



**Written Representations  
for the  
Royal Society for the Protection of Birds**

**Submitted for Deadline 8  
25 March 2021**

**Planning Act 2008 (as amended)**

**In the matter of:**

**Application by Scottish Power Renewables for an  
Order Granting Development Consent for the  
East Anglia ONE North/East Anglia TWO Offshore Windfarms**

**Planning Inspectorate Ref: EN010077/EN010078  
Registration Identification Ref: 20024733/20024734**

# 1 Introduction

- 1.1 This representation applies jointly to the development consent order (the DCO) applications by Scottish Power Renewables (the Applicant) for the East Anglia ONE North (EA1N) and East Anglia TWO (EA2) offshore windfarms (collectively “the applications”).
- 1.2 This submission is the RSPB’s combined response to the Applicant’s Deadline 6 submissions for each scheme entitled “Offshore Ornithology Without Prejudice Compensatory Measures” (both numbered REP6-045).

## Scope of Written Submission

- 1.3 This Written Submission covers the following:
  - Response to Sections 1-3
  - Response to Appendixes 1-6 (species specific compensation measures).
- 1.4 This submission should be read in conjunction with the RSPB’s previous submissions to the Examination, in particular our Deadline 4 submission on the screening of compensation measures (REP4-097). 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, also to be submitted at Deadline 8. Due to ongoing resource constraints, we may also refer to submissions made in respect of other, recent offshore windfarm schemes where those are relevant to the issues raised by REP6-045.
- 1.5 In addition, we have reviewed Natural England’s comments on the Applicant’s compensatory measures set out in their Deadline 7 submission (REP7-071). In order to save the Examining Authority’s time we have, where appropriate, set out our agreement (or disagreement) with Natural England’s comments.

## 2 Response to Sections 1-3 (REP6-045, EA1N and EA2)

### Introduction

2.1 Below we set out the RSPB's response to sections 1-3 under the following headings:

- Summary of the RSPB's position on adverse effect on integrity arising from EA1N and EA2
- Overarching comments
  - Insufficient detail to enable full consideration of compensatory measures at examination;
  - Collaborative working with other developers on compensation measures.

### Summary of the RSPB's position on adverse effect on integrity arising from EA1N and EA2

2.2 As stated above, the final Offshore SOCG between the RSPB and the Applicant will be submitted at Deadline 8. As set out in that document, the RSPB's position on adverse effect on integrity is as follows:

#### **Flamborough and Filey Coast Special Protection Area (SPA)**

- **Gannet:** in-combination effects due to collision risk
- **Kittiwake:** in-combination effects due to collision risk
- **Guillemot:** in-combination effects due to displacement
- **Razorbill:** in-combination effects due to displacement
- **Seabird assemblage:** in-combination effects due to the combined effects of collision risk and displacement on the above species.

#### **Alde-Ore Estuary SPA**

- **Lesser black-backed gull:** in-combination effects due to collision risk.

#### **Outer Thames Estuary SPA**

- **Red-throated diver:**
  - Adverse effect on integrity cannot be ruled out due to displacement from EA1N alone; and

- Adverse effect on integrity cannot be ruled out due to displacement from EA1N and EA2 in-combination with existing plans and projects.
- 2.3 The RSPB notes that in REP4-042 (and referred to in REP6-045 at para 35 in Appendix 1 (Kittiwake)), the Applicant has removed Hornsea Three in respect of kittiwake collision risk on the basis that it is compensated for. The RSPB disagrees with this for the following reasons:
- The collision risk impacts of Hornsea Three will not be avoided and therefore the adverse effect on the Flamborough and Filey Coast SPA will still occur. It is appropriate to include those impacts in the model;
  - The effectiveness of the Hornsea Three kittiwake compensation is highly uncertain (hence the Secretary of State has required provision for additional and alternative compensation measures to be made should it fail). Therefore, there is no guarantee that any benefits that might accrue will be benefits to the Flamborough and Filey Coast SPA. This underlines the first point that the adverse effects of Hornsea three on that SPA has not been avoided.
- 2.4 We refer the Examining Authority to section 2 of the RSPB's Deadline 1 submission (REP1-180) for an overview of the SPAs and features affected by the EA1N and EA2 schemes, with particular reference to the site conservation objectives and associated supplementary advice.

