



Written Submission
for the
Royal Society for the Protection of Birds
OVERVIEW and SUMMARY

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 The RSPB is grateful for the opportunity to make submissions in response to the Secretary of State for Business, Energy and Industrial Strategy's (BEIS) request for comments on the information provided by Norfolk Boreas Limited's ("the Applicant") in reply to the Secretary of State's request for further information dated 28 April 2021.
- 1.2 This document and its annexes sets out the RSPB's comments on key elements of the following submissions by the Applicant:
 - In Principle Habitats Regulations Derogation Provision of Evidence: Appendix 1, Flamborough and Filey Coast SPA In Principle Compensation ("Appendix 1")
 - In Principle Habitats Regulations Derogation Provision of Evidence: Appendix 2, Alde-Ore Estuary SPA In Principle Compensation ("Appendix 2")
- 1.3 Our response will also cover related aspects of the Applicant's submission "Response to the Request for further information (dated 25 June 2021)".
- 1.4 At this stage, we have not sought to comment on the Applicant's compensation proposals concerning the Haisborough, Hammond and Winterton Special Area of Conservation (Appendix 3) as we have not engaged on the issues raised. However, we have noted the Applicant's proposal for only implementing compensation after damage is caused to the SAC, notwithstanding having assessed the potential impacts of deploying cable protection within the SAC.¹ This is of serious concern and raises significant and potentially damaging precedent issues. The RSPB will review the comments of those nature conservation organisations more familiar with the matters raised and we reserve the right to submit fuller comments on this issue at the next consultation.
- 1.5 We have where relevant drawn on RSPB submissions to the Norfolk Boreas examination, as well as submissions in respect of other offshore wind farm proposals.

¹ Based on the summary of these set out on pages 16 to 18 of the Response to the Request for further information (dated 25 June 2021).

- 1.6 In his letter dated 9 July 2021² the Secretary of State requested the Applicant provide the results of updated Population Viability Analysis (PVA) models in relation to the in-combination impacts on kittiwakes, gannets, guillemot and razorbills from the Flamborough and Filey Coast Special Protection Area (FFC SPA). We note the letter states there will be a further consultation on this and other material submitted by the 20 August 2021 deadline.
- 1.7 Given this and its relevance to the treatment of in-combination impacts per se, the RSPB notes that it is its intention at this second consultation to respond to the Applicant's June 2021 submission on matters relating to the issue of "de minimis". These were set out at paragraphs 1-33 of the "Response to the Request for further information" document. The RSPB notes the position of the Marine Management Organisation as described at paragraph 10 of the "Response to the Request for further information" document. The RSPB has a position on the issue of "de minimis" and will address it in the context of issues raised by the PVA material and any other relevant submissions made by 20 August 2021.

Contents of the RSPB's submission

- 1.8 The RSPB's submission comprises the following documents:
- Overview and Summary (this document);
 - Annex 1: RSPB comments on "In Principle Habitats Regulations Derogation Provision of Evidence: Appendix 1, Flamborough and Filey Coast SPA In Principle Compensation (dated 25 June 2021)";
 - Annex 2: RSPB comments on: "In Principle Habitats Regulations Derogation Provision of Evidence: Appendix 2, Alde-Ore Estuary SPA In Principle Compensation (dated 25 June 2021)";
 - Annex 3: Copy of the RSPB's combined response to the SoS BEIS's consultation on Hornsea Three and Norfolk Vanguard offshore wind farm schemes (22 April 2020);
 - Annex 4: Extract from REP11-127 East Anglia One North and East Anglia Two examination: the RSPB's responses to the Examining Authority's Third Round of Written Questions: answer to Question 3.2.5;

² <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010087/EN010087-002833-NORB-further-consultation-letter-9-7-21.pdf>

- Annex 5: Extracts from the RSPB's Deadline 17 submission (REP17-012) to the Norfolk Boreas examination.

2 RSPB's assessment of the Applicant's overall approach to compensation measures

2.1 This section sets out the RSPB's assessment of the Applicant's overall approach to compensation measures. In summary, we consider the approach to be seriously flawed and, for reasons set out elsewhere in this document and its annexes, lacking any explicit, tangible compensation proposals that can give the Secretary of State confidence that compensation measures either have been or are capable of being secured.

