



**Written Representation
for the
Royal Society for the Protection of Birds
Comments on Deadline 7 submissions**

**Submitted for Deadline 8
18 August 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

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1. Introduction

Scope of submission

- 1.1. This submission takes account of documents submitted by the Applicant and Natural England at Deadline 7, as well as the Examining Authority's question to the Applicant in its Rule 17 letter dated 11 August 2022 (the Rule 17 letter).
- 1.2. In section 2, the RSPB has provided comments on matters arising from Deadline 7 submissions.
- 1.3. In section 3, we note that lack of information on the use of Counterfactual of Population Growth Rate and Counterfactual of Population Size requested by the Examining Authority at Issue Specific Hearing 11.
- 1.4. In section 4, the RSPB has provided further information on the emerging Highly Pathogenic Avian Influenza (HPAI) situation on the Flamborough and Filey Coast. This is to update the Examining Authority in relation to its question on this matter in the Rule 17 letter.

Statement of Common Ground – progress update

- 1.5. The RSPB has agreed a Statement of Common Ground with the Applicant. The Applicant will submit this at Deadline 8.

2. Comments on documents submitted at Deadline 7

2.1. Below, the RSPB makes brief comments on the following issues arising from documents submitted at Deadline 7:

- RSPB and Natural England position on adverse effect on integrity;
- Guillemot and razorbill compensation and implications of adopting Natural England's approach to impact assessment
- Matters raised in relation to derogation in REP7-085: G7.4 The Applicants Ornithology Position Paper - Revision: 01.

RSPB and Natural England position on adverse effect on integrity

- 2.2. The RSPB is now content with the baseline and subsequent predictions of collision and displacement mortalities presented in the revised Ornithology EIA and HRA Annex (REP6-029: G5.25 Ornithology Environmental Impact Assessment (EIA) and Habitats Regulations Assessment (HRA) Annex (Tracked) - Revision 03). However, the Applicant has still refused to present the Counterfactual of Population Size for the relevant populations. In the absence of this crucial metric, we have rerun the PVAs using the Natural England PVA tool, mirroring the input log of the Applicant (in REP6-026 G4.7 Ornithological Assessment Sensitivity Report (Clean) - Revision: 03) and with the mortalities presented in REP6-029. From this we are able to come to conclusions with regard to the adverse effects on the integrity of the Flamborough and Filey Coast (FFC) SPA populations of gannet, kittiwake guillemot and razorbill.
- 2.3. For **gannet**, the combined displacement and collision assessment shows that the FFC SPA population is likely to be **5.2-7.2% lower** after the lifetime of Hornsea Project Four wind farm than it would be without the development, and **62.0-69.6% lower** in-combination with other developments. While the SPA population may previously have been sufficiently robust to be maintained, even with the additional mortality associated with the project alone, in the context of the current outbreak of Highly Pathogenic Avian Influenza there is considerable uncertainty as to the continued viability of this population (see Section 4). As such, it is not possible to rule out an Adverse Effect on the Integrity of the FFC SPA gannet population both for the project alone and in-combination.
- 2.4. For **kittiwake**, the displacement assessment shows that the FFC SPA population is likely to be **3.0% lower** after the lifetime of Hornsea Project Four wind farm than it would be without the development, and **16.4% lower** in-combination with other developments. Given the FFC SPA restore objective for this species' population and the vulnerability of the population, both locally and in the wider biogeographic region, it is not possible to rule out an Adverse Effect on the Integrity of the FFC SPA kittiwake population for the project alone and that an Adverse Effect on Integrity exists in-combination.
- 2.5. For **guillemot**, the displacement assessment shows that the FFC SPA population is likely to be **13.9 -20.6% lower** after the lifetime of Hornsea Project Four wind farm than it would be without the development, and **24.0-41.7% lower** in-combination with other developments.

As such, it is impossible to rule out an Adverse Effect on the Integrity of the FFC SPA guillemot population for the project alone and in-combination.

- 2.6. For **razorbill**, the displacement assessment shows that the FFC SPA population is likely to be **11.1-21.9% lower** after the lifetime of Hornsea Project Four wind farm, in combination with other developments, than it would be without the developments. As such, it is impossible to rule out an Adverse Effect on the Integrity of the FFC SPA razorbill population for the project in-combination.
- 2.7. At Deadline 7, the RSPB set out its updated position with respect to adverse effects on the integrity of the FFC SPA from the project alone and in-combination with other projects (see REP7-098). This is repeated below for clarity.