### Overarching comments

#### *Insufficient detail to enable full consideration of compensatory measures at examination*

- 2.5 At paragraph 5 of its comments (REP7-071) on the Applicant's compensatory measures, Natural England states as follows:

*"The Applicant's assert that the details of the compensatory measures can be addressed once a decision on the need to compensate for the Project has been made by the SoS. Natural England's view is that this is not acceptable and advise that at the point of decision the SoS should be provided with sufficient confidence that appropriate compensation measures are available and have been or can be secured. In this context, our advice is to leave as little as is possible regarding the nature and implementation of the compensatory measures to the post-consent period, as the level of specific detail provided will be a key factor with respect to confidence in the success of the measures and securing them. Please be advised that the level of outstanding detail associated with the Hornsea Project 3 compensatory measures raises significant challenges to*

*implementation and therefore we counsel against proceeding on the basis that an equivalent level of information to that provided by Hornsea Project 3 will necessarily be sufficient.”*

- 2.6 The RSPB completely agrees with Natural England’s position and advice as set out above, including in respect of the Hornsea Three compensation measures. We consider the approach adopted to the post-consent situation by the Applicant is wholly inadequate. Each of the sections in Appendices 1-6 entitled “*Summary and Roadmap for delivery of compensation (if required)*” are too generic and lack the specific detail that would help ensure the Secretary of State guidance to offshore wind farm developers as set out in paragraph 6.3 of his decision letter (dated 31 December 2020)<sup>1</sup> on Hornsea Three is capable of being met:

*“...It is therefore important that potential adverse impacts on the integrity of designated sites are identified during the pre-application period and full consideration is given to the need for derogation of the Habitats Regulations during the examination...”* (emphasis added)

- 2.7 It is the RSPB’s overarching view that there is wholly insufficient detail provided by the Applicant in REP6-045 to enable “full consideration” to be given to the proposed compensatory measures. We consider the Examining Authority and Secretary of State can have no confidence that compensatory measures with a reasonable guarantee of success have been both identified and secured in ecological, legal and financial terms. For all proposed measures, no (truly) specific locations are identified and for most, no meaningful detail is provided to enable the measures to be properly explored at the Examination. We provide additional comment in section 3 below on the measures proposed for each species.

#### *Collaborative working with other developers on compensation measures*

- 2.8 In various places in REP6-045, the Applicant refers to the potential for collaborative and strategic working with other offshore wind farm developers in the provision of compensatory measures e.g. paragraph 86, Appendix 1 (kittiwake). The RSPB welcomes the suggestion in principle and agree with Natural England’s comments (as set out above) that more detail on how this would work in practice should be provided given the practical challenges (e.g. see kittiwake compensation in paragraph 3.9 below). We consider this should include provision within the DCO to facilitate and,

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<sup>1</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010080/EN010080-003265-EN010080%20Hornsea%20Three%20-%20Secretary%20of%20State%20Decision%20Letter.pdf>

critically, regulate such collaborative working to ensure that each developer's contribution is properly managed, overseen and capable of enforcement if required. This includes the establishment and co-ordination of relevant expert and management steering groups. We are not aware of any proposed conditions in the draft DCO to such effect and therefore have reservations on how this would be made to work in practical and legal terms at this stage.

### 3 Response to Appendices 1-6: species specific compensation measures (REP6-045)

#### Introduction

3.1 This section sets out the RSPB's comments on Appendices 1-6 – the species-specific compensation measures put forward by the Applicant. We have set our comments out under the following headings:

- Compensation measures: overview of European Commission and Defra guidance
- Compensation measures: Flamborough and Filey Coast SPA
  - Appendix 1: Kittiwake
  - Appendix 2: Gannet
  - Appendices 3 and 4: Guillemot and razorbill
- Compensation measures: Alde-Ore Estuary SPA
  - Lesser black-backed gull
- Compensation measures: Outer Thames Estuary SPA
  - Red-throated diver

3.2 Based on the RSPB's view on adverse effects set out in section 2, we consider the matter of compensatory measures remains relevant to all the above SPA features. As at Deadline 4 (paragraph 3.2), we remain of the view that significantly more evidence is required from the Applicant to be able to demonstrate both to the Examining Authority and the Secretary of State for Business, Energy and Industrial Strategy that it has secured the necessary compensation measures to address the potential adverse effects.

