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RENEWABLES**

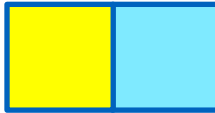
# **East Anglia ONE North and East Anglia TWO Offshore Windfarms**

## **Applicants' Comments on Royal Society for the Protection of Birds' Deadline 11 Submissions**

Applicant: East Anglia TWO and East Anglia ONE North Limited  
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**Applicable to East Anglia ONE North and East Anglia TWO**



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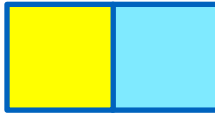
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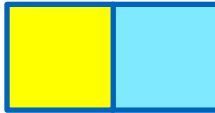
## Glossary of Acronyms

AEol	Adverse Effect on Integrity
AS	Additional Submission
BOU	British Ornithologists' Union
DCO	Development Consent Order
DML	Deemed Marine Licence
EC	European Commission
FFC	Flamborough & Filey Coast
HDD	Horizontal Directional Drilling
HRA	Habitats Regulations Assessment
LBBG	Lesser Black-Backed Gull
NE	Natural England
PD	Procedural Decision
RSPB	Royal Society for the Protection of Birds
SoCG	Statement of Common Ground
SPA	Special Protected Area
UK	United Kingdom

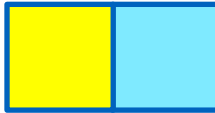


## Glossary of Terminology

Applicant	East Anglia TWO Limited / East Anglia ONE North Limited
Construction operation and maintenance platform	A fixed offshore structure required for construction, operation, and maintenance personnel and activities.
East Anglia ONE North project	The proposed project consisting of up to 67 wind turbines, up to four offshore electrical platforms, up to one construction, operation and maintenance platform, inter-array cables, platform link cables, up to one operational meteorological mast, up to two offshore export cables, fibre optic cables, landfall infrastructure, onshore cables and ducts, onshore substation, and National Grid infrastructure.
East Anglia ONE North windfarm site	The offshore area within which wind turbines and offshore platforms will be located.
East Anglia TWO project	The proposed project consisting of up to 75 wind turbines, up to four offshore electrical platforms, up to one construction, operation and maintenance platform, inter-array cables, platform link cables, up to one operational meteorological mast, up to two offshore export cables, fibre optic cables, landfall infrastructure, onshore cables and ducts, onshore substation, and National Grid infrastructure.
East Anglia TWO windfarm site	The offshore area within which wind turbines and offshore platforms will be located.
European site	Sites designated for nature conservation under the Habitats Directive and Birds Directive, as defined in regulation 8 of the Conservation of Habitats and Species Regulations 2017 and regulation 18 of the Conservation of Offshore Marine Habitats and Species Regulations 2017. These include candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation and Special Protection Areas.
Generation Deemed Marine Licence (DML)	The deemed marine licence in respect of the generation assets set out within Schedule 13 of the draft DCO.
Horizontal directional drilling (HDD)	A method of cable installation where the cable is drilled beneath a feature without the need for trenching.
Inter-array cables	Offshore cables which link the wind turbines to each other and the offshore electrical platforms, these cables will include fibre optic cables.
Jointing bay	Underground structures constructed at intervals along the onshore cable route to join sections of cable and facilitate installation of the cables into the buried ducts.
Landfall	The area (from Mean Low Water Springs) where the offshore export cables would make contact with land, and connect to the onshore cables.
Link boxes	Underground chambers within the onshore cable route housing electrical earthing links.
Meteorological mast	An offshore structure which contains metrological instruments used for wind data acquisition.
Mitigation areas	Areas captured within the onshore development area specifically for mitigating expected or anticipated impacts.
Marking buoys	Buoys to delineate spatial features / restrictions within the offshore development area.



Monitoring buoys	Buoys to monitor <i>in situ</i> condition within the windfarm, for example wave and metocean conditions.
Natura 2000 site	A site forming part of the network of sites made up of Special Areas of Conservation and Special Protection Areas designated respectively under the Habitats Directive and Birds Directive.
Offshore cable corridor	This is the area which will contain the offshore export cables between offshore electrical platforms and landfall.
Offshore development area	The East Anglia TWO / East Anglia ONE North windfarm site and offshore cable corridor (up to Mean High Water Springs).
Offshore electrical infrastructure	The transmission assets required to export generated electricity to shore. This includes inter-array cables from the wind turbines to the offshore electrical platforms, offshore electrical platforms, platform link cables and export cables from the offshore electrical platforms to the landfall.
Offshore electrical platform	A fixed structure located within the windfarm area, containing electrical equipment to aggregate the power from the wind turbines and convert it into a more suitable form for export to shore.
Offshore export cables	The cables which would bring electricity from the offshore electrical platforms to the landfall. These cables will include fibre optic cables.
Offshore infrastructure	All of the offshore infrastructure including wind turbines, platforms, and cables.
Offshore platform	A collective term for the construction, operation and maintenance platform and the offshore electrical platforms.
Platform link cable	Electrical cable which links one or more offshore platforms. These cables will include fibre optic cables.
Safety zones	A marine area declared for the purposes of safety around a renewable energy installation or works / construction area under the Energy Act 2004.
Scour protection	Protective materials to avoid sediment being eroded away from the base of the foundations as a result of the flow of water.
Transition bay	Underground structures at the landfall that house the joints between the offshore export cables and the onshore cables.
Transmission DML	The deemed marine licence in respect of the transmission assets set out within Schedule 14 of the draft DCO.