Project alone – RSPB AEOI conclusions

- 2.8. For the species where it has been possible to reach a conclusion on adverse effect on the integrity of the FFC SPA from the project alone, the RSPB's conclusions are:
- **Gannet:** cannot rule out adverse effect on site integrity due to the impact of combined displacement and collision mortality.
 - **Kittiwake:** cannot rule out adverse effect on site integrity due to the impact of collision mortality.
 - **Guillemot:** cannot rule out adverse effect on site integrity due to the impact of displacement mortality.
 - **Seabird assemblage:** cannot rule out adverse effect on site integrity due to the impact of combined collision and displacement mortality on the seabird assemblage.

Project in combination with other plans and projects – RSPB AEOI conclusions

- 2.9. The RSPB's conclusions for each feature of the FFC SPA from Hornsea Four in-combination with other projects are:
- **Kittiwake:** adverse effect on site integrity exists due to the impact of collision mortality on the kittiwake population;
 - **Gannet:** adverse effect on site integrity exists due to the impact of combined collision and displacement mortality on the gannet population;
 - **Guillemot:** adverse effect on site integrity exists due to the impact of displacement mortality on the guillemot population;
 - **Razorbill:** cannot rule out adverse effect on site integrity due to the impact of displacement mortality on the razorbill population;
 - **Seabird assemblage:** adverse effect on site integrity exists due to the impact of combined collision and displacement mortality on the seabird assemblage.
- 2.10. The RSPB note that while there is much commonality between the RSPB and Natural England, in terms of methodological issues and most AEOI conclusions, there are some

differences. These are with regard to impacts on the FFC SPA populations of gannet and kittiwake through mortality arising from the project alone. These are discussed below in paragraphs 2.11-2.16. However, we agree on the following conclusions:

- **Kittiwake:** adverse effect on site integrity exists due to the impact of collision mortality on the kittiwake population arising from the project in-combination with other projects
- **Gannet:** adverse effect on site integrity exists due to the impact of combined collision and displacement mortality on the gannet population arising from the project in-combination with other projects when Sheringham and Dudgeon Extensions, and Rampion 2 are included
- **Guillemot:** adverse effect on site integrity exists due to the impact of displacement mortality on the guillemot population arising from the project alone and in-combination with other projects
- **Razorbill:** cannot rule out adverse effect on site integrity due to the impact of displacement mortality on the razorbill population arising from the project in-combination with other projects;
- **Seabird assemblage:** adverse effect on site integrity exists due to the impact of combined collision and displacement mortality on the seabird assemblage.

- 2.11. For gannet, the key difference between the RSPB and NE relates to the application of a 60-80% macro avoidance (that is reactive behaviour that occurs outside the wind farm footprint) to baseline densities taken forward to collision risk modelling. This position is detailed in REP7-098. Key to this is that NE's view is based on a report which has not yet been published and which the RSPB, for entirely proper contractual reasons, have not yet had sight of. It may be that once we have reviewed the final report that we adopt this approach, although we highlight again the issues of seasonality and within-windfarm avoidance.
- 2.12. The seasonality point is that, as described in REP7-098, we believe that gannet will show different levels of macro- avoidance dependent on breeding status and the consequent constraints of central place foraging. This point is agreed on by the Applicant in REP2-045: G2.9 Gannet Displacement and Mortality Evidence Review Revision 01.
- 2.13. For within-windfarm avoidance, the revised approach continues to use the "all gulls" avoidance rate for the modelling, while using adjusted densities accounting for macro avoidance. The RSPB argue in REP7-098 that may need to be adjusted to account for the lower maneuverability of gannets compared with gulls, and consequent lower ability to take last minute reactive behaviour to avoid rotating turbines.
- 2.14. For these reasons, for conclusions on AEIOI, the RSPB has calculated mortalities and consequent Counterfactual of Population Size using a 98% avoidance rate in the breeding season and 98.9% in the non-breeding season. The RSPB has also taken into consideration the accelerating spread of HPAI at the FFC SPA colony.

- 2.15. The RSPB also disagree with Natural England with regard to AEOI arising from the impacts of the development from the project alone. In this regard, there are no methodological differences with Natural England, rather it is in the interpretation of the predicted impacts and what is considered an acceptable level of population scale impact. We also note that Natural England have highlighted an issue with the PVA as carried out by both the Applicant and the RSPB (the RSPB, in order to have Counterfactuals of Population Size, which the Applicant has refused to share, carried out their own analysis, mirroring the Applicant's approach by using the model log provided). As such we are applying greater precaution to our interpretation.
- 2.16. The conservation objectives of the FFC SPA have a restore objective for the kittiwake feature. Given the population trajectory of kittiwake, in the wider biogeographical region and the UK, the potential for greater mortality arising from the Highly Pathogenic Avian Influenza and the precaution required in proportion to the uncertainty inherent in the assessment; the predicted 3% lowering of the impacted population in comparison with the unimpacted population will, in the RSPB's opinion, cause an adverse effect on site integrity.