3.3 Based on our comments set out below, we conclude that for different reasons, none of the compensation measures proposed by the Applicant provide the necessary detail to provide the Secretary of State with the confidence that they are:

- Appropriate (ecologically);
- If implemented, would have a reasonable guarantee of success; and
- Have been secured (in ecological, financial and legal terms).

## Compensation measures: overview of European Commission and Defra guidance

- 3.4 We have reviewed both the European Commission (EC)<sup>2</sup> and Defra<sup>3</sup> guidance on compensatory measures. Both are in broad alignment as to the principles to adopt when considering compensatory measures. As the EC Guidance is fuller and more up to date, we have used that as our primary reference, while drawing out any additional points made in the Defra guidance since it is UK focused.
- 3.5 In Table 1 below, we summarise the EC's criteria for designing compensatory measures and annotate them with additional commentary based on the RSPB's experience of the principles that should be applied when assessing compensatory measures drawing on previous compensation proposals.

*Table 1: Criteria for designing compensatory measures*

EC criteria	EC guidance summary (emphasis added)	RSPB additional commentary
<b>Targeted</b>	<p>Measures should be the <b>most appropriate to the impact predicted and focused on objectives and targets addressing the Natura 2000 elements affected.</b></p> <p>Must <b>refer to structural and functional aspects of site integrity and habitats/species affected.</b></p> <p><b>Must consist of ecological measures:</b> payments to individuals/funds are not appropriate.</p>	<p>Must address the ecological functions and processes required by impacted species/habitat. Requires shared understanding and agreement on what the impacts are i.e. need to agree nature, magnitude including that they will be continue for the length of project of impacts in order to define objectives for compensation measures.</p> <p>Clear objectives must be established for the compensation measures.</p>
<b>Effective</b>	<p><b>Based on best scientific knowledge available alongside specific investigations for the location where the measures will be implemented.</b> Must be <b>feasible and operational in reinstating the conditions needed to ensure the overall coherence</b> of the Natura 2000 network.</p> <p><b>Measures where no reasonable guarantee of success should not be</b></p>	<p>Scientific evaluation of proposed measures must be carried out before consent is granted to avoid agreeing to measures that is/are not effective or technically feasible. This should include appropriate baseline survey and assessment.</p> <p>Compensation must address the impacted Natura 2000 feature to ensure overall coherence of the network for that feature is maintained. Substitution is not acceptable.</p>

<sup>2</sup> EC (2018) *Managing Natura 2000 sites – The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC (21/11/18) C(2018) 7621 final.*

<sup>3</sup> Defra (2012) *Habitats and Wild Birds Directives: guidance on the application of article 6(4). Alternative solutions, imperative reasons of overriding public interest (IROPI) and compensatory measures.* Paras 28-36.



