



Written Submission

for the

Royal Society for the Protection of Birds

Submitted for Deadline 16
28th September 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

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1. Introduction

- 1.1 In the September Rule 17 letter (request for further information), the RSPB was asked to provide its position, ideally in a joint statement with the Applicant, Natural England and Marine Management Organisation, on the proposed compensation measures for kittiwake from the Flamborough and Filey Coast Special Protection Area (SPA). The RSPB made enquiries to the Applicant on the matter of a joint statement with the different organisations, but the Applicant did not enter into discussions with us on this issue. On the 23rd September 2020, the Applicant confirmed via email to the RSPB that Natural England would not be able to agree a joint statement within the timeframe and that individual statements would therefore be submitted. The RSPB is therefore providing an individual response below, concentrating on matters raised at Deadline 15.
- 1.2 Whilst not directed to us, we also provide further comments below on the proposed compensation measures for lesser black-backed gull from the Alde-Ore Estuary SPA for which we still have substantial concerns about their appropriateness given the need to demonstrate that compensation for the Norfolk Boreas project will be additional to measures necessary for either site management or those still requiring delivery as mitigation for the Galloper Offshore Wind Farm.
- 1.3 This document sets out the RSPB's views on those matters and covers:
- Summary of the RSPB's Deadline 15 response regarding conclusions of Adverse Effects on Integrity;
 - Summary of the RSPB's position on compensation measures:
 - Summary of the RSPB's position on the proposed compensation measures for lesser black-backed gull from the Alde-Ore Estuary SPA;
 - Summary of the RSPB's position on the proposed compensation measures for kittiwake from the Flamborough and Filey Coast SPA;
 - The RSPB's position regarding additional features of the Flamborough and Filey Coast SPA for which no compensation measures have been proposed;
 - Points of relevance to our comments on Deadline 15 submissions;
 - The RSPB's comments on submissions at Deadline 15 by the Applicant and Natural England.
- 1.4 The RSPB will review the latest information on the compensation packages submitted at Deadline 16, specifically additional information from the Applicant to inform their proposed approach and any updated dDCO conditions, and provide further detailed comments at Deadline 17 (7th October 2020).

2. Summary of the RSPB's Deadline 15 response regarding conclusions of Adverse Effects on Integrity

- 2.1 Throughout the Norfolk Boreas examination it has been made abundantly clear that the UK is of outstanding international importance for its breeding seabirds.
- 2.2 The Flamborough and Filey Coast SPA and Alde-Ore Estuary are both designated for their internationally important seabird populations and have site conservation objectives to restore and/or maintain those populations at a favourable level.
- 2.3 The Conservation Objectives and Supplementary Advice for the Flamborough and Filey Coast SPA^{1,2} and the Alde-Ore Estuary SPA^{3,4} provide the primary guidance regarding action needed to ensure the populations of qualifying features and seabird assemblages remain in favourable condition. These have been based on the best available advice and evidence and provide the basis for considering how projects may impact on protected areas.
- 2.4 In the case of kittiwake and lesser black-backed gull at the Flamborough and Filey Coast SPA and the Alde-Ore Estuary SPA respectively, the relevant conservation objectives⁵ are to:
- Restore the size of the SPA breeding populations to a level above their designation population, whilst avoiding deterioration from their current (unfavourable) levels;
 - Restore/maintain safe passage of birds moving between their nesting and feeding areas;
 - Restrict/reduce the frequency, duration and/or intensity of disturbance to roosting, nesting, foraging, feeding, moulting and/or loafing birds so they are not significantly disturbed;
 - Reduce predation and disturbance caused by native and non-native predators (Alde-Ore Estuary SPA only);
 - Maintain the extent, distribution and availability of suitable breeding habitat (either within or outside the site boundary) which supports the feature for all necessary stages of its breeding cycle (courtship, nesting, feeding); and

¹ [Natural England Conservation Advice for Marine Protected Areas: Flamborough and Filey Coast SPA \(dated 13 March 2020\)](#). Accessed 28 September 2020.

² [Natural England: Flamborough and Filey Coast SPA: Supplementary Advice on Conservation Objectives \(updated 13 March 2020\)](#). Accessed 28 September 2020.

³ [Natural England Conservation Advice for Marine Protected Areas: Alde-Ore Estuary SPA](#) (variously dated). Accessed 28 September 2020.

⁴ [Natural England: Alde-Ore Estuary SPA: Supplementary Advice on Conservation Objectives \(updated 13 September 2019\)](#). Accessed 28 September 2020.