[Implications for gannet compensation](#)

- 2.17. As set out above, the RSPB and Natural England agree that an adverse effect on site integrity exists due to the impact of combined collision and displacement mortality on the FFC SPA gannet population arising from the project in-combination with other projects when Sheringham and Dudgeon Extensions and Rampion 2 are included. This would mean that there is a need to provide compensation measures for gannets. The RSPB refers the Examining Authority to its position (set out at Deadline 6, REP6-069) that there are fundamental problems exist each of the Applicant's proposed compensation measure for gannet such that neither can be considered a credible or feasible compensation measure at this time. This is notwithstanding the Applicant's decision to subsequently withdraw its gannet compensation proposals at Deadline 7.

[Hornsea Project Four: auk apportioning and wider application to future OWFs](#)

- 2.18. The RSPB agree with Natural England that their bespoke approach to apportioning is the most appropriate treatment of the data, and agree with their rationale for doing so, as set out in REP5-115 and REP6-056. We also note that Natural England have consistently highlighted that this is a bespoke approach, only for use in the assessment of Hornsea Project Four, and we entirely agree that this is appropriate. As such we disagree with the Applicant that using this approach will pose "*significant challenges to the offshore wind industry*" through its application in other projects and in in-combination assessments (see paragraph 1.1.1.11 in REP7-028 B2.8 Flamborough and Filey Coast (FFC) Special Protection Area (SPA) Guillemot and Razorbill Compensation Plan). The Applicant's continued assertion of this is misleading and acts to increase uncertainty around the potential impacts of this and other developments and any possible means to compensate for them.

Guillemot and razorbill compensation and implications of adopting Natural England's approach to impact assessment

- 2.19. In section 1 of REP7-028 (B2.8 Flamborough and Filey Coast (FFC) Special Protection Area (SPA) Guillemot and Razorbill Compensation Plan (Tracked): Revision 03), the Applicant's revisions address the implications of Natural England's advice on the approach to assessing the impacts of displacement on guillemots and razorbills from the FFC SPA. Specifically, the higher level of predicted impact and the implications for the Applicant's compensation proposals for those species:
- **Bycatch reduction:** increase the number of vessels; and
 - **Predator eradication:** consideration of additional islands/island groups from its long list.
- 2.20. In respect of predator eradication, the Applicant states it "*remains confident that alternative islands can be identified from the long-list (provided within APP-196) where a predator eradication programme can be delivered*" (paragraph 1.1.1.13 in REP7-028).
- 2.21. The RSPB has set out its very serious concerns of the Applicant's proposed compensation measures for guillemot and razorbill (see sections 4-6 in REP6-069). In respect of predator eradication, any proposal needs to be able to demonstrate:
- Predator eradication can be successfully implemented and sustained over the long-term (based on agreed standards set out in REP6-069, in particular Table 3); and
 - Demonstrate benefit to guillemot and razorbill such that the coherence of the UK National Site Network for each species will be protected.
- 2.22. The challenges the RSPB has identified with the Applicant's current compensation proposals apply equally if not more so with unspecified and unevidenced additional measures. In respect of predator eradication, our advice is to treat any claims by the Applicant with regard other islands or island groups as speculative at this stage, given the absence of the detailed studies we have identified in REP6-069.
- 2.23. If, based on Natural England's advice, additional compensation measures are needed to address a greater level impact on guillemot and razorbill, this reinforces the need for the Secretary of State to:
- require the Applicant to submit the detailed evidence set out in Tables 3 and 5 of REP6-069 in respect of predator eradication and bycatch reduction and demonstrate how such measures will protect the coherence of the UK National Site Networks for each species; and
 - consult with interested parties on that evidence for the additional compensation measures prior to any decision on whether to consent the DCO.
- 2.24. Finally, the RSPB notes that in paragraph 5.3.1.4 in REP7-008 (A4.6.1 Compensation Project Description (Tracked) - Revision: 02), the Applicant refers to strategic compensation and the Offshore Wind Industry Council's pilot study work. In relation to the predator control/eradication topic it says:

“The options are to explore eradication at a UK island, which due to the geographical distribution of seabird colonies is likely to be in Scottish or Welsh waters, or to explore high-quality predator proof fencing at a mainland breeding colony, in line with a risk assessment to seabirds present at those colonies.”