EC criteria	EC guidance summary (emphasis added)	RSPB additional commentary
	<p><b>considered.</b> The likely success of the compensation scheme should influence final approval of the plan or project in line with the prevention principle.</p> <p>The <b>most effective option, with the greatest chance of success, must be chosen.</b></p> <p><b>Detailed monitoring required</b> to ensure long-term effectiveness with remediation provisions if shown to be less effective.</p>	<p>Must be clearly defined timescales for delivery and measuring success.</p> <p>Monitoring must directly relate to the target species or habitat and the relevant ecological functions and processes.</p> <p>The compensation measures should be provided in perpetuity in line with obligations to ensure the overall coherence of the Natura 2000 network is maintained.</p> <p>Where it is not possible to devise compensatory measures to offset the adverse effects on site integrity, the project should not proceed.</p>
<b>Technical feasibility</b>	<p><b>Design must follow scientific criteria and evaluation</b> in line with best scientific knowledge and take into account the specific requirements of the ecological features to be reinstated.</p>	<p>See <b>Effective</b> above.</p>
<b>Extent</b>	<p>Extent required <b>directly related to:</b></p> <ul style="list-style-type: none"> <li>• the <b>quantitative and qualitative aspects inherent to the elements of integrity likely to be impaired</b></li> <li>• <b>estimated effectiveness of the measure(s)</b></li> </ul> <p>Therefore, ratios best set on a case-by-case basis. Ratios should generally be well above 1:1. Ratios of 1:1 or below only considered when shown measures will be fully effective in reinstating structure and functionality in a short period of time.</p>	<p>Based on an assessment of the necessary ecological requirements to restore species' populations and the related habitat structure and functions identified in the compensation objectives. Determining the minimum appropriate quantity will require an understanding of the quality of the compensation measures and how effective they will be in reinstating the required structures and functions.</p> <p>Any identified uncertainty in success should be factored in to increased ratios. However, if there is no reasonable guarantee of success that measure should not be considered (see <b>Effective</b> under EC criteria).</p>
<b>Location</b>	<p><b>Located in areas where they will be most effective</b> in maintaining overall coherence of the Natura 2000 network.</p> <p>Pre-conditions to be met include:</p> <ul style="list-style-type: none"> <li>• <b>must be within same range/ migration route/wintering areas for bird species and provide functions comparable those justifying selection of original site esp. geographical distribution;</b></li> <li>• <b>must have/be able to develop the ecological structure and functions required by the relevant species (or habitat)</b></li> </ul>	<p>While the preference is for compensation measures as geographically close to the location of the damage, it is important to consider whether or not the compensation measures will be subject to pressures impacting their efficacy in that location e.g. prey availability, disturbance, and/or other impacts from the same or similar developments.</p> <p>Therefore, compensation measures should be located so as to maximise proximity while minimising external pressures that may reduce likelihood of success.</p>

EC criteria	EC guidance summary (emphasis added)	RSPB additional commentary
	<ul style="list-style-type: none"> <li><b>must not jeopardise integrity of any other Natura 2000 site.</b></li> </ul> <p>Spatial search hierarchy starting as close as possible to the impacted Natura 2000 site and working out from there.</p>	
<b>Timing</b>	<p>Case by case approach but <b>must provide continuity in the ecological processes essential to maintain the structure and functions that contribute to the Natura 2000 network coherence.</b></p> <p>Requires <b>tight co-ordination between implementation of the plan or project and the compensation measures.</b></p> <p>Factors to consider include:</p> <ul style="list-style-type: none"> <li><b>no irreversible damage to the site before compensation in place</b></li> <li><b>compensation operational at the time damage occurs.</b> If not possible, over-compensation required</li> <li><b>time lags only admissible if will not compromise objective of “no net loss” to coherence of Natura 2000 network;</b></li> <li>May be possible to scale down in time depending on whether the negative effects are expected to arise in short, medium or long term.</li> </ul> <p><b>All technical, legal or financial provisions must be completed before plan or project implementation starts</b> to prevent unforeseen delays that compromise effective compensation measures.</p>	<p>Compensation measures should be fully functional before any damage occurs to ensure the overall coherence of Natura 2000 is protected. This requires careful alignment of the timelines for implementing the plan or project and the compensation measures.</p> <p>Suggested time lags in delivering fully functional compensation will need to be carefully considered and can only be accepted where this will not compromise the continuity of essential ecological processes,</p> <p>Any effect of delay should be factored into the design and additional compensation measures provided (see also <b>Extent</b> above).</p>
<b>Long-term implementation</b>	<p><b>Legal and financial security required for long-term implementation and for protection, monitoring and maintenance of sites to be secured before impacts occur.</b></p>	<p>Legal rights to secure and implement the compensation measures must be in place prior to consent being granted.</p> <p>And robust financial guarantees are required to fund implementation, monitoring and any necessary remediation measures.</p> <p>In line with Government policy, the Government should commit to including compensation measures, once delivered, within the Natura 2000 network.</p>