⁵ See Table 3 (Flamborough and Filey Coast SPA) and Table 5 (Alde-Ore Estuary SPA) of the RSPB's Deadline 15 submission (REP15-013).

- Restore/maintain or restore the distribution, abundance and availability of key food and prey items.
- 2.5 NE has stated both in its Site Conservation Objectives^{6,7}, supplementary advice^{8,9} and Site Improvement Plans^{10,11} for each SPA that site management measures are required to restore these features to favourable status.
- 2.6 In our Deadline 15 submission, the RSPB set out how the conservation objectives for these protected sites are becoming increasingly compromised by every additional offshore wind farm that is consented. This has also been set out clearly by Natural England in their submission at Deadline 14 and its response to Q5.8.4.1 (REP14-064). We elaborated on this in our Deadline 15 submission where we presented graphs showing the cumulative and in-combination impact of successive wind farm developments (see figures 3-6, REP15-013). These demonstrated the increasingly negative impact of the projects on kittiwake and lesser black-backed gull populations in comparison to the unimpacted populations if the projects were not constructed.
- 2.7 For lesser black-backed gulls from the Alde-Ore Estuary SPA and kittiwake from the Flamborough and Filey Coast SPA their populations have suffered significant declines from their favourable condition levels: c.87% and c.40-50% respectively. The in-combination impacts of Norfolk Boreas will cause each population to deteriorate further from its current unfavourable condition level, contrary to its conservation objectives. We set this out in detail in Section 7 of our Deadline 15 submission (REP15-013).
- 2.8 With such a scale of change the RSPB maintains that there will be adverse effects on the integrity of these two qualifying features, and therefore on the integrity of the respective protected sites. As such we support the Secretary of State's request that applicants submit full derogation proposals to ensure the relevant evidence is in front of the examinations, including compensation packages designed to address adverse impacts on the SPA features.
- 2.9 Using the Applicant's own data, Natural England and ourselves have also been unable to conclude that there will be no adverse effects on the integrity of a number of other qualifying

⁶ [Natural England Conservation Advice for Marine Protected Areas: Alde-Ore Estuary SPA](#) (variously dated). Accessed 28 September 2020.

⁷ [Natural England Conservation Advice for Marine Protected Areas: Flamborough and Filey Coast SPA \(dated 13 March 2020\)](#). Accessed 28 September 2020.

⁸ [Natural England: Alde-Ore Estuary SPA: Supplementary Advice on Conservation Objectives \(updated 13 September 2019\)](#). Accessed 28 September 2020.

⁹ [Natural England: Flamborough and Filey Coast SPA: Supplementary Advice on Conservation Objectives \(updated 13 March 2020\)](#). Accessed 28 September 2020.

¹⁰ [Natural England \(2014\) Site Improvement Plan Alde-Ore Estuaries](#). Accessed 28 September 2020.

¹¹ [Natural England \(2015\) Site Improvement Plan Flamborough and Filey Coast](#). Accessed 28 September 2020.

features of the Flamborough and Filey Coast SPA, specifically gannet (due to collision risk and disturbance), guillemot (due to disturbance) and razorbill (due to disturbance) and, overall, on the seabird assemblage feature. There have currently not been any compensation measures proposed by the Applicant for these features. The RSPB discusses this in more detail in Section 3 below.

3. Summary of the RSPB's approach to identifying compensation measures and developing appropriate compensation packages

3.1 In its Deadline 10 submission (REP10-067), the RSPB provided its position on the approach that must be taken to ensure any compensation packages are appropriate and will have a good chance of being both deliverable and effective. The requirement for measures to have a reasonable guarantee of success is clearly set out in both Defra¹² and European Commission¹³ guidance. We recognise that some uncertainty may still remain regarding the outcome of implementing a specific compensation measure, but the aim must be for a robust approach that minimises such uncertainty as much as possible in order to be confident that there is a reasonable guarantee of success. Too much uncertainty places doubt on the likely effectiveness of measures. Effective ongoing monitoring of the compensation measures is essential, with a mechanism in place to review and adapt the measures where they are found not to deliver the anticipated benefits to the impacted features.

