



Written Submission
for the
Royal Society for the Protection of Birds
ANNEX 2
Alde-Ore Estuary SPA

20 August 2021

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
Consultation on further information published 9 July 2021

Planning Inspectorate Ref: EN010087

Registration Identification Ref: 2002291

1 Introduction

Scope of submission

1.1 This document and its annexes sets out the RSPB's comments on key elements of the following submission by the Applicant:

- In Principle Habitats Regulations Derogation Provision of Evidence: Appendix 2, Alde-Ore Estuary SPA In Principle Compensation ("Appendix 2")

1.2 Our response will also cover related aspects of the Applicant's submission "Response to the Request for further information (dated 25 June 2021)".

RSPB submissions to Norfolk Boreas examination

1.3 We have, where relevant, referred to RSPB submissions made during the Norfolk Boreas examination. These are:

- REP10-067¹: Deadline 10 submission dated 6 May 2020. Includes Annex with RSPB April 2020 submission on Hornsea Three and Norfolk Vanguard compensation proposals. The April 2020 submission is included here as Annex 3;
- REP 15-013²: Deadline 15 submission dated 1 September 2020;
- Deadline 16-029: Deadline 16 submission dated 28 September 2020;
- Deadline 17-012³: Deadline 17 submission dated 7 October 2020.

¹ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010087/EN010087-002146-DL10%20-%20RSPB%20-%20Deadline%20Submission.pdf>

² https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010087/EN010087-002478-DL15%20-RSPB%20response_Norfolk%20Boreas_Deadline%2015%20submission_FINAL.pdf

³ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010087/EN010087-002549-DL17%20-%20RSPB%20-%20Deadline%20Submission.pdf>

Contents of the RSPB's submission

1.4 The RSPB's submission comprises the following:

- RSPB position on adverse effect on integrity of the Alde-Ore Estuary SPA;
- Lesser black-backed gull colony at Alde-Ore Estuary SPA;
- Compensation measures – general comments;
- RSPB detailed comments on the Applicant's lesser black-backed gull compensation proposals;
- Conclusion.

2 RSPB position on adverse effect on integrity of the Alde-Ore Estuary SPA

Position at end of the Norfolk Boreas examination

- 2.1 The RSPB's overall conclusions with regards the potential adverse effect on integrity of the Norfolk Boreas scheme on the Flamborough and Filey Coast SPA and Alde-Ore Estuary SPA were in Section 6 and paragraph 7.44/Table 7 of the RSPB's Deadline 15 submission to the Norfolk Boreas examination (REP15-013⁴).
- 2.2 The RSPB considered that due to in-combination impacts with other plans or projects adverse effects on integrity exist for kittiwake, gannet, guillemot and razorbill from the Flamborough and Filey Coast SPA and lesser black-backed gull from the Alde-Ore Estuary SPA; and that adverse effects on the integrity cannot be ruled out on the seabird assemblage of the Flamborough and Filey Coast SPA. The RSPB considered there to be sufficient certainty in the data presented by the Applicant to support this conclusion.
- 2.3 Below, we have repeated the contents of Table 7 from our Deadline 15 submission relevant to the Alde-Ore Estuary SPA.

Table 1: the RSPB's position on Norfolk Boreas impacts on the Alde-Ore Estuary SPA at the end of the Norfolk Boreas examination

Feature	SPA	Alone	In-combination with other plans or projects
Lesser black-backed gull	Alde-Ore Estuary	Conclude that there will not be an adverse effect on site integrity	Adverse effect on site integrity exists due to collision risk.

Updated position based on information submitted for 25 June 2021

- 2.4 The RSPB has reviewed the information provided by the Applicant in its recent submissions. These include amendments to the project alone predicted impact, through changes in the turbine numbers and specifications, as proposed in the following documents submitted to the Norfolk Boreas examination:
- Offshore Ornithology Assessment Update, Project Alone Collision Risk Modelling [REP5-059]; and

⁴ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010087/EN010087-000897-Norfolk%20Boreas%20Examination%20Library%20PDF%20Version.pdf>

- Offshore Ornithology - Assessment Update Cumulative and In-combination Collision Risk Modelling [REP6-024].

2.5 The RSPB welcomes these changes and agrees with the Applicant that they reduce the predicted collision mortality of lesser black-backed gull. However, these changes do not substantially alter the in-combination assessment for lesser black-backed gull from the Alde-Ore Estuary SPA, which predicts unacceptable levels of mortality.

2.6 In their revised assessment, the Applicant does not consider recent changes to Avoidance Rates, as calculated by the British Trust for Ornithology, in the most up to date and thorough review of evidence of avoidance and collision available⁵. This report recommends a revised avoidance rate for kittiwake of 0.986, lower than the previous recommended rate, resulting in a greater number of predicted collisions. If the number of in-combination predicted lesser black-backed gull collisions apportioned to Alde-Ore Estuary SPA is recalculated using this revised rate, the total number increases from 54 to 152. This not only demonstrates the unacceptable scale of predicted in-combination mortality, but contradicts the Applicants continual assertion that the approach they have taken is overly precautionary

2.7 Therefore, the RSPB's conclusion for lesser black-backed gulls from the Alde-Ore Estuary SPA remains as it was at the end of the Norfolk Boreas examination:

- **Alone:** conclude that there will not be an adverse effect on site integrity;
- **In-combination:** conclude adverse effect on site integrity exists due to collision risk.

⁵ Cook A.S.C.P., (2021) Additional analysis to inform SNCB recommendations regarding collision risk modelling. BTO Research Report 739 ISBN: 978-1-912642-30-4 Available [here](#)

3 Lesser black-backed gull colony at Alde-Ore Estuary SPA

Introduction

3.1 This section sets out the following:

- Population of the Alde-Ore Estuary SPA lesser black-backed gull colony
- Lesser black-backed gull breeding ecology requirements - summary
- SPA site conservation objectives, supplementary conservation advice and Site Improvement Plan for breeding lesser black-backed gulls – brief overview
- Recent productivity of RSPB Havergate colony and relevance to compensation proposals
- RSPB Havergate management for lesser black-backed gulls – correcting a long-standing error by the Applicant.

