



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

**Submitted for Deadline 1
19 October 2021**

Planning Act 2008 (as amended)

In the matter of:

**Application by Alternative Use Boston Projects Limited for an
Order Granting Development Consent for the
Boston Alternative Energy Facility**

**Planning Inspectorate Ref: EN010095
Registration Identification Ref: 20028367**

1. Introduction

1.1 The RSPB has engaged with the proposed Boston Alternative Energy Facility (BAEF) Development Consent Order (DCO) Application (the Application) since 2019. We have sought to engage constructively in pre-application discussions with Alternative Use Boston Projects Limited (the Applicant) and, in particular, their consultant Royal Haskoning DHV (RHDHV), in respect of the Application. The following sets out information about the RSPB, our interest in the BAEF and the engagement we have had to date with the Application.

a) *The RSPB*

1.2 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 million (RSPB, 2021)¹. The RSPB manages 220 nature reserves in the UK covering 158,725 hectares.

1.3 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 in international fora 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.

1.4 Inappropriately designed and/or sited developments can cause serious and irreparable harm to biodiversity. Such impacts are avoidable, and the RSPB spends considerable time working with stakeholders to ensure that decisions about new developments 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.

Summary of the RSPB's position with respect to the Application

2.1 The Wash is home to an array of internationally important wildlife and an important stop off point for passage birds travelling along the East Atlantic flyway. The Wash itself is the most extensive bay in England, home to the UK's largest gathering of wintering waterbirds and one of the most important wetlands for wildlife in Europe. The Wash provides countless homes for nature and a plethora of services for people, including natural flood defences and wellbeing benefits. These benefits, however, are intrinsically linked to a healthy coast which we know is at risk from the effects of growing recreational disturbance, intensive farming, development and climate change.

2.2 The RSPB is working with partners such as the Environment Agency, Natural England, and Lincolnshire Wildlife Trust to deliver a bigger, better and more connected coastal landscape around The Wash, which is protected from damaging impacts, valued and respected by local communities and visitors, and is better equipped to cope with climate change. Our nature reserves are the 'engines of landscape restoration' and provide important havens for local residents, as well as supporting tourism within the

¹ The RSPB Annual Report 2021. At: https://www.rspb.org.uk/globalassets/downloads/annual-report-2021/rspb-annual-report-2020-2021_digital.pdf?sourcecode=GENWEB0026

area. By working closely in partnership with private landowners, conservation organisations, government and local communities we focus on protecting, restoring and creating new habitat so that threatened species and habitats which are often isolated and fragmented, can become more resilient to pressures. The work we and our partners are undertaking will make a significant contribution to ensuring that more than 30% of land in England will be well-managed for nature by 2030.

2.3 Where development and activities are proposed in areas that could impact on The Wash, our reserves and other important sites managed by our partners, we will seek to defend them to ensure that they continue to support their important wildlife and habitats and that the wider benefits that they bring are maintained. A fundamental principle of the mitigation hierarchy is to avoid damage to such sites in the first instance. All efforts must be made to minimise harm to The Wash and functionally linked sites that support its conservation objectives.