3.6 The Defra guidance reinforces some of the points above, in particular by requiring:

- Consideration of whether the measure is technically proven or considered reasonable. Measures for which there is no reasonable expectation of success should not be considered (paragraph 31)
- Compensation should be proportionate and no more than is needed to protect the coherence of the Natura 2000 network, having factored in the need to increase the compensation to deal with any uncertainty, time lag etc (paragraphs 32 and 33)
- The need to condition the consent to include [remedial] actions should the compensation prove to be less successful than anticipated (paragraph 33)
- Compensation must be sustainable – therefore it is necessary to secure medium to long term management (paragraph 34); and
- Compensation must be secured before consents are given for the proposal to commence i.e. must be satisfied all the necessary legal, technical, financial and monitoring arrangements are in place to ensure the compensation measures proceed. If it is not possible to secure adequate compensatory measures, a derogation allowing the proposal to commence must not be granted (paragraph 35).

#### Compensation measures: Flamborough and Filey Coast SPA

3.7 Below we set out our comments on the compensation measures proposed for adverse effects on the kittiwakes, gannets, guillemots and razorbills of the Flamborough and Filey Coast SPA set out in REP6-045.

#### *Appendix 1: Kittiwake compensatory measures (artificial nesting sites)*

3.8 In our deadline 4 submission we argued that clear evidence of the efficacy of this measure was required (paragraphs 3.10-3.12, REP4-097). Having reviewed the further information in REP6-045 on the proposed measure (artificial nesting sites), we remain of this view. The “Barriers to be overcome” we outlined at Deadline 4 remain and it is the RSPB’s considered view that the ability to create successful artificial nesting structures for kittiwakes with a reasonable guarantee of success is unproven and would be experimental. This is notwithstanding the Secretary of State’s decision to grant consent for the Hornsea Three offshore wind farm.

3.9 Having reviewed Natural England’s submission (REP7-071), we agree with its comments on the following issues:

- Conservation objectives (para 18): the RSPB concurs with Natural England’s position regarding the 1987 count data and the evidence base that supports that position
- Quantification of effect (para 21)
- Broad location (para 22): the RSPB shares the concerns that the lack of certainty in the Applicant’s proposals regarding specific structures and specific locations, combined with the lack of detail regarding any mechanism for cross-project collaboration (see paragraph 2.8 above) means it is unclear whether all projects will be able to deliver their compensation requirements. Projects such as EA1N/2 could be left with sub-optimal locations, especially if rival projects have acquired the more suitable locations. To some extent, this logic applies to other species/compensation proposals too.
- Ecological rationale (para 23)
- Collaborative working with other developers (para 24).

#### Conclusion

3.10 Therefore we conclude that there can be no confidence, based on the information provided to the Examination, that the compensation measure currently proposed for kittiwakes would have a reasonable guarantee of success as required by both Defra<sup>4</sup> and European Commission<sup>5</sup> guidance on compensation measures.

#### *Appendix 2: Gannet compensatory measures – encourage establishment of new colony/artificial nest sites*

3.11 In our deadline 4 submission we argued that clear evidence of the efficacy of this measure was required (paragraphs 3.7-3.9, REP4-097). Having reviewed the further information in REP6-045 on the proposed measure, we do not consider it is viable as a compensation measure and it remains

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<sup>4</sup> Defra (2012) *Habitats and Wild Birds Directives: guidance on the application of article 6(4). Alternative solutions, imperative reasons of overriding public interest (IROPI) and compensatory measures*. Paras 28-36.

<sup>5</sup> EC (2018) *Managing Natura 2000 sites – The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC (21/11/18) C(2018) 7621 final*.

highly speculative. No evidence has been brought forward to demonstrate it has been proven to work for this species and therefore there cannot be a reasonable guarantee of success.

