



**The RSPB's Response to the Examining  
Authority's Regulation 17 Written Questions**

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

**Submitted for Deadline 13  
29<sup>th</sup> July 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**

Ref	Respondent	Deadline	ExA question	RSPB comments
<b>General</b>				
R17.1.1	Natural England, RSPB	D13	In the light of the SoS decision letters for Norfolk Vanguard and Hornsea THREE published on 1 July 2020, can NE and the RSPB give their current positions for the Proposed Development	<p>The RSPB is continuing to finalise its analysis of the Secretary of State’s decision letters for Norfolk Vanguard and Hornsea THREE. Further to our email of 14 July 2020, we will now endeavour to provide our full position by 29 August 2020, which we understand will be consistent with Natural England’s approach. Once all parties’ latest positions and additional responses have been provided, we would be happy to attend a hearing session to explore any further points of clarification that would be useful to the examination.</p> <p>At this time, the RSPB considers:</p> <ul style="list-style-type: none"> <li>• The Examining Authority’s Report on the Norfolk Vanguard project provided clear decisions on the evidence that had been presented to them. This demonstrated that the approach advocated by the RSPB and Natural England to the assessment process was appropriate and not over-precautionary. It established that there are significant concerns in the currently available data for kittiwake, lesser black-backed gull, red-throated diver, guillemot, razorbill, great black-backed gull and gannet at the EIA level, as well as the HRA level for kittiwake, gannet, guillemot, razorbill, the Flamborough and Filey Coast SPA seabird assemblage and lesser black-backed gull. The RSPB supports the Examining Authority’s conclusion that an adverse effect on integrity (AEOI) of the Flamborough and Filey Coast SPA and Alde-Ore Estuary SPA could not be ruled out.</li> <li>• The Examining Authority’s Report made it clear that a derogation case would be required to identify appropriate compensation measures to address the inability to conclude no AEOI from the Norfolk Vanguard project. The RSPB agrees with the process that was applied.</li> <li>• The RSPB provided our comments on the derogation cases for both Norfolk Vanguard and Hornsea THREE on 22 April 2020<sup>1</sup> (we note that the derogation case presented for Norfolk Boreas was essentially the same as that presented for Norfolk Vanguard). Whilst both Norfolk Vanguard and Hornsea THREE each presented a package of compensation measures to the Secretary of State for consideration, we concluded that neither projects’ proposals: <ul style="list-style-type: none"> <li>▪ Have a reasonable guarantee of success based on the best scientific knowledge;</li> </ul> </li> </ul>

<sup>1</sup> These were provided as Annex 1 in our Deadline 10 submission (REP10-067).

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				<ul style="list-style-type: none"> <li>▪ Would be secured (legally, financially, ecologically and technically) in advance of consent being granted; and</li> <li>▪ Would ensure the overall coherence of the Natura 2000 network was protected.</li> </ul> <ul style="list-style-type: none"> <li>• Based on the currently available information, our position regarding the derogation cases for both projects has not changed from that set out in our Norfolk Boreas Deadline 10 (REP10-067) response on 6 May 2020.</li> <li>• We support the Secretary of State’s view as set out in both the Norfolk Vanguard decision letter and Hornsea THREE “minded to” letter that Applicants should submit full derogation cases which are project specific, so that they can be fully scrutinised during the Examination process. We provided our support for this approach in our Deadline 10 submission (REP10-067). Consequently, it is essential that a fully developed derogation case is submitted for Norfolk Boreas for review during the examination period.</li> <li>• As mentioned above, the RSPB is continuing to analyse the final conclusions from the Norfolk Vanguard decision letter. Whilst the conclusions from the Examining Authority’s report are recorded, specifically that no AEOI cannot be concluded for the Flamborough to Filey Coast SPA and Alde-Ore Estuary SPA, we have so far failed to find any additional information that justifies the Secretary of State consenting the project.</li> <li>• In addition, subject to finalising our full analysis of the Norfolk Vanguard decision, we have seen nothing that would alter our position with respect to the Norfolk Boreas project. We consider the Applicant’s own evidence clearly demonstrates that several seabird populations would be substantially smaller in comparison to the project (in combination with the other assessed projects) not being constructed. Such changes would mean that the conservation objectives for the Flamborough and Filey Coast SPA and Alde-Ore Estuary SPA would not be met. We therefore stand by our submissions on this, as set out in our Deadline 9 response. We will review our position once the Applicant has submitted a full derogation case as the Secretary of State has indicated is required.</li> </ul>
<b>Level of Precaution</b>				
R17.1.2	Applicant,	D13	To provide the latest considerations on the level of precaution applied to	The RSPB’s position on the level of precaution used in the assessments has not changed. We have provided detailed comments in our submissions at Deadline 3 (REP3-028), submitted for Issue

