



**Written Representation
for the
Royal Society for the Protection of Birds
Summary of Written Representation**

Submitted for Deadline 2

22 October 2024

Planning Act 2008 (as amended)

In the matter of:

**Application by Five Estuaries Offshore Wind Farm Limited for an Order
Granting Development Consent for the Five Estuaries Offshore Wind Farm**

Planning Inspectorate Ref: EN010115

RSPB Registration Identification Ref: 20049322

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1. Summary of the RSPB's Written Representation

The RSPB

- 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 written submission

- 1.4. This Written Submission covers the following:
- The nature conservation importance of the seabirds affected by the Five Estuaries offshore wind farm scheme.
 - Nature conservation legislation and policy background.

¹ <https://www.rspb.org.uk/about-us/annual-report> Accessed 14 October 2024.

- Offshore ornithology
- Derogation case: the RSPB's approach to evaluating compensation measures under the Conservation of Habitats and Species Regulations 2017 (as amended).
- RSPB comments on the Applicant's specific compensation proposals.

2. The nature conservation importance of the seabirds affected by the Five Estuaries offshore wind farm scheme

Introduction

- 2.1. The UK is of outstanding international importance for its breeding seabirds. As with all Annex I and regularly occurring migratory species, the UK has particular responsibility under the Birds Directive² to secure the conservation of these important seabird populations.
- 2.2. As set out in our Relevant Representation (RR-094), the RSPB is particularly concerned regarding the impacts on the following designated sites:
 - Alde-Ore Estuary SPA
 - Flamborough and Filey Coast Special Protection Area (SPA).
 - Outer Thames Estuary SPA.
- 2.3. Natural England has referred to the conservation advice for each of the designated sites listed above in Table 5.1 in their Relevant Representation (PD2-002) including Conservation Objectives and Supplementary Advice on Conservation Objectives.

Conservation objectives

- 2.4. The Conservation Objectives for the SPAs generally follow the same format i.e.:

“...to ensure that, subject to natural change, the integrity of the site is maintained or restored as appropriate, and that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;

 - The extent and distribution of the habitats of the qualifying features
 - The structure and function of the habitats of the qualifying features
 - The supporting processes on which the habitats of the qualifying features rely
 - The populations of each of the qualifying features
 - The distribution of the qualifying features within the site.”
- 2.5. It is vital to consider whether an 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.

² Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (codified version) (the Birds Directive).

3. Nature conservation legislation and policy background

- 3.1. There is a statutory duty to comply with the Conservation of Habitats and Species Regulations 2017 (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 Habitats Regulations)(as amended)³. The Habitats and Offshore Habitats Regulations set out a sequence of steps to be taken by the competent authority (here the Secretary of State for Energy Security and Net Zero (DESNZ)) when considering authorisation for a project *likely to have an effect* on a European site and its species before deciding to authorise that project.
- 3.2. 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.

³ The Conservation of Habitats and Species Regulations 2017: <https://www.legislation.gov.uk/uksi/2017/1012/contents>. The Conservation of Offshore Marine Habitats and Species Regulations 2017 are also relevant - <https://www.legislation.gov.uk/uksi/2017/1013/contents>.

4. Offshore ornithology

Impact Assessment Conclusions

Project alone – RSPB AEOI conclusions

- 4.1. 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
- 4.2. As a result of methodological concerns, set out below, the RSPB considers that the impacts have not been adequately assessed and, as such consider that an adverse effect on the integrity on the following features of the Flamborough and Filey Coast SPA cannot be ruled out:
- The impact of combined collision and displacement mortality on the Northern Gannet population.

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

- 4.3. 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
- 4.4. 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.
- 4.5. 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.
- 4.6. 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 of on the SPA's Red-throated Diver population arising from vessel movement during construction and decommissioning and operations and maintenance.

Methodological Concerns

4.7. As is detailed in our Written Representation, the RSPB has methodological concerns with the impact assessment relating to:

- Inadequate details of digital aerial survey methodology
- The application of a macro-avoidance correction factor 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
- The worse case scenario presented for the assessment of impacts on Guillemot and Razorbill arising through distributional responses, displacement and barrier effects

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 EC⁴ and Defra⁵ 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 where sufficient detail is available:
 - 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.

⁴ 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.

⁵ Defra (2021) <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>. Accessed October 2024.

6. RSPB 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:

- Kittiwake
- Guillemot and Razorbill
- Lesser Black-backed Gull

6.2. 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.

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

Kittiwake:

- Further information on the sharing arrangements at the Gateshead ANS.
- Further information on revision of the Kittiwake Implementation and Monitoring Plan (APP – 053) to include ANS survey evidence.

Guillemot and Razorbill:

- RSPB will provide further comments at a future deadline in response to the submission of the Guillemot and Razorbill Survey reports (REP1 – 054).
- RSPB question the suitability of this measure given challenges in determining baselines, including colony productivities and efficacy of measures to reduce disturbance.

Lesser Black-backed Gull:

- RSPB will continue to engage with the Applicant regarding the Orford Ness compensatory measures option, including discussions over LBBG nesting densities and productivities.
- RSPB regard the Outer Trial Bank compensatory measures option as requiring more investigation and, based on the available information, cannot see how it is capable of progression as compensation.