



Written Representation
for the
Royal Society for the Protection of Birds
Summary of Written Representation
Submitted for Deadline 2 (29 March 2022)

Planning Act 2008 (as amended)

In the matter of:

**Application by Hornsea Project Four Limited for an Order
Granting Development Consent for the Hornsea Project Four Offshore Wind
Farm**

Planning Inspectorate Ref: EN010098

RSPB Registration Identification Ref: 20029909

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1. Summary of the RSPB's Written Representation

Introduction

- 1.1. The Royal Society for the Protection of Birds (the RSPB) was set up in 1889. It is a registered charity incorporated by Royal Charter and is Europe's largest wildlife conservation organisation, with a membership of over 1.1 million¹. The principal objective of the RSPB is the conservation of wild birds and their habitats. The RSPB therefore attaches great importance to all international, EU and national law, policy and guidance that assist in the attainment of this objective. It campaigns throughout the UK and internationally for the development, strengthening and enforcement of such law and policy. In so doing, it also plays an active role in the domestic processes by which development plans and proposals are scrutinised and considered, offering ornithological and other wider environmental expertise. This includes making representations to, and appearing at, public inquiries and hearings during the examination of applications for development consents.

The RSPB's interest in offshore wind development

- 1.2. Faced with the threats of climate change to the natural world the RSPB considers that a low-carbon energy revolution to reach net zero is essential to safeguard biodiversity. However, inappropriately designed and/or sited developments can also cause serious and irreparable harm to biodiversity and damage the public acceptability of the necessary low-carbon energy transition technologies. The RSPB recognises the significant role that offshore wind will play in decarbonising our energy systems and the renewed urgency with which this must happen. Installing this technology at the scale and pace needed is no easy task: there are significant challenges rooted in the planning frameworks and the state of our seas which threaten both nature *and* our ability to reach net zero.
- 1.3. The available evidence suggests that the main risks of offshore wind farms for birds are collision, disturbance/displacement, barriers to movement (e.g. migrating birds, or disruption of access between the breeding areas and feeding areas), and habitat change particularly with associated changes in food availability and the cumulative and in-combination effects of these across multiple wind farms. Such impacts are avoidable, and the RSPB has spent considerable time working with stakeholders in the UK offshore wind industry to ensure that decisions about deployment of renewable energy infrastructure take account of environmental constraints and seek to avoid or minimise impacts wherever possible. The RSPB therefore strongly advocates the use of rigorous, participative environmental assessments to inform the development of projects.

Scope of submission

- 1.4. The RSPB's Written Submission covers the following:
- The nature conservation importance of the seabirds affected by the Hornsea Project Four Offshore wind farm scheme

¹ <https://www.rspb.org.uk/about-the-rspb/about-us/how-the-rspb-is-run/annualreport/> Accessed 29 March 2022.

- Legislation and policy background
- Offshore ornithology
- Derogation case: the RSPB's approach to evaluating compensation measures under the Conservation of Habitats and Species Regulations 2017 (as amended)
- RSPB detailed comments on the Applicant's specific compensation proposals
- RSPB comments on the draft Development Consent Order (DCO) and draft Deemed Marine Licence (DML).

1.5. The RSPB is aware that the Applicant submitted a number of new and updated documents at Deadline 1 of relevance to the RSPB's concerns. The Applicant has also set out its timetable for submitting additional new documents to the Examination. As raised during the preliminary meeting, the RSPB would welcome further information on what each of these documents will cover. This is in order to be able to understand more fully the implications of each in respect of the concerns raised by the RSPB and others. The RSPB also repeats its requests made at the Preliminary Meeting that the Applicant provides a timetable for when it proposes to update key application documents related to offshore ornithology and compensation measures.

1.6. We continue to be concerned about such large quantities of new information coming in after the start of the Examination, particularly after the deadline for written representations and wish to repeat our concerns about how it will be possible for Interested Parties to review this new environmental information, update their positions and ensure the Examination Authority is provided with comments on it.