Population of the Alde-Ore Estuary SPA lesser black-backed gull colony

3.2 The Alde-Ore Estuary SPA was classified in 1996⁶ for, among other things, supporting 12% of the British population and 8% of the biogeographic population of breeding lesser black-backed gulls of the *graellsii* race. Natural England established a peak-mean population of 14,070 pairs based on the period 1994-1997. Following classification, the lesser black-backed gull population experienced a rapid increase in the late 1990s, peaking in 2000. This is reflected in the population of 21,700 pairs described in the Alde-Ore Estuary SPA site account in the UK SPA Review (Stroud *et al.* 2001). Since this time, the population has experienced a severe decline, such that in 2019 there were only 1,717 breeding pairs recorded in the Alde-Ore Estuary SPA.

3.3 The Alde-Ore Estuary is the only SPA for lesser black-backed gull on the east coast of England, the others being located in north-west and south-west England. As such it plays an important role, both in terms of population and range, with respect to the UK conservation of this species. Even at its now much reduced size the most recent SPA-wide population estimate (1,717 pairs) represents 1.53% of the UK population of 112,000 Apparently Occupied Nests (AON).⁷

3.4 Table 2 and Figure 1 below are updated versions of the equivalent information provided in the RSPB's Deadline 15 (REP15-013⁸) submission to the Norfolk Boreas Examination.

⁶ [Alde-Ore SPA citation dated January 1996](#)

⁷ [JNCC \(2018b\) Latest population trends: lesser black-backed gull.](#)

⁸ https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010087/EN010087-002478-DL15%20-RSPB%20response_Norfolk%20Boreas_Deadline%2015%20submission_FINAL.pdf

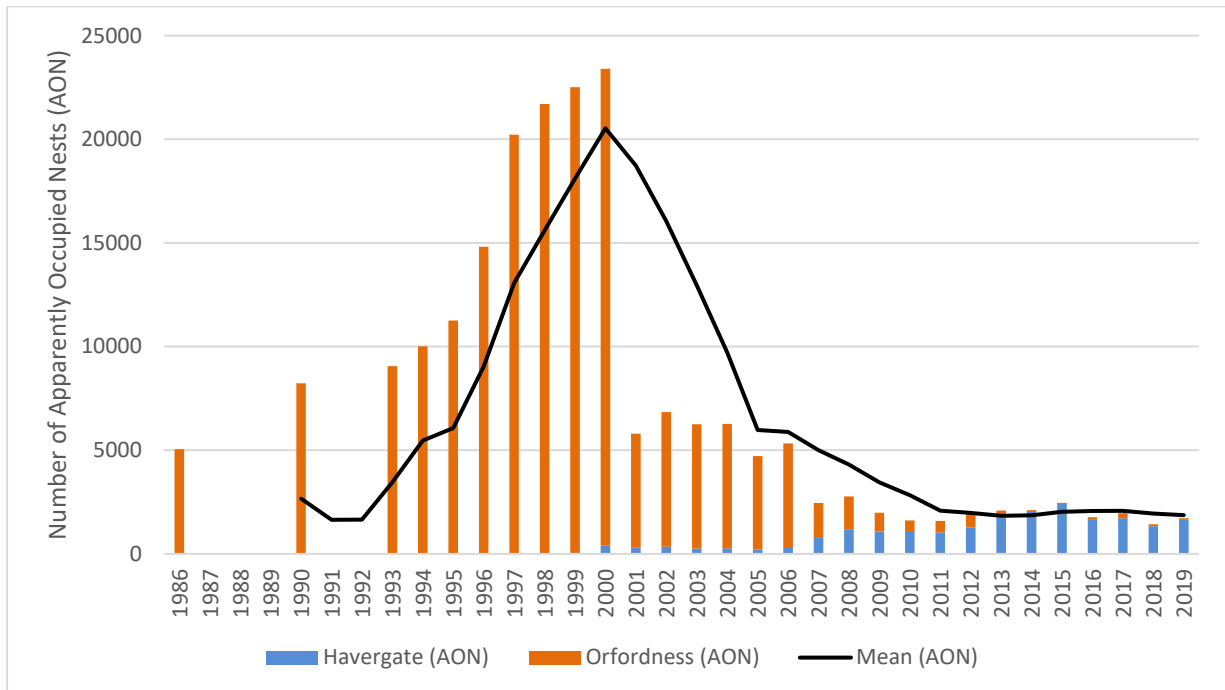
Table 2: Number of pairs of lesser black-backed gulls breeding at the Alde-Ore Estuary SPA between 1986 and 2020. The RSPB Havergate Island data comes from the RSPB’s Annual Reserves Monitoring data set. The Orfordness data comes from a combination of the JNCC Seabird Monitoring Programme (to 2019 only)⁹.

Year	Havergate (AON)	Orfordness (AON)	Total (AON)	Running 5-year mean (AON)
1986	0	5043	5043	
1987	1		1	
1988	0		0	
1989	0		0	
1990	0	8223	8223	2653
1991	0		0	1645
1992	4		4	1645
1993	7	9043	9050	3455
1994	27	9981	10008	5457
1995	35	11221	11256	6064
1996	3	14814	14817	9027
1997	2	20216	20218	13070
1998	4	21700	21704	15601
1999	14	22500	22514	18102
2000	400	23000	23400	20531
2001	290	5500	5790	18725
2002	338	6500	6838	16049
2003	249	6000	6249	12958
2004	264	6000	6264	9708
2005	208	4500	4708	5970
2006	325	5000	5325	5877
2007	768	1678	2446	4998
2008	1185	1584	2769	4302
2009	1074	900	1974	3444
2010	1053	550	1603	2823
2011	1030	550	1580	2074
2012	1267	640	1907	1967
2013	1747	335	1747	1829
2014	2070	37	2070	1856
2015	2399	60	2459	2027
2016	1668	91	1668	2063
2017	1714	239	1953	2072
2018	1327	97	1414	1940

⁹ Note: This updates the equivalent table (Table 4) provided in the RSPB’s Deadline 15 (REP15-013) submission to the Norfolk Boreas Examination due to updated information for Orfordness being available from the JNCC Seabird Monitoring Programme database for the years 2013, 2014, 2016 and 2018.