# 1 Introduction

1. This document presents the Applicants' comments on Royal Society for the Protection of Birds' (RSPB's) Deadline 11 submissions as follows.
  - RSPB's Deadline 11 Submission – Written Representations for the RSPB (REP11-126);
  - RSPB's Deadline 11 Submission – The RSPB's responses to the Examining Authority's (ExA's) Third Round of Written Questions (REP11-127).
2. This document is applicable to both the East Anglia TWO and East Anglia ONE North DCO applications, and therefore is endorsed with the yellow and blue icon used to identify materially identical documentation in accordance with the Examining Authority's procedural decisions on document management of 23<sup>rd</sup> December 2019 (PD-004). Whilst this document has been submitted to both Examinations, if it is read for one project submission there is no need to read it for the other project submission.



## 2 Comments on RSPB's Deadline 11 Submissions

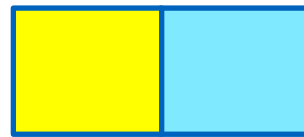
### 2.1 Applicants' Comments on RSPB's Deadline 11 Submission – Written Representations for the RSPB (REP11-126)

ID	RSPB's Comment	Applicants' Comments								
<b>Introduction</b>										
1	<p>This representation applies jointly to the development consent order (the DCO) applications by Scottish Power Renewables (the Applicants) for the East Anglia ONE North (EA1N) and East Anglia TWO (EA2) offshore windfarms (collectively “the applications”).</p> <p>This submission is the RSPB's combined response to the Applicants' Deadline 10 submissions for each scheme entitled “Applicants' Comments on the Royal Society for the Protection of Birds' Deadline 9 Submissions” (both numbered REP10-018).</p>	Noted								
<b>Scope of Written Submission</b>										
2	<p>This Written Submission covers the following a small number of the comments set out in REP10-018. It should be read in conjunction with the RSPB's previous submissions to the Examination, in particular our submissions at Deadline 4 (REP4-097), Deadline 8 (REP8-171) and Deadline 9 submission (REP9-071). This submission also takes account of the RSPB's final position on adverse effect on integrity conclusions that are set out in a final Offshore Statement of Common Ground (SOCG) with the Applicant (REP8-105) submitted at Deadline 8 and summarised in RSPB REP8-171.</p>	<p>Noted. The Applicants have responded to the RSPB submissions as follows:</p> <table border="1"> <thead> <tr> <th>RSPB Submission</th> <th>Applicants' Response</th> </tr> </thead> <tbody> <tr> <td>REP4-097</td> <td>REP5-016</td> </tr> <tr> <td>REP8-171</td> <td>REP9-020</td> </tr> <tr> <td>REP9-071</td> <td>REP10-018</td> </tr> </tbody> </table>	RSPB Submission	Applicants' Response	REP4-097	REP5-016	REP8-171	REP9-020	REP9-071	REP10-018
RSPB Submission	Applicants' Response									
REP4-097	REP5-016									
REP8-171	REP9-020									
REP9-071	REP10-018									

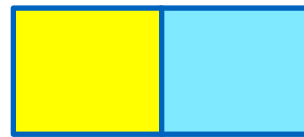




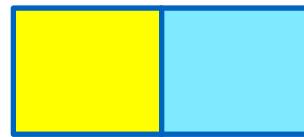
ID	RSPB's Comment	Applicants' Comments
<b>Response to Applicants' REP10-018</b>		
3	<p>We have limited our response to the Applicants' comments (REP10-018) on the RSPB's Deadline 9 (REP9-071) submission to summary observations in relation to the Applicants' bycatch compensation proposal. Beyond the comments below, we do not propose to make any further exchange of comments on this bycatch proposal. This is because our original comments summarise our position and nothing in the Applicants' Deadline 10 response has changed that position.</p>	Noted
4	<p>The RSPB's overarching view remains that the proposal is not fit for purpose as a possible compensation measure. Our concerns can be summarised as:</p> <ul style="list-style-type: none"> <li>The general paucity of information on the nature, scale and location of bycatch affecting guillemots and razorbills in UK waters means that there can be no confidence the Applicants' proposals will be of any benefit to these species and therefore provide compensation with a reasonable guarantee of success;</li> <li>Underlying the Applicants' proposal is an assumption that it can solve significant challenges in a short (5-year) timeframe in an inappropriate geographic area (see next point). Assuming a link is proven to the target species, these challenges include the identification of suitable mitigation options appropriate to specific fisheries and addressing the long-term social, economic and scientific research necessary to persuade individual fishers and fisheries to adopt any such measures. Based on the RSPB's experience, we are concerned that the proposal overstates the simplicity in implementing its approach.</li> </ul>	<p>The Applicants appreciate the clarity provided by the RSPB in their response to the proposed approach. The Applicants recognise the challenge ahead, from quantifying the level of impact on seabird species from bycatch, and that a 5-year locally targeted project to address data gaps and implement a solution to this problem, one which could be resulting in thousands of deaths of birds per year in UK waters, is ambitious.</p> <p>The Applicants seek to provide reassurance that this indirect compensation proposal is not aiming to solve this challenge unilaterally. The aim is to work with stakeholders to build on best practice gathered globally, provide an innovative model for other marine users to adopt on a strategic basis, and compensate for the predicted mortalities of gannet (13.8/13), lesser black-backed gull (1.6/0.3), guillemot (5/6) and razorbill (1/1) by engaging positively with the fishing industry to raise awareness of bycatch and incentivise action to reduce it to create a more sustainable fishery through:</p> <ul style="list-style-type: none"> <li>Conducting monitoring to record local fishing effort/bycatch data based on gear deployment to support the Seabird Plan of Action monitoring effort with a standalone monitoring proposal as a backup measure if</li> </ul>