3.2 To date no new information has been provided by the Applicant to demonstrate that the compensation measures that they have identified meet the standards set out in Defra and European Commission guidance. Our comments on the compensation packages therefore remain as set out in our Deadline 10 submission (REP10-067).

a) EC and Defra Guidance – summary of key points

3.3 At Deadline 10, we provided an overview of the European Commission's guidance for designing compensatory measures.¹⁴ We provided our interpretation on the following key terms based on our extensive experience engaging with Nationally Significant Infrastructure Projects and other major infrastructure schemes over the last 20 years: targeted, effective, technical feasibility, extent, location, timing and long-term implementation.¹⁵

3.4 The Defra guidance reinforces that of the European Commission points by requiring:

- Consideration of whether the measure is technically proven or considered reasonable. Measures for which there is no reasonable expectation of success should not be considered (paragraph 31);

¹² Defra (2012) *Habitats and Wild Birds Directives: guidance on the application of article 6(4). Alternative solutions, imperative reasons of overriding public interest (IROPI) and compensatory measures*. Paras 28-36.

¹³ EC (2018) *Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC (21/11/18) C(2018) 7621 final*.

¹⁴ See Annex 1 of REP10-067.

¹⁵ See Table 5 of REP10-067 (pp.57-60).

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

3.5 A key concern is whether the proposed compensation measures meet the required additionality test. This is highly relevant to the Norfolk Boreas compensation packages as the Applicant will need to demonstrate the measures will deliver above and beyond the conservation and restoration requirements of the SPA conservation objectives. This is of particular concern with regard to the lesser black-backed gull compensation (see paragraphs 172-174 in Annex 1 of our Deadline 10 submission (REP10-067)). We note that Norfolk Boreas has agreed with the European Commission’s Guidance that compensatory measures should be additional to existing obligations, for example, at paragraph 45 of REP7-026,¹⁶ the Applicant states:

“Compensation should not be used to address issues that are causing designated habitats or species to be in an unfavourable condition. This is the responsibility of the UK Government.”

b) Summary of the ecological requirements for the features impacted by the Norfolk Boreas project

3.6 In order to assess the likely effectiveness of any proposed compensation measures it is important to understand the key breeding ecology requirements of the species. A successful and legally acceptable compensation measure will need to ensure it has addressed these requirements and any additional pressures known to act on the species in the UK.

¹⁶ In Principle Habitats Regulations Derogation Provision of Evidence - Appendix 2 Alde-Ore Estuary SPA In Principle Compensation.

- 3.7 The RSPB presented detailed information in our Deadline 10 submission on the specific ecological requirements for lesser black-backed gulls¹⁷ and kittiwake.¹⁸ This covered key considerations regarding their general ecology, nest sites, predators, food availability, and disturbance impacts. The information was provided based on our knowledge of the species requirements from our site management, as well the evidence that has been presented by Natural England in the Site Conservation Objectives, supplementary advice and Site Improvement Plans.
- 3.8 Whilst some of the ecological requirements have clearly been considered in identifying appropriate compensation measures, it does not appear that all requirements will be effectively addressed through the currently proposed measures. This has significant implications for the potential success of any compensation. We discuss this in more detail in Section 4 below.

c) Alde-Ore Estuary SPA: breeding lesser black-backed gulls

- 3.9 The RSPB looks forward to seeing the additional work carried out by Norfolk Boreas to identify potential compensation measures to address the predicted in-combination adverse effects on breeding lesser black-backed gulls from the Alde-Ore Estuary SPA. As set out at Deadline 10, we support the proposal to carry out a structured review to identify potential compensation measures that would have a “reasonable guarantee of success”.
- 3.10 The compensation measure identified for the Norfolk Boreas project is identical to the compensation measure proposed for the Norfolk Vanguard project. The RSPB thoroughly reviewed these options during the Secretary of State’s request for additional information for the Norfolk Vanguard and Hornsea 3 projects. Our detailed comments to the Secretary of State’s consultation were attached to our Deadline 10 submission (REP10-067) and we refer specifically to Table 9 (pp.81-82), Table 10 (pp.83-87) and our overall conclusions (pp.87-88) that cover the issues associated with solely exploring a predator-proof fence within the Alde-Ore Estuary SPA. Our comments on the Norfolk Vanguard proposals remain relevant to those submitted for Norfolk Boreas.
- 3.11 In the absence of any updated information on the proposed compensation package the RSPB’s conclusion remains that Norfolk Boreas has not established that its preferred option of a predator-proof fence and delivery co-ordinator to oversee implementation of compensation measures and their effectiveness will be additional, meets the necessary standards and evidence

¹⁷ See Annex B of REP10-067 (pp.94-97).