Year	Havergate (AON)	Orfordness (AON)	Total (AON)	Running 5-year mean (AON)
2019	1665	52	1717	1862
2020	1775	No info	min. 1775	
2021	1511	No info	min. 1511	

Figure 1: Change in breeding lesser black-backed gulls (Apparently Occupied Nests (AON)) on the Alde-Ore Estuary SPA, including running five-year mean.



3.5 The RSPB Havergate Island reserve now supports the main colony of breeding large gulls within the Alde-Ore Estuary SPA. This is a mixed colony of lesser black-backed gulls and herring gulls.

- Following the collapse of the Orfordness colony (see Figure 1 above), the lesser black-backed gull population at RSPB Havergate reached a peak of 2399 pairs in 2015, but has since been in decline (see Table 2 above). The Orfordness colony has, in general, remained at a very low level since 2014.
- The herring gull population at RSPB Havergate has been more stable: it grew gradually from 1994 before reaching 501 pairs in 2008, since when it has fluctuated around an average of 519 pairs.

3.6 The RSPB summarised its understanding of the reasons for the decline in breeding lesser black-backed gulls at the Alde-Ore Estuary SPA at paragraphs 26-28 of its submission (dated 22 April

2020) to the Secretary of State in respect of the Hornsea Three and Norfolk Vanguard schemes:¹⁰

- “26. A study of gull productivity on the Alde-Ore Estuary by the RSPB in 2010 and 2011 identified the most likely factors contributing to poor productivity within the Alde-Ore Estuary SPA by comparing productivity at Orfordness and Havergate. This study has been referenced in the RSPB’s submissions to various offshore wind farm examinations including Galloper and East Anglia One.¹¹ It is now available as an RSPB report.¹² The factors identified were:
- Fox predation;
 - Flooding; and
 - Habitat quality – dense vegetation.
27. The RSPB agrees with Natural England’s view summarised by the Examining Authority for the Galloper Wind Farm application that *“it is not clear what actually caused the LBBG breeding population to collapse in the first place, and there is a lack of hard data on the effectiveness of site management measures”* (see para (xii) of the Examining Authority’s Report on the Implications for European Sites, submitted to the NID Examination of the GWF application in November 2012). It is for this reason that at the time of the Galloper and East Anglia One examinations, the RSPB set out that further experimental research was essential to assess which management measure(s) would be most effective in increasing breeding productivity of breeding LBBGs at the Alde-Ore Estuary SPA to restore the colony to favourable status.¹³ This remains the case.
28. The need to address these site management issues is now set out in Natural England’s Site Improvement Plan for the Alde-Ore Estuary Natura 2000 Sites.¹⁴...”

¹⁰ See [RSPB \(2020\) Written Submission for The Royal Society for the Protection of Birds. Response to the Secretary of State’s Consultations, 22 April 2020. Hornsea Project Three Offshore Wind Farm and Norfolk Vanguard Offshore Wind Farm](#) (also included at Annex 1 of RSPB Deadline 10 submission (REP10-067))

¹¹ See RSPB Response to Written Representations and Statements of Common Ground at Deadline 2 for the East Anglia One offshore wind farm examination, dated 23 August 2013. Para 4.30.

¹² Davis, S., Sharps, E., Brown, A., Lock, L., Wilson, L.J. and Bolton, M. 2018. *Breeding success of sympatric Herring Gulls *Larus argentatus* and Lesser Black-backed Gulls *Larus fuscus* breeding at two adjacent colonies with contrasting population trends*. RSPB Research Report 62. RSPB Centre for Conservation Science, RSPB, The Lodge, Sandy, Bedfordshire, SG19 2DL

¹³ See for example: RSPB responses to the Examiners’ Second Written Questions for the Galloper Offshore Wind Farm examination, dated 24 September 2012, Question 20.36.

¹⁴ Natural England (2014) *Site Improvement Plan Alde-Ore Estuaries*.

3.7 In the next section, we have provided a brief overview of the aspects relevant to breeding lesser black-backed gulls from the SPA site conservation objectives, Natural England’s supplementary conservation advice and Natural England’s Site Improvement Plan.

Lesser black-backed gull breeding ecology requirements – summary

3.8 Part of the RSPB’s Deadline 10 submission to the Norfolk Boreas examination includes a copy of the RSPB’s comments on the Applicant’s essentially identical compensation proposals for its sister project, Norfolk Vanguard. As we set out in section 5 below, we have included at Annex 3, a copy of that same Norfolk Vanguard (and Hornsea Three) submission from April 2020.

3.9 Part of that submission includes a detailed summary of the main breeding ecology requirements for a successful lesser black-backed gull colony. Below we repeat the summary of the key elements (set out in paragraph 183 at Annex 3 to this submission) on the basis that any compensatory measures will need to ensure it has addressed these:

- **General:** Lesser Black-backed Gulls are adaptable, occupying a variety of natural and urban habitats. Predation and food availability are the key drivers of population changes and distribution. Avoiding predation affects colony location in particular, and perhaps also the habitat selection of the nest site within the colony. Food availability will influence whether breeding takes place (through the condition of the adult female) and is also important in determining the outcome of the breeding attempt. Breeding is often in mixed colonies with Herring Gulls. *Larus fuscus graellsii* is the subspecies present in the UK;
- **Nest sites:** nests are generally located on a solid surface, usually on the ground although sometimes on flat or gently sloping roofs, especially those topped with shingle or colonised by lichens and mosses. Habitat at the nest site can vary. The most-preferred breeding sites are open with surrounding vegetation which may combine the advantages of an open aspect (visibility of potential predators and a drier, sunnier microclimate) with shelter and hiding-places for the chicks once mobile. Dense vegetation is more usually avoided and areas of taller vegetation within a colony are associated with indicators of lower-quality adults suggesting these are less-preferred areas;
- **Predators:** site selection by Lesser Black-backed Gulls suggests that areas inaccessible to ground predators are particularly important as colony sites;
- **Food availability:** a generalist and opportunistic feeder. There is evidence of individual specialization in the use of different food resources and also of differences between males and females, with the larger males, spending more time offshore and foraging at fishing

trawlers. In addition, there are reports of increasing numbers of LBBGs following tractors, e.g. spreading muck and slurry or cutting silage, while supplementary feeding of livestock also presents an opportunity for gulls. Tracking data shows significant use of open-air pig units in some areas. Colonies with access to a variety of food resources are more likely to be resilient to short- and long-term changes in accessibility to particular types of food. LBBGs have been found to feed more at sea than other sympatric gull species and are known to be capable of long foraging flights;

- **Disturbance:** human activity can deter Lesser Black-backed Gulls from using a breeding site.

