an effect. So, while the current advice is to use a range of displacement rates to capture this inherent variability, the Applicant has highlighted only the upper limits of the range in order to highlight a perceived overly precautionary approach, whereas the Lamb et al (2024) study highlights that these are within the probable range of displacement effects. The Applicant fails to mention that mortality rates used in the displacement assessment may be under precautionary. Mortality rate can be considered to be the number of birds subject to displacement or barrier effects that will die as a consequence of those effects. The metric is applicable only to fully sized individuals and as such, the method does not account for any effects of breeding success. For long lived, low fecundity species like seabirds, the most likely response to additional stressors during the

[5] Lamb, J., Gulka, J., Adams, E., Cook, A., & Williams, K. A. (2024). A synthetic analysis of post-construction displacement and attraction of marine birds at offshore wind energy installations. *Environmental Impact Assessment Review*, *108*, 107611.

[6] Trinder, M., O'Brien, S. H., & Deimel, J. (2024). A new method for quantifying redistribution of seabirds within operational offshore wind farms finds no evidence of within-wind farm displacement. *Frontiers in Marine Science*, *11*, 1235061.

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			breeding season is the abandonment of a breeding attempt, or chick death through poor attendance. As such, the omission of chick mortality can be seen as a major limitation of the Applicant's approach and demonstrates the need to take a precautionary approach in determining the range of mortalities that may arise through distributional responses the presence of a wind farm. The presentation of a range of displacement and mortality rates, as advocated by Natural England, can be considered to be the most appropriate way to describe the uncertainty inherent in the assessment of distributional responses to offshore wind farms. As such, it is entirely wrong to characterise it as overly precautionary. While the RSPB does not have the resource to go through each point of the Applicant's submission, the above highlights the complexities in understanding the potential impacts on birds in such an inherently dynamic system, the consequent uncertainty and the need for a precautionary approach. There are uncertainties at each of the stages of assessment, whether relating to data collection, which is subject to inherent variability and biases in measurement or modelled impact, which will always be a simplified abstraction of reality. All these elements of precaution must be considered in the assessment. As concluded by Searle et al (2023), "*A failure to recognize or quantify these uncertainties in models and data results in poorly informed decision-making where the rationale is unclear, rather than providing transparent, objective,*

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			evidence-based decision-making informed by proportionate risk assessment".