

**Written Submission for Deadline 10  
for  
The Royal Society for the Protection of Birds**

**1 April 2019**

**Planning Act 2008 (as amended)**

**In the matter of:**

**Application by Ørsted Hornsea Project Three (UK) Ltd for an Order Granting Development  
Consent for the**

**Hornsea Project Three Offshore Wind Farm**

**Planning Inspectorate Ref: EN010080  
Registration Identification Ref: 20010702**



## The Applicant's Documents

### The Revised Development Consent Order

#### Ecological Management Plan

The RSPB welcome the addition of the words "and the relevant recommendations of appropriate British Standards" to the Ecological Management Plan provisions (Schedule 1, Part 3 – Requirements, Regulation 10(1)).

#### In-Principle Monitoring Plan and Ornithological Monitoring Plan

The RSPB requests that it is involved in future discussions concerning the scope and content of the ornithological monitoring under the Ornithological Monitoring Plan (Schedule 11 – Deemed Marine Licence under the 2009 Act – Generation Assets, Part 2 – Conditions, Regulation 13(1)(l)), the In-Principle Monitoring Plan (Schedule 11 – Deemed Marine Licence under the 2009 Act – Generation Assets, Part 2 – Conditions, Regulation 17(1)(a)) and the baseline report proposals (Schedule 11 – Deemed Marine Licence under the 2009 Act – Generation Assets, Part 2 – Conditions, Regulation 17(1)(b)).

#### Post-construction monitoring

The RSPB requests that it is involved in discussions about any post-construction monitoring to be undertaken via the Ornithological Monitoring Plan (Schedule 11 – Deemed Marine Licence under the 2009 Act – Generation Assets, Part 2 – Conditions, Regulation 19(2)(c)).

#### Outline Code of Construction Practice

The RSPB notes the revised text in relation to the pink-footed goose management plan (paragraph 6.5.1.40). We are content with the proposed changes.

### Applicant's comments on Written Representations and Responses submitted by Interested Parties at Deadline 7

The RSPB note the Applicant's statement in relation to a response by Natural England on the Report on the Implications for European Sites (Comment 3.1, Section 3.0.9, page 4):

The Applicant would further conclude that where a negligible impact is identified that an in-combination assessment would be unnecessary as any contribution from Hornsea Three would not materially alter the current in-combination impact.

The RSPB disagrees with this approach and considers it to be fundamentally flawed. The whole purpose of in-combination assessment is to address the "last straw that broke the camel's back" situation. It is precisely at the point where the assessment of a scheme alone considers that it is unlikely to have an effect that it is important to go on to assess the impacts when other schemes are taken into account. The purpose of the in-combination assessment is to pick up the residual impacts which would otherwise be overlooked and could slowly accumulate until a problem is caused. We note that Natural England return to these concerns in Comment 3.2, section 3.1.1 (also on page 4). This issue is considered in the European Union's guidance Managing Natura 2000, which states:

A series of individually modest impacts may, in combination, produce a significant impact. As the Court has pointed out '*the failure to take account of the cumulative effect of projects in practice leads to a situation where all projects of a certain type may escape the obligation to carry out an assessment, whereas, taken together, they are likely to have significant effects on the environment*' (C-418/04, C-392/96 paragraphs 76, 82).

Article 6(3) tries to address this by taking into account the combination of effects from other plans or projects. In this regard, Article 6(3) does not explicitly define which other plans and projects are within the scope of the in-combination provision.<sup>1</sup>

Consequently, the RSPB consider that it is not appropriate for the Applicant to decline to undertake an in-combination assessment.

The RSPB note the Applicant's concluding remarks on Natural England's evidence on page 23:

The Applicant submits that it is incumbent on the competent authority to ensure, insofar as Natural England disagree with the findings of a comprehensive scientific assessment and now wish to present their own alternative analysis, that Natural England is held to a similar standard as the Applicant, whereby Natural England is required to justify its assumptions and substantiate its position through cogent factual submissions based upon sound scientific evidence.

The RSPB consider that this approach is entirely divorced from the requirements of the Development Consent Order process and the requirements of The Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017. As a Statutory Nature Conservation Body, if Natural England are not convinced by the evidence that the Applicant has presented it is for the Applicant to address those concerns and not, as they contend, for Natural England to resolve any shortcomings that it has identified in the Applicant's assessment work. This view is supported by *Managing Natura 2000*, which states:

**The onus is therefore on demonstrating the absence of adverse effects rather than their presence**, reflecting the precautionary principle (C-157/96 paragraph 63). It follows that the appropriate assessment must be sufficiently detailed and reasoned to demonstrate the absence of adverse effects, in light of the best scientific knowledge in the field (C-127/02 paragraph 61).<sup>2</sup>

The key issue is that it is for the Applicant to demonstrate that there will not be an adverse effect on integrity of any Natura 2000 site as part of the Development Consent Order application. If they do not supply adequate evidence to discharge that requirement, it is not for Natural England to rectify that situation.

### Statement of Common Ground between Ørsted Hornsea Project Three (UK) Ltd and Norfolk Vanguard Ltd and Norfolk Boreas Ltd

The RSPB is profoundly concerned by the statement in *Table 2 – Status of further consideration between Hornsea Three* in relation to offshore ornithology that

On the basis that cumulative effects have been scoped out, or where CEA has not identified any significant cumulative effects – it is agreed that no further consideration of these effects necessary at this time.

The Applicant would further conclude that where a negligible impact is identified that an in combination assessment would be unnecessary as any contribution from Hornsea Three would not materially alter the current in-combination impact.

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<sup>1</sup> *Managing Natura 2000 sites - The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC* (Brussels, 21.11.2018, C(2018) 7621 final), section 3.5.3.

<sup>2</sup> *Managing Natura 2000*, section 3.7.3.

Given the ongoing concerns in relation to the potential impacts of Hornsea Three upon the Flamborough and Filey Coast SPA we do not consider that it is credibly possible for cumulative effects between Hornsea Three and Norfolk Vanguard to have been scoped out at this stage. We urge the Examining Authority to treat this assertion with a high degree of scepticism.

## Natural England's Documents

### Natural England's Response to the Applicant's Deadline 7 Submissions

The RSPB support Natural England's position as set out in paragraphs 1.2.1 to 1.2.3. It is for the Applicant to supply sufficient evidence for Natural England to be able to draw a conclusion that there is no likely significant effect upon Natura 2000 sites: consequently if Natural England consider that there is insufficient evidence to enable them to do so it is inappropriate for the Applicant to criticise Natural England on this basis. It is important to note that the concerns about the adequacy of the data available for the assessments is shared by the RSPB.