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	Natural England, RSPB		the significance of impacts on seabird populations, and how headroom could be taken into consideration when assessing AEol.	<p>Specific Hearing 4 on 20 January 2020 (AS-041) and Deadline 9 (REP9-052). Natural England also hold the same position which has been clearly set out in various of their submissions (summarised in their Deadline 9 submission, REP9-041).</p> <p>The RSPB has not seen any new information that has caused us to amend our position and we therefore maintain that there has not been an overly precautionary approach used in the assessment process. As we set out in detail in our combined response to the Secretary of State on Norfolk Vanguard and Hornsea THREE<sup>2</sup>, use of a precautionary approach is required at every stage of the assessment due to the considerable uncertainty inherent in each stage of assessment process.</p> <p>The RSPB has submitted further comments on the issue of ‘headroom’ in previous submissions to the Norfolk Boreas Examination. Please see our most recent comments on the matter in our Deadline 9 submission (section 5c, paras 5.4-5.6 of REP9-052) and in our earlier submissions at Deadline 3 (page 53, REP3-028) and submitted for Issue Specific Hearing 4 on 20 January 2020 (para 2.2, AS-041).</p> <p>The RSPB continues to support Natural England’s position and advice (set out on page 4 of Natural England’s comment on Norfolk Boreas Position Statement on Derogation, REP9-041) and we reiterate that although it may be possible to re-consider some previous assessments due to the difference between consented and as built scenarios this possibility “<i>is a highly complex one</i>” and “<i>it is important to note that there is not yet an agreed way forward at present</i>”. We also continue to support Natural England’s concerns as to “<i>Whether consented or as-built scenarios can be considered ‘legally secured’</i>” and note that Natural England do not advocate the McArthur Green approach used in the Crown Estate report. Our support remains for Natural England’s conclusion that “<i>Therefore, until the uncertainties highlighted by Natural England are addressed and an industry wide approach is agreed we recommend that the default ‘standard’ approach is appropriate.</i>”</p>

<sup>2</sup> Please see pages 20 to 23, Annex 1, to our Deadline 10 submission (REP10-067).

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				As mentioned above, we note the Examining Authority agreed with the justification provided in support of the methodology that we and Natural England advocated during the Norfolk Vanguard examination <sup>3</sup> . Subject to our ongoing analysis, we note that the Secretary of State's decision on Norfolk Vanguard (and the accompanying Habitats Regulations Assessment) does not provide any explanation of how he has dealt with the consented vs. as built scenarios beyond a single sentence. As such we consider that Natural England's methodology for assessing impacts from Offshore Wind Farms on seabirds is appropriate and is currently the most scientifically robust approach.
<b>Cumulative Effects</b>				
R17.1.3	Natural England, RSPB	D13	NE and the RSPB to provide their latest conclusions on significant cumulative displacement impacts for red-throated diver, guillemot and razorbill.	<p>The RSPB refers back to its submission on the Offshore Ornithology Update submitted for Issue Specific Hearing 4 on 20 January 2020 (AS-041) and further comments submitted at Deadline 9 (REP9-052).</p> <p>With respect to red-throated diver, the Applicant has presented no data or that demonstrates there are currently no significant cumulative displacement impacts affecting the Southern North Sea population. We recognise that further discussions have since taken place with respect to mitigation measures that would be applied during the construction period. However, there remain concerns about the assessment of operational displacement. There are a number of recent reports that highlight that displacement of red throated divers does occur out to some considerable distance (Mendel <i>et al.</i>, (2019)<sup>4</sup>, Dorsch <i>et al.</i>, (2020)<sup>5</sup>, Vilela <i>et al.</i>, (2020)<sup>6</sup>).</p> <p>While the scale of development in the Southern North Sea is extensive and there is clear evidence of the existence of displacement impacts, there remains considerable uncertainty as to how these</p>

<sup>3</sup> As set out in paragraphs 5.3.69 – 5.3.72 (pp.209-210) of the Examining Authority's report.

<sup>4</sup> Mendel, B., Schwemmer, P., Peschko, V., Müller, S., Schwemmer, H., Mercker, M., Garthe, S., 2019. Operational offshore wind farms and associated ship traffic cause profound changes in distribution patterns of Loons (*Gavia spp.*). *Journal of Environmental Management* 231, 429–438. <https://doi.org/10.1016/j.jenvman.2018.10.053>

<sup>5</sup> Dorsch, M., Burger, C., Heinänen, S., Kleinschmidt, B., Morkūnas, J., Nehls, G., Quillfedlt, P., Schubert, A., Žydelis, R., 2020. DIVER: German tracking study of seabirds in areas of planned Offshore Wind Farms at the example of divers (Funded by the Federal Ministry of Economics and Energy (BMWi) on the basis of a decision by the German Bundestag. No. 0325747A/B).

<sup>6</sup> Vilela, R., Burger, C., Diederichs, A., Nehls, G., Bacht, F., Szostek, L., Freund, A., Braasch, A., Bellebaum, J., Beckers, B., Piper, W. (2020). Final Report: Divers (*Gavia spp.*) in the German North Sea: Changes in Abundance and Effects of Offshore Wind Farms. A study into diver abundance and distribution based on aerial survey data in the German North Sea. BioConsult Report prepared for Bundesverband der Windparkbetreiber Offshore e.V.