ID	RSPB's Comment	Applicants' Comments
	<p>Establishing a gear replacement fund is no guarantee of success.</p> <ul style="list-style-type: none"> <li>• The selection of East Anglia as the geographic target area is inappropriate based on current evidence. It appears to be based on an ability to work with fisheries with which the Applicants' have existing relations. However, for reasons set out in REP9-071, current evidence suggests East Anglia is not of substantial importance from a bycatch perspective.</li> <li>• While we have initial evidence of seabird bycatch rates and risk, there is an urgent need for improved data on seabird bycatch across the UK, particularly in static net fisheries, to understand the true scale of the problem. There is also a concurrent need to invest in identifying potential solutions with industry. Therefore, the RSPB believes the focus needs to be on coherent, coordinated and well-funded strategic research and development to improve data collection and plug substantial evidence gaps on seabird bycatch in the UK as a whole i.e. significantly increased monitoring coverage (observer and electronic) over several years across multiple fisheries in order to: <ul style="list-style-type: none"> <li>○ Improve understanding of seabird bycatch and sea areas of conservation concern in respect of bycatch affecting the target species;</li> <li>○ Target sea areas and fisheries with the aim of carrying out multi-year trials of possible bycatch mitigation options in co-operation with the relevant fisheries;</li> <li>○ Develop, implement and monitor bycatch mitigation options in co-operation with the target fisheries; and</li> </ul> </li> </ul>	<p>no/insufficient data were collected in the region under the Seabird Plan of Action monitoring;</p> <ul style="list-style-type: none"> <li>• Providing a new funding stream to work with the fishing industry to rapidly develop and deploy new fishing techniques (and to reduce bycatch risk from them) which work for local fishermen, their target catch and methods of working;</li> <li>• Creating a much needed funding incentive for local fishermen to upgrade their gear and methods to deliver a more sustainable approach to fishing as a fundamental concept; and</li> </ul> <p>Ensuring the funding package and approach proposed by the Applicants presents an opportunity to understand the nature of the risk, and provide fishermen with the ability to take ownership of how they positively interact with the wider environment.</p>



ID	RSPB's Comment	Applicants' Comments
	<ul style="list-style-type: none"> <li>○ Support work across multiple strands of technical mitigation, management measures and gear replacement.</li> <li>● The limited spatial and temporal nature of the Applicants' proposals will not address these issues for the reasons set out in RSPB REP9-071.</li> </ul>	
5	<p>In considering the Applicant's response to our comments on the timing relationship between the Applicants' proposal and the UK Seabird Bycatch Plan of Action (the PoA), it is apparent that confusion has arisen in terms of how ourselves and the Applicants' have interpreted each others' drafting and therefore intention.</p> <p>We consider it would be unwise for the Applicants' (and the Examining Authority) to rely on an unpublished PoA. We cannot be confident at this time as to whether the implementation of the PoA will provide the necessary evidence we have described that would help place the Applicants' proposal in proper context, nor whether that evidence would be available at the time the Applicants' anticipate.</p> <p>If further clarity is required on the scope, nature and planned implementation of the PoA we would advise the Applicants' contact Defra directly. This may help provide the Applicants', the Examining Authority and other parties to the Examination with clarification on the proposed relationship between the Applicants' bycatch proposal and the PoA.</p>	

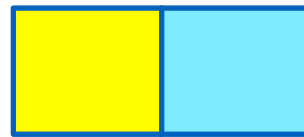


## 2.2 Applicants' Comments on RSPB's Deadline 11 Submission – RSPB's Responses to the ExA's Third Round of Written Questions (REP11-127)

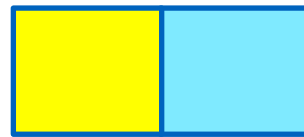
ID	ExA's Question	RSPB's Comment	Applicants' Comments
<b>3.2 Biodiversity, Ecology and Natural Environment (including Habitats Regulations Assessment (HRA))</b>			
1	<p><b>3.2.5</b></p> <p><b>Cumulative and in-combination collision risk: Hornsea Project Three contribution</b></p> <p>In [REP8-171], the RSPB states that it does not agree with the Applicants that the in-combination annual kittiwake collisions apportioned to the FFC SPA should exclude the estimated collisions at Hornsea Project Three because the adverse effect arising from Hornsea Project Three will not be avoided and because it considers the effectiveness of the Hornsea Project Three compensatory measures to be “<i>highly uncertain</i>”.</p> <p>Conversely, Natural England [REP8-166, answer to R17QB.12] agrees with the Applicants' approach, stating that the SoS decision is clear that the impacts from Hornsea Project Three will be fully compensated for.</p> <p>a) Does the RSPB maintain the view expressed in [REP8-171]? If so, please could you elaborate on the reasons for your position?</p>	<p><b>Combined response to question (a) and (b)</b></p> <p>The RSPB maintains its position that the in-combination annual kittiwake collisions apportioned to the Flamborough and Filey Coast SPA (FFC SPA) should not exclude the estimated collisions at Hornsea Project Three. This is because the adverse effect arising from Hornsea Project Three will not be avoided and because it considers the effectiveness of the Hornsea Project Three compensatory measures to be ‘<i>highly uncertain</i>’.</p> <p>Below we summarise our reasons in maintaining this position under the following headings:</p> <ul style="list-style-type: none"> <li>• The adverse impacts of Hornsea Project Three on the FFC SPA will not be avoided.</li> <li>• Benefits of the Hornsea Project Three compensation.</li> </ul> <p><i>The adverse impacts of Hornsea Project Three on the FFC SPA will not be avoided.</i></p>	<p>The Applicants disagree with RSPB's position and note that NE consider that Hornsea 3 has fully compensated for kittiwake – this is stated within <b>Appendix A16b - Comments on Cumulative and In-combination Collision Risk [REP8-035]</b> (REP9-066).</p> <p>The Applicants agree with NE's position.</p>



