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To: [Hornsea Project Three](#)
Subject: Hornsea Three: request for comments on further information - RSPB response
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Dear Sir/Madam

Further to the request by BEIS dated 27 September 2019 (updated with a revised timetable on 19 December 2019), I am pleased to attach the RSPB's comments on the further ornithological information provided by the applicant for the Hornsea Three offshore wind farm. We will send a hard copy of this submission to the address provided in the 27 September 2019 letter.

The RSPB notes that BEIS will provide a 28 day period for interested parties to respond to the detailed information provided by the Applicant and Natural England at the 14 February 2020 deadline. We look forward to receiving further details on this consultation period in due course.

I would be grateful if you could confirm receipt of this email and its attachment.

With kind regards,

Andrew Dodd
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**Written Submission
for
The Royal Society for the Protection of Birds**

**Response to the Secretary of State's September
Consultation**

14 February 2020

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**



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1. Introduction

The RSPB is grateful for the opportunity to comment on the additional ornithological information provided by the Applicant after the Examining Authority's (ExA) report had been submitted to the Department for Business, Energy and Industrial Strategy (BEIS).

We have reviewed this information and set out our views on both this information and its implications for the wider questions posed by BEIS in its letter of 27 September 2019.

This document considers:

- The features of the Flamborough and Filey Coast SPA and their conservation objectives;
- Legal requirements;
- The RSPB's position at the end of the Hornsea Three examination;
- The RSPB's position at the end of the Norfolk Vanguard examination;
- The RSPB's view on the additional information supplied;
- The RSPB's conclusions on affected SPA features of the Flamborough and Filey Coast SPA;
and
- Next steps

While we appreciate that some of the information in this submission is likely to be contained within the Examining Authority's report, for ease of reference we have included the relevant background information here to provide context to our comments and observations.

2. The nature conservation importance of Flamborough and Filey Coast SPA

Context

The UK is of outstanding international importance for its breeding seabirds, including northern gannet for which the UK supports over 50% of the world population and around 10% of the world population of kittiwake (Table 1). As with all Annex I and regularly migratory species, the UK has particular responsibility under the Birds Directive¹ to secure the conservation of these important seabird population.

Table 1: Proportion of the world population of seabird species relevant to the Hornsea Three project that the UK supports.

Species	% World population	Status
Northern gannet ²	c.56	Most increasing, but a few colonies have declined
Black-legged kittiwake ³	8	Declining
Guillemot ⁴	c.13	Some colonies increasing but many declining
Razorbill ⁵	c.22	A few colonies increasing but many declining

The Flamborough and Filey Coast SPA

Qualifying features

The Flamborough Head and Bempton Cliffs SPA was designated under Article 4(2) of the Birds Directive as an SPA in 1993 due to the presence of 83,370 pairs of black-legged kittiwake (*Rissa tridactyla*), representing 4% of the Eastern Atlantic breeding population. In 2001, the UK SPA Review⁶ found that it also qualified under Article 4(2) as a site regularly supporting at least 20,000 seabirds, due to at the time of designation, the site regularly supporting 305,784 individual seabirds including: puffin (*Fratercula arctica*), razorbill (*Alca torda*), guillemot (*Uria aalge*), herring gull (*Larus argentatus*), gannet (*Morus bassanus*), and kittiwake. Kittiwake and the seabird assemblage are therefore the qualifying features of this SPA.

¹ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (codified version) (the Birds Directive).

² <https://jncc.gov.uk/our-work/northern-gannet-morus-bassanus/>

³ <https://jncc.gov.uk/our-work/black-legged-kittiwake-rissa-tridactyla/>

⁴ <https://jncc.gov.uk/our-work/guillemot-uria-aalge/>

⁵ <https://jncc.gov.uk/our-work/razorbill-alca-torda/>

⁶ Stroud, DA, Chambers, D, Cook, S, Buxton, N, Fraser, B, Clement, P, Lewis, P, McLean, I, Baker, H & Whitehead, S (eds). 2001. The UK SPA network: its scope and content. JNCC, Peterborough.

In January 2014, Natural England held a consultation on proposals to change the SPA. The proposals comprised changes to the designated site boundary including extending it to cover part of the Filey Coast (hence the change in its name) and changes to the numbers of qualifying species. This new site was formally designated in August 2018⁷, incorporating the Flamborough Head and Bempton Cliffs SPA.

At the same time, Natural England also conducted a review of the seabird populations using contemporary data (Natural England Departmental Brief 2014⁸). A summary of Natural England’s review of the ornithological interest of the SPA is as follows with the key features set out in more detail in [Table 2](#) below:

The application of the JNCC SPA selection guidelines to current data for this site confirm that it qualifies by regularly supporting internationally important numbers of breeding black-legged kittiwakes, northern gannet, common guillemot and razorbill and an assemblage of European importance of over 20,000 breeding seabirds. Black-legged kittiwake, northern gannet, common guillemot and razorbill are all main components of the assemblage and present in internationally important numbers. However, northern fulmar is also present in sufficient numbers to warrant being listed as main component species of the assemblage, since numbers exceed 2,000 individuals (10% of the minimum qualifying assemblage of 20,000 individuals). In addition, Atlantic puffin, herring gull, European shag (*Phalacrocorax aristotelis*) and great cormorant (*Phalacrocorax carbo*) are also part of the breeding seabird assemblage.

Table 2: Summary of Ornithological Interest of the SPAs

Feature	Count (period)	% of subspecies or population (pairs)	Interest Type
Flamborough Head and Bempton Cliffs SPA			
Black-legged kittiwake <i>Rissa tridactyla</i>	83,700 pairs (1987)	4% Western Europe	Migratory
Flamborough and Filey Coast SPA			
Black legged kittiwake <i>Rissa tridactyla</i>	44,520 pairs 89,041 breeding adults (2008-2011)	2% North Atlantic	Migratory
Northern gannet <i>Morus bassanus</i>	8,469 pairs	2.6% North Atlantic	Migratory

⁷ Flamborough and Filey Coast SPA citation: <http://publications.naturalengland.org.uk/file/4690761199386624>

⁸ Natural England (2014) Proposed extension to Flamborough Head and Bempton Cliffs Special Protection Area and renaming as Flamborough and Filey Coast potential Special Protection Area. Departmental Brief. Natural England.