¹⁸ See Annex A of REP10-067 (pp.91-93).

base to be considered a compensation measure nor have a “reasonable guarantee of success”. In summary, Norfolk Boreas’s preferred option to create a predator-proof fenced area within the Alde-Ore Estuary SPA:

- would not be additional to site management measures already necessary to restore the lesser black-backed gull population of the SPA to favourable status; and,
- There is scientific uncertainty as to the effectiveness of the measures. Further research is required to test the efficacy of the most likely measures.

d) Flamborough and Filey Coast SPA: breeding kittiwake

3.12 The RSPB looks forward to seeing the additional work carried out by Norfolk Boreas to identify potential compensation measures to address the predicted in-combination adverse effects on breeding kittiwake from the Flamborough and Filey Coast SPA.

3.13 The compensation measures identified for the Norfolk Boreas project is identical to the compensation measures proposed for the Norfolk Vanguard project. The RSPB thoroughly reviewed these options during the Secretary of State’s request for additional information for the Norfolk Vanguard and Hornsea 3 projects. Our detailed comments to the Secretary of State’s consultation were attached to our Deadline 10 submission (REP10-067) and we specifically refer to Table 6 (pp.63-67), Table 8 (pp.76-79) and our overall conclusions (pp.79-80) that cover the issues associated with artificial nest sites as a compensation measure for kittiwake. Our comments on the Norfolk Vanguard proposals remain relevant to those submitted for Norfolk Boreas.

3.14 In the absence of any updated information on the proposed compensation package the RSPB’s conclusion remains that Norfolk Boreas has not established that its preferred option meets the necessary standards and evidence base to be considered a compensation measure that has a “reasonable guarantee of success”. There is little or no evidence to demonstrate that creation of a novel artificial nesting structure will successfully attract and sustain a population of breeding kittiwakes.

e) Flamborough and Filey Coast SPA: breeding gannet, guillemot and razorbill

3.15 In addition, we are not aware that a derogation case addressing, among other things, necessary compensation measures has been proposed by the Applicant to address the current conclusions of Natural England (as stated in their Deadline 14 response (REP14-064) and Deadline 15 response (REP15-009) response to Q5.8.6.1) and the RSPB that it is not possible to conclude no

adverse effects on gannet, guillemot and razorbill from the Flamborough and Filey Coast SPA when Hornsea 3 and Hornsea 4 data are included in the assessments. This would not meet the requirements set out at paragraphs 5.2 and 5.3 in the Secretary of State's decision letter on the Norfolk Vanguard (and Hornsea three) project i.e. future applicants to demonstrate that all identified adverse effects on integrity will be effectively addressed:

"...provide all necessary evidence on these matters, including possible compensatory measures, for consideration during the Examination" [paragraph 5.2]

"The ExA will be required to provide an opinion on the sufficiency of the proposed compensation even if it considers that compensation is not required (in case the Secretary of State disagrees with that conclusion), but such measures would only be required if the Secretary of State were to find that there would be significant adverse impacts (and that the proposed compensatory measures are appropriate)." [paragraph 5.3]

3.16 The Applicant has stated in its Deadline 7 submission (paragraph 15 (pp.3-4); REP7-024) that:

"For Norfolk Boreas, Natural England has concluded that AEoI for gannet, razorbill and guillemot cannot be ruled out only when the two Hornsea projects are included (REP4-040) and this was also Natural England's conclusion for Norfolk Vanguard (REP8-104); although Hornsea Project Four had not submitted their preliminary assessment at that stage so this only related to Hornsea Project Three). This contrasts with Natural England's position on kittiwake and lesser black-backed gull, for both Norfolk Boreas (REP4-040) and Norfolk Vanguard (REP8-104). For these two species Natural England has concluded that AEoI cannot be ruled out irrespective of the inclusion of the Hornsea projects. Therefore, the Applicant considers the situation for gannet, razorbill and guillemot to be materially different from that for kittiwake and lesser black-backed gull. On this basis, the Applicant does not consider there to be a requirement to consider in principle compensation options for gannet, razorbill and guillemot, and also notes that these have not been requested by the SoS for either Hornsea Project Three or Norfolk Vanguard."