3.12 It is apparent that the Applicant recognises the lack of robust scientific evidence. First, in citing Furness *et al* (2013) at paragraph 107 (Appendix 2, REP6-045), it is readily apparent that Furness was uncertain if gannets could be encouraged to colonise new sites. The Applicant fails to provide any new evidence since 2013 that would remove or reduce those uncertainties. In fact, they go on to imply that aspects of the evidence base for this proposed measure for gannets is poor e.g. see paragraphs 112 and 117 of Appendix 2 (REP6-045):

*“...it must be acknowledged that there is a degree of uncertainty about the effectiveness of such measures [models/playback] for northern gannet.”* (paragraph 112, Appendix 2)

*“...as this would be a comparatively novel undertaking for this species there are questions about the time frame for achieving success...”* (paragraph 117, Appendix 2)

3.13 Having reviewed Natural England’s submission (REP7-071), we agree with its comments on the following issues:

- Supplementary advice target to avoid deterioration (paragraph 26)
- Artificial nests (paragraph 27)
- Potential location (paragraph 28).

#### Conclusion

3.14 Therefore, we conclude that no compensation measure for gannet has been put forward that would have a reasonable guarantee of success as required by both Defra<sup>6</sup> and European Commission<sup>7</sup> guidance on compensation measures e.g. see paragraph 31 of the Defra guidance which requires:

- Consideration of whether the measure is technically proven or considered reasonable.  
Measures for which there is no reasonable expectation of success should not be considered.  
(emphasis added)

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<sup>6</sup> Defra (2012) *Habitats and Wild Birds Directives: guidance on the application of article 6(4). Alternative solutions, imperative reasons of overriding public interest (IROPI) and compensatory measures.* Paras 28-36.

<sup>7</sup> EC (2018) *Managing Natura 2000 sites – The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC (21/11/18) C(2018) 7621 final.*

*Appendices 3 and 4: Guillemot and razorbill compensatory measures (rat eradication)*

3.15 In our deadline 4 submission we expressed our concern that the Applicant had omitted any reference to guillemot and razorbill from the Flamborough and Filey Coast SPA and set out our comments on the screening consultation (see paragraph 3.13, REP4--097). Our comments highlighted:

- the limited evidence of benefits to cliff nesting auks in the UK – a combination of small sample size and short-term data;
- that the best benefits from island restoration are likely to be where populations can recover from mammal predation in situations where an abundant/regular supply of food is available; and
- the need for a full-scale feasibility study of any potential location chosen before DCO consent is granted to be sure of a “reasonable guarantee of success”.

3.16 We therefore welcome the Applicant’s presentation of information on possible compensatory measures for both guillemot and razorbill in REP6-045. However, both appendices lack critical detail including (fundamentally) the selected locations for rat eradication and any associated feasibility study to demonstrate the benefit that would be guaranteed to accrue to guillemot and razorbill.

3.17 Having reviewed Natural England’s submission (REP7-071), we agree with its comments on the following issues:

- Insufficient detail (paragraph 29)
- Population drivers (paragraph 30).

3.18 In respect of population drivers, it would be necessary for the Applicant to show that other important population drivers (such as food supply):

- Did not provide a better explanation of any population increases recorded post-eradication in historic cases;
- Would not act as a constraint on any proposed location for rat eradication.

3.19 No such evidence is provided.

## Conclusion

3.20 Therefore we conclude that there can be no confidence, based on the information provided to the Examination, that the compensation measures currently proposed for guillemot and razorbill would have a reasonable guarantee of success as required by both Defra<sup>8</sup> and European Commission<sup>9</sup> guidance on compensation measures.

## Comments on compensation measures: Alde-Ore Estuary SPA – breeding lesser black-backed gulls (predator proof fencing)

3.21 The Applicant continues to propose the use of predator control as a potential compensatory measure for breeding lesser black-backed gulls. As set out in our Deadline 4 submission (paras 3.14-3.16, REP4--097), the RSPB view is that this is possibly viable but must not be considered in isolation of other key factors (habitat quality, food availability, disturbance and flooding) and for the reasons given it should not be taken forward in the form proposed. This remains our considered view.

3.22 Notwithstanding the above, and in line with our overarching comments in section 2, the Applicant has failed to demonstrate that it has legally and financially secured a specific location in which to implement its proposed compensation measure.

