Submission ID: 30764

Five Estuaries Offshore Windfarm Development Consent Order Application
Planning Inspectorate Reference: EN010115
Text of Summary Relevant Representation from the Royal Society for the Protection of Birds (RSPB)
Interested Party Reference Number: 20049322
3 October 2024

INTRODUCTION

The RSPB supports the deployment of renewable energy projects, providing that they are sited in appropriate places and designed to avoid potential adverse impacts on wildlife.

This summary relevant representation outlines the RSPB's position on the following aspects of the Five Estuaries application:

- Offshore ornithology impacts
- Derogation case with particular reference to compensation measures

Due to resource constraints, the RSPB has had limited time to review the Applicant's documents in relation to offshore ornithology impacts. Our submission on these matters therefore represents an initial assessment of the Applicant's submitted information and will be supplemented by the RSPB's main written representation.

The RSPB reserves the right to add to and/or amend its position in light of changes to or any new information submitted by the Applicant.

OFFSHORE ORNITHOLOGY IMPACTS - SUMMARY OF RSPB POSITION

We have significant concerns regarding the findings of some of the impact assessments.

We have been able to reach conclusions on adverse effect on the integrity (AEOI) on the Kittiwake, Guillemot and Razorbill features of the Flamborough and Filey Coast Special Protection Area (SPA), and the Lesser Black-backed Gull feature of the Alde-Ore Estuary SPA.

As a result of the methodological concerns the RSPB considers that some of the impacts have not been adequately assessed and as such consider that an AEOI on the Northern Gannet feature of the Flamborough and Filey Coast SPA and the Red-throated Diver feature of the Outer Thames Estuary SPA cannot be ruled out at this stage. We set out these concerns below.

Our conclusions are summarised below.

Project alone – RSPB AEOI conclusions

We conclude there will be an adverse effect on site integrity on the following features of the Alde-Ore Estuary SPA:

- The impact of collision mortality on the Lesser Black-backed Gull (LBBG) population

We cannot rule out an adverse effect on site integrity on the following features of the Flamborough and Filey Coast SPA:

- The impact of combined collision and displacement mortality on the Northern Gannet population.

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

We conclude there will be an adverse effect on site integrity on the following features of the Alde-Ore Estuary SPA:

- The impact of collision mortality on the Lesser Black-backed Gull (LBBG) population

We conclude there will be an adverse effect on site integrity on the following features of the Flamborough and Filey Coast SPA:

- The impact of mortality arising from collision and distributional change combined on the Kittiwake population
- The impact of mortality arising from distributional change on the Guillemot population
- The impact of mortality arising from distributional change on the Razorbill population

We cannot rule out an adverse effect on site integrity on the following features of the Flamborough and Filey Coast SPA:

- The impact of mortality arising from collision and distributional change combined on the Northern Gannet population
- The impact of combined collision and displacement mortality on the seabird assemblage.

The RSPB cannot rule out an adverse effect on the integrity of the Outer Thames Estuary SPA, arising through the project alone and in combination through distributional change on the SPA's Red-throated Diver population, arising from vessel movement during construction, decommissioning and operations and maintenance.

IMPACT ASSESSMENT – METHODOLOGICAL CONCERNS

The RSPB's key concerns with the impact assessment relate to:

- Inadequate details of digital aerial survey methodology
- The application of additional macro-avoidance to predicted Northern Gannet collision mortalities
- Inadequate consideration of the conservation objectives of the Outer Thames Estuary SPA
- a lack of consideration of impacts compounded by Highly Pathogenic Avian Influenza

Inadequate details of Digital Aerial Survey methodology

The RSPB are content that digital aerial surveys can provide useful data, however full methodological detail needs to be provided alongside the outputs and the details the Applicant has provided are scant. In particular there is:

- insufficient consideration of potential biases in the survey and analysis methods;
- no consideration of potential response of birds to disturbance arising from the survey activity itself, such as flight take off rate or diving rate, that would have implications for the accuracy of the assessment;
- no detail provided as to how spatial autocorrelation has been evaluated and if necessary accounted for. The assessment should explicitly demonstrate an analysis of the data showing whether spatial auto-correlation is present or not;
- no rationale provided as to why a transect rather than grid survey design has been used;
- no detail given of any independent validation of identification and detection rates, this validation is carried out as part of the internal quality assurance procedures, but no detail of any independent external quality assurance appears to have been carried out.

The application of additional macro-avoidance to predicted Northern Gannet collision mortalities

The Applicant has applied a reduction of 70% to the baseline densities inputted into the Northern Gannet collision risk modelling in order to account for macro-avoidance by amending the Avoidance Rates used in Collision Risk Modelling. This approach follows suggestions in Cook (2021).