3.17 The RSPB disagrees and considers the Examining Authority and Secretary of State should be presented with robust compensatory measure proposals in relation to all species where Natural England and the RSPB have not ruled out potential adverse effects on integrity, including gannet, guillemot and razorbill. The Applicant has made a deliberate decision not to present such proposals to the Examination: this is at its own risk. In the case that the Secretary of State agrees with Natural England and the RSPB on these matters, he will have no option but to refuse consent as he will not have the information to enable him to secure the necessary compensatory measures to protect the overall coherence of the Natura 2000 network.

f) [Relevance of our Deadline 10 submission to our comments on Deadline 15 submissions.](#)

3.18 The RSPB's detailed comments on the proposed compensatory measures against the criteria set out in EC guidance can be found at Table 8 (kittiwake, artificial nesting structures) and Table 10 (lesser black-backed gull, predator-proof fencing) in REP10-067. They are relevant to our comments on the Deadline 15 submissions (see below) and bear close examination, as they demonstrate the dynamic interrelationship between the criteria. They highlight the issues which need to be addressed by decision-makers to assess properly the level of confidence that can be safely placed in any proposed compensation measures. It is unfortunate there has, to date, been no response by the Applicant to these legitimate and substantive concerns.

4. The RSPB's comments on the Applicant's and Natural England's Deadline 15 comments

a) Introduction

- 4.1 As we have highlighted in our submissions at Deadlines 2, 10 and 15 (REP02-096, REP10-067 & REP15-013), the Secretary of State must make an appropriate assessment of the implications for the SPA and its features in view of its Conservation Objectives^{19,20} (including associated supplementary advice^{21,22} and Site Improvement Plans^{23,24}). In light of the conclusions of the assessment, the Secretary of State 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 i.e. where no reasonable scientific doubt remains as to the absence of adverse effects. Therefore, it is critical the competent authority carefully evaluates the predicted impacts against the SPA conservation objectives and Natural England's associated supplementary advice and site improvement plans (as we set out in Section 7 of our Deadline 15 response). In particular, it is essential that any proposed compensation measures are set against clear objectives and targets that have been identified, based on the specific ecological requirements of the species of concern. These comments are made without prejudice to the RSPB's stated view that the necessary details of compensation measures should be agreed and secured before consent is granted. We have set out our detailed concerns in Section 6 in Annex 1 of our Deadline 10 submission (REP10-067).
- 4.2 We remain concerned that far too many details (scheme design, location, management requirements, tenure, consents etc) are proposed to be left to the post DCO consent period and create considerable risk that the appropriate measures will not ultimately be secured, risks that cannot be overcome simply by the promise of an increased amount of compensation.
- 4.3 Pending any further amendments to dDCO conditions by the Applicant at Deadline 16, the RSPB will comment fully on dDCO conditions at Deadline 17.

¹⁹ [Natural England Conservation Advice for Marine Protected Areas: Alde-Ore Estuary SPA](#) (variously dated). Accessed 28 September 2020.

²⁰ [Natural England Conservation Advice for Marine Protected Areas: Flamborough and Filey Coast SPA \(dated 13 March 2020\)](#). Accessed 28 September 2020.

²¹ [Natural England: Alde-Ore Estuary SPA: Supplementary Advice on Conservation Objectives \(updated 13 September 2019\)](#). Accessed 28 September 2020.

²² [Natural England: Flamborough and Filey Coast SPA: Supplementary Advice on Conservation Objectives \(updated 13 March 2020\)](#). Accessed 28 September 2020.

²³ [Natural England \(2014\) Site Improvement Plan Alde-Ore Estuaries](#). Accessed 28 September 2020.

²⁴ [Natural England \(2015\) Site Improvement Plan Flamborough and Filey Coast](#). Accessed 28 September 2020.

b) Proposed compensation measures: lesser black-backed gull from the Alde-Ore Estuary SPA

4.4 The RSPB understands that the current compensation measures are to include:

- predator-proof fencing; and
- a delivery co-ordinator to oversee delivery of the compensation and coordinate with landowners and other stakeholders.

4.5 For clarity, the RSPB has not been involved with the discussions that have taken place between the Applicant and Natural England regarding the proposed measures and condition wording. Following a discussion with the National Trust on 24th September 2020, we also understand they have had no contact with the Applicant regarding proposed compensation measures at the Alde-Ore Estuary SPA.

Comments on Natural England's Deadline 15 comments

4.6 At Deadline 15, in response to the Applicant's answer to Examining Authority's question 5.8.6.1, Natural England stated (REP15-009):

"...With regard to the Applicant's proposed updates to the dDCO regarding compensation for Alde-Ore Estuary SPA lesser black-backed gulls, as the condition now states that the strategy must include predator fencing and be submitted before any offshore works commence, and that predator fencing must then be put in place before the turbines are operational, and in the context of the predicted level of impact from Norfolk Boreas, we are satisfied with these amendments."

