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2010

Boston Alternative Energy Facility

Appendix J1 to Natural England's Deadline 3 Submission

**Natural England's Advice on BAEP Derogation Case - Alternatives and Compensation
Measures**

For:

The construction and operation of Boston Alternative Energy Facility (AEF) that would generate approximately 102 MW of renewable energy and is located immediately south of Boston town, Lincolnshire.

Planning Inspectorate Reference: EN010095

6th December 2021

Appendix J1 Natural England's Advice on BAEP Derogation Case - Alternatives and Compensation Measures

Introduction

This Appendix includes comments on the following documents submitted by the Applicant at Deadline 2:

- Without Prejudice Habitat Regulations Assessment Derogation Case: Assessment of Alternative Solutions [REP2-011]
- Without Prejudice Habitat Regulations Assessment Derogation Case: Compensatory Measures [REP2-013