- 2.25. It is apparent from this update that substantial work still remains with respect to these pilot studies. This reinforces the RSPB comments on the current state of play with strategic compensation measures (see REP6-069 and REP7-099) that they are not yet at a sufficient stage of development and implementation whereby the Secretary of State can rely on them as an alternative to the provision of Hornsea Four project level compensation measures (see paragraph 3.8 in REP6-067).

Matters raised in relation to derogation in REP7-085: G7.4 The Applicants Ornithology Position Paper - Revision: 01

The Applicant’s HRA Derogation case

- 2.26. In paragraph 5.1.1.2, section 5, the Applicant reiterates its view that its derogation case (with particular reference to compensatory measures) goes *“far beyond the detail provided in a derogation case for any other OWF project DCO to the point of consent”* and at paragraph 5.1.1.8 that *“it has been a common theme of comments from certain IPs across all recent OWF projects relying on derogation, that proposed compensation measures were not sufficiently detailed and must be developed further prior to the decision-making stage, and that it is not appropriate to rely on post-examination consultation”*.
- 2.27. The RSPB’s position on these issues is based on over 20 years’ experience of the challenges in bringing forward viable and secure compensation measures. As set out in its previous submissions to the Examination, the RSPB has highlighted:
- Compared to other offshore wind farms, Hornsea Project Four has benefited from being able to include compensation proposals at the point of application, rather than *“introduce them during examination or in post-examination”* (para 4.7 in REP 5-120);
 - Notwithstanding that, it is the RSPB’s considered view that the *“the Hornsea Project Four compensation proposals continue to have significant uncertainties attached to them, even at this late stage of the examination process”* (paragraph 3.16 in REP6-067)
 - For the reasons set out in the RSPB previous submissions (REP6-067 and REP6-069), we have “red” rated each compensation package and recommended where we consider *“it would be necessary for the Secretary of State to consider requesting further detailed information from the Applicant and to then consult with Interested Parties on that information before deciding whether to consent the DCO.”* This is in order to ensure the Secretary of State has confidence that the compensation measures will protect the coherence of the UK National Site Network for the affected seabird species and the management objectives for that Network are not affected (as set out in regulation 16A, Habitats Regulations;

- Prior experience in the container port sector of compensation proposals under the Habitats Regulations emphasises the need to agree critical issues in advance of applications and, critically, consent decisions (e.g. see paragraph 4.13 in REP5-120); and
- Recent experience with Hornsea Three compensation measures highlights the vulnerability of outline compensation proposals and the DCO decision making having confidence despite additional consents being required from other regulators, since these further consents being granted cannot be guaranteed.. This reinforces the RSPB's longstanding position that to reduce these very predictable uncertainties and risks, much greater certainty is required prior to DCO consent on the legal securing of compensation measures, both in terms of land tenure and relevant legal consents. That certainty does not exist for compensation measures in respect of Hornsea Four (paragraphs 2.7-2.9, REP7-099).

2.28. This is all to ensure viable and appropriate compensation measures have a reasonable guarantee of success and will be secured and the coherence of the UK National Site Network ensured, as required by the Habitats Regulations. In doing so, confidence can be had in the ability to proceed with successfully implementing compensation measures post-DCO consent and thereby reduces the risk of any delay to project operation. It actually provides the benefit the Applicant seeks by reducing risk.

Lead-in times for compensation and protecting the coherence of the National Site Network

2.29. As set out in earlier submissions (e.g. see section 5 in REP2-089, including Table 4), ecologically appropriate lead-in times are an essential requirement of ensuring the coherence of the UK National Site Network is protected. This is because they avoid or minimise the gap between a compensation measure becoming ecologically effective and the point of damage caused by the plan or project.

2.30. In paragraphs 6.1.1.11-6.1.1.13, the Applicant argues that this approach should be removed because:

- It does not align with policy in the British Energy Security Strategy;
- The derogation case means it is imperative to override the normal protections accorded to European sites (now National Sites);
- It is not a legal requirement of the Habitats Regulations; and
- It is disproportionate that the environment is deprived of several years of much needed clean power generation.