4.7 As noted above, we will comment fully on the draft DCO conditions at Deadline 17. However, we wish to make the following brief comments on Natural England's Deadline 15 statement on the proposed lesser black-backed gull compensation measures. Reference should also be made to our detailed comments at Deadline 10 (REP10-067) on the Applicant's compensation proposals and our summary of those in section 3 above.

4.8 We have concerns with the following aspects:

- Reliance on a predator-fence measure; and
- Agreement to dDCO conditions aimed at increasing breeding success at the Alde-Ore Estuary SPA

Reliance on a predator fence measure

4.9 These comments concern over-reliance by the Applicant and Natural England on a single measure, predator fencing, to achieve a more successful breeding colony of lesser black-backed

gulls, ignoring other fundamental ecological requirements of the species, which may be of greater importance depending on the final location selected for the compensation measures.

- 4.10 We refer the Examining Authority to Annex B of Annex 1 of our Deadline 10 submission (REP10-067), where we set out the breeding requirements for lesser black-backed gull. A successful compensation measure will need to address these issues, summarised at paragraph 183 of our Deadline 10 submission. We draw attention to the fact that successful breeding requires the provision of several key aspects in addition to low/no mammalian predation i.e. suitable nest sites and associated habitat structure, food availability, no/low disturbance.
- 4.11 These pre-requisites for successful breeding are interrelated and so need to be looked at together: each potential compensation location will vary in how well it meets each one and the package of management measures required to achieve success at that location. Focusing on one (predators) is short-sighted and risks perverse outcomes by skewing the search for suitable locations.
- 4.12 As a consequence, we respectfully disagree with Natural England's agreement to a compensation measure focused on the provision of a predator-fenced area, apparently within the SPA (see 4.13 *et. seq.* below). By specifying only this measure in the DCO condition, there is a strong likelihood that other key factors necessary to secure a successful breeding population of lesser black-backed gull will not be legally required to be considered and so deemed of secondary importance. This concern is closely linked to our comments below on the issues of additionality and location.

Agreement to draft DCO conditions aimed at increasing breeding success at the Alde-Ore Estuary SPA

- 4.13 These comments concern issues of additionality and location of compensation.
- 4.14 As set out above, it is accepted by Natural England and the Applicant that compensation measures must be additional to those measures already required: this is consistent with UK and EC guidance.
- 4.15 Natural England's supplementary advice for the lesser black-backed gull feature of the Alde-Ore Estuary SPA is to restore its population to 14,070 pairs. It identifies the measures necessary to achieve this in its Site Improvement Plan for the Alde-Ore Estuary Natura 2000 Sites.²⁵ We summarised the Plan's priority issues and measures with regard to lesser black-backed gull in

²⁵ [Natural England \(2014\) Site Improvement Plan Alde-Ore Estuaries](#). Accessed 28 September 2020.

our Deadline 10 submission (REP10-067 - see Table 1 in Annex 1). For ease of reference, we repeat them in Table 1 below.

Table 1: Priority/Issues and Measures relating to breeding lesser black-backed gulls in Natural England’s Site Improvement Plan for the Alde-Ore Estuary Natura 2000 sites

Priority and Issue	Measure
Hydrological changes (pressure)	Seek alternative habitat provision or habitat enhancement opportunities
Public access/disturbance (pressure)	Reduce bird disturbance
Inappropriate pest control (pressure)	Ensure adequate protection of nesting birds from predators
Changes in species distributions (threat)	Understand population dynamics and enable boundary flexibility/better wider habitat provision

4.16 Therefore, Natural England has set itself a clear requirement to work with SPA landowners and occupiers to ensure appropriate site management measures be put in place to help restore the SPA’s lesser black-backed gull population.

4.17 The current drafting of the dDCO conditions strongly implies that the location of the predator fencing compensation measure will be inside the SPA boundary. This must properly be considered a site management measure, as it would meet Natural England’s stated need to “ensure adequate protection of [SPA] nesting birds from predators”.

4.18 The RSPB has seen no evidence provided by the Applicant or Natural England to show how the provision of predator fencing within the SPA will be additional to those SPA site management measures already identified as required by Natural England to secure restoration of the SPA lesser black-backed gull feature.

4.19 It is the RSPB’s view that, in the context of an SPA feature with a restore objective, the search for compensation must explicitly start outside the SPA. The dDCO conditions must be reworded to reflect this.