Feature	Count (period)	% of subspecies or population (pairs)	Interest Type
	16,938 breeding adults (2008-2012)		
Common guillemot <i>Uria aalge</i>	41,607 pairs 83,214 breeding adults (2008-2011)	15.6% (<i>Uria aalge albionis</i>)	Migratory
Razorbill <i>Alca torda</i>	10,570 pairs 21,140 breeding adults (2008-2011)	2.3% (<i>Alca torda islandica</i>)	Migratory
	Count period	Average number of individuals	
Seabird assemblage	2008-2012	215,750	

Site Conservation Objectives and draft Supplementary Advice

Natural England has set out draft conservation advice for the Flamborough and Filey Coast SPA, including Conservation Objectives⁹ and Supplementary Advice on Conservation Objectives¹⁰. Below, we summarise the key aspects of that conservation advice.

Conservation Objectives

The Conservation Objectives for the Flamborough and Filey Coast SPA are as follows:

...to ensure that, subject to natural change, the integrity of the site is maintained or restored as appropriate, and that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;

- *The extent and distribution of the habitats of the qualifying features*
- *The structure and function of the habitats of the qualifying features*
- *The supporting processes on which the habitats of the qualifying features rely*
- *The population of each of the qualifying features*
- *The distribution of the qualifying features within the site.*

Since this site was originally designated as an SPA in 1993, the national populations of both kittiwake and some assemblage species have suffered substantial declines. For example, the UK breeding kittiwake population has reduced by 70% since 1986 (State of the UK's Birds, 2017¹¹). Within the SPA

⁹ [Natural England Conservation Advice for Marine Protected Areas: Draft advice for Flamborough to Filey Coast SPA](#) (variously dated March and September 2019). Accessed 13 December 2019.

¹⁰ [Natural England: Flamborough to Filey Coast SPA: draft Supplementary Advice on Conservation Objectives \(updated 13 September 2019\)](#). Accessed 13 December 2019.

¹¹ Hayhow D.B., Ausden M.A., Bradbury R.B., Burnell D., Copeland A.I., Crick H.Q.P., Eaton M.A., Frost T., Grice P.V., Hall C., Harris S.J., Morecroft M.D., Noble D.G., Pearce-Higgins J.W., Watts O., Williams J.M. (2017) State of the UK's Birds 2017. The RSPB, BTO, WWT, DAERA, JNCC, NE and NRW, Sandy, Bedfordshire.
<https://www.bto.org/research-data-services/publications/state-uk-birds/2017/state-uk-birds-2017>

there has been an approximate 50% reduction in the kittiwake population from the original 83,700 breeding pairs (designation population, 1987) to an average of 44,520 breeding pairs between 2008 and 2011.

The current SPA citation does not reflect this substantial decline in the population of breeding kittiwake or other seabird species included under the assemblage feature.

Draft Supplementary Advice on Conservation Objectives (dated 13 September 2019)

Natural England's Supplementary Advice on the Conservation Objectives for the Flamborough and Filey Coast SPA¹² identifies, for each SPA feature, key attributes and targets. Attributes¹³ are the ecological characteristics or requirements of the classified features within the SPA and deemed to best describe the site's ecological integrity. If safeguarded this will enable achievement of the Conservation Objectives and favourable conservation status for all the designation features, including the assemblage.

Table 3 below sets out, for each qualifying feature, the targets in respect of the following attributes:

- Breeding population: abundance
- Connectivity with supporting habitats
- Disturbance caused by human activity

The RSPB considers these attributes and targets are particularly relevant to BEIS's consideration of the Hornsea Three scheme as they respectively relate to:

- the population levels at which the features should be maintained or restored to;
- the need to maintain or restore safe passage of birds moving between their nesting and feeding areas; and
- the need to reduce/avoid disturbance to foraging, feeding, moulting and/or loafing birds.

¹² Supplementary Advice on the Conservation Objectives for the Flamborough and Filey Coast SPA, Natural England, 13 September 2019:

<https://designatedsites.naturalengland.org.uk/Marine/SupAdvice.aspx?SiteCode=UK9006101&SiteName=&SiteNameDisplay=Flamborough+and+Filey+Coast+SPA&countyCode=&responsiblePerson=>

¹³ Supplementary Advice on the Conservation Objectives for the Flamborough and Filey Coast SPA, Natural England, 13 September 2019:

<https://designatedsites.naturalengland.org.uk/Marine/SupAdvice.aspx?SiteCode=UK9006101&SiteName=&SiteNameDisplay=Flamborough+and+Filey+Coast+SPA&countyCode=&responsiblePerson=>

Table 3: Flamborough and Filey Coast SPA: draft supplementary advice on conservation objectives – breeding population (abundance) and connectivity with supporting habitats.

SPA feature	Attribute	Target	Season	Site specific comments
Kittiwake (breeding)	Breeding population: abundance	Restore the size of the breeding population at a level which is above 83,700 breeding pairs, whilst avoiding deterioration from its current level as indicated by the latest mean peak count or equivalent.	Breeding (summer season)	Current population figures indicate major decline since designation population count (1987). Indications of ongoing decline in breeding productivity.
	Connectivity with supporting habitats	Restore safe passage of birds moving between nesting and feeding areas	Year-round	NE has advised regulators that predicted in-combination collision mortality from consented or proposed offshore wind farms could adversely effect the integrity of the SPA.
	Disturbance caused by human activity	Restrict the frequency, duration and / or intensity of disturbance affecting roosting, nesting, foraging, feeding, moulting and/or loafing birds so that they are not significantly disturbed	Breeding (summer season)	
Gannet (breeding)	Breeding population: abundance	Maintain the size of the breeding population at a level which is above 8,469 pairs, whilst avoiding deterioration from its current level as indicated by the latest mean peak count or equivalent.	Breeding (summer season)	Latest colony count (2017) showed increase to 13,392 Apparently Occupied Nests (AON).
	Connectivity with supporting habitats	Maintain safe passage of birds moving between nesting and feeding areas.	Year-round	Evidence that gannet may be vulnerable to collision with offshore turbines. Also they are sensitive to displacement effects.
	Disturbance caused by human activity	Restrict the frequency, duration and / or intensity of disturbance affecting roosting, nesting, foraging, feeding, moulting and/or loafing birds so that they are not significantly disturbed	Breeding (summer season)	