ID	ExA's Question	RSPB's Comment	Applicants' Comments
	<p>b) Specifically, whilst noting your position that the collision risk impacts from Hornsea Project Three will not be avoided, if the H3 collision risk impact on kittiwake is fully compensated for, please explain why you consider it to be appropriate to include that impact in the in combination and cumulative assessments?</p>	<p>Hornsea Project Three will contribute to the predicted cumulative and in-combination reduction in the kittiwake population of the FFC SPA due to multiple offshore wind farms. This is demonstrated by the Population Viability Analysis graph at Figure 1, paragraph 2.9 in the RSPB's REP4-097. Each identified scheme adds to the downward pressure on the FFC SPA population.</p> <p>De facto, the FFC SPA kittiwake population will be further reduced as a result of the Hornsea Project Threw impacts. The impact will not be avoided in biological terms at the FFC SPA itself (see also below re "Benefits of the Hornsea Project Three compensation"). It is therefore critical that this impact is acknowledged in all future assessments and not "removed" as if it is not happening.</p> <p>Consequently, the adverse effect on the integrity of the FFC SPA arising from this predicted impact will not be avoided.</p> <p>It follows that it is important to understand and acknowledge the full context of the in-combinatoin and cumulative impacts of subsequent offshore wind farms on the FFC SPA's kittiwake population. Hornsea Project Three's contribution to the downward pressure on that population will exist in reality and will continue to act in-combination with</p>	



ID	ExA's Question	RSPB's Comment	Applicants' Comments
		<p>other projects (past, present and future) during and beyond its lifetime.</p> <p><i>Benefits of the Hornsea Project Three compensation</i></p> <p>The RSPB has set out elsewhere the reasons why it considers the claimed benefits of the Hornsea Project Three kittiwake compensation are uncertain and that the compensation is experimental in nature. In REP4-097 we cross-refer to more detailed critiques of kittiwake compensation proposals proposed by other offshore wind farms:</p> <ul style="list-style-type: none"> <li>• Para 3.4: refers to our comments on the initial Hornsea Project Three and Norfolk Vanguard proposals (April 2020);</li> <li>• Para 3.10: refers to our comments on the Norfolk Boreas proposals (October 2020);</li> <li>• Para 3.12: refers to our comments on the more detailed Hornsea Project Three proposals (November 2020).</li> </ul> <p>In the context of the Examining Authority's question (b), there are several important and connected aspects of the Hornsea Project Three compensation to be aware of which underline our comments immediately above:</p> <ul style="list-style-type: none"> <li>• There is no guarantee that the Hornsea Project Three compensation scheme will successfully recruit the</li> </ul>	

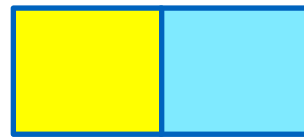


ID	ExA's Question	RSPB's Comment	Applicants' Comments
		<p>(estimated) requirement of 73 breeding adult kittiwakes per annum deemed to be necessary to offset the losses at the FFC SPA arising from Hornsea Project Three;</p> <ul style="list-style-type: none"> <li>• Critically, it is accepted by the RSPB, Natural England and Hornsea Project Three that kittiwake population ecology means there can be no biological certainty that any breeding adults so recruited will choose to breed at the FFC SPA itself.</li> <li>• Consequently, it cannot be assumed Hornsea Project Three kittiwake compensation will “offset” the predicted population losses due to Hornsea Project Three. This means some or all of the population reduction at FFC SPA will remain and needs to be acknowledged in future impact assessments;</li> <li>• This is reflected in the objective for the Hornsea Project Three kittiwake compensation scheme set out in paragraph 3.34 of the Hornsea Project Three Kittiwake Compensation Plan: “<i>The purpose of site selection has been to identify an area to host artificial nesting sites that will be occupied by new recruits in the</i></li> </ul>	



ID	ExA's Question	RSPB's Comment	Applicants' Comments
		<p><i>English southern North Sea, whilst contributing to an increase of breeding adults to the Eastern Atlantic kittiwake population.” (emphasis added)</i></p> <ul style="list-style-type: none"> <li>The target of any recruitment is the Eastern Atlantic kittiwake population, not the FFC SPA. This is, in part, explicit recognition of the inability of the Hornsea Project Three applicant to guarantee any breeding adults arising from the compensation scheme would return to the FFC SPA itself. This issue was discussed by Hornsea Project Three, Natural England and the RSPB during discussions on the “Kittiwake Compensation Plan” and the above formulation for an objective arrived at.</li> <li>For example, Natural England’s comments on the “minded to consent” consultation for Hornsea Project Three stated:<sup>4</sup> <i>“...however the number of ‘new’ birds that will recruit back to FFC SPA as a result of this measure is unknown”</i> (section 1.1, numbered para (4), page 4)</li> <li>The Secretary of State accepted the wider, Eastern Atlantic population objective in his decision</li> </ul>	

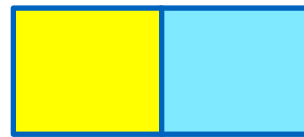




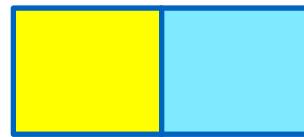
ID	ExA's Question	RSPB's Comment	Applicants' Comments
		<p>letter (at paragraph 6.51)5 and Habitats Regulations Assessment (section 13.1, page 109).</p> <p>It is for these reasons and our concerns over the effectiveness of the Hornsea Project Three kittiwake compensation measures that the RSPB considers it is inappropriate to assume the impacts of Hornsea Project Three on the kittiwake population of the FFC SPA itself will be wholly or partially reversed. Therefore, the RSPB considers it is appropriate to include the estimated collisions at Hornsea Project Three as part of the in-combination annual kittiwake collisions apportioned to the FFC SPA in assessing the impacts of EA1N/2 and other offshore wind farms.</p>	
2	<p><b>3.2.8</b></p> <p><b>Without prejudice compensation measures [REP8-089]: level of detail in relation to implementation</b></p> <p>Natural England expresses a view [REP9-065] that greater detail about the design and implementation of compensatory measures is needed to provide the SoS with the necessary confidence that those measures can be secured. This is a position echoed strongly by the RSPB [REP10-054, REP9-071]. The Applicants maintain the position [REP10-017, REP10-018, REP9-016] that compensation</p>	<p><b>Answer to Q3.2.8 (b)</b></p> <p>This answer should be read alongside our previous submissions on matters relating to compensation measures.</p> <p>The RSPB's general position on the level of detail provided by offshore wind farm (and other) developers to date was set out in its response to the Hornsea Project Three "minded to consent" consultation at paragraph 1.1 of the RSPB's submission dated 2 November 2020:7</p>	<p>The Applicants maintain their position set out in <b><i>Applicants' Responses to ExQ3 Volume 4 - 3.2 Biodiversity Ecology and Natural Environment</i></b> (REP11-088).</p>