2. The nature conservation importance of the seabirds affected by the Hornsea Project Four offshore wind farm scheme

- 2.1. The Flamborough and Filey Coast SPA is a vital site for nationally and internationally important seabird populations. Kittiwake, gannet, guillemot, razorbill and the seabird assemblage are qualifying features of this SPA. Despite the Conservation Objectives, “to ensure that ... the integrity of the site is maintained or restored as appropriate”, since this site was designated in 1993 the national populations of both kittiwake and some assemblage species have suffered substantial declines.
- 2.2. It is vital to consider whether the SPA and its qualifying features meet the attributes and targets set by Natural England when considering whether the SPA’s conservation objectives to maintain or restore site integrity can be met and the SPA achieve favourable conservation status throughout the lifetime of the development and any subsequent period where its impacts continue to affect the SPA features.

3. Legislation and policy background

- 3.1. Energy National Policy Statements (NPSs) set out the Government's approach to considering new energy infrastructure. Consent for energy infrastructure is subject to tests set out in Section 104 of the Planning Act. NPS EN-3, National Policy Statement for Renewable Energy Infrastructure, specifically identifies birds as a biodiversity concern to be taken into account (paragraph 2.6.59 and 2.6.68).
- 3.2. There is a statutory duty to comply with the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations, as amended) which offer protection for protected sites (Ramsar, SPA, SAC) and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (Offshore Regulations)(as amended). The Habitats and Offshore Regulations set out a sequence of steps to be taken by the competent authority (here the Secretary of State for Business, Energy and Industrial Strategy (BEIS)) when considering authorisation for a project *likely to have an effect* on a European site and its species before deciding to authorise that project.
- 3.3. We set out a series of related matters to be considered in this context, including:
 - SPA and SAC Conservation Objectives;
 - Appropriate assessment;
 - In-combination effects and compensation for other schemes;
 - Habitats Regulations General Duties;
 - Environmental Impact Assessment.

4. Offshore ornithology

- 4.1. A key issue that underpins the whole of the Applicant's ornithology assessment is the manner in which the spatial modelling of survey data has been carried out to obtain baseline information including bird densities to input into predictive modelling of potential bird collision and displacement impact mortalities. The RSPB is content that the proposed method to calculate baselines is robust if used correctly and transparently. However, there are a number of concerns that we share with Natural England around how the Applicant has applied the methods and a lack of clarity as to how data has been treated and how the model based approach has been validated.
- 4.2. These fundamental issues with the assessment, along with the presentation of the outputs of the modelling of population scale impacts, in our view mean the assessment is inadequate, and therefore insufficient for the robust consideration required to enable a proper understanding of the likely impacts of the scheme. Whilst we appreciate the Applicant may provide more information (and we reserve the right to review our comments and concerns in light of it) unless the Applicant resolves these two fundamental issues, in our view the assessment currently before the Examination is not fit for purpose.

5. Derogation case: the RSPB's approach to evaluating compensation measures under the Conservation of Habitats and Species Regulations 2017 (as amended)

- 5.1. This section sets out the RSPB's approach to evaluating compensation measures. It includes our general approach to assessing compensation proposals and the level of detail we consider is required in order to evaluate compensation proposals as part of the examination process, before drawing out some general issues raised by the Applicant's proposals.
- 5.2. The RSPB has reviewed both the EC² and Defra³ guidance on compensatory measures. This review also draws on the RSPB's over 20 years experience evaluating and negotiating compensation proposals under the Habitats Regulations by developers across various sectors. As the EC Guidance is fuller, we have used that as our primary reference, while drawing out any additional points made in the Defra guidance since it is UK focused.
- 5.3. The RSPB will use the EC's criteria and its experience to evaluate the various compensation measures:
 - Targeted;
 - Effective;
 - Technical feasibility;
 - Extent;
 - Location;
 - Timing;
 - Long-term implementation;
 - Additionality.
- 5.4. In addition, we have set out the level of detail we consider is required in any proposed compensation measures, and have gone on to identify generic issues raised by the Applicant's proposals:
 - Lack of specific proposals and locations for compensation measures;
 - Scale of compensation;
 - Lead-in times for compensation;
 - Lifetime of compensation in relation to damage.

Environmental assessment of the proposed compensation measures

- 5.5. Section 6 and Annexes B and C set out the RSPB's detailed comments on the Applicant's specific compensation measures as submitted. Our key and overarching comment is that the Applicant has failed to put forward detailed and location specific compensation measures for any impacted species. Neither have any been secured. It is therefore not possible at this stage for the RSPB to assess any of the compensation measures properly and provide advice to the

² 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.