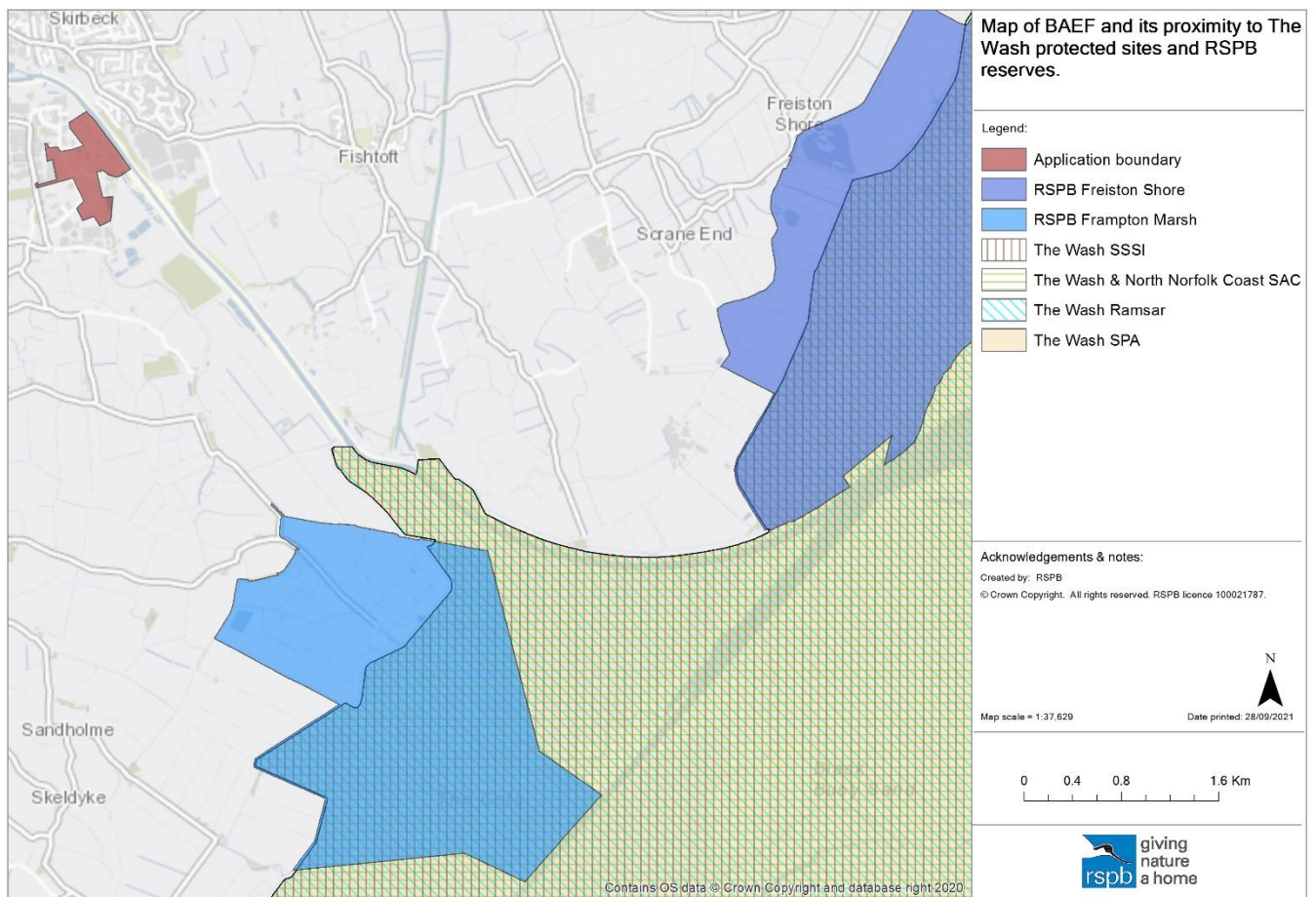


Figure 1: Map showing the application site and its proximity to The Wash protected areas and RSPB reserves.

2.4 The Wash covers 62,211.66ha (around 615km², or 15 by 15 miles) and is of international importance for the numbers of waders, wildfowl, terns and gulls that it supports, as well as important proportions of threatened habitats. This is reflected in its classification as a Ramsar site and as a Special Protection Area (SPA) within the National Site Network² for the significant numbers of birds it supports. Its important habitats and other wildlife populations, such as harbour seals, are recognised within The Wash & North Norfolk Coast Special Area of Conservation (SAC). The Wash is therefore of international and European importance. Consequently, The Wash is also a nationally important site for the species

² Formerly the Natura 2000 network of sites of European importance.

populations and habitats its supports and is classified as a Site of Special Scientific Interest (SSSI) that underpins the former designations.