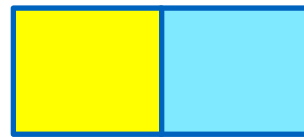
ID	ExA's Question	RSPB's Comment	Applicants' Comments
	<p>measures are appropriately secured and provide adequate levels of compensation, whilst providing necessary flexibility to allow for refinements in detail in the post-consent period.</p> <p>The ExAs note that publicly available correspondence from the Secretary of State in relation to the decision stage for the Norfolk Boreas application requests additional environmental information with regard to possible HRA compensatory measures. This includes, for example, "confirmation of the selected site(s) for compensation strategies and details of how the site(s) will be acquired/leased", as well as 'an implementation timetable for when the compensation measures will be delivered and achieve their objectives in relation to the first operation of the wind farm".</p> <p>a) In light of these requests, do the Applicants maintain their position that sufficient detail about the delivery of its without prejudice compensation measures has been submitted into this examination to enable the Secretary of State to discharge its duties as Competent Authority without the need for further consultation in the decision stage?</p>	<p>"1.1 Whilst we appreciate the substantial additional information presented by the Applicant and the constructive discussions held, the RSPB considers there remain significant uncertainties with regards to the proposed compensation package, which remains experimental in nature. The number of further agreements, consents and permissions that will be required to deliver the proposed compensation measures post-consent remains profoundly worrying, as there is no certainty that those can be agreed or granted. Consistent with our views expressed on other offshore wind farm compensation proposals, it is therefore not clear that sufficient information is available to be confident ecologically, financially nor legally that all necessary compensation measures will be secured in order to maintain the overall coherence of the Natura 2000 network."</p> <p>Therefore, we consider there are requirements that should be subject to scrutiny at the Examination and settled before consent is granted in order to be confident any compensation measure has/can be secured and will have a reasonable guarantee of success. These, with some adaptation, are</p>	



ID	ExA's Question	RSPB's Comment	Applicants' Comments
	<p>Does Natural England or RSPB have any observations to make on this question? If you consider that additional detail on the implementation of compensation measures is necessary, please set out the main areas in which you consider detail to currently be lacking.</p>	<p>common to all such measures. The key issues are listed below:</p> <ul style="list-style-type: none"> <li>• <b>Nature/magnitude of compensation:</b> Agreement on the scale of compensation required in relation to the predicted impacts and best estimate of the timeline by which the proposed compensation measure will achieve its objectives, the latter to work out the lead-in time necessary to ensure the overall coherence of the National Site Network is protected;</li> <li>• <b>Location:</b> legal securing of proposed compensation sites with ability to scrutinise evidence of (a) relevant consents bring secured and (b) relevant legal agreements to secure land to ensure compatibility with compensation objectives;</li> <li>• <b>Monitoring and review:</b> detailed monitoring and review packages agreed in advance including terms of reference and ways of working for any "regulators group" to oversee implementation of measure, review periods, feedback loops etc.</li> </ul>	



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		<p>Below we have summarised the main additional matters that should be addressed for each of the species where compensation measures have been proposed by the Applicants'. Note that this is not exhaustive.</p> <p><b>Kittiwakes: artificial nesting structures</b></p> <ul style="list-style-type: none"> <li>• Confirmation of the selected sites for the artificial nesting structures and that they have been legally secured;</li> <li>• Evidence on available food supply for breeding kittiwakes at the proposed locations, including evidence on interaction/competition with existing colonies, especially SPA colonies;</li> <li>• Assessment of collision risk with existing and planned offshore wind farms;</li> <li>• Details of the terms of any legal agreements or options associated with the above to ensure they are consistent with the successful delivery of the compensation measures and will not act to undermine them;</li> </ul>	



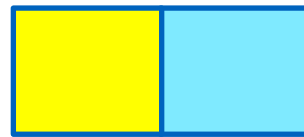
ID	ExA's Question	RSPB's Comment	Applicants' Comments
		<ul style="list-style-type: none"> <li>Evidence that the relevant planning and other consents have been secured;</li> <li>A meta-population analysis carried out to clarify dynamics between potential purpose-built artificial nest sites and SPA and other colony populations (see para 3.10 in the RSPB's submission to the Hornsea Project Three "minded to consent" consultation (dated 2 November 2020));</li> <li>Detailed design of the compensation measure.</li> </ul> <p><b>Guillemot/razorbill – island eradication</b></p> <p>The success or failure of island eradication schemes hinge on detailed feasibility work for specific selected locations. It is wholly inadequate to rely on a desk exercise and allude to the potential to find a suitable location at some point post-consent as the practical experience of the RSPB and others in designing, facilitating and completing eradication schemes demonstrate that there are many factors that can result in a promising location proving impractical or ecologically inappropriate.</p>	



