

**From:** [Philip Pearson](#)  
**To:** [Norfolk Boreas](#)  
**Cc:** [Carrie Marchbank](#)  
**Subject:** RSPB submissions for Deadline 11  
**Date:** 11 May 2020 17:09:24  
**Attachments:** [Response to Applicant's responses to ExA fourth round of written questions.pdf](#)

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Dear Sian,

Please find attached the following submissions sent on behalf of the RSPB for Deadline 11:

1. Response to the Applicant's Responses to the Fourth Round of Written Questions

We note that the Applicant has raised additional points on our Deadline 9 submission but consider these have been suitably addressed through our previous submissions at Deadline 3 (REP3-028), Issue Specific Hearing 4 (AS-041), Deadline 9 (REP9-052) and Deadline 10 (REP10-067 and REP10-068). We do not consider any further exchange on the points raised by the Applicant would be helpful for the Examining Authority, as this would only maintain uncertainty around points that have already been extensively discussed.

I would be grateful for acknowledgement of your receipt of this email.

Kind regards,

Phil Pearson

**Dr Philip Pearson**

Senior Conservation Officer (Norfolk & Lincolnshire)

**RSPB Norwich Office**, 65 Thorpe Road, Norwich, NR1 1UD – **office currently closed**



[rspb.org.uk](http://rspb.org.uk)

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The Royal Society for the Protection of Birds (RSPB) is a registered charity: England and Wales no. 207076, Scotland no. SC037654

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**Response to the Applicant's Responses to the Fourth Round  
of Written Questions**

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

**Submitted for Deadline 11**

**11<sup>th</sup> May 2020**

**Planning Act 2008 (as amended)**

**In the matter of:**

**Application by Norfolk Boreas Limited for an  
Order Granting Development Consent for the  
Norfolk Boreas Offshore Wind Farm**

**Planning Inspectorate Ref: EN010087**

**Registration Identification Ref: 20022916**

Question	Question addressed to	ExA question	Applicant's comments (emphasis added to highlight specific points of concern raised in the RSPB's response)	RSPB response
<b>5.10 Compensation to protect Natura 2000 network</b>				
Q4.5.10.1	The Applicant	<p><b>Part 1: Flamborough and Filey Coast Special Protection Area:</b> Condition 1(2) states nest sites should be “implemented as approved and suitable for use prior to first operation of any wind turbine generator”. As this is a compensation measure, the ExA requires a greater lead in time than ‘prior to’.</p>	<p>The purpose of requiring nest sites to be suitable for use 'prior to' first operation is to provide a clear, precise and enforceable trigger to ensure that the nest sites are made available prior to any collision risk occurring, and therefore prior to any adverse effect occurring. The 'prior to' trigger does not set a lead-in time for delivery of the nest sites. The lead-in time will be approved by the Secretary of State through the previous condition 1(1) under which details of the nest sites must be provided for approval with, amongst other matters, <i>“an implementation timetable including timescales for delivery of the artificial kittiwake nest sites”</i>. This condition allows the appropriate timing of nest site delivery to be discussed with Natural England (and approved by the Secretary of State) once precise details of the nest site scheme (i.e. design, size and location of the nest sites) are known.</p> <p>In any event, it should be noted that the guidance (DEFRA 2012), which was referred to in [REP7-026], states, <i>“in principle, the result of implementing compensation has normally to be operational at the time when the damage is effective on the site concerned. Under certain circumstances where this cannot be fully fulfilled, overcompensation would be required for the interim losses.”</i> Furthermore, <i>‘Compensation measures should normally be delivered before the adverse effect on the European site occurs’</i>.</p> <p><b>Whilst efforts will be made to encourage kittiwakes to colonise the structure for the purpose of breeding (e.g. using decoys and playback of kittiwake calls from other colonies), successful colonisation and hence compensation, is dependent on bird behaviour and other biological aspects. Therefore it is not wholly within the Applicant’s power to guarantee this will occur to the required degree in advance of wind turbine operation.</b> In such cases the proposed compensatory measures should <i>over-compensate</i> for the predicted impact magnitude. As the proposed size of the artificial nesting colony</p>	<p>As noted in Annex A to the RSPB’s Deadline 10 submission (REP10-067 - “Response to the Applicant’s In Principle Habitats Regulations Derogation Provision of Evidence submitted at Deadline 7 and other matters”), the artificial nesting structure approach is unproven and in turn relies on unproven techniques (e.g. playback calls) in the hope they will attract kittiwakes. These issues are acknowledged in the Applicant’s answer where they are unable to state with confidence the measure will succeed and will deploy experimental and unproven techniques to seek to attract kittiwakes.</p> <p>The Applicant’s proposed approach to the risk of kittiwakes not being attracted to the platform is to increase “nesting capacity” and, in its view, “over-compensate”.</p> <p>It is important to note the fundamental difference between “actual nests occupied” and “nesting capacity”. The measure of success must be “actual nests occupied” successfully and within which nesting birds meet a required level of productivity in order to achieve the required population increase. Simply providing and relying on “nesting capacity” as a measure of success is not acceptable.</p> <p>The reliance on over-compensation for a measure with little robust scientific evidence it will succeed does not meet the requirement to secure compensation with “a reasonable guarantee of success”.</p>