- 2.5 The current condition of the SSSI units within The Wash is considered to be 68% favourable, 31.5% unfavourable recovering, and 0.5% unfavourable declining. However, there are also a range of species which have shown considerable declines in number and are of increasing concern, with many of these declines not currently reflected in the condition assessment for The Wash. For example, The Wash SSSI's Favourable Condition Table, states that "*the site should be judged unfavourable if the baseline mean peak breeding density of redshank within the mature saltmarsh declines by 25% or more.*" The decline for this species is much greater than 25%, with breeding redshank numbers having declined by 56% across The Wash and by 79% on saltmarsh around our Frampton Marsh reserve.
- 2.6 There are a range of threats that need to be carefully managed around The Wash to ensure that the important wildlife and habitats that it supports are maintained. Increased development and recreational disturbance are major threats. These can cause disturbance to the many birds that The Wash provides an important site for breeding, wintering and as a place to refuel on migration. This can affect the success of birds to find safe nest sites and successfully rear their chicks. If wintering and migrating waterbirds cannot find quiet foraging and roosting sites, this can increase their energy expenditure which can reduce their survival or ability to breed the following year. If there are fewer young birds successfully leaving the nest and overwinter survival increases this will lead to population declines. This is of serious concern for the proposed Facility, especially given the increase in vessel movements which have been observed to cause disturbance to roosting birds on The Haven, as well as some foraging birds. Increases in noise and lighting during construction and operation are also concerns. Understanding the scale of disturbance that the proposed Facility will generate both during the day and at night is critical to inform possible measures to address the impacts.
- 2.7 New development can also remove water from the environment, reduce water quality, impact on coastal processes and affect flood risk. All of these issues need to be carefully managed year-round, especially against the backdrop of climate change that is already impacting on the wildlife and habitats of The Wash. Evidence of such pressures causing declines in bird numbers using The Wash comes from the Wetland Bird Survey, which has highlighted a number of species that have declined and as the trend is against that of the wider UK strongly suggests that there are specific issues around The Wash that need to be managed. It is important that the proposed Facility does not exacerbate any of these effects, as even small additional impacts can reduce survival and compromise efforts to restore species and habitats.
- 2.8 Despite its size, The Wash is vulnerable to such impacts. This is in part due to certain areas of The Wash having greater importance for different species, and also seasonally. The area affected by the Facility is one that supports a large number of birds and important intertidal habitats. In such areas impacts that result in the disturbance and displacement of significant numbers of birds that are features of The Wash will undermine the conservation objectives of the protected sites and make any restoration targets more difficult, or even impossible, to achieve.
- 2.9 The loss of habitat associated with the Facility will also undermine the conservation objectives of The Wash. The direct loss of the redshank roost as a result if the wharf construction is a serious concern and must be compensated. With respect to the loss of intertidal habitat (saltmarsh and mudflat), whilst it is possible to recreate such losses, newly created habitat is typically of a lower quality with respect to the amount of food that is available. The structure of the new habitat also takes time to develop and means that the overall number of species is typically lower, at least until the habitat matures. It is therefore critical that the mitigation hierarchy is strictly applied. Protected habitats should be avoided in the first

instance, and only when it is demonstrated that no other less damaging alternatives exist, compensation be provided at a greater than 1:1 ratio. Any habitat lost must be minimised.

- 2.10 It is of serious concern that as the Examination starts, the Applicant has not developed a full baseline of the ecological importance of the whole of The Haven, which could be impacted both from the Facility and the c.150% increase in vessel movements. It is also unclear what impact will occur from capital dredging, and most importantly, future maintenance dredging needed to maintain navigation to the facility (impact on erosion of intertidal habitats and impact on foraging and roosting features of The Wash SPA/Ramsar/SSSI). There has been no assessment of the disturbance and displacement of birds due to vessel movements along the entirety of The Haven. There has been no assessment work to understand the effect of recreational pressure and other activities along the whole of The Haven that could cause disturbance to birds using The Haven. This means that a full understanding of the numbers of birds affected and their distribution (i.e. important locations for foraging and roosting) along the length of The Haven are not known. No evidence of the impact of vessels on roosting and foraging birds in the approaches to The Haven and the vessel anchorage area has also been presented to understand the baseline extent of vessel disturbance to features of The Wash SPA/Ramsar/SSSI within The Wash and therefore assess the effect of increased vessel movements. Consequently, the full extent of measures to compensate for impacts of the Application alone or in-combination with other projects/activities or plans remain unknown at this time. We therefore consider the current assessments are inadequate and that there has been a lack of consideration of the full suite of conservation objectives for The Wash SPA/Ramsar/SSSI that could be adversely affected by the Application. We do not consider the Application demonstrates that the population and distribution of each qualifying feature will be maintained or restored, or the extent, distribution, structure and function of the supporting habitats will be maintained or restore.
- 2.11 Given the international importance of The Wash, the RSPB has concerns with the approach that the Applicant is taking to the Facility to ensure that this exceptional site is not irreparably damaged. We have therefore set out our expectations with respect to the policy and legal framework governing the Application. With respect to the mitigation hierarchy, we also set out the criteria against which the Application must be judged and against which we are assessing the proposal. Of key concern is that the Applicant has provided limited justification for the development to be sited in the identified location, with no alternative options detailed to demonstrate that there are no less environmentally damaging alternatives. This also applies to consideration of compensation habitat areas to ensure that the most appropriate and deliverable options can be developed. Whilst the Applicant has confirmed that an in-principle derogation case is being developed, no details have yet been submitted for Interested Parties to review and provide comments. We welcome the Applicant's intention to provide this information at Deadline 2 (11 November 2021) which we consider essential if interested parties are to have sufficient time to evaluate and respond during the course of the Examination. A more detailed options appraisal relating to the choice of site and is also required.
- 2.12 The provision of the Applicant's in-principle derogation is also essential. This will set out the measures the Applicant would take to address adverse impacts arising from the Application on qualifying features of The Wash SPA/Ramsar/SSSI. This is necessary to ensure such measures can be secured and delivered, along with an appropriate monitoring package to ensure HRA conclusions are appropriate and that any compensation measures do maintain or restore populations of the qualifying features impacted by the Application.
- 2.13 We also set out our expectations with respect to determining Biodiversity Net Gain. It is critical that such proposals *"...provide an increase in appropriate natural habitat and ecological features over and above that being affected in such a way it is hoped that the current loss of biodiversity through*