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		<p>In this context, in order to provide the Examining Authority and the Secretary of State with the required confidence, it would be necessary to do the following (adapted from para 3.13 of REP4-097):</p> <ul style="list-style-type: none"> <li>• Agree a shortlist of potentially suitable site(s);</li> <li>• For each suitable site carry out a full-scale feasibility study using a suitable eradication expert contractor. To be sure of a “reasonable guarantee of success”, any feasibility study must be carried out before DCO consent is granted and must be set against the 7 feasibility criteria set out in Table 1 on page 18 of the Manual of the UK Rodent Eradication Best Practice Toolkit (2018)<sup>12</sup> i.e.: <ul style="list-style-type: none"> <li>○ Technically feasible</li> <li>○ Sustainable</li> <li>○ Socially acceptable</li> <li>○ Politically and legally acceptable</li> <li>○ Environmentally acceptable</li> <li>○ Capacity</li> </ul> </li> </ul>	



ID	ExA's Question	RSPB's Comment	Applicants' Comments
		<ul style="list-style-type: none"> <li>○ Affordable.</li> </ul> <p>Any biosecurity measures must be secured in perpetuity.</p> <p>In addition, similar considerations apply as per kittiwake above, albeit replacing collision risk with offshore wind farms with displacement.</p> <p><b>Lesser black-backed gulls – predator management</b></p> <p>Our comments at paragraphs 3.15 and 3.16 in REP4-097 remain (and for ease of reference are adapted below). We remain critical of the narrow focus of the proposed measure on predator management and that other key factors critical to successful breeding (habitat quality, food availability, disturbance and flooding) should be fully addressed in identifying a suitable approach.</p> <p>In general terms, we identified the following issues that we consider still require to be addressed:</p> <ul style="list-style-type: none"> <li>• Consideration of the feasibility of:             <ul style="list-style-type: none"> <li>○ Creating a new habitat to support breeding lesser black-backed gulls outside of</li> </ul> </li> </ul>	



ID	ExA's Question	RSPB's Comment	Applicants' Comments
		<p>the existing protected area network for this species;</p> <ul style="list-style-type: none"> <li>○ Measures to increase the population of a large colony not protected by the existing lesser black-backed gull protected area network.</li> </ul> <p>We highlight the need for the following in addition to agreement on detailed design to meet agreed compensation objectives:</p> <ul style="list-style-type: none"> <li>• Identifying and securing suitable location to meet all the breeding requirements of the species, including necessary legal agreements with landowners and consenting authorities to demonstrate compensation measures can be delivered at the location proposed;</li> <li>• Avoiding locations that expose birds breeding at compensation site to unnecessary risk e.g. collision risk with offshore wind farms. In addition, similar considerations apply as per kittiwake above.</li> </ul>	
3	3.2.12	Answer to Q3.2.12(c)	The Applicants maintain the position set out in the answer to this question provided in <b>Applicants'</b>

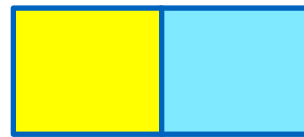




ID	ExA's Question	RSPB's Comment	Applicants' Comments
	<p><b>Without prejudice compensation measures [REP8-089]: duration of compensation measures</b></p> <p>The RSPB has highlighted [REP10-054] provisions in Schedule 14, Part 1, article 7 of the made Hornsea Project Three DCO, which require that artificial nest structures for kittiwake must be maintained beyond the lifetime of the authorised development if they are colonised, with routine and adaptive management measures continuing whilst the structures are in place. Schedule 18, Part 1, article 7 of the dDCO for this project does not include comparable provisions.</p> <p>a) Whilst noting the Applicants' comments on pages 10 and 11 of [REP9-020], including that the EC Guidance does not explicitly require compensation measures to be provided in perpetuity, please could the Applicants set out the justification for taking a different approach in this case to that deemed to be necessary in the recently made DCO for Hornsea Project Three?</p> <p>b) Please could the Applicants set out the justification for departing from Defra advice to Competent Authorities that they "should make</p>	<p>The RSPB sets out its reasoning on this issue at paragraphs 2.15-2.20 in its response to the Hornsea Project Three "minded to consent" consultation<sup>9</sup>, and cross-referenced in para 3.12 of REP4-097. We have replicated the relevant text below:</p> <p><i>"The length of time the compensation is required</i></p> <p>2.15 The Applicant sets a cut-off point for provision of compensation measures at the end of life of the development i.e. 30 years. For example, the proposed DCO conditions effectively state in several places that the proposed compensation measure (artificial nesting structures) will be maintained in place and retained "...during the operation..." of the wind farm.</p> <p><b>2.16 The RSPB strongly disagrees with this approach and strongly recommends that the compensation be explicitly required by the Secretary of State to be provided beyond the lifetime of the wind farm. The Applicant's cost estimates will need to be revised accordingly.</b></p> <p>2.17 There are two key factors that require the compensation to be provided beyond the lifetime of the wind farm:</p>	<p><b>Responses to ExQ3 Volume 4 - 3.2 Biodiversity Ecology and Natural Environment (REP11-088).</b></p> <p>As a result of this question the Applicants updated Section 5.4.3 in Appendix 1 of the <b>Offshore Ornithology Without Prejudice Compensation Measures (REP11-070)</b> at Deadline 11 to clarify that the intention is for the compensation measure to remain in place until the later of either windfarm decommissioning or a determination by the Secretary of State on duration.</p>