Question	Question addressed to	ExA question	Applicant's comments (emphasis added to highlight specific points of concern raised in the RSPB's response)	RSPB response
			<p>has been designed to accommodate a colony capable of producing many more adult recruits than the magnitude of the project's collision risk (a maximum of 14 individuals using Natural England's preferred modelling parameters, or 6 using the Applicant's preferred parameters), the Applicant considers the proposed in-principle compensation complies with the guidance on this matter.</p> <p><i>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. Available at: <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69622/pb13840-habitats-iropi-guide-20121211.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69622/pb13840-habitats-iropi-guide-20121211.pdf</a>.</i></p>	<p>Please refer to our detailed position on this issue set out in paragraphs 193-197 of Annex A in the RSPB's Deadline 10 submission (REP10-067 - "Response to the Applicant's In Principle Habitats Regulations Derogation Provision of Evidence submitted at Deadline 7 and other matters").</p>
Q4.5.10.2	The Applicant	<p><b>Part 2: Alde-Ore Estuary Special Protection Area:</b></p> <p>a) Condition 2 (2), the applicant to provide greater commitment to implement the measures for improving breeding success prior to commencement of the offshore works.</p> <p>b) In Appendix 2 [REP7-026] the Applicant states that it may not be possible to have the complete package in place prior to operation. This goes against guidance to have compensation in place in advance of harm happening. The Applicant to review.</p>	<p>a) The compensation proposed expressly recognises that it may <b>not be possible to implement and deliver all the measures for improved breeding success prior to first operation, and as a result it is not appropriate to secure this in the relevant condition</b> (whether prior to first operation and therefore any collision risk occurring, or prior to commencement of offshore works as referred to by the ExA). As set out in response to (b) below, <b>principles of overcompensation have been employed to account for this in accordance with guidance</b>. Notwithstanding this, condition 2(3) does require that the strategy to be approved by the Secretary of State contains "<i>timescales for the measures to be delivered</i>", which must then "<i>be carried out as approved, unless otherwise agreed in writing with the Secretary of State</i>". <b>This ensures that the measures are delivered at an appropriate point, considering the detail of the measures to be delivered and the magnitude of over-compensation applied</b> and following consultation with Natural England. In particular, the strategy must accord with the principles for compensation submitted in [REP7-026] (which would be a certified document if compensation was required) which states, at paragraph 78:</p>	<p>The RSPB disagrees with the Applicant's approach in relation to the guidance to have compensation in place in advance of harm occurring. We refer the Examining Authority to Annex A to the RSPB's Deadline 10 submission (REP10-067 - "Response to the Applicant's In Principle Habitats Regulations Derogation Provision of Evidence submitted at Deadline 7 and other matters"). Please see our conclusions at paragraphs 202-205 and paragraph 201 and Table 10 for our detailed reasoning. The latter is with particular reference to the following compensation criteria: Additionality, Targeted, Effective, Location, Timing and Long-term Implementation.</p>

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			<p><i>"The timetable for delivery of the measures would be approved by the Secretary of State in consultation with Natural England, with the aim that this would be initiated well in advance of operation of Norfolk Boreas. If this was required for both Norfolk Boreas and Norfolk Vanguard this would be approached strategically, with the aim of obtaining approval on a joint basis, and therefore initiated well in advance of the operation of both projects."</i></p> <p>b) The guidance, which was included in [REP7-026], states, <i>"in principle, the result of implementing compensation has normally to be operational at the time when the damage is effective on the site concerned. Under certain circumstances where this cannot be fully fulfilled, overcompensation would be required for the interim losses."</i></p> <p>The Applicant has applied the principle that, as a time between the compensation being fully operational and the impact occurring cannot be ruled out (for example due to both logistical and biological reasons, the latter of which being at best only partially within the Applicant's control), then the proposed compensatory measures should <i>over-compensate</i> for the predicted impact magnitude. As the proposed predator exclusion plan would permit an increase in productivity several orders of magnitude larger than the project's maximum estimated collision risk of two individuals (using Natural England's preferred modelling parameters), the Applicant considers the proposed in-principle compensation complies with the guidance on this matter.</p>	