SPA feature	Attribute	Target	Season	Site specific comments
Guillemot (breeding)	Breeding population: abundance	Maintain the size of the breeding population at a level which is above 41,607 breeding pairs, whilst avoiding deterioration from its current level as indicated by the latest mean peak count or equivalent.	Breeding (summer season)	[No post-designation colony count noted.]
	Connectivity with supporting habitats	Maintain safe passage of birds moving between nesting and feeding areas.	Year-round	Cumulative effect of habitat loss and displacement due to offshore developments may result in reduced breeding productivity and/or lower adult fitness and survival.
	Disturbance caused by human activity	Restrict the frequency, duration and / or intensity of disturbance affecting roosting, nesting, foraging, feeding, moulting and/or loafing birds so that they are not significantly disturbed	Breeding (summer season)	
Razorbill (breeding)	Breeding population: abundance	Maintain the size of the breeding population at a level which is above 10,570 breeding pairs whilst avoiding deterioration from its current level as indicated by the latest mean peak count or equivalent.	Breeding (summer season)	[No post-designation colony count noted.]
	Connectivity with supporting habitats	Maintain safe passage of birds moving between nesting and feeding areas.	Year-round	Cumulative effect of habitat loss and displacement due to offshore developments may result in reduced breeding productivity and/or lower adult fitness and survival.
	Disturbance caused by human activity	Restrict the frequency, duration and / or intensity of disturbance affecting roosting, nesting, foraging, feeding, moulting and/or loafing birds so that they are not significantly disturbed	Breeding (summer season)	
Seabird assemblage (breeding)	Assemblage of species: abundance	Maintain the overall abundance of the assemblage at a level which is above 216,730 individuals whilst avoiding deterioration from its current level as indicated by	Breeding (summer season)	[No post-designation colony count noted.]

SPA feature	Attribute	Target	Season	Site specific comments
		the latest peak mean count or equivalent.		
	Disturbance caused by human activity	Restrict the frequency, duration and / or intensity of disturbance affecting roosting, nesting, foraging, feeding, moulting and/or loafing birds so that they are not significantly disturbed	Breeding (summer season)	Offshore: some species may be vulnerable to impacts of habitat loss, displacement and collision from offshore developments.

The RSPB considers these attributes and targets are directly relevant to BEIS’s consideration of whether the SPA’s conservation objective to maintain or restore site integrity can be met and the SPA achieve favourable conservation status for all its features including the assemblage.

Kittiwakes

With particular reference to the SPA kittiwake population, we note that Natural England’s Supplementary Advice refers to Aitken et al, 2017¹⁴ where recent census data has shown that kittiwake productivity has declined rapidly at the SPA. As a long-lived species, such lowering in productivity will take some time before it becomes apparent in population numbers. However, if this trend continues it will have severe long-term impacts on the population growth (Figure 1 below reproduces Fig.3 from the report).

¹⁴ Aitken, D., Babcock, M., Barratt, A., Clarkson, C. and Prettyman, S. 2017. Flamborough and Filey Coast pSPA Seabird Monitoring Programme: RSPB.

Figure 1: Reproduction of Fig.3 from Aitken *et al* (2017). Flamborough/Bempton Black-legged Kittiwake productivity 2009-2017, mean of plot results plus/minus SE.

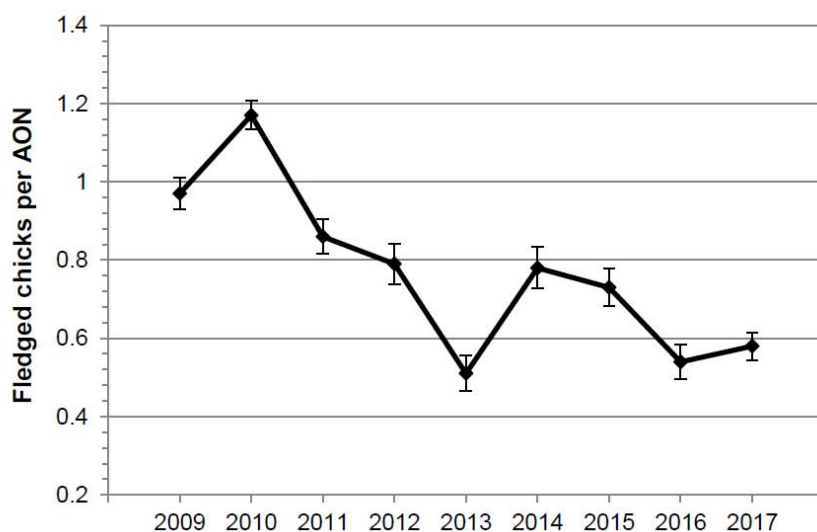


Fig. 3: Flamborough/Bempton Black-legged Kittiwake productivity 2009 – 2017, mean of plot results plus/minus SE.

JNCC (2018a)¹⁵ discusses the rapid decline in the UK kittiwake population observed since the early 1990s and links this to declining productivity and adult survival, with declines in sandeel prey and the effects of climate change on sea surface temperatures noted as likely contributory factors.

Frederiksen *et al.* (2004)¹⁶ also demonstrated the vulnerability of kittiwake populations to human activities through a study based on the Isle of May. Their population modelling showed that this population was unlikely to increase should the local sandeel fishery remain active and would be likely to decline further if sea surface temperature also increased, due to effects on both productivity and adult survival.