2.31. However as set out in our Deadline 7 submissions, pages 14 -15, (REP7-099) in summary, the British Energy Security Strategy has not yet been implemented nor have the proposals within Defra's Offshore Wind Environmental Improvement Package. In addition, in relation to the aspects the Applicant wishes to rely on, the following is relevant:

- Primary and possibly secondary legislation is required to establish the Marine Recovery Fund;

- the Marine Recovery Fund (MRF) does not exist as yet and as the consultation document states legislation is required (page 9) *“to enable the establishment of a dedicated Marine Recovery Fund (MRF) that can collect and deploy financial contributions from developers to meet the costs of compensatory measures identified in the library of measures.”* That legislation will need to go through the parliamentary process.
- No strategic compensation measures exist or are agreed upon, nor are any formal mechanisms and governance agreed and in place. The timescale for establishing these is unknown and make take many years and would require:
 - Detailed design and requirements to be agreed;
 - Relevant consents obtained;
 - Measures implemented and providing quantifiable benefit to relevant species.

Therefore, we consider the assumption such measures will be available from the end of 2023 is unrealistic. With any significant delay in the implementation of required compensation measures needing to be accounted for in the quantum of compensation required to compensate for the predicted impacts.

- Therefore, any weight and/or reliance on the MRF and provision of Strategic Compensation is premature.

- 2.32. In relation to the additional points raised by the Applicant, we note within its Deadline 7, Applicant’s G7.4 Ornithology Position Paper (REP7-085), despite being clear on legislative requirements at paragraph 6.1.1.10, paragraph 6.1.1.7 suggests these should be overridden due to recent unimplemented BESS policy (with the key aspects of that policy being relied on by the Applicant included within para 6.1.1.6):

“That Government policy must be acted upon and reflected in decision-making. There is no scope for delay or attrition if energy security and net zero policies are to be delivered.”

- 2.33. And in relation to the Application’s para 6.1.1.11:

“In addition, to the extent that compensatory measures are required, the Applicant submits that the current approach, of delaying operation of the project to several years postimplementation of the compensatory measures, is not aligned with policy in the BESS, nor does it align with the conclusion, in the context of a derogation case, that urgently delivering offshore wind to provide energy security and mitigate climate change, is an imperative that overrides the normal protections accorded to European sites. Nor is it a legal requirement of the Habitats Regulations. It is disproportionate in that it means that the environment is deprived of several years of much needed clean power generation”

As above we do not believe the policy within the BESS can override existing legal requirements until the legislation required receives Royal Assent and is implemented along with any secondary legislation requirements and establishment of the MRF.

- 2.34. In addition, this appears to miss the final part of any Habitats Regulations derogation case, namely that compensation measures are required to ensure the overall coherence of the National Sites Network is protected. Part of the ensuring overall coherence is that the measures are effective and in place before harm occurs.

3. Hearing Action Points arising from Issue Specific Hearing 11

- 3.1. The RSPB notes Action Point 16 from EV-035a (Action Points arising from Issue Specific Hearing 11 on matters relating to marine ornithology - Thursday 21 July 2022) requesting the Applicant to:

“Review and provide a summary of the reference made to, and the use made of, both counterfactuals in the last six relevant offshore wind farm Development Consent Order decisions. (Post-Hearing suggestion: this could include any recommendation or position taken by the Examining Authority (ExA) and Secretary of State in each case.)”

- 3.2. The RSPB notes that the Applicant has not yet provided a response to this action. The RSPB has outlined the importance of presenting both the Counterfactual of Population Growth Rate, and the Counterfactual of Population Size (which the Applicant has currently omitted) in its REP7-098 (section 5) and also in REP6-068.

4. Rule 17 letter: update on Highly Pathogenic Avian Influenza on the Flamborough and Filey Coast

- 4.1. The RSPB notes that the Examining Authority's Rule 17 letter requested a response from the Applicant to the RSPB's submissions on Highly Pathogenic Avian Influenza (HPAI).
- 4.2. At Deadline 7 on 10 August 2022, the RSPB provided an update (see section 4 in REP7-098) on the situation with HPAI. Among other things, we noted that since our Deadline 6 submissions, staff at the Flamborough and Filey Coast had recorded that the spread of the disease among gannets and kittiwakes was escalating.
- 4.3. We can now update the Examining Authority further on this matter. The RSPB has staff at FFC as the reserve team at Bempton Reserve and as the tagging and post consent monitoring team in the reserve and wider SPA. These seabird experts are reporting that HPAI is spreading through the gannets and other seabirds in all areas monitored and that this spread is accelerating. Gannet seem to be particularly affected, potentially through their ecology and the long length of breeding season increasing the likelihood of exposure to infection. There are reported multiple carcass clusters on the beaches under the breeding cliffs, some with up to 50 gannet carcasses present. The situation is rapidly evolving, but our experience at the Bass Rock demonstrates that such spread can be catastrophic.
- 4.4. The RSPB will be able to report on the situation in more detail once the breeding season is over. We would be happy to provide an update to the Examining Authority and Interested Parties by the end of October 2022 if required.