4.20 We consider the dDCO condition’s specific geographic reference to the Alde-Ore Estuary SPA to:

- artificially constrain the search for suitable locations that provide the necessary conditions for successful breeding; and
- hamper the ability to consider locations where there may be fewer pressures, including collision risk with offshore wind turbines.

- 4.21 Collision risk is a relevant matter and has not been explicitly addressed by the Applicant. This is because a decision to locate lesser black-backed gull compensation measures in the immediate vicinity of this SPA will place that compensation site at the same risk of collision as the existing SPA birds. We note Natural England raised this same issue in relation to the kittiwake compensation measure (see our comments above on Flamborough and Filey Coast SPA).
- 4.22 Notwithstanding our concern that the Applicant proposes to leave these critical issues to be resolved post-consent, decisions on location and nature of the selected compensation measures must have the flexibility to take account of this and other risks and consider alternative locations away from the SPA. As presently worded, the dDCO condition lacks this flexibility and could compromise the ability to locate a suitable compensation location.
- 4.23 As noted at paragraph 210 in our Deadline 10 submission (REP10-067), we recommend that detailed consideration be given to off-site compensatory measures using the search hierarchy set out in the European Commission's guidance. Based on the RSPB's knowledge of lesser black-backed gulls, this may require consideration of locations outside the immediate location of the Alde-Ore Estuary.
- 4.24 The RSPB will submit more detailed comments on the dDCO conditions at Deadline 17.

c) [Proposed compensation measures for kittiwake from the Flamborough and Filey Coast SPA](#)

4.25 The RSPB understands that the current compensation measures are to include:

- Provision of artificial nesting ledges.

4.26 For clarity, the RSPB has not been involved with the discussions that have taken place between the Applicant and Natural England regarding the proposed measures and condition wording.

[Flamborough and Filey Coast SPA: compensation measures for kittiwake feature - comments on NE's Deadline 15 comments](#)

4.27 At Deadline 15, in response to the Applicant's answer to Examining Authority's question 5.8.6.1, Natural England stated (REP15-009):

"...With regard to in principle compensation measures for Flamborough and Filey Coast SPA kittiwakes, please see our Deadline 14 response to the Applicant's responses to R17.1.14 in REP14-065. As noted in REP14-065, Natural England have provided some additional advice to the Applicant on what further work could be carried out to develop greater confidence in the

compensatory measures and that could also be provided within the limited time remaining prior to the end of examination.”

4.28 The Natural England Deadline 14 response²⁶ addressed the Applicant’s compensation proposal to site artificial nesting structures at an unspecified location within its Order limits:

“...As set out in our Deadline 9 response [REP9- 046] to the Applicant’s in principle Habitats Regulations Derogation provision of evidence for Flamborough and Filey Coast SPA in principle compensation measures, we believe that these proposals are in principle heading in the right direction in relation to addressing the ecological impacts. However, we note that the compensation measure mostly likely to increase the FFC SPA productivity i.e. fisheries management measures has not been taken forward by Norfolk Boreas in the proposed approach to delivery and draft conditions to secure the compensation; with the Applicant in favour of providing nesting ledge provision for kittiwakes. Please be advised that we still have significant concerns in relation to the evidence base for this proposal, which requires much greater analysis, and implementation/legal issues to fully understand and address before this can be considered an appropriate compensatory measure to address collision mortality impacts. We note that no further information has been provided by the Applicant regarding these concerns and hence these still remain.”

4.29 This was reinforced in the same Deadline 14 response in its comments on the Applicant’s response to R17.1.16:

“...Natural England remain concerned by the proposal to locate the proposed artificial nest structure within the existing order limits, as this option would seem to be likely to result in any kittiwakes attracted to the platform being subject to considerable collision risk from the Boreas OWF and other neighbouring proposals, reducing the effectiveness of the measure. As noted above, we consider that the proposals require much greater analysis in order to demonstrate that the structure is, among other aspects, located where kittiwake colonisation, productivity and collision mortality will be such that the impacts of the Boreas project will be addressed.”

4.30 Natural England’s concerns are consistent with the RSPB’s concerns over the Applicant’s proposals to rely on unproven artificial nesting structures, compounded by the proposal to locate them at an unspecified location within its Order limits that would present a significant collision risk for any birds attempting to use such structures. These concerns are set out in detail in Annex 1 of our Deadline 10 submission (REP10-067).

²⁶ See Natural England REP14-065, answer to the Applicant’s response to R17.1.14.