[SPA site conservation objectives, supplementary conservation advice and Site Improvement Plan for breeding lesser black-backed gulls – brief overview](#)

- 3.10 In paragraphs 3.21-3.26 of the RSPB's Deadline 15 submission (REP15-013¹⁵) to the Norfolk Boreas examination, the RSPB summarised the key aspects of the conservation advice in respect of lesser black-backed gull for the Alde-Ore Estuary SPA.
- 3.11 In respect of the breeding lesser black-backed gulls, the fundamental aim of the SPA conservation objectives, supplementary advice and Site Improvement Plan is to restore the population from its currently low level to above 14,074 pairs, while avoiding further deterioration.
- 3.12 Natural England's supplementary conservation advice is particularly helpful in identifying the relevant factors to be addressed in order to restore the population. It identifies, for each SPA feature, key attributes and targets. Attributes¹⁶ 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.

¹⁵ https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010087/EN010087-002478-DL15%20-RSPB%20response_Norfolk%20Boreas_Deadline%2015%20submission_FINAL.pdf

¹⁶ [Natural England: Alde-Ore Estuary SPA: Supplementary Advice on Conservation Objectives \(updated 13 September 2019\)](#). Accessed 24 August 2020.

3.13 For breeding lesser black-backed gull, Natural England identifies targets in respect of the following attributes:

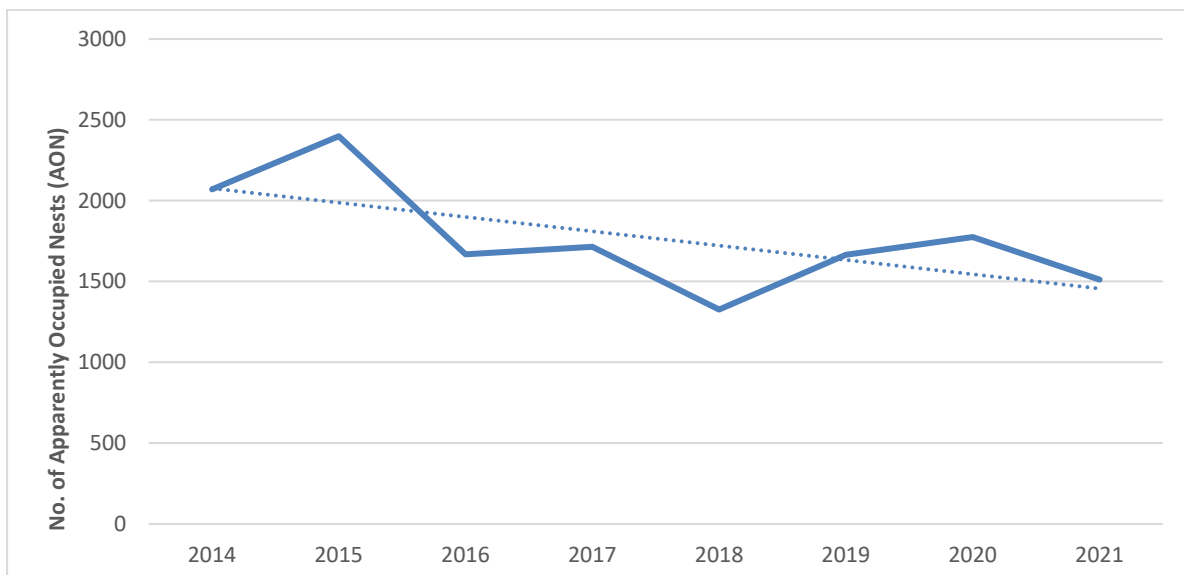
- Breeding population: abundance;
- Connectivity with supporting habitats i.e. safe passage between nesting and feeding areas;
- Disturbance caused by human activity;
- Predation – all habitats;
- Supporting habitat: conservation measures;
- Extent and distribution of supporting habitat for the breeding season; and
- Food availability.

3.14 Understanding how each of these factors is affecting large gull breeding success is critical to ensuring all relevant factors have been considered in designing and implementing conservation management measures.

Recent productivity of RSPB Havergate colony and relevance to compensation proposals

3.15 Figure 2 below shows that, since 2014, the lesser black backed-gull population on RSPB Havergate Island has exhibited a downward trend, the latest 5-year average (2017-2021) being 1598 pairs.

Figure 2: Change in breeding lesser black-backed gulls (Apparently Occupied Nests (AON)) at RSPB Havergate Island reserve (2014-2021).



3.16 Since 2014, the RSPB has been monitoring large gull productivity at Havergate i.e. how many young do each pair fledge each year? It is important to note that fledgling lesser black-backed

gulls and herring gulls are essentially indistinguishable in the field. Therefore, productivity is estimated for the mixed large gull colony as a whole and attributed equally (following standard protocol).

3.17 Productivity provides an indication as to how successful the colony is and will be in the future, as birds which survive to adulthood begin to breed: large gulls generally first breed in their 4th year. Good productivity is needed to maintain and, where possible, increase the population. Understanding the key factors influencing population growth and productivity of a specific colony is essential in helping to ensure appropriate management is put in place.