³ Defra (2021) <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>. Accessed March 2022.

Examining Authority on whether each has a reasonable guarantee of success in meeting specific, agreed compensation objectives.

6. RSPB detailed comments on the Applicant's specific compensation proposals

6.1. Section 6 sets out the RSPB's views on the following compensation measures put forward by the Applicant:

- Offshore and onshore artificial nesting structures (kittiwake and gannet);
- Bycatch reduction (guillemot, razorbill and gannet);
- Predator eradication (guillemot and razorbill);
- Fish habitat enhancement – seagrass restoration.

6.2. Annex B (bycatch reduction) and Annex C (predator eradication) provide more detailed comments, drawing on additional RSPB expertise on these matters.

6.3. The RSPB's key and most critical concern is that the Applicant has failed to put forward detailed, proven and location specific compensation measures for any impacted species. Notwithstanding this, the RSPB has as far as is practicable, provided more detailed comments in section 6 on each of the broad compensation measures.

6.4. The RSPB's current assessment on the Applicant's proposed measures is summarised below:

- Northern gannet:
 - Artificial nest sites: we consider the evidence submitted demonstrates clearly that Northern Gannet is dependent on natural nesting habitats i.e. less than 20 individual birds out of 1.5-1.8 million birds shown to have used some form of artificial nest sites. Therefore, at this time, in the absence of substantive and compelling evidence otherwise, we are not persuaded that artificial nesting structures can be considered even theoretically feasible as a compensation measure for this species;
 - Bycatch reduction: no information has been provided on what precise measures the Applicant proposes to carry out for gannet. As far as we are aware, no trial work is underway in respect of this species (c.f. guillemot and razorbill). Therefore, the RSPB reserves its position and refers the Examining Authority to its detailed comments on bycatch reduction set out in Annex B to this Written Representation. This sets out the nature of the evidence base we would expect to be presented to the examination for scrutiny by the Examining Authority and Interested Parties for any bycatch reduction proposal.
- Kittiwake:
 - Offshore artificial nest structures: the RSPB recognises the significant amount of work by the Applicant to explore and identify potential suitable offshore locations for putative kittiwake nesting structures. However, it is also apparent that a significant amount of further work is still required before detailed proposals can be presented to the examination so that they can be fully scrutinised. At this stage, we consider the measure experimental. No precise location and design has been proposed, so it is not possible to evaluate and advise, or assess whether any site specific constraints could undermine confidence in long-term implementation;

- Onshore artificial nesting structures: the RSPB is concerned with onshore nesting structures, given the number of offshore wind farm projects (consented and submitted) already proposing such measures, with a particular preponderance in Suffolk. This raises concerns in the identification and securing of suitable locations capable of addressing the many uncertainties. In this context the RSPB shares Natural England’s concern and is “not persuaded that further onshore artificial nesting structures are likely to result in sufficient benefits to produce compensation, given the number and location of such structures already proposed by submitted OWF projects. It has not been demonstrated there is a sufficient pool of nest-limited kittiwake recruits, suitable locations and/or prey availability available to meet and sustain the existing demand for this measure. We therefore recommend that this measure should not be taken forward by the Applicant”.
- Guillemot and razorbill:
 - Predator eradication: the RSPB recognises that predator eradication or island restoration (IR) offers some potential to benefit guillemots and razorbills. However, we consider it premature to describe IR as a primary compensation measure for these two auk species. IR is a complex and highly specialised conservation measure. To succeed, it needs the effective targeting of 100% of the Invasive Non-Native Species (INNS) to achieve eradication, supported by comprehensive measures to keep the risk of reinvasion low and ongoing capacity to respond effectively to any biosecurity breach. A full-scale Feasibility Study is required, carried out by a suitable eradication expert contractor to international best practice standards, in order to firmly establish that the removal of Invasive Non-Native Species (INNS) for each island to be restored is feasible. At present, the RSPB does not have confidence that the predator eradication measure would benefit either guillemot or razorbill and so provide compensation. To determine whether an IR scheme will, rather than might, benefit either species in a selected location requires detailed scrutiny of a feasibility study and associated work as part of the examination process. The results of any detailed feasibility study and associated implementation plans must be presented to the examination for scrutiny by the Examining Authority and interested parties as soon as practicable;
 - Bycatch reduction: The RSPB does not accept that bycatch reduction can be described as a compensation measure, primary or otherwise, and considers this proposal is experimental research. As a result, we have no confidence that the proposed measures are viable, effective or can be delivered. The Applicant is proposing gillnet bycatch reduction measures, yet there are currently no recommended technical measures for gillnet bycatch mitigation. The measures that are proposed and trialled are unproven and fail to meet the Agreement on the Conservation of Albatrosses and Petrels (ACAP) Best Practice Seabird Bycatch Mitigation Criteria and Definition. The research trials will only report in full in 2023 i.e. after the examination ends and the current decision date for the DCO. Before any measures can be deemed acceptable as bycatch mitigation they must be proven through a robust trial, with all data made available for peer-review. Peer-review will be necessary to tackle important questions about whether the initial trial truly