4.31 We refer the Examining Authority to our detailed comments on these measures at Table 8 in Annex 1 of our Deadline 10 submission (REP10-067). These are critical issues that have not been addressed by the Applicant and remain unresolved. They include, among other things, a secure food supply (e.g. additionality, technical feasibility, extent and location criteria) and population dynamics (e.g. technical feasibility, location, timing, long-term implementation criteria), as well as any collision risk that may be introduced by the proposed measures.

d) [The absence of compensation measures for additional features where it is not possible to conclude no AEOL: gannet, guillemot, razorbill](#)

4.32 We have reviewed the Deadline 14 and 15 submissions by the Applicant (specifically, REP14-036, REP15-003 and REP15-004) and Natural England (specifically, REP14-064 and REP15-009) with regards to gannet, guillemot and razorbill from the Flamborough and Filey Coast SPA. Natural England's conclusions remain as set out at Deadline 4.

4.33 In their Deadline 4 submission (REP4-040), Natural England set out a thorough review of the evidence and their latest submissions indicate that these conclusions still stand, namely, that they are unable to conclude no adverse effect on integrity given ongoing concerns about the Hornsea 3 offshore ornithology data. The RSPB is not aware that this issue has been or will be resolved prior to the conclusion of the Norfolk Boreas examination and any conclusions must be based on the currently available information.

4.34 Despite the inability for all parties to agree that there would be no adverse effect on these features of the Flamborough and Filey Coast SPA there have been no discussions on compensation packages for these SPA features and the Applicant has not submitted compensation measures for them.

e) [Response to the Applicant's comments on the evidence that the kittiwake conservation objectives for the Flamborough and Filey Coast SPA are appropriate.](#)

4.35 At Deadline 15 the Applicant restated its disagreement over the correct kittiwake population level for the Flamborough and Filey Coast SPA and its disagreement with the associated site conservation objective to restore the population from its current level to 83,700 pairs (REP15-003, ExQ 5.8.4.1). The Applicant prays this in aid in relation to its argument on the adverse effect on site integrity test.

4.36 The RSPB disagrees. At paragraph 9 of Annex 1 of the RSPB’s Deadline 10 submission (REP10-067) we dealt with this matter, stating (in relation to similar arguments advanced by the Applicant for Norfolk Vanguard):

“The RSPB notes that Norfolk Vanguard¹ claim that the 1987 kittiwake population estimate that the SPA conservation objectives seek to restore to, is incorrect. The RSPB disputes this, and as such our position is in alignment with Natural England and JNCC, both of whom based their position of an extensive review of the evidence, including original paper survey forms and reports, for the Hornsea Project 1 examination in 2014 and for the drafting of the conservation objectives for the FFC SPA in 2016. In particular these reviews highlighted that two of the claims against the veracity of the population counts; that they were in fact counts of birds rather than nests (and therefore pairs) and that there was an over-reliance on land-based counts, were contrary to the evidence available. Furthermore, regardless of this historical decline and this difference in position between the statutory agencies and Norfolk Vanguard current productivity is low (0.55 fledglings per pair¹), below the 0.8 suggested need for a kittiwake colony population to be maintained (Coulson, 2017¹)”

4.37 The RSPB refers the Examining Authority to the statement on this matter at para 6.7.50 of the Examining Authority’s report into the Norfolk Vanguard scheme:²⁷

“Although the Applicant highlights an apparent discrepancy in population sizes, we consider the obligation is to have regard to the population presented on the citation which underpins the legal designation of the site.”

4.38 The RSPB observes that the Secretary of State, in his decision letter²⁸ on the Norfolk Vanguard, did not contradict the Examining Authority’s approach.

4.39 Therefore, the RSPB restates its view that the correct approach is to consider the site conservation objective for the population of the kittiwake feature at the Flamborough and Filey Coast SPA as one of restoring it to above its original population of 83,700 pairs from its current level. We note the Applicant accepts at Deadline 15 (REP15-003 – response to comments on Q5.8.6.2) that its scheme will act to reduce the SPA population from its current level. Therefore,

²⁷ Norfolk Vanguard Offshore Wind Farm. Examining Authority’s Report of Findings and Conclusions and Recommendation to the Secretary of State for Business, Energy and Industrial Strategy, dated 10 September 2019.

²⁸ Secretary of State for Business, Energy and Industrial Strategy. Decision letter dated 1 July 2020: Application for the Norfolk Vanguard Offshore Wind Farm Order.

its impacts clearly conflict with the achievement of the site conservation objective for this SPA feature and represent an adverse effect on the integrity of the SPA.