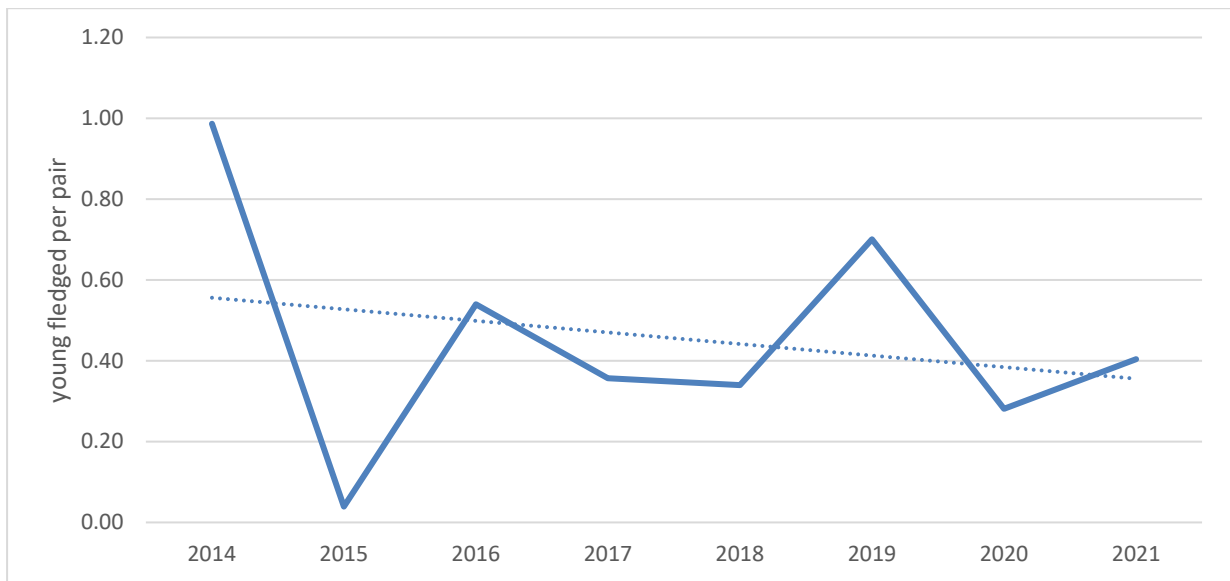
3.18 Table 3 below provides a summary of the large gull productivity recorded at RSPB Havergate between 2014 and 2021, including commentary on any incidents of predation recorded. In the most recent 5-years (2017-2021) it has averaged 0.42 fledged young per pair.

Table 3: Large gull productivity (young fledged per pair) recorded at RSPB Havergate Island reserve (2014-2021).

Year	Large gull productivity (young fledged per pair)	Notes on predation
2014	0.99	
2015	0.04	Fox present
2016	0.54	No predators
2017	0.36	Fox late season
2018	0.34	No fox sightings
2019	0.70	No fox sightings. Badger present but no effect on gulls
2020	0.28	No fox or badger sightings
2021	0.40	No fox or badger sightings

3.19 Table 3 and Figure 3 (below) show that productivity of the main SPA colony is fluctuating, is generally low and on a downward trend. This is contributing to the population decline shown in Figure 2 above.

Figure 3: Large gull productivity (young fledged per pair) recorded at RSPB Havergate Island reserve (2014-2021).



3.20 The RSPB's positive management of Havergate Island for large gulls (see paragraphs 3.25 to 3.31 below) has, in line with Natural England's supplementary advice, helped ensure:

- widespread availability of suitable habitat;
- no disturbance; and
- no recent predation.

3.21 This means there are no obvious drivers of these downward trends at the colony itself and no obvious explanation for the lack of population growth.

3.22 Therefore, there is some other critical factor (or factors) driving the decline in population and productivity. Reviewed against the SPA supplementary advice for this species, the other main factors that could meaningfully affect productivity are:

- food availability i.e. what are the lesser black-backed gulls feeding on and how might this be affecting the productivity of the colony?
- Connectivity with supporting habitats i.e. safe passage between nesting and feeding areas (onshore and offshore).

3.23 Understanding these and how they are interacting with other factors needs to be properly considered so that additional conservation measures can be put in place to stabilise and then restore the SPA population.

- 3.24 **We have taken time to explain the current situation because it is a fundamental point in assessing the ecological impact of any compensation measure. A failure to acknowledge, understand and then address all critical factor(s) which could undermine population growth and good productivity means the compensation measure may be doomed to fail or be less successful than is being assumed. We will return to this issue below in assessing the Applicant’s compensation proposals.**

[RSPB Havergate management for lesser black-backed gulls – correcting a long-standing error by the Applicant](#)

- 3.25 At paragraph 63 of Appendix 2 the Applicant states:

“Establishing a protected area for lesser black-backed gulls at Orford Ness would also reduce the conflict between recovering gull breeding numbers and protecting avocets and other ground nesting birds from gull predation at Havergate Island.”

- 3.26 This text is identical to that provided by the Applicant in paragraph 58 of its February 2020 submission to the Secretary of State with regards lesser black-backed gull compensation for Norfolk Vanguard. The RSPB corrected this error at paragraph 201 in its 22 April 2020 combined submission to the Secretary of State regarding compensation proposals for the Hornsea Three and Norfolk Vanguard schemes.
- 3.27 The RSPB also sought to correct the same error during the examination of the Norfolk Boreas scheme itself (see RSPB REP18-038). Below we set out a distilled version of our various attempts to correct the same, identical text in multiple offshore wind farm submissions (including most recently that for Scottish Power Renewables East Anglia One North and East Anglia Two proposals).
- 3.28 The reference to a claimed benefit to the RSPB’s Havergate Island reserve (part of the Alde-Ore Estuary SPA) is mistaken and based on an outdated understanding of the RSPB’s management priorities for this reserve. The RSPB is already managing Havergate Island to benefit breeding lesser black-backed gulls (and other large gulls).
- 3.29 The RSPB’s management priority at Havergate Island is now to provide positive management for breeding lesser black-backed gulls. This will inevitably respond to the specific management needs at Havergate Island, distinct from the management challenges faced at Orfordness.
- 3.30 Relying on Havergate Island alone will not enable the [Alde-Ore Estuary] SPA population of lesser black-backed gulls to be restored to at or above 14,074 pairs. To restore the SPA population to favourable condition will also require site management measures to be carried out at Orfordness. As we have set out in the previous section, it will need a proper

understanding of all the key factors affecting the breeding success of lesser black-backed gulls in the SPA as a whole.