Given this context of continued declines in the UK kittiwake population since the early 1990s and the effect of anthropogenic impacts on adult survival and productivity, the RSPB considers that offshore windfarm mortality could add significantly to the multiple stressors affecting this population and reduce the likelihood of population recovery.

¹⁵ JNCC (2018a) Latest population trends: black-legged kittiwake. Available at: <http://jncc.defra.gov.uk/page-2889#2>

¹⁶ Frederiksen, M., Harris, M.P., Daunt, F., Rothery, P. and Wanless, S. 2004. The role of industrial fisheries and oceanographic change in the decline of North Sea black-legged kittiwakes. *Journal of Applied Ecology* 41: 1129-1139.

3. Legal requirements

SACs and SPAs are "European sites" in inshore waters (up to 12 nautical miles from the baselines) under provisions within the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations); and in offshore waters (i.e. from 12-200 nautical miles) under provisions within the Conservation of Offshore Marine Habitats and Species Regulations 2017 (Offshore Regulations).

The Habitats and Offshore Regulations set out the sequence of steps to be taken by the competent authority (here the Secretary of State for Business, Energy and Industrial Strategy (BEIS)) when considering authorisation for a project that may have an impact on a European site and its features before deciding to authorise that project. These are as follows:

- i) Step 1: consider whether the project is directly connected with or necessary to the management of the SPA and its species (regulation 63 (1)). If not –
- ii) Step 2: consider, on a precautionary basis, whether the project is likely to have a significant effect on the SPA and its features, either alone or in combination with other plans or projects (the Likely Significance Test) (regulation 63 (1)).
- iii) Step 3: make an appropriate assessment of the implications for the SPA and its features in view of its conservation objectives. There is no requirement or ability at this stage to consider extraneous (non-conservation e.g. economics, renewable targets, public safety etc) matters in the appropriate assessment (regulation 63 (1)).
- iv) Step 4: consider whether it can be ascertained that the project will not, alone or in combination with other plans or projects, adversely affect the integrity of the SPA and its features, having regard to the manner in which it is proposed to be carried out, and any conditions or restrictions subject to which that authorisation might be given (the Integrity Test) (regulation 63 (6)).
- v) Step 5: In light of the conclusions of the assessment, the competent authority shall agree to the project only after having ascertained that it will not adversely affect the integrity of the SPA, alone or in combination with other plans or projects (regulation 63 (5)).
- vi) Step 6: only if the competent authority is satisfied that, there being no alternative solutions and the plan or project must be carried out for imperative reasons of overriding public interest (which, subject to (regulation 64(2)), may be of a social or economic nature), they may agree to the plan or project notwithstanding a negative assessment of the implications for the European site (regulation 64 (1)).
- vii) Step 7: in the event of the no alternative solutions and imperative reasons of overriding public interest tests being satisfied, the Secretary of State must secure that any necessary

compensatory measures are taken to ensure that the overall coherence of the Natura 2000 network is protected (regulation 68).

It is important to add that in addition to the requirements set out above, in relation to both inshore area and the offshore marine area, any competent authority must exercise its functions so as to secure compliance with the requirements of the Habitats Directive and the Birds Directive; and in particular to take such steps as it considers appropriate to secure the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds¹⁷, having regard to the requirements of Article 2 of the Birds Directive.¹⁸ And for offshore SPAs and SACs regulation 26 of the Offshore Regulations requires competent authorities to exercise their functions (as far as possible) to secure steps to avoid the disturbance of species and the deterioration of habitats or habitats of species within those sites.

It is clear that the Hornsea Three scheme is not directly connected with or necessary for the management of the SPA.

¹⁷ As required by Article 3, Birds Directive.

¹⁸ See regulation 9(1) and 10(1)(2)(3) and (8) of the Habitats Regulations and regulation 6 of the Offshore Regulations. Article 2 Birds Directive imposes a requirement on Member States to maintain all wild bird populations at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or if necessary, to restore the population of these species to that level (Article 2).

4. The RSPB’s position at the end of the Hornsea Three examination

Table 4 below summarises the RSPB’s position on impacts on features at the Flamborough and Filey Coast SPA at the end of the Hornsea Three Examination.

Table 4: The RSPB’s position on adverse effects on site integrity of the Flamborough and Filey Coast SPA

Feature	Alone	In combination with other plans or projects
Kittiwake	Cannot exclude the risk of an adverse effect on site integrity	Cannot exclude the risk of an adverse effect on site integrity
Gannet	No likely significant effect	Cannot exclude the risk of an adverse effect on site integrity
Guillemot	No likely significant effect	Cannot exclude the risk of an adverse effect on site integrity
Razorbill	No likely significant effect	Cannot exclude the risk of an adverse effect on site integrity

The RSPB’s focus during the Expert Working Group process for the Hornsea Three application, and during the examination, was upon these SPA features. However, the breeding¹⁹ seabird assemblage (including but not restricted to migratory birds) as a combination of these features and other species is equally important and we are unable to exclude the risk of an adverse effects on that assemblage feature as well. Our current position on the assemblage is set out in Table 6 below.

This position did not take account of any potential in combination impacts arising from the Norfolk Vanguard scheme, which was running several months behind the Hornsea Three scheme.

There were a number of important areas of disagreement with the Applicant over assessment methodology used for Hornsea Three that remained unresolved at the end of the examination. In short, the key disagreements were:

- The aerial survey data covered too short a period (an issue the Applicant has endeavoured to resolve by providing additional survey data);
- The impacts on guillemot and razorbill were inadequately assessed (impacts on non-breeding birds associated with the Flamborough and Filey Coast SPA during the breeding season should have been included);
- A number of issues associated with the collision risk modelling work:

¹⁹ The breeding population includes juveniles and non-breeding adults. Natural England’s [Conservation Advice for the Flamborough and Filey Coast SPA](#) further notes that: “The species of the seabird assemblage are distributed throughout the SPA and components of the assemblage are present year-round.”