3.23 We note that Natural England has agreed with the Applicant (REP7-071):

- That measures to reduce egg and chick predation by mammals is likely to be the most ecologically beneficial measure to take forward; and
- In principle, installing New Zealand style predator proof fencing (as opposed to more traditional electric post-and-wire fencing used to manage impacts on seabird colonies) would be beneficial.

3.24 The RSPB respectfully disagrees on the basis that it is not additional to necessary site management measures. Our reasons are as follows:

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<sup>8</sup> Defra (2012) *Habitats and Wild Birds Directives: guidance on the application of article 6(4). Alternative solutions, imperative reasons of overriding public interest (IROPI) and compensatory measures*. Paras 28-36.

<sup>9</sup> EC (2018) *Managing Natura 2000 sites – The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC (21/11/18) C(2018) 7621 final*.

- The Alde-Ore Estuary SPA's Site Conservation Objectives<sup>10</sup> and Natural England's Supplementary Advice<sup>11</sup> are to restore the lesser black-backed gull colony to favourable status. This includes restoring the breeding population to a target level which is above 14,074 pairs;
- In its Supplementary Advice Natural England identifies a number of factors that need to be addressed in order to achieve this: safe passage to nesting and feeding areas, reducing disturbance (including to nesting birds), maintaining habitat quality and food supply;
- Natural England's Site Improvement Plan<sup>12</sup> for the Alde-Ore Estuary Natura 2000 sites identified four priority issues and measures with regard breeding lesser black-backed gulls, including ensuring adequate protection of nesting birds from predators;
- Our understanding of Natural England's agreement to the use of New Zealand style fencing is that it is superior to traditional fencing and thus is essential to reduce/avoid mammal predation (and disturbance) within the Alde-Ore Estuary SPA and secure an increase breeding productivity and ensure successful breeding. In other words, Natural England consider reliance on traditional fencing is not adequate in preventing mammalian predation of this species in this location (Orfordness);
- Therefore, logically, this superior standard of fencing is clearly necessary for SPA site management in order to contribute towards the restoration of the breeding colony to its target of above 14,074 pairs, and so cannot be considered a compensation measure. It is not "additional", but "essential" to site management.

3.25 Having reviewed Natural England's submission (REP7-071), we agree with its comments at paragraphs 32-33 on the quantification of effect i.e. an adverse effect on integrity of the Alde-Ore

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<sup>10</sup><https://designatedsites.naturalengland.org.uk/Marine/MarineSiteDetail.aspx?SiteCode=UK9009112&SiteName=alde-ore&countyCode=&responsiblePerson=&unitId=&SeaArea=&IFCAArea=&NumMarineSeasonality=8&SiteNameDisplay=Alde-Ore%20Estuary%20SPA&HasCA=1&NumMarineSeasonality=8&SiteNameDisplay=Alde-Ore%20Estuary%20SPA#hlco> (accessed 22 March 2021)

<sup>11</sup><https://designatedsites.naturalengland.org.uk/Marine/SupAdvice.aspx?SiteCode=UK9009112&SiteName=alde-ore&SiteNameDisplay=Alde-Ore+Estuary+SPA&countyCode=&responsiblePerson=&SeaArea=&IFCAArea=&NumMarineSeasonality=8> (accessed 22 March 2021)

<sup>12</sup> Natural England (2014) *Site Improvement Plan Alde-Ore Estuaries*.



Estuary SPA cannot be ruled out due to the contribution of EA1N and EA2 to the in-combination total of LBBG mortalities per annum from the Alde-Ore Estuary SPA.

*Havergate Island reserve management*

3.26 At paragraph 209 (Appendix 5, lesser black-backed gull), the Applicant states that:

*“Establishing a protected area for lesser black-backed gulls at Orford Ness would also reduce the conflict between recovering gull breeding numbers and protecting avocets and other ground nesting birds from gull predation at Havergate Island.”*

3.27 The reference to a claimed benefit to the RSPB’s Havergate Island reserve (part of the Alde-Ore Estuary SPA) is mistaken and based on an outdated understanding of the RSPB’s management priorities for this reserve which we have corrected in other offshore wind farm examinations.