The current evidence of a strong macro avoidance of wind farms by gannets, established from observed behaviour, is almost entirely derived from non-breeding birds (Cook 2021). The evidence for macro avoidance during the breeding

season is limited with the exception of a German study. However, it is unclear from this study what the breeding status of the tracked birds was, or how their behaviour differed from what would have been expected pre-construction as two of the three wind farms were already operational during the first year of tracking. What the study does clearly show is that breeding Northern Gannets do fly through offshore wind farms, often showing no avoidance behaviour at all.

As Northern Gannets can show macro avoidance it was suggested that this was applied to the baseline densities, and then collision risk modelling was carried out using an 'all gull' avoidance rate, so effectively applying avoidance twice.

The RSPB does not agree with the approach. Firstly, it does not consider seasonal variation. Secondly, by basing the 'within wind farm' avoidance rate on the 'all gull' rate, it assumes that Northern Gannets will have the same 'within wind farm' reactive flight response as gulls. This assumption is very unlikely to be met. This will result in a lesser ability to make rapid reactions and consequently have a greater risk of collision. This should be reflected in the 'within wind farm' avoidance rate if any further changes are to be made.

Any evidence of macro avoidance should also be seen in the context of recent work in Belgian offshore windfarms that has shown potential habituation to the presence of turbines. This effectively results in lower macro avoidance and so an elevated risk of collision.

Consequently the RSPB are concerned that the predicted Northern Gannet mortalities arising from collision are not robust, and therefore cannot come to any conclusions with regard to any adverse effects on site integrity.

Inadequate consideration of the conservation objectives of the Outer Thames Estuary SPA

The RSPB cannot rule out an adverse effect on the integrity of the Outer Thames Estuary SPA, arising through the project alone and in combination. This is due to the impact of displacement (from vessel movement during construction, decommissioning and operations and maintenance) on the SPA's Red-throated Diver population. The numbers of Red-throated Divers, their distribution within the SPA and their ability to use all suitable habitat contained in the SPA are all relevant to the SPA conservation objectives, but are not considered. If Red-throated Divers are displaced from part of the SPA which would otherwise be suitable for them, the effect is to reduce the functional size of the SPA, undermining the conservation objectives.

Highly Pathogenic Avian Influenza (HPAI)

The current H5N1 strain of Highly Pathogenic Avian Influenza (HPAI) has affected UK wild bird populations on an unprecedented scale since it was first recorded, with seabirds and waterfowl particularly affected. The extent of reported mortalities attributed to HPAI in the UK and across Europe in 2022 demonstrated that HPAI had become one of the biggest immediate conservation threats faced by multiple seabird species, including some for which the UK population is of global importance.

It is currently unclear what the ultimate population scale impacts of the outbreak will be, but it is likely that they will be severe. This scale of impact means that seabird populations will be much less robust to any additional mortality arising from offshore wind farm developments. It also means that there may need to be a reassessment of whether SPA populations are in Favourable Conservation Status. With such uncertainty as to the future of these populations, there is the need for a high level of precaution to be included in examination of impacts arising from the proposed development. This caution must also be applied to claims on the potential success of proposed compensation measures. The RSPB does not consider that these concerns have been adequately considered in the Assessment.

IN-COMBINATION: TREATMENT OF CONSENTED PROJECTS REQUIRED TO PROVIDE COMPENSATION

At paragraph 12.4.88 in APP-040 (RIAA), the Applicant states that it presents in-combination impacts for Kittiwake that exclude the impacts of those projects which have been "compensated for" as it considers them no longer relevant to the in-combination assessment. It also presents compensated impacts as a separate scenario.

The RSPB strongly disagrees with the approach of excluding "compensated for" projects from the in-combination assessment. Our relevant representation explains the reasons for this disagreement which includes commentary on the CJEU ruling in C-164/17 Grace v Sweetman.

DEROGATION CASE WITH PARTICULAR REFERENCE TO COMPENSATION MEASURES

Based on the RSPB's conclusions on adverse effect on integrity, the RSPB considers a derogation case is required if the Secretary of State for the Department for Energy Security and Net Zero (DESNZ) is to consider consenting a damaging project.

As part of any derogation case, and based on our initial conclusions regarding adverse effects on integrity, the RSPB considers compensation measures would be required for the following species: LBBG; Kittiwake; Northern Gannet, Guillemot and Razorbill and Red-throated Diver, should the Secretary of State decide to consent the Application as it is currently proposed.

We set out within our relevant representation in some detail how we approach our assessment of the Applicant's compensation proposals, the level of detail we expect to see and an outline of our concerns with each of the compensation measures as they are currently presented.

The RSPB has reviewed the available EC and DEFRA guidance relating to compensatory measures which has been supplemented by the RSPB's practical experience of applying the principles when assessing compensatory measures. We use a combination of EC guidance and the RSPB's experience in this field to assess the Applicant's compensatory measures. This is a critical element of the RSPBs position on the Applicant's proposal and should be considered in full within the relevant representation, and one which will develop during the Examination, linked to agreement of the nature and scale of predicted adverse effects on integrity.

References are provided within our relevant representation.