ID	ExA's Question	RSPB's Comment	Applicants' Comments
	<p>sure the compensatory measures...will remain in place all the time they're needed, which in most cases will be indefinitely"?</p> <p>c) To the Applicants, RSPB and Natural England - The RSPB has raised this matter in relation to kittiwake, however arguably the principle has wider applicability, not least in this case to artificial nesting sites for gannet. Should an approach be taken in Schedule 18 Part 1 which requires the compensatory measures to remain in place beyond the decommissioning of the wind farm where those measures have been colonised, which of the other Parts of Schedule 18 (i.e. which other compensation measures), if any, might require similar amendment?</p> <p>d) Further to the question in part (c), what does Natural England consider would happen to these sites in terms of their management and status if they were to be maintained after the wind farm has been decommissioned?</p> <p>Could the Applicants please explain any implications of the above approach for the</p>	<p>Time lag in the colony reaching the necessary population size meaning there is likely to be a significant delay before the required population is reached (based on the Applicant's own evidence this could be c.15-20 years, despite a separate assertion that it will produce the required population within 5 years, see paragraphs 3.19-3.29 below);</p> <p>The time taken for the kittiwake population at FFC SPA to recover from the accumulated annual losses of breeding adults over 30 years once the wind farm has ceased operation. The development's impact on the FFC SPA will go substantially beyond the lifetime of the development.</p> <p>2.18 The RSPB set out its concern regarding recovery of the FFC SPA population in the "Long-term implementation" section of Tables 7 and 8 of its April 2020 submission:10</p> <p>"The length of time the compensation measures should be secured for must be based on the combination of the lifetime of the development plus the time it will take the affected seabird population to recover from the impacts."</p> <p>2.19 Unless these issues are acknowledged and addressed, the RSPB is seriously concerned that that compensation will fail to</p>	



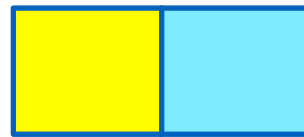
ID	ExA's Question	RSPB's Comment	Applicants' Comments
	Offshore Ornithology Compensation Measures Funding Statement [REP8-081]?	<p>meet its objective stated at paragraph 3.10 of the Kittiwake Compensation Plan to “deliver 73 adult (breeding age) kittiwake into the regional (East Atlantic) population per annum”.</p> <p><b>2.20 We strongly recommend the compensation measures be required to be in place until such time as it is predicted the FFC SPA will have recovered from the scheme's impacts (see sections 3 and 4 below)."</b></p> <p>The RSPB agrees with the Examining Authority that the same logic applies to all other species and or features for which compensation measures are required i.e. the compensation measures should be in place beyond the decommissioning of the wind farm until such time as the relevant feature is deemed to have recovered from the scheme's impacts. This is especially given the uncertainties associated with the compensation measures proposed for each species, and the potential need for both adaptive management measures and additional compensation measures.</p> <p>In the context of the RSPB's position on the EA1N/2 projects, it would apply to those species which the RSPB has concluded it is</p>	



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		not possible to avoid an adverse effect on the integrity of the relevant SPA.	
4	<p><b>3.2.15</b></p> <p><b>Without prejudice compensation measures [REP8-089]: quantification of effects</b></p> <p>In a number of appendices to [REP8-089], the Applicants advance the argument that, "<i>(t)he Project's impacts are small compared with those for most other windfarms, and would also be more than offset by the difference between the total collisions based on consented windfarm designs compared with as-built designs</i>".</p> <p>How do Natural England and the RSPB respond to this statement?</p>	<p>The RSPB's most recent submission on this issue of "consented versus built-out capacity" (sometimes known as "headroom") was made at Deadline 15 of the Norfolk Boreas examination, at paragraphs 9.4-9.5 (repeated below, from RSPB Norfolk Boreas REP15-013):11</p> <p>"9.4 The Applicant refers to projects in the in-combination assessment that have been built out to a lower capacity than that consented as a source of precaution within the assessments. As discussed in our earlier written submissions, this is an acceptable point for windfarms where the Development Consent Order (DCO) has been amended and therefore there is legal certainty regarding the reduction. However, where windfarms still have their original DCOs and therefore the ability to construct more wind turbines, it is not appropriate to do anything less than consider the full extent of those DCOs when considering in-combination/cumulative effects.</p> <p>9.5 The Applicant cites an unpublished report commissioned by the Crown Estate (Appendix 2 of The Applicant's comments on Written Representations and Additional Submissions;</p>	<p><b>The Crown Estate Report - headroom</b></p> <p>The RSPB state that the report for The Crown Estate on this issue was flawed, however the remaining points made by the RSPB do not identify flaws in the methods but rather present the RSPB's position on how they consider this work should be interpreted. The RSPB may disagree with how this work could be used, but that does not mean the basis is flawed.</p> <p>The report presented a very simple means by which the turbine component of the collision mortality calculations (which are essentially just the product of seabird densities, seabird biometric parameters and turbine operating parameters) could be updated from one turbine design to another (e.g. from the turbine model used in the original application to that which has actually been installed in a windfarm). Following this step, the original mortality estimates can simply be multiplied by the resulting turbine 'correction' factor to obtain the equivalent collision estimates for the new turbine design.</p> <p>Put simply, it provides the collision predictions that would have been presented in the application if the assessment had used the built turbine design in their calculations, rather than a worst case design. This method is simply a means to obtain exactly the same</p>