- The use of the wrong avoidance rate for kittiwake when using Band Option 2;
 - Inappropriate use of Band Option 3 for gannet and kittiwake, contrary to the advice of the Statutory Nature Conservation Bodies;
 - The consideration of uncertainty in the modelling was not adequately addressed;
 - The incorrect Nocturnal Activity Factor was used for kittiwake and gannet;
 - The incorrect apportioning rate used for kittiwake from Flamborough and Filey Coast SPA;
- The way a number of 'correction factors' have been used (the Nocturnal Activity Factor referred to above and the use of 'as built' scenarios for other offshore wind farms);
 - The way that the impacts of the scheme from construction and decommissioning were assessed separately from the operational impacts;
 - In addition, we consider that the context in which the counter-factual of population size has been presented is misleading.

The RSPB continues to consider that these significant issues mean that limited confidence can be attached to the Applicant's conclusions on the likely impacts of the scheme. As a consequence, this in turn meant that the RSPB had to be more cautious in how it expressed its conclusions with regard to the adverse effect on integrity test (see Table 4 above). This is in contrast to Norfolk Vanguard where, by the end of the examination, the RSPB had greater confidence in the information provided by the applicant to that scheme (see section 5 below). This enabled the RSPB to reach more definite conclusions on the possible adverse effects on integrity i.e. adverse effects on integrity existed for certain SPA features. We return to this issue in sections 6, 7 and 8 below.

[The RSPB's position on adverse effects on the integrity of the Flamborough and Filey Coast SPA](#)

At the end of the Hornsea Three Examination the RSPB considered that it was not possible to exclude potential adverse effects on integrity of the kittiwake population of the Flamborough and Filey Coast SPA arising from the Hornsea Three scheme alone, and for kittiwake, gannet, guillemot and razorbill populations of the SPA when the Hornsea Three scheme was considered in combination with other plans or projects.

5. The RSPB's position at the end of the Norfolk Vanguard examination

At the end of the Norfolk Vanguard examination the RSPB considered that adverse effects on integrity existed for the kittiwake, gannet, guillemot and razorbill populations of the Flamborough and Filey Coast SPA.

For gannet, guillemot and razorbill this was in combination with Hornsea Three, for kittiwake the conclusion was reached irrespective of whether the impacts of Hornsea Three were included. This was a significant shift in position – moving from a position where we were unable to exclude the risk of adverse effects on integrity to one where we were confident that effects existed, and reflects a continuing development of our understanding of the impacts of offshore wind farms in the southern North Sea on the seabirds of the Flamborough and Filey Coast SPA (as well as other protected sites).

We also considered that as a consequence of these impacts it was not possible to rule out adverse effects on the integrity of the breeding seabird assemblage of the Flamborough and Filey Coast SPA when considered in-combination with other offshore wind farms.

We note the 6 December 2019 letter from the Secretary of State requesting further information from Norfolk Vanguard in relation to in combination impacts on the kittiwake feature of the Flamborough and Filey Coast SPA.

6. The RSPB's views on the additional information supplied

In respect of ornithology, paragraph 3 of the SoS's consultation letter of 27 September 2019 seeks the views of interested parties on two late representations received by the SoS. Below we set out the RSPB's comments on the first of these – additional information supplied by the Applicant dated 31 July 2019.

The RSPB welcomes the completion of the additional four surveys and the analysis of those data presented in *Hornsea Project Three Offshore Wind Farm Ornithology Baseline Data Comparison* (NIRAS, July 2019). However, having reviewed this additional information carefully we consider this document to be an incomplete presentation of the information gathered from the aerial surveys and inadequate to allow us to alter our position from that detailed in our submissions to the examination and SoCG (see [Table 4](#) above).

In particular our concerns are:

- Only the months, rather than the specific dates of the surveys are given. These were:
 - One in January 2019,
 - Two in February 2019, and
 - One in March 2019.

These surveys were designed in part to respond to the concerns of Natural England and the RSPB that the 20 months of aerial survey data presented to the Examination was an inadequate baseline, since, for the months December to March there was only one year of survey data. However, while these surveys were designed to effectively backfill these four months, the absence of the survey dates means it is possible that they were carried out as follows:

- The end of January,
- Two in February, and
- The beginning of March.

This means that the attempt to account for four surveys in four months could have been provided by four surveys within, potentially, 30 days: while we appreciate this may not be the case, the dates are needed to be sure. This would of course be unacceptable for a survey designed to capture temporal variability of the target species, but in the absence of the survey dates we cannot agree that information has resolved the issue of inadequate survey. We will review our position on this issue if the dates are provided.

- In tables 3.1-3.9 the Applicant presents a range of revised collision estimates using the additional survey data, using parameters advocated by Natural England, their own preferred

scenarios and those "provided by the Examining Authority". While the RSPB welcome the presentation of this range of outputs we consider that the Applicant's report does not fully include what was requested by the Examining Authority. The scenarios requested by the Authority as a Request for Further Information at Deadline 9, were not as suggested in the Applicant's text, preferred values, but as the Examining Authority made clear a request for further information and at that stage, the Authority "has not concluded on these matters and will continue to consider all points of view."

- In Appendix 1 the Applicant sets out the parameters they have used in the range of mortalities presented in the main body of the text. For parameter 4, Breeding Season Apportioning, under Natural England's preferred value they show: "Unknown – range applied". However, in the tables containing mortality only one apportioning rate is used under the Natural England parameter scenario and no clarification is offered as to the value used and why it was chosen: Without such information it is not possible to rely upon the figure presented.

Therefore, the Applicant has not provided any new information that would cause the RSPB to change its position on the risk of adverse effects on the integrity of kittiwake, gannet, guillemot, and razorbill populations from the Flamborough and Filey Coast SPA.