Overview and critique of Applicant's approach (seabirds only)

2.2 The Applicant has produced two key documents in respect of its proposed compensation measures for SPA seabirds affected by the Norfolk Boreas proposal:

- Appendix 1 Flamborough and Filey Coast SPA In Principle Compensation; and
- Appendix 2 Alde-Ore Estuary SPA In Principle Compensation.

2.3 Each document sets out the Applicant's analysis of possible compensation options and indicates a preferred approach as follows:

- Kittiwake: artificial nesting structures (onshore);
- Guillemot and razorbill: predator eradication (island restoration);
- Lesser black-backed gull: predator management (focused on an anti-predator fence).

2.4 Critically, the key legal mechanism comprises the proposed DCO wording for each compensation proposal. The Applicant relies on essentially the same structure and approach in setting out its DCO wording, with minor adjustments related to the species. Below, we set out our understanding of the logic of the DCO wording's approach and why we consider it is seriously flawed.

2.5 In essence the logic of the proposed approach set out in the DCO wording is as follows:

- **Condition 1:** defines the meaning of "compensation plan"
 - Crucially, states that the "compensation plan" means the "relevant principles" set out in the Appendix for that species;
- **Condition 2:** requires a strategy for the delivery of the (compensation) measures to be submitted to and approved by the Secretary of State;
- **Condition 3:** requires the strategy to be prepared in accordance with the "principles" in the "compensation plan" (which is by definition the "relevant principles").

- Sets out the information that should be included in the “strategy” **BUT** only “in the event” that the strategy proposes a named compensation measure (as per paragraph 3.3 above). This construction clearly allows for a strategy to be developed post-consent which contains a different, unnamed, and un-examined compensation measure.
 - **Condition 8:** allows for amendments to the strategy to be agreed in writing with the Secretary of State provided they accord with the “principles” set out in the “compensation plan”.
- 2.6 Therefore, the ability of (i) stakeholders to comment on the draft proposals and, ultimately, (ii) Secretary of State to ensure adherence to such DCO commitments, hinges on knowing what the “relevant [compensation] principles” are for each species’ compensation plan.
- 2.7 The RSPB has read each Appendix in detail and carried out a word search to ensure we have not overlooked anything. We can confirm that:
- Nowhere in Appendix 1 (kittiwake, guillemot and razorbill) is it clearly stated what the “relevant [compensation] principles” are for any of the species. Therefore, there are no “relevant principles” that can be scrutinised as to whether they are suitable to form the basis of such a compensation plan or the detailed delivery strategy that must be in accordance with said principles;
 - In Appendix 2 (lesser black-backed gull), the wording is subtly different but the approach is essentially the same. Condition 3 requires the delivery strategy to accord with the principles set out in the compensation plan. We can confirm the only reference in Appendix 2 that could be construed as “principles” is contained in paragraph 81 and this refers narrowly to principles to be used when siting proposed fencing. These are not compensation principles.
- 2.8 Therefore, we conclude that it is not possible to be certain what each species’ compensation plan actually comprises. This makes it impossible to evaluate and understand how the legal requirement set out in the DCO condition should be implemented and to comment accordingly. We would further argue it makes it very difficult for the Secretary of State to be confident what the overarching framework is that will govern each species’ compensation measures.
- 2.9 This serious flaw in the proposed approach is exacerbated by the provision in condition 3 in each DCO wording that expressly countenances an alternative compensation measure being put forward post-consent. This means that the public can have no confidence what compensation measure will be implemented for each species given that the proposed DCO wording allows for it to be changed post-consent. This means it is not possible at this time to be

confident the coherence of the National Sites Network would be protected should consent be granted.

- 2.10 As we summarise in sections 4 and 5 below (and in detail in RSPB annexes 1 and 2), this is compounded by the lack of any substantive compensation proposals being put forward by the Applicant for any of the seabird species of concern. No tangible and secured proposal is put forward in either Appendix 1 or Appendix 2.