3.28 The RSPB is already managing Havergate Island to benefit breeding lesser black-backed gulls. Separately, site management measures at Orfordness are also required to benefit breeding lesser black-backed gulls and restore the SPA population. Below we quote from paragraph 5.5 in the RSPB’s Deadline 18 submission to the Norfolk Boreas examination (REP18-038, dated 12 October 2020)<sup>13</sup>:

*“...As stated by the RSPB in REP10-067 and other submissions, the RSPB’s management priority at Havergate Island is now to provide positive management for breeding lesser black-backed gulls. This will inevitably respond to the specific management needs at Havergate Island, distinct from the management challenges faced at Orfordness.*

*Relying on Havergate Island alone will not enable the [Alde-Ore Estuary] SPA population of lesser black-backed gulls to be restored, as the carrying capacity of Havergate Island has largely been reached and cannot accommodate the additional pairs necessary to achieve the target population. To restore the SPA population to favourable condition requires site management measures to be carried out at Orfordness. This requires the experimental research to be carried out; to date, this has not taken place. Given that lesser black-backed gulls typically breed in their fourth year, should the research be commissioned it will take several years before results would be available to*

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<sup>13</sup><https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010087/EN010087-002559-DL18%20-%20RSPB%20-%20Deadline%20Submission.pdf>

*identify the most appropriate SPA site management measures to restore the colony at Orfordness...”*

#### *Conclusion*

3.29 Therefore we conclude that the compensation measures as proposed should properly be treated as site management measures as they would not be “additional” to those required to restore the Alde-Ore Estuary SPA breeding population of lesser black-backed gulls to favourable status in line with the SPA’s conservation objectives. In this respect we disagree with Natural England.

3.30 The RSPB’s view is as set out at paragraph 3.16 of REP4—097:

#### **“Possible viable measures**

*Consideration of the feasibility of:*

- *Creating new habitat to support breeding lesser black-backed gulls outside the existing protected area network for this species;*
- *Measures to increase the population of a large colony not protected by the existing lesser black-backed gull protected area network.*

#### **Barriers to be overcome**

*In addition to agreement on detailed designs to meet agreed compensation objectives, among other things:*

- *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;*
- *Avoiding locations that expose birds breeding at compensation site to unnecessary risk e.g. collision risk with offshore wind farms.”*

3.31 Unfortunately, the Applicant has not explored these proposals during the Examination.

#### **Comments on compensation measures: Outer Thames Estuary SPA – non-breeding red-throated diver (navigation management)**

3.32 As set out in paragraph 2.2 above, the RSPB’s position on adverse effect on integrity in respect of the permanent displacement of red-throated diver in the Outer Thames Estuary SPA is as follows:

- Adverse effect on integrity cannot be ruled out due to displacement from EA1N alone; and

- Adverse effect on integrity cannot be ruled out due to displacement from EA1N and EA2 in combination with existing plans and projects.

3.33 The RSPB has considered the Applicant’s proposal for navigation management as a compensation measure set out in Appendix 6 of REP6-045. We have also considered Natural England comments in its REP7—071.

3.34 Having reviewed Natural England’s submission (REP7-071), we agree with the following statements:

- Quantification of effect (paragraphs 38-39), including the inclusion of EA2 in the in-combination assessment
- Navigation management (paragraphs 40-42).

#### *Conclusion*

3.35 The RSPB’s conclusion is that based on the information provided, there is no compensation measure proposed that addresses the adverse effect arising from the permanent displacement of non-breeding red-throated diver from within the Outer Thames Estuary SPA. Therefore, no compensation measure has been put forward that would have a reasonable guarantee of success as required by both Defra<sup>14</sup> and European Commission<sup>15</sup> guidance on compensation measures.

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<sup>14</sup> Defra (2012) *Habitats and Wild Birds Directives: guidance on the application of article 6(4). Alternative solutions, imperative reasons of overriding public interest (IROPI) and compensatory measures*. Paras 28-36.

<sup>15</sup> EC (2018) *Managing Natura 2000 sites – The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC (21/11/18) C(2018) 7621 final*.