- 3.31 The RSPB also manages land outside the Alde-Ore Estuary SPA on the adjacent Suffolk coast. The management priority of this land is targeted at those SPA species displaced from Havergate by the increase in the lesser black-backed gull population e.g. avocet, terns. This strategy has been adopted with Natural England's agreement so that management at Havergate could be refocused to benefit large gulls, including lesser black-backed gulls.

4 Compensation measures – general comments

Level of detail

- 4.1 At the recent examination into the East Anglia One North and East Anglia Two offshore wind farm schemes, the Examining Authority sought interested parties' views on the level of detail that should be provided by the Applicant in respect of compensation measures (see Question 3.2.8 in the Examining Authority's Third Written Questions¹⁷). This was in response to the Secretary of State's request for further environmental information for Norfolk Boreas¹⁸ and Natural England's view that greater detail about the design and implementation of [the EA1N/EA2] compensatory measures was needed to provide the SoS with the necessary confidence that those measures can be secured.
- 4.2 Below, we set out a slightly edited (for context) version of our response to the EA1N/EA2 Examining Authority's question as we consider it directly relevant to the Norfolk Boreas compensatory measure submissions.
- 4.3 The RSPB's general position on the level of detail provided by offshore wind farm (and other) developers to date was set out in its response to the Hornsea Project Three "minded to consent" consultation at paragraph 1.1 of the RSPB's submission dated 2 November 2020:¹⁹

"1.1 Whilst we appreciate the substantial additional information presented by the Applicant and the constructive discussions held, the RSPB considers there remain significant uncertainties with regards to the proposed compensation package, which remains experimental in nature. The number of further agreements, consents and permissions that will be required to deliver the proposed compensation measures post-consent remains profoundly worrying, as there is no certainty that those can be agreed or granted. Consistent with our views expressed on other offshore wind farm compensation proposals, it is therefore not clear that sufficient information is available to be confident ecologically, financially nor legally that all necessary compensation measures will be secured in order to maintain the overall coherence of the Natura 2000 network."

- 4.4 Therefore, we consider there are requirements that should be subject to scrutiny and settled before consent is granted in order to be confident any compensation measure has/can be

¹⁷ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010077/EN010077-005101-ExQ3-May-2021-APPROVED.pdf>

¹⁸ See letter dated 28 April 2021: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010087/EN010087-002810-NORB-Secretary-of-State-letter.pdf>

¹⁹ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010080/EN010080-003259-RSPB.pdf>

secured and will have a reasonable guarantee of success. These, with some adaptation, are common to all such measures. The key issues are listed below:

- **Nature/magnitude of compensation:** Agreement on the scale of compensation required in relation to the predicted impacts and best estimate of the timeline by which the proposed compensation measure will achieve its objectives, the latter to work out the lead-in time necessary to ensure the overall coherence of the National Site Network is protected;
- **Location:** legal securing of proposed compensation sites with ability to scrutinise (a) compensation design (b) evidence of relevant consents being secured and (c) evidence of relevant legal agreements to secure land to ensure compatibility with compensation objectives;
- **Monitoring and review:** detailed monitoring and review packages agreed in advance including terms of reference and ways of working for any “regulators group” to oversee implementation of measure, review periods, feedback loops etc.

4.5 We will comment on these issues below.

5 RSPB detailed comments on the Applicant's lesser black-backed gull compensation proposals

Introduction

5.1 We have set out our detailed comments on the Applicant's lesser black-backed gull compensation proposals in the following sections:

- Summary of RSPB comments on compensation proposals during examination;
- RSPB landholdings and compensation;
- RSPB response to new information provided by the Applicant: predator management.

Summary of RSPB comments on compensation proposals during examination

5.2 The RSPB's comments on the Applicant's compensation proposals for lesser black-backed gull were set out in a series of submissions during the examination at deadlines 10, 15, 16 and 17 (see paragraph 1.3 above).

5.3 The submitted compensation proposals were, as set out in the RSPB's Deadline 10 submission (paragraph 3²⁰), essentially identical to those submitted to the Secretary of State by the Applicant for its sister project, Norfolk Vanguard. For that reason, we provided the Examining Authority with a copy of the RSPB's response to the Secretary of State on those proposals. For the same reason, we have included a copy of that response at Annex 3.

5.4 Overall, the RSPB's comments on the original Norfolk Vanguard compensation proposals for lesser black-backed gull continue to apply to the latest Norfolk Boreas proposals. For that reason, we have provided signposting to the relevant sections that set out our primary concerns. They should be read alongside the comments set out in the rest of this section.

5.5 The RSPB's submissions at Deadlines 15, 16 and 17 responded to responses by the Applicant and Natural England during the examination. The key points arising from those submissions are summarised below:

²⁰ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010087/EN010087-002146-DL10%20-%20RSPB%20-%20Deadline%20Submission.pdf>

- **Deadline 15:**
 - As with Norfolk Vanguard, we supported the proposal to carry out a structured review to identify potential compensation measures that would have a “reasonable guarantee of success” (prior to consent);
 - summarised our position on the compensation proposals, drawing on our Norfolk Vanguard response i.e. the preferred option create a predator fenced area within the Alde-Ore Estuary:
 - would not be additional to measures already necessary to restore the LBBG population of the SPA to favourable status;
 - There is scientific uncertainty as to the effectiveness of the measures. Further research is required to test the efficacy of the most likely measures;
 - It would be necessary to show how any compensatory measures within the SPA are genuinely additional to site management.
 - We considered the Applicant’s decision not to provide additional information on the proposed compensation was at the Applicant’s own risk and meant the Examining Authority had no detailed evidence in front of it as to:
 - Whether the compensation measures will be sufficient, if the Secretary of State were to conclude an adverse effect on integrity of an SPA feature could not be ruled out; and
 - That those compensation measures had been secured.
- **Deadline 16:** we set out our concerns regarding:
 - 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 (see section 3 above), which may be of greater importance depending on the final location selected for the compensation measures. We drew 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
 - As a consequence, we respectfully disagreed with Natural England’s agreement to a compensation measure focused on the provision of a predator-fenced area, apparently

within the SPA. By specifying only this measure in the DCO condition, we considered there was 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.