*development will be halted and ecological networks can be restored.*³ We do not consider current proposals show that proposed Biodiversity Net Gain is above and beyond measures needed to compensate for impacts on qualifying features of The Wash SPA/Ramsar/SSSI, or that the full benefits of Biodiversity Net Gain measures have been explored fully, and we support the views of Boston Borough Council and the Environment Agency in their Relevant Representations.^{4 5}

2.14 In summary, we do not consider it possible to construct the facility at this location without significant effects on The Wash SPA/Ramsar/SSSI and The Wash & North Norfolk Coast SAC and, potentially, the RSPB's reserves at Frampton Marsh and Freiston Shore. The proposals have the potential to damage highly protected wildlife sites and to impact nationally and internationally important populations of rare species, which are valued in their own right, by those that live near and visit The Wash, and all who care about nature conservation across the UK and beyond.

2.15 The RSPB considers the available evidence has shown there will be disturbance to birds using the Application site and the mouth of The Haven and its approaches. We consider that the surveys undertaken for this NSIP are limited and further evidence is needed to demonstrate that features of The Wash SPA/Ramsar/SSSI will be adversely affected. We are concerned by the outstanding gaps in evidence relating to noise, visual disturbance, lighting and water impacts. We also do not consider that proposed mitigation measures are either viable as there are concerns about their effectiveness, ability to secure them and ability to enforce them, or that they are properly compensation measures as defined by the Habitats Regulations (see Section 8 of our Written Representation). No alternative options have been fully explored in the Environmental Statement and neither have the potential impact on other activities, such as recreational pressures or the suggestion that the fishing fleet might have to relocate downstream of the Facility if constructed. Consequently, a full derogation case, including the case for Imperative Reasons of Overriding Public Interest, must be presented that includes compensation measures; this has not been provided to date. At this time, therefore, we do not consider that, based on the currently available evidence, it can be concluded that there will not be an adverse effect on integrity of The Wash SPA/Ramsar/SSSI beyond reasonable scientific doubt.

2.16 In conclusion, based on the above concerns, we do not agree that *adverse effects on integrity* can be excluded for the following sites and species for impacts from the Application alone:

- Redshank, dark-bellied brent goose, shelduck, oystercatcher, black-tailed godwit, lapwing, curlew, turnstone, golden plover, ruff, and common tern associated with the Wash SPA
- Redshank, dark-bellied brent goose, shelduck, oystercatcher, black-tailed godwit, lapwing, curlew, turnstone, golden plover, ruff, common tern and harbour seal associated with the Wash Ramsar
- Harbour seal associated with The Wash & North Norfolk Coast SAC

2.17 In relation to the Application in combination with other plans and projects, we do not agree that *adverse effects on integrity* can be excluded for the following sites and species:

- Redshank, dark-bellied brent goose, shelduck, oystercatcher, black-tailed godwit, lapwing, curlew, turnstone, golden plover, ruff and common tern associated with the Wash SPA
- Redshank, dark-bellied brent goose, shelduck, oystercatcher, black-tailed godwit, lapwing, curlew, turnstone, golden plover, ruff, common tern and harbour seal associated with the Wash Ramsar
- Harbour seal associated with The Wash & North Norfolk Coast SAC

³ CIEEM – Biodiversity Net Gain – Principles and Guidance for UK Construction and Developments: <https://cieem.net/i-am/current-projects/biodiversity-net-gain/>

⁴ Boston Borough Council Relevant Representation ([RR-019](#))

⁵ Environment Agency Relevant Representation ([RR-013](#))

14.3 We also consider that significant impacts from the Application alone are likely on the following Priority Habitats:

- Saltmarsh and intertidal mudflats

14.4 We also consider that significant impacts from the Application alone are likely on the following Annex 1 species:

- Ruff

14.5 We will continue to work with the Applicant on these concerns and provide comments on further information submitted to the Examination for example further details on the required management mitigation, compensation and monitoring plans and schemes. We will update the Examining Authority of our position in light of any new information presented

14.6 However, for now (as also covered in other section of these written representations), we have serious concerns about the adequacy of information currently available and strongly recommend that without those details, including the lack of clarity on the required legal and ecological securing of requirements, measures, plans and schemes – confidence in them is premature.