In particular, for kittiwake, for reasons outlined in the RSPB examination documents, we disagree that there are no adverse effects on integrity arising from Hornsea Three alone or in-combination with other plans or projects. Even if our concerns regarding survey timing are addressed the new survey data does not alter this position: We note that in fact the new information **increases** the predicted mortality arising from the project alone.

For gannet it is not possible to exclude the risk of potential adverse effects on integrity of the Flamborough and Filey Coast SPA arising from Hornsea Three in combination with other plans or projects. Even if our concerns regarding survey timing are addressed the new survey data does not alter this position, in fact it **increases** the predicted mortality arising from the project alone.

For guillemot our position remains that inadequate consideration was given to effects of non-breeding guillemot associated with Flamborough and Filey Coast SPA during the breeding season. In part due to concerns with the adequacy of the new survey data it is not possible to exclude the risk of potential adverse effects on integrity of the Flamborough and Filey Coast SPA guillemot arising from Hornsea Three in combination with other plans or projects

For razorbill our position remains that inadequate consideration was given to effects of non-breeding razorbill associated with Flamborough and Filey Coast SPA during the breeding season. In

part due to concerns with the adequacy of the new survey data it is not possible to exclude the risk of adverse effects on integrity of the Flamborough and Filey Coast SPA razorbill arising from Hornsea Three in combination with other plans or projects.

Therefore, as stated at the end of section 4, significant issues remain with the information provided by the Applicant meaning that limited confidence can be attached to its conclusions on the likely impacts of the scheme. However, the information provided indicates an increase in mortality for kittiwake and gannet from the project alone, increasing our concern over the impacts of the scheme on the Flamborough and Filey Coast SPA.

7. The RSPB's conclusions on affected SPA features of the Flamborough and Filey Coast SPA

This section sets out the RSPB's conclusions in respect of affected SPA features based on the additional ornithological information provided by Ørsted, the Norfolk Vanguard information, and further information in the light of the commencement of the Norfolk Boreas Examination. We also note the implications of The Crown Estate's announcements on offshore wind farm extensions and the Round 4 leasing process.

In-combination plans and projects

The RSPB has identified a number of schemes that have changed status since the Hornsea Three Development Consent Order application was submitted. Table 5 below, based on *Table 2 – Assigning certainty to 'other existing development and/or approved development'* from the Planning Inspectorate's Advice Note 17 (Cumulative Effects Assessment)²⁰, lists the schemes which the RSPB is aware have changed status since the Cumulative Effects Screening Matrix for Hornsea Three was published²¹.

We also wish to highlight that some in-combination projects have only had their constructed turbines and footprint considered rather than their full consent and unless that consent is changed there remains the possibility of these developers constructing further wind turbines and increasing their footprint. Therefore it is very important that the entirety of projects consents are considered when assessing potential in-combination effects.

In addition the RSPB remains concerned that some constructed and operational offshore windfarms are now being considered as part of the baseline and not considered in the in-combination assessment. Part of our concern is due to there being insufficient monitoring at this stage to be able to determine that their impacts are as predicted or whether there are some residual or further effects that mitigation has not solved meaning no account is being taken of them. As all are aware in-combination assessments are vital to ensure these residual effects are taken into account.

²⁰ <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/12/Advice-note-17V4.pdf> (accessed on 17 December 2019).

²¹ Environmental Statement, Volume 4, Annex 5.2 (APP-097)(May 2018).

Table 5: Schemes to be considered in combination that have changed status since the Hornsea Three application was submitted

Assessment Tier	Stage	Schemes
Tier 1	Under construction	Kincardine Offshore Wind Farm ²²
	Permitted application(s), whether under the PA2008 or other regimes, but not yet implemented	Methil Demonstration Project ²³
	Submitted application(s) whether under the PA2008 or other regimes but not yet determined	East Anglia One North ²⁴ East Anglia Two ²⁵ Norfolk Boreas ²⁶ Norfolk Vanguard ²⁷ Thanet Extension ²⁸
	Submitted Scottish Offshore Wind Farm applications	Seagreen Alpha ²⁹ Seagreen Bravo ²⁹
Tier 2	Projects on the Planning Inspectorate’s Programme of Projects where a scoping report has been submitted	East Anglia One North East Anglia Two Norfolk Boreas Norfolk Vanguard Thanet Extension Kincardine Offshore Wind Farm Methil Demonstration Project Seagreen Alpha Seagreen Bravo Hornsea Four ³⁰ *
Tier 3	Projects on the Planning Inspectorate’s Programme of Projects where a scoping report has not been submitted	Hornsea Four
	Identified in the relevant Development Plan (and emerging Development Plans – with appropriate weight being given as they move closer to adoption) recognising that there will be limited information available on the relevant proposals	

²² Construction is due to complete in 2020 (<https://www.4coffshore.com/news/kincardine-up-and-running-nid8745.html>).

²³ Awarded a Contract for Difference (as Forthwind) on 20/9/19 (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/838914/cfd-ar3-results-corrected-111019.pdf).

²⁴ Accepted for Examination on 22/11/19.

²⁵ Accepted for Examination on 22/11/19.

²⁶ Accepted for Examination on 4/7/19.

²⁷ Accepted for Examination on 24/7/18.

²⁸ Accepted for Examination on 23/7/18.

²⁹ Revised Application for Seagreen Alpha and Bravo submitted to Marine Scotland (September 2018) (<https://www.offshorewind.biz/2018/09/21/seagreen-submits-application-for-optimised-seagreen-alpha-and-bravo/>)

³⁰ Scoping Opinion published on 23/11/18.

Assessment Tier	Stage	Schemes
	Identified in other plans and projects (as appropriate) which set the framework for future development consents/approvals, where such development is reasonably likely to come forward	The Crown Estate’s Extensions ³¹ The Crown Estate Offshore Wind Leasing Round 4 ³²

* By agreement with Natural England the results from the Hornsea Four Preliminary Environmental Information Report have been included as part of the Offshore Ornithology Assessment Update for Norfolk Boreas³³.