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				<p>impacts will manifest on the population dynamics. The approach adopted by the Applicant risks under-estimating impacts and fails to apply the precautionary principle given the high degree of uncertainty associated with the population scale impacts from the predicted level of cumulative displacement on this species.</p> <p>With respect to guillemot and razorbill, the available evidence indicates that substantial cumulative displacement is possible for these species. This necessitates a precautionary approach being taken. The RSPB has seen no additional evidence that would cause us to amend our position. Natural England submissions support this position.</p> <p>We note that the Examining Authority agreed with the justification for this position that we and Natural England advocated during the Norfolk Vanguard examination<sup>7</sup>.</p>
R17.1.4	Natural England, RSPB	D13	NE and the RSPB to provide their latest conclusions on significant cumulative collision impacts for herring gull, lesser black-backed gull, kittiwake and great black-backed gull.	<p>The RSPB refers the Examining Authority back to its submission on the Offshore Ornithology Update submitted for Issue Specific Hearing 4 on 20 January 2020 (AS-041) and further comments submitted at Deadline 9 (REP9-052).</p> <p>With respect to impacts on herring gull, lesser black-backed gull, kittiwake and great black-backed gull, the Applicant's own figures demonstrate a substantial cumulative collision impact on the Southern North Sea population. We have reviewed the analysis outlined in Natural England's Deadline 4 submission (pp.14-31; REP4-040), which considered the species' conservation status and the predicted impact based on the Applicant's assessments. The key conclusions they drew from this analysis were:</p> <ul style="list-style-type: none"> <li>• Herring gull – <i>“Natural England therefore is not in a position to advise that significant impact can be ruled out for herring gull for cumulative collision impacts when the Hornsea 3 and Hornsea 4 projects are included in the cumulative totals.”</i></li> <li>• Lesser black-backed gull – <i>“Natural England therefore is not in a position to advise that significant impact can be ruled out for LBBG for cumulative collision impacts when the Hornsea 3 and Hornsea 4 projects are included in the cumulative totals.”</i></li> </ul>

<sup>7</sup> Set out in their “conclusions on Offshore Ornithology” (paragraphs 5.3.97-5.3.110; pp.214-216).

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				<ul style="list-style-type: none"> <li>• Kittiwake – “we [NE] are unable to rule out a significant adverse impact on kittiwake from cumulative collision mortality at an EIA scale irrespective of whether the Hornsea 3 and Hornsea 4 projects are included in the cumulative totals or not.”</li> <li>• Great black-backed gull – “we [NE] are unable to rule out a significant adverse impact on GBBG from cumulative collision mortality at an EIA scale irrespective of whether the Hornsea 3 and Hornsea 4 projects are included in the cumulative totals or not.”</li> </ul> <p>At Deadline 9 (REP9-049), we note that Natural England summarised their position and that this had not changed from their Deadline 4 position. They also highlighted that similar conclusions had also been drawn for East Anglia THREE and Norfolk Vanguard and that predicted impacts will have increased as Norfolk Boreas and East Anglia ONE North and East Anglia TWO figures are incorporated into the assessments.</p> <p>The RSPB fully supports Natural England’s position. We have seen no new evidence to justify changes to these conclusions. We therefore continue to agree that it is not possible to conclude that significant cumulative collision effects can be ruled out for herring gull, lesser black-backed gull, kittiwake and great black-backed gull.</p> <p>We note that the Examining Authority agreed with the justification for this position that we and Natural England advocated during the Norfolk Vanguard examination<sup>8</sup>.</p>
R17.1.5	Natural England, RSPB	D13	NE and the RSPB to provide their latest conclusions on combined effects of collision and displacement for cumulative projects for gannet.	<p>The RSPB has principally previously focussed its comments on the SPA populations with respect to gannet. However, we have reviewed the analysis outlined in Natural England’s Deadline 4 submission (pp.14-20; REP4-040), which considered the species conservation status and the predicted impact based on the Applicant’s assessments. The key conclusion from this analysis was that Natural England were “...unable to rule out a significant adverse impact on gannet from cumulative collision + displacement mortality at an EIA scale irrespective of whether the Hornsea 3 and Hornsea 4 projects are included in the cumulative totals or not.”</p>

<sup>8</sup> As set out in their “conclusions on Offshore Ornithology” of the Examining Authority’s Report on Norfolk Vanguard (paragraphs 5.3.97-5.3.110; pp.214-216).

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				<p>At Deadline 9 (REP9-049), we note that Natural England summarised their position and that this had not changed from their Deadline 4 position. They also highlighted that similar conclusions had also been drawn for East Anglia THREE and Norfolk Vanguard.</p> <p>Having considered the evidence, the RSPB fully supports Natural England’s position. We have seen no new evidence to justify changes to these conclusions. We therefore agree that it is not possible to conclude that significant cumulative collision and displacement effects can be ruled out for gannet.</p> <p>We note that the Examining Authority agreed with the justification for this position that we and Natural England advocated during the Norfolk Vanguard examination<sup>9</sup>.</p>

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<sup>9</sup> As set out in their “conclusions on Offshore Ornithology” of the Examining Authority’s Report on Norfolk Vanguard (paragraphs 5.3.97-5.3.110; pp.214-216).