- We made comments in respect of the drafting of the dDCO condition re:
 - Strong implication that that the location of the predator fencing compensation measure will be inside the SPA boundary. We argued 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*”.
 - the dDCO condition’s specific geographic reference to the Alde-Ore Estuary SPA artificially constrained the search for suitable locations that provide the necessary conditions for successful breeding and hampered the ability to consider locations where there may be fewer pressures, including collision risk with offshore wind turbines.
- **Deadline 17:**²¹
 - This distils the RSPB’s view based on its detailed comments at Deadline 10 (REP10-067), supplemented by comments in subsequent responses, in particular at Deadline 16 (REP16-029).²²
 - At paragraphs 2.3 and Table 1 we set out detailed comments on the Applicant’s proposed compensation measures for lesser black-backed gull. We have reviewed these in light of the updated information and consider they still apply in general. We have included the relevant extracts at Annex 5 to this submission.

²¹ See: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010087/EN010087-002549-DL17%20-%20RSPB%20-%20Deadline%20Submission.pdf>

²² Norfolk Boreas Limited. Addendum to REP11-012 - In principle Habitats Regulations Derogation Provision of Evidence Appendix 1 Flamborough and Filey Coast Special Protection Area (kittiwake) in Principle compensation (Version 2)

RSPB landholdings and compensation

- 5.6 The RSPB can confirm that it was one of the landowners that took part in the discussions hosted by Defra and Natural England referred to at paragraph 105 of Appendix 2. This meeting was held to gauge interest in participation in the delivery of proposed “strategic compensation” proposals.
- 5.7 We can further confirm that the RSPB was subsequently (July 2021) contacted by the Applicant on the same matter. During that discussion we explained why the RSPB was not interested in pursuing such discussions. We considered the proposal would be inappropriate on our landholdings in the area of the Alde-Ore Estuary for the following reasons:
- The RSPB owns and manages land inside the Alde-Ore Estuary SPA at Havergate Island. As described above (paragraphs 3.25 to 3.31), this is now managed for breeding large gulls, in particular breeding lesser black-backed gulls. It has widespread availability of suitable habitat, no disturbance and no recent predation. Therefore, there is no requirement for a predator-proof fence, nor would it address the currently experienced decline in productivity experienced at Havergate which requires further investigation (see paragraphs 3.16 to 3.24 above).
 - The RSPB also manages land outside the Alde-Ore Estuary SPA on the adjacent Suffolk coast. The management priority of this land is targeted at those SPA species displaced from Havergate by the increase in the lesser black-backed gull population e.g. avocet, terns (see paragraph 3.31 above). Therefore, the proposal would conflict with the management of this land.
- 5.8 We note here that it is our understanding that following the meeting hosted by Defra and Natural England, none of the landowners involved expressed a wish to host the proposed anti-predator fence. However, we recommend that BEIS confirm that with Defra and Natural England and/or the Applicant.

RSPB response to new information provided by the Applicant: predator management

- 5.9 The RSPB has reviewed the updated information provided by the Applicant in respect of its compensation proposals for lesser black-backed gulls. We have concentrated on new or amended information.
- 5.10 Overall, we note that that there are no substantive new proposals contained within the updated information or a fundamental change in approach i.e. the proposal remains substantially as submitted to the examination with all key details to be worked out post-DCO consent. This

underlines the lack of a clear and robust compensation proposal with a specific, secured location and associated substantive detail which can be properly scrutinised.

- 5.11 Therefore, the majority of the RSPB's concerns remain. Below we set out our comments on key issues arising from the review of the updated information under the relevant headings from Appendix 2.

Section 4.4.2: Delivery mechanism

- 5.12 At paragraph 62, the Applicant refers to possible joint delivery with other offshore wind farms such as East Anglia One North and East Anglia Two. A similar suggestion was raised by the applicant for East Anglia One North and East Anglia Two during the examination into those schemes. The RSPB welcomed that suggestion in principle²³ and agreed with Natural England's comments that more detail on how this would work in practice should be provided given the practical challenges. We considered this should include provision within the DCO to facilitate and, critically, regulate such collaborative working to ensure that each developer's contribution is properly managed, overseen and capable of enforcement if required. This would include the establishment and co-ordination of relevant expert and management steering groups. As with those schemes, we are not aware of any proposed conditions in the draft DCO to such effect and therefore have reservations on how this would be made to work in practical and legal terms.

Section 4.4.3: Spatial scale

- 5.13 The Applicant has presented a graph, Figure 1 of Appendix 2, of predicted colony growth alongside cumulative mortality for the lesser black-backed gull population of the Alde-Ore Estuary SPA. This is claimed to show that the "mortality debt" will be "paid back" in three to four years. However, this illustration is dependent on a number of entirely questionable and uncertain assumptions. These include, inter alia, the rate of colony growth, the colony starting size, the and the timescale to achieve the required population levels. For example, the Applicant uses a productivity rate 0.5 fledged per pair, claiming it is a modest assumption and low, whereas the 5 year average for Havergate is 0.42. Most importantly, in presenting this graph, the Applicant implies a degree of precision and certainty that is not present in their proposals for a compensation scheme as they currently stand.

²³ See paragraph 2.8 in RSPB REP8-171 to EA1N and EA2 examinations:
<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010077/EN010077-004459-DL8%20-%20RSPB.pdf>

- 5.14 At paragraphs 74-82, the Applicant sets out its preferred location for its New Zealand style fencing proposal as an unspecified location within the Orfordness National Nature Reserve or adjacent land. It goes on to set out some of the constraints it would have to deal with in proposing a large-scale fencing scheme in this highly sensitive area: e.g. AONB landscape impacts, historic environment and designated nature conservation interests (SSSI and SAC). This is welcome in general terms.
- 5.15 However, the list of constraints set out at paragraph 81 underlines the significant issues that remain unresolved with the Applicant's proposals, any of which could result in any fencing proposal being rejected by the relevant regulator. This reinforces the RSPB's view set out at paragraph 4.4 above that it is critical that the Applicant be required to submit evidence that it has legally secured its proposed compensation site and that stakeholders are provided with the ability to scrutinise evidence of (a) relevant consents being secured and (b) relevant legal agreements to secure land to ensure compatibility with compensation objectives.
- 5.16 The Applicant subsequently recognises the vulnerability of its proposals in paragraph 83 where it acknowledges that compensation could be delayed due to delays in agreeing an appropriate location and management. We consider these are so fundamental to deciding if the compensation is viable that they must be secured in advance of any consent.

Section 4.4.4: Timescale

- 5.17 We are disappointed that the proposal to convene a working group has been abandoned (paragraph 83). The RSPB had suggested that such a working group should have been convened in advance of consent being granted in order to work through the complex issues to be resolved. This includes the choice of a predator fence as the compensation solution in this broad location which we consider fails to take account of other ecological factors affecting breeding success in this broad location (see section 3 above).
- 5.18 For the reasons set out in our comments in paragraph 5.13 above, we do not agree that there can be any confidence over the general timescales for colony growth of the proposed compensation measure.
- 5.19 At paragraph 85, the Applicant claims the compensation measure has a "predicted large magnitude of success". This is speculative. The RSPB argues that no weight should be given to such a claim until detailed, fully worked up proposals are presented which can be critically evaluated by stakeholders, including details of secured locations, consents and agreements. This includes ensuring there is a proper understanding of the factors leading to the declines observed in the population and productivity of the main Havergate colony.

5.20 At paragraph 86, the Applicant refers to an alternative approach of a strategic fund. The RSPB refers the Secretary of State to its comments on this in Table 10 of Annex 3 to this submission:

“the concept of a strategic fund is inappropriate at this time given that no compensation measures have been identified that could be relied upon.”

Section 4.4.5: Management and monitoring

5.21 We welcome the monitoring suggestions outlined at paragraphs 88-89. As a minimum, a detailed monitoring strategy should be made available for public consultation now. This is in keeping with Natural England’s advice on what should be included in a compensation plan, which we have recommended (see section 2 in Overview and Summary) should be the basis for proper consideration of the Applicant’s compensation proposals before any decision on the DCO consent. The RSPB’s submission at Deadline 17 of the Norfolk Boreas examination (see para 2.9 in Annex 5) set out a minimum monitoring requirement for all species requiring compensation measures. Each measure would require bespoke consideration to ensure it is properly tailored to the requirements.

Section 4.6: Proposed approach to delivery of compensation

5.22 The RSPB agrees with the Applicant that the focus of a compensation measure for breeding lesser black-backed gulls should be to improve breeding success in the selected location (paragraph 96), although we do not at this stage agree that the solution is a New Zealand style fence, or that the Suffolk coast is the appropriate location given the need to understand the other factors affecting breeding success and population of the main Havergate colony.

5.23 At paragraph 97, the Applicant sets out a series of measures it would undertake in order to improve breeding success. The RSPB is in broad agreement with the logic of the measures outlined (notwithstanding the focus on a predator fence).

5.24 However, we consider that the first two measures (stakeholder working group and candidate locations) must take place before any DCO consent is granted. Given the significant sensitivities and constraints identified by the Applicant at paragraph 81, it is essential that these issues are addressed now in order to determine whether a suitable compensation measure can be secured.

Section 4.6.1.1: Draft DCO condition

5.25 The RSPB has set out its key concerns with the Applicant’s approach to its DCO wording in section X of the Overview and Summary part of this submission and why it is seriously flawed. We do not consider it fit for purpose.

Section 4.6.2: Proposed content of lesser black-backed gull compensation plan

5.26 See section 2 in the RSPB's Overview and Summary document for overarching comments on Natural England's advice on the proposed content of a lesser black-backed gull compensation plan.

Section 4.8: Evidence for acquisition or leasing of compensation sites

5.27 We note the comments by the Applicant here. However, we have seen no evidence presented by the Applicant that any interest in land has been secured. For the reasons set out above, we are not aware of any landowner that has expressed an interest in negotiating a voluntary agreement as stated in paragraph 107 and therefore recommend the Secretary of State seek more robust evidence on this matter from the Applicant.

5.28 It is the RSPB's view that the ability to secure interest in suitable land is fundamental and therefore a significant barrier which must not be treated lightly. To date, no evidence has been provided that any such interest has been secured. Consent for the DCO should not be granted until evidence is provided by the Applicant that interest in land has been secured (and relevant consents obtained).

Section 4.9: Implementation timetable

5.29 In line with our comments elsewhere, we consider the first 4 measures set out in paragraph 109 are needed before any DCO consent is granted i.e. working group, ownership and access agreements obtained, planning permission and other consents obtained (not just sought), and detailed designs agreed.

6 Conclusion

Impacts

6.1 The RSPB's conclusion for lesser black-backed gulls from the Alde-Ore Estuary SPA remains as it was at the end of the Norfolk Boreas examination:

- **Alone:** conclude that there will not be an adverse effect on site integrity;
- **In-combination:** conclude adverse effect on site integrity exists due to collision risk.

Compensation proposals in respect of the Alde-Ore Estuary SPA for lesser black-backed gulls

6.2 Based on the RSPB's careful consideration of the Applicant's compensation proposals for lesser black-backed gull set out in Appendix 2, the RSPB's overall conclusions are that Norfolk Boreas has not presented compensation measures that:

- Have a reasonable guarantee of success based on the best scientific knowledge;
- Would be secured (legally, financially and technically) in advance of consent being granted;
- Would ensure the overall coherence of the National Sites Network was protected.