Conservation Objectives and Supplementary Advice

As set out and discussed above the conservation objectives and Supplementary Advice are central to the consideration of potential adverse effects on the SPA and its features and also for the consideration of any compensation required.

Among other things, the Conservation Objectives for SPAs require the maintenance or restoration of the population for each qualifying feature and the supporting processes on which the habitats of the qualifying features rely. The Supplementary Advice then sets out the key attributes and targets for each qualifying feature of which the following are particularly relevant:

- Breeding population abundance
- Connectivity with supporting habitats (safe passage)
- Restricting disturbance

Below, we consider the effects of the project on the following SPA features and summarise our view in Table 5:

- Kittiwake
- Gannet
- Guillemot
- Razorbill
- Seabird assemblage

Kittiwake

The RSPB note the letter from BEIS in relation to the Norfolk Vanguard DCO application on 6 December 2019. In particular, paragraph 3 of the letter covers “the qualifying kittiwake feature of

³¹ Announced on 28/8/19 (<https://www.thecrownestate.co.uk/en-gb/media-and-insights/news/2019-28-gw-of-offshore-wind-extension-projects-to-progress-following-completion-of-plan-level-habitats-regulations-assessment/>)

³² Announced on 14/10/19 (<https://www.thecrownestate.co.uk/en-gb/media-and-insights/news/2019-offshore-wind-leasing-round-4-officially-opens/>)

³³ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010087/EN010087-001420-Offshore%20Ornithology%20Assessment%20Update.pdf>

the Flamborough and Filey Coast SPA" rather than asking about kittiwake as part of the assemblage of the SPA.

The RSPB consider that the key concern relates to kittiwake as one of the qualifying features of the SPA (which we will cover below), but as per the request from the Secretary of State we also consider the SPA assemblage at the end of this section and kittiwakes contribution to that SPA feature.

[Kittiwake as an SPA feature](#)

The RSPB disagreed with the Applicant's view that no adverse effects on the integrity of the Flamborough and Filey Coast SPA **alone** would be experienced. We stated: "The kittiwake population of the Flamborough and Filey Coast SPA is one of only two kittiwake populations in the North Sea that is relatively stable, the other being on the Suffolk Coast (Lowestoft harbour and Sizewell Rigs CWS). All others are declining precipitously. And the enhanced monitoring of the Flamborough and Filey Coast SPA is demonstrating that productivity has declined and is consequently a concern for the long-term viability of the population." ³⁴

Notwithstanding its relative recent stability, the SPA population has declined by around 50% from its original SPA level of 83,700 pairs such that it is in unfavourable conservation status. It is for this reason that Natural England has set its conservation objective as one of restoration to its original designation population of 83,700 pairs, alongside targets of restoring safe passage for birds moving between nesting and feeding areas and reducing disturbance.

This decline has also acted to reduce the overall seabird assemblage population from its historic level of 305,784 individual seabirds (as per JNCC UK SPA Review 2001) to 216,730 individuals at the designation of the Flamborough and Filey Coast SPA.

In this context, the RSPB's view is that the predicted increases in mortality as a consequence of collision risk from the project undermine the achievement of the SPA's conservation objectives and Natural England's targets. Despite its continued shortcomings (see section 6), the additional information provided by the Applicant predicts increased mortality from the project alone. Therefore, the RSPB continues to conclude that it is not possible to exclude the risk of adverse effects on site integrity as a result of the project alone and in-combination with other plans or projects.

³⁴ RSPB/Ørsted Statement of Common Ground (March 2019), page 25.

Gannet

The population abundance target for gannet set out in Natural England's Supplementary Advice on Conservation Objectives is to maintain the population of gannets at its designation level of 8,469 pairs whilst avoiding deterioration from its current level e.g. 13,392 pairs in 2017 (see Table 3). It also sets out additional targets of maintaining safe passage for birds moving between nesting and feeding areas and reducing disturbance.

In this context, it is the RSPB's view that the increase in mortality as a consequence of collision risk, in combination with other plans and projects, undermines the achievement of the SPA's conservation objectives and Natural England's targets. The RSPB continues to conclude it is not possible to exclude the risk of adverse effects on site integrity as a result of the project in-combination with other plans or projects.

Guillemot

The population abundance target for guillemot set out in Natural England's Supplementary Advice on Conservation Objectives is to maintain the population of guillemots at its designation level of 41,607 pairs whilst avoiding deterioration from its current level (see Table 3). It also sets out an additional target of maintaining safe passage for birds moving between nesting and feeding areas.

In this context, it is the RSPB's view that the increase in mortality as a consequence of displacement, in combination with other plans and projects, undermines the achievement of the SPA's conservation objectives and Natural England's targets. Therefore, it is not possible to exclude the risk of adverse effects on site integrity as a result of the project in-combination with other plans or projects.

Razorbill

The population abundance target for razorbill set out in Natural England's Supplementary Advice on Conservation Objectives is to maintain the population of razorbills at its designation level of 10,570 pairs whilst avoiding deterioration from its current level (see Table 3). It also sets out an additional target of maintaining safe passage for birds moving between nesting and feeding areas.

In this context, it is the RSPB's view that the increase in mortality as a consequence of displacement, in combination with other plans and projects, undermines the achievement of the SPA's conservation objectives and Natural England's targets. Therefore, it is not possible to exclude the risk of adverse effects on site integrity as a result of the project in-combination with other plans or projects.

The breeding seabird assemblage

BEIS' consultation letter specifically requests views on the impacts on kittiwake as part of the seabird assemblage. As summarised in section 2 above, the seabird assemblage comprises several seabird species. Historically, kittiwake was the most numerous component of the seabird assemblage (83,700 pairs) but as noted above has declined by approximately 50%, such that it is in unfavourable conservation status.

The population abundance target for the seabird assemblage set out in Natural England's Supplementary Advice on Conservation Objectives is to maintain the population at its designation level of 216,730 individuals, while avoiding deterioration from its current level (see Table 3). It also sets out an additional target of restricting the frequency, duration and intensity of disturbance affecting, among other things, foraging, feeding, moulting and/or loafing birds, with particular reference to the vulnerability of some species to collision and displacement from offshore developments.