demonstrates efficacy or not, and what else may be required (e.g. further data collection, robust commercial testing). Whilst we welcome the proposals to conduct some (limited) experimental research, as currently described, the proposal is not fit for purpose as a possible compensation measure. If the proposed bycatch mitigation measures were proven effective per se, based on our considerable experience in this field we are concerned about the achievability of uptake and implementation over a period of more than 35 years. This places a significant burden of proof on the Applicant to demonstrate how such sustained uptake will be achieved. This needs to be confirmed and guaranteed before the end of the examination so that it can be scrutinised by the Examining Authority and interested parties.

- Fish habitat enhancement: While the RSPB welcomes the work carried out by Hornsea Project Four on this topic, it remains its view that it cannot yet be considered even a supportive measure. This is due to a combination of the weak evidence base capable of linking this measure with measurable benefits to the target seabird species and the experimental nature of seagrass restoration itself. As with bycatch mitigation, it too is also at the experimental research and trial stage. Like Natural England, we do not consider the measure to be compensation and so have not commented further.

7. RSPB comments on the draft Development Consent Order (DCO) and draft Deemed Marine Licence (DML)

- 7.1. At this time, we have concentrated our comments on the draft schedule on Ornithology Compensation Measures set out in the various roadmap documents, but reserve the right to comment more widely on the draft DCO/DML document as it evolves during the examination. We would suggest that it would be helpful if future iterations include the full version of the draft Schedule on Ornithology Compensation Measures as set out in the various roadmap documents listed above. Square brackets could be used to indicate where the Applicant is including text on a without prejudice basis.
- 7.2. We summarise the scheme set out in the draft Ornithology Compensation Measures schedule.
- 7.3. It is apparent that the Applicant proposes that a substantial amount of detail regarding the various compensation measures and the engagement group is to be deferred until post-consent, relying on essentially outline proposals contained in the various “Compensation Plan” documents. These lack information on specific locations, designs, implementation methodologies, monitoring, adaptive management etc. As a result, considerable uncertainty surrounds the ability of the various proposed compensation measures to delivery the claimed ecological benefits.
- 7.4. For the reasons set out in sections 5 and 6 (and associated annexes), the RSPB considers that the substantive detail on the proposed compensation measures is required during the examination phase so that it can be subject to detailed scrutiny by the Examining Authority and interested parties.
- 7.5. Therefore, we propose that the current outline draft Compensation Plan documents should be amended and filled out during the examination process to contain the necessary detail on the compensation measures that we have described above and elsewhere in our Written Representation and its annexes.
- 7.6. Making substantive changes to the Compensation Plan now will provide the Examining Authority and interested parties with a full opportunity to scrutinise and test the robustness of the proposed compensation measures, whether they will be ecologically effective in practice, and whether they have been secured such that the overall coherence of the National Site Network for affected species will be protected.
- 7.7. This will help ensure the Examining Authority has a robust evidence base to assess the merits of the package of compensation measures put forward by the Applicant and advise the Secretary of State as to whether or not it meets the requirements of the Habitats Regulations. As currently proposed, the necessary detail and evidence base will not be before the Examining Authority.
- 7.8. We make various additional comments on the draft schedule.