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		<p>REP3-007). This report, which was not designed for use in assessment, was flawed for several reasons and took an approach counter to the principles of sustainable development. Rather than seeking to achieve maximum capacity for least environmental effect, the report implied that the calculated 'headroom' for each species is simply expendable. Furthermore, no new knowledge and understanding was accommodated within the report, for example, there was no clarity on the accuracy of the underlying baseline data sets, uncertainties within the modelling and expression of confidence intervals for the outputs of those models. In the absence of this context, the report cannot be relied upon to be used to inform assessment."</p> <p>In respect of the applicant's statements that "(t)he Project's impacts are small compared with those for most other windfarms", the RSPB refers the Examining Authority to its earlier submissions, in particular the Population Viability Analysis graphs REP4-097:</p> <ul style="list-style-type: none"> <li>• Kittiwake para 2.9/Figure 1;</li> <li>• LBBG, para 2.10/Figure 2.</li> </ul> <p>In the context of ongoing in-combination impacts, each scheme's incremental</p>	<p>information as is contained in a windfarm's non-material change application.</p> <p>Thus, the RSPB's questions about the original seabird data are not relevant, since these are not required for the calculation. The method simply provides like-for-like collisions with only the turbine parameters changed. The fact that this work was not designed for assessment is of no relevance to whether or not the method can be applied to obtain a more appropriate estimate of cumulative collision risk.</p> <p>A key output from this work was that the current cumulative and in-combination collision estimates for all species were over-estimates, since for many windfarms they reflected the application designs, not the actual built ones.</p> <p>The RSPB are correct that no new information (apart from turbine data) are required and this in fact is a key advantage when comparing the mortalities, since the revised estimates can <u>only</u> reflect turbine design changes as that is the only part of the calculation which has changed. This ensures the comparison does not reflect methodological changes which could otherwise confuse matters.</p> <p>There is also an inconsistency in the RSPB arguments. It is stated that <i>'where windfarms still have their original DCOs and therefore the ability to construct more wind turbines, it is not appropriate to do anything less than consider the full extent of those</i></p>

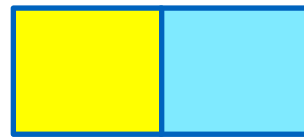


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		<p>contribution to the overall in-combination impacts will act to further reduce those populations (see answer to Q3.2.5 above) and move them further away from achieving their conservation objective (be that to maintain or restore its population for the individual species). Therefore, the EA1N/2 projects will contribute to the loss of SPA integrity for the affected species.</p>	<p><i>DCOs when considering in-combination/cumulative effects</i>'.</p> <p>Hence the RSPB are stating that the original collision mortality estimates, calculated for the turbine design in the application, remain appropriate for inclusion in cumulative assessment.</p> <p>However, these estimates on which the DCO was based were obtained using the datasets which are then brought into question: <i>'no new knowledge and understanding was accommodated within the report, for example, there was no clarity on the accuracy of the underlying baseline data sets'</i>.</p> <p>Thus, the RSPB initially state that the original estimates should be used (i.e. the original data), but then question the accuracy of the data used to obtain them. These two statements are at odds with one another – either the data underpinning the DCO are appropriate or they are not, but the RSPB appear to suggest they are in some situations but not others.</p> <p>Overall, the RSPB's arguments do not detract from the fact that there is clear headroom in the current cumulative and in-combination totals.</p> <p><b>Use of as-built information</b></p> <p>For clarity, the Applicants have not used as-built information within the assessment (the cumulative and in-combination tables were updated in the examination using the agreed Boreas Deadline 8 estimates). The</p>



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			<p>Applicants provided information on the potential headroom available as-built information in <b>section 2.3</b> of the <b>Offshore Ornithology Precaution Note (AS-041)</b>.</p> <p>The point on headroom deriving from the gap between consented and as-built is merely for context.</p> <p><b>The Projects' impacts</b></p> <p>The key point is that the Projects have very low collision mortality estimates when compared to comparable projects.</p>
5	<p><b>3.2.16</b></p> <p><b>Compensatory measures for the guillemot and razorbill features of the FFC SPA</b></p> <p>In response to Natural England's advice [REP9-065] that because the FFC SPA is classified for the <i>albionis</i> sub-species of guillemot, compensation should be ideally directed towards this sub-species, the Applicants make the case [REP10-017, page 14] that the <i>albionis</i> and <i>aalge</i> sub-species are probably not biologically valid classifications or genuinely separate populations, and therefore that compensation at colonies within the range of <i>aalge</i> would still improve the conservation status of colonies in the <i>albionis</i> area.</p>	<p>The RSPB notes the Applicants' response to Natural England. We also note the following:</p> <ul style="list-style-type: none"> <li>• The Flamborough and Filey Coast SPA was classified in 2018, following consultation in 2014. The SPA was, as Natural England states, based on its qualification for the <i>albionis</i> sub-species. This is one of the two main sub-species breeding in the UK;</li> <li>• The responsibility for the official list of species recorded in the UK lies with the British Ornithologists' Union. It recognises three sub-species of common guillemot as occurring in the UK, including both <i>aalge</i> and <i>albionis</i>.</li> </ul>	<p>The RSPB is correct that this is listed as subspecies by the IOC and British Ornithologists' Union (BOU). However, this does not detract from the rather weak evidence that this is a real distinction, and nor does it detract from the evidence that birds from each "subspecies" may move to breed at a colony of the other subspecies. So, it is clear that actions to improve the conservation status of colonies in either subspecies area will benefit the populations of both subspecies.</p>





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	<p>Do Natural England and RSPB accept the evidence and logic progressed by the Applicants in this regard? If not, please explain and evidence your position.</p>	<ul style="list-style-type: none"> <li>The current BOU official list is in turn based on version 10.2 of the official world bird list maintained by the International Ornithological Congress, which also recognises three UK sub-species of common guillemot</li> </ul> <p>Therefore, given that all of these post-date the references cited by the Applicants', we see no reason to vary from Natural England's advice on this matter. Notwithstanding the genetic analysis of Morris-Pocock et al., 2008, the analytical procedures for which are now somewhat dated and which did not include any genetic material from English albionis birds, there remain well established morphological differences between the sub-species. Albionis birds are considerably darker than aalge, and are also smaller and lighter. As such we accept the current position of the British Ornithologists' Union and the International Ornithological Congress and view these as sub-species.</p> <p>We support the implication of NE's position in REP9-095 that in seeking to identify compensation measures with a reasonable guarantee of success, the hierarchical search</p>	





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		for such measures should be applied in the following sequence: <ul style="list-style-type: none"><li data-bbox="884 411 1167 443">• albionis sub-species</li><li data-bbox="884 467 1151 499">• aalge sub-species.</li></ul>	