Given the level of risk to the individual SPA features of kittiwake, gannet, guillemot and razorbill set out above, the RSPB's view is that it is not possible to exclude the risk of adverse effects on the SPA seabird assemblage feature, and therefore site integrity, as a result of the project in-combination with other plans or projects.

Overall conclusions with regards AEOI

The RSPB's view on affected features

Following the RSPB's review of the additional ornithological information provided by the Applicant we have concluded that this additional information does not alter our views on the likely impacts of the Hornsea Three scheme on the Flamborough and Filey Coast SPA.

The RSPB consider that it is no longer possible to exclude the risk of adverse effects on integrity for kittiwake and the seabird assemblage as a whole (both for the scheme alone and in combination with other plans or projects) and in combination with other plans or projects for gannet, guillemot and razorbill.

The RSPB continues to consider that significant issues with the information provided by the Applicant mean that limited confidence can be attached to the Applicant's conclusions on the likely impacts of the scheme. As noted in section 4, this has meant the RSPB has had to be more cautious in how it expresses its conclusions with regard to the potential adverse effects on integrity test. If we were able to have similar confidence to that information provided by the end of the Norfolk Vanguard examination, it is likely we would reach similar conclusions (see section 5 above).

Therefore, our more tentative conclusions on Hornsea Three should not be taken as the RSPB stating Hornsea Three is less damaging than Norfolk Vanguard. For this reason, we highlight in section 8 below the need for these HRA impact assessments to be done to a common, agreed standard, thereby creating a level playing field between applications.

Table 6: The RSPB's current position on impacts on the Flamborough and Filey Coast SPA

Feature	Alone	In combination with other plans or projects
Kittiwake	Cannot exclude the risk of an adverse effect on site integrity	Cannot exclude the risk of an adverse effect on site integrity
Gannet	No likely significant effect	Cannot exclude the risk of an adverse effect on site integrity
Guillemot	No likely significant effect	Cannot exclude the risk of an adverse effect on site integrity
Razorbill	No likely significant effect	Cannot exclude the risk of an adverse effect on site integrity
Assemblage	Cannot exclude the risk of an adverse effect on site integrity	Cannot exclude the risk of an adverse effect on site integrity

Conclusion

As all are aware, the application can only be granted consent if the Secretary of State is convinced that it will not have an adverse effect on the integrity of European Sites and their qualifying features, having applied the precautionary principle and taken account of the conservation objectives for those sites and their features. *Waddenzee* confirmed that where reasonable scientific doubt remains as to the absence of adverse effects on the integrity of the site, approval should be refused³⁵, subject to the consideration of alternative solutions, imperative reasons of overriding public interest and the provision of compensatory measures, as set out in regulations 64 and 68 of the Conservation of Habitats and Species Regulations 2017.

³⁵ CJEU Case-127/02; [2004] ECR-7405 at [56]-[57]

8. Next steps

The RSPB has noted that BEIS will provide a 28 day period for interested parties to respond to the detailed information provided by the Applicant and Natural England at the 14 February 2020 deadline. Critically, this includes the views of those organisations on the matters raised by BEIS in its letter of 27 September 2019 in respect of ornithology:

- whether there are any feasible alternative solutions to the project which could avoid or lessen any adverse effects on the integrity of the site;
- any imperative reasons of overriding public interest for the project to proceed;
- any compensatory measures proposed to ensure that the overall coherence of the network of European sites is protected.

We are aware that similar questions have been posed in relation to the North Norfolk Sandbanks and Saturn Reef SAC and The Wash and North Norfolk Coast SAC. We reserve the right to comment on the submissions in relation to alternative solutions, IROPI and compensation insofar as such answers have a bearing on the interpretation and operation of the Habitats Regulations.

The RSPB has already provided BEIS with its submissions on these matters to the Examination as part of its letter dated 6 September 2019. The RSPB reserves the right to review and amend these submissions in light of the further information from the Applicant and Natural England. However, we wish to make the following comment we consider relevant to proper consideration of the three derogation tests.

Relationship between adverse effect on integrity and the derogation tests

A key starting point in addressing the Regulation 64 and 68 derogation tests is agreeing the nature and magnitude of the predicted and potential adverse effects on the integrity of the features of the impacted Natura 2000 site(s). This is critical to the three derogation tests as follows:

- **Alternative solutions:** enables an assessment of whether an alternative solution is more or less damaging than the plan or project under consideration;
- **IROPI:** enables the need to protect the Natura 2000 site to be weighed against the claimed need (including public interest(s)) of the project; and
- **Compensatory measures:** enables clear objectives and related targets to be defined to identify and design compensatory measures that will protect the overall coherence of the Natura 2000 network.

Ensuring this is done to a common, agreed standard will be important to ensure the tests are addressed in a robust, fair and proportionate way in decisions by the competent authority relating to this and any future offshore wind farm schemes e.g. Norfolk Vanguard.

In respect of seabirds, creating this level-playing field is particularly important given the known variation and inconsistency in impact assessment methodology between the various consultants advising the different wind farm developers e.g. see section 5 above. Therefore, the RSPB recommends that BEIS work closely with its statutory nature conservation adviser, Natural England, and other stakeholders to:

- agree such a standard for assessing adverse impacts (e.g. annual mortality of breeding adult birds from collision);
- develop a consistent approach to translate those impacts into suitable objectives for any compensatory measure(s) deemed necessary to protect the overall coherence of the Natura 2000 network for each affected feature. This must ensure success is measured in terms of whether the compensation measure results in actual benefits to the affected feature e.g. increased number of breeding pairs, or improved breeding productivity above a defined level.

There needs to be a transparent link between these two aspects to ensure the compensatory measures are targeted at the requirements of the SPA feature(s) adversely affected. The RSPB would welcome being part of and able to contribute to such discussions.