[An alternative approach to the “compensation plan”](#)

- 2.11 As we set out in sections 4 and 5 below, the RSPB does not consider the Applicant’s Appendix 1 and Appendix 2 are fit for purpose as “in principle compensation proposals”. In brief, they lack the relevant evidence to demonstrate that compensation measures have been secured and can be delivered.
- 2.12 The RSPB does not consider “in principle” equates to “outline” proposals such that all the critical issues would be addressed post-consent. This completely undermines confidence in what the compensation measures will comprise and that the public interest to protect the coherence of the National Sites Network will be secured.
- 2.13 Fortunately, it is evident that Natural England has provided clear advice to the Applicant on what the compensation plan should comprise. In the section after the proposed DCO wording in each appendix, the Applicant summarises Natural England’s advice on what the relevant species’ compensation plan should comprise. This is in stark contrast to the vague reference to “principles” described above. Natural England’s advice is in line with the approach and level of detail we understand is now being required of current wind farm proposals. We see no reason why Norfolk Boreas should not be required to operate to the same standards.
- 2.14 As such, we argue that Natural England’s advice on what each compensation plan should contain provides a robust basis for the evidence on each proposed compensation measure that the Secretary of State should require from the Applicant before deciding whether to grant consent for the Norfolk Boreas scheme. Any such revised proposals should be subject to public consultation.
- 2.15 This advice aligns with the RSPB’s answer to a question posed by the Examining Authority into the East Anglia One North and East Anglia Two offshore wind farm schemes. In its REP12-096

Deadline 12 response³ to Question R17QF.4 posed by the Examining Authority, the RSPB stated the following, which we consider applies to Norfolk Boreas and other similar schemes:

“Question (c), (d) and (e)

The Examining Authority’s questions touch on the important issue of the sequencing of informed decision-making in respect of compensation proposals and the tension that currently exists in dealing with proposals that are very much outline proposals with little, if any, practical detail. It also relates to the answers provided to the Examining Authority’s Question 3.2.8 (level of detail in relation to [compensation] implementation) at Deadline 11 and the reason why it is important to ensure the availability of sufficient information at the point of DCO consent on the implications of each proposed compensation measure e.g.:

- *The nature and location of the proposed measure(s) and an assessment of whether it is likely to have a reasonable guarantee of success;*
- *Whether it has been legally secured through relevant consents and agreements.*

As the RSPB’s answer to Question 3.2.8 highlighted (REP11-127)⁴, there are some highly significant and detailed considerations for the various compensation measures that it is both essential and appropriate to consider before DCO consent is granted, rather than assume a highly outline compensation measure can be translated in to a detailed and workable measure “on the ground” at a later date and all the necessary consents and agreements successfully secured.

Satisfying these issues prior to DCO consent being granted should, in general terms, ensure it is possible to:

- *Identify the location and mechanism(s) of the proposed compensation measure in detail;*
- *Identify the relevant consenting and/or licensing mechanisms required. Depending on location and mechanism, we consider these are likely to go beyond the outline changes to article 3 of parts 1-6 of Schedule 18 of the dDCO suggested in part (e) of the Examining Authority’s question;*
- *Identify any potential impacts of the proposed measure on the receptor site and surrounding environment and carry out appropriate screening;*
- *Based on this, identify any particular impact assessment requirements necessary which might arise from likely direct and indirect effects of the compensation measure on other*

³ See: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010077/EN010077-005506-DL12%20-%20RSPB%20-%20Response%20to%20R17.pdf>

⁴ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010077/EN010077-005276-DL11%20-%20Royal%20Society%20for%20the%20Protection%20of%20Birds%20Written%20Questions.pdf>

receptors (e.g. Environmental Impact Assessment, Habitats Regulations Assessment, SSSI consents etc);

- *Once these have been completed and relevant processes completed, be satisfied that the relevant legal consents are secured, assuming consent for the compensation measure is granted by the relevant decision-making authority. If consent has not been granted, the Examining Authority and Secretary of State would know in advance.*

This would in turn enable the Examining Authority and Secretary of State to be able to make a fully informed decision on whether proposed compensatory measures have been secured, have a reasonable guarantee of success and therefore will protect the overall coherence of the National Sites Network.”

Without prejudice comments on amendments to current DCO wording

2.16 Notwithstanding our advice above, should the Secretary of State disagree with the RSPB’s proposed approach, then as a bare minimum the proposed DCO wordings should be brought in to line with the approach adopted by the Secretary of State in the Hornsea Project Three consent. For example:

- Development should explicitly not be allowed to commence until [the delivery strategy] has been submitted to and approved by the Secretary of State. Given the lack of detail currently available, that draft strategy should be made subject to public consultation before the Secretary of State decides whether or not to approve it;
- The strategy should include details of locations where compensation measures will be deployed and details of landowner agreements demonstrating how the land will be bought or leased and assurances that the land management will deliver the ecology objectives of the strategy;
- The implementation timetable must ensure the first wind turbine is not operated until compensation is in place for an agreed number of years to enable affected seabirds to colonise, breed and first recruits to breed. As a minimum, this should be 4 years but needs to take account of the breeding ecology of each species and the timescales likely to be required for the agreed compensation measure to be ecologically effective;
- The monitoring condition should require annual monitoring reports to be submitted to the Secretary of State. These reports should be required to be made publicly available at the same time;
- For the same reasons as Hornsea Project Three, the compensation measures should be maintained beyond the operational lifetime of authorised development i.e. the compensation measures should be required to be in place until such time as it is predicted

the affected SPA will have recovered from the scheme's impacts. This is especially given the uncertainties associated with the compensation measures proposed for each species, and the potential need for both adaptive management measures and additional compensation measures.

- 2.17 If this sub-optimal approach is adopted, a further public consultation should be required on explicit compensation principles for each species before a decision on whether to consent the DCO is made. However, given the current lack of clear compensation proposals by the Applicant, we consider even this approach would still be significantly flawed.

3 Summary of response to “In Principle Habitats Regulations Derogation Provision of Evidence: Appendix 1 Flamborough and Filey Coast SPA”

3.1 Below we set out a summary of the RSPB’s position on:

- Adverse effect on the integrity of the FFC SPA
- The Applicant’s compensation proposals for kittiwake, guillemot and razorbill.

RSPB position on adverse effect on integrity of the FFC SPA

3.2 The RSPB’s conclusions for each species from the FFC SPA remain as they were at the end of the Norfolk Boreas examination, now with the confirmation that Hornsea Project Three has been consented:

- **Kittiwake:** no adverse effect on site integrity alone; adverse effect on site integrity exists in combination due to collision risk;
- **Gannet:** no adverse effect on site integrity alone; adverse effect on site integrity exists in combination due to collision risk and exacerbated by displacement;
- **Guillemot:** no adverse effect on site integrity alone; adverse effect on site integrity exists (when mortality from Hornsea Three and Four are included) in combination due to displacement;
- **Razorbill:** no adverse effect on site integrity alone; adverse effect on site integrity exists (when mortality from Hornsea Three and Four are included) in combination due to displacement;
- **Seabird assemblage:** no adverse effect on site integrity alone; not possible to rule out adverse effect on site integrity due to collision risk and displacement (based on combined impacts of: kittiwake, gannet, guillemot and razorbill).

RSPB summary position on the Applicant’s compensation proposals for kittiwake, guillemot and razorbill

3.3 The RSPB has set out its detailed comments on the Applicant’s updated information on compensation proposals in Annex 1 to this submission. For the detailed reasons set out there (and the other documents referred to) and the serious concerns set out in section 2 above, the RSPB’s overall conclusion is that the compensation proposals are not fit for purpose. At its most basic, none of the proposals have an identified and secured location and accompanying detailed design to be scrutinised, let alone relevant consents etc. We argue that significantly more detailed evidence is required in order to test the compensation proposals and determine whether or not they meet the legal requirements.

3.4 Therefore, based on the RSPB's careful consideration of the Applicant's compensation proposals for kittiwake, guillemot and razorbill set out in Appendix 1, 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.

4 Summary of response to “In Principle Habitats Regulations Derogation Provision of Evidence: Appendix 2 Alde-Ore Estuary SPA”

Introduction

4.1 Below we set out a summary of the RSPB’s position on:

- Adverse effect on the integrity of the Alde-Ore Estuary SPA
- The Applicant’s compensation proposals for lesser black-backed gulls.

RSPB position on adverse effect on integrity

4.2 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.

RSPB summary position on the Applicant’s compensation proposals for lesser black-backed gull

4.3 The RSPB has set out its detailed comments on the Applicant’s updated information on compensation proposals in Annex 2 to this submission. For the detailed reasons set out there (and the other documents referred to) and the serious concerns set out in section 2 above, the RSPB’s overall conclusion is that the compensation proposals are not fit for purpose. At its most basic, the proposal does not have an identified and secured location and accompanying detailed design to be scrutinised, let alone relevant consents etc. This is compounded by the issues we have described in Annex 2 which point to other factors besides predator management and disturbance affecting the breeding success of lesser black-backed gulls within the Alde-Ore Estuary SPA. We argue that significantly more detailed evidence is required in order to test the compensation proposals and determine whether or not they meet the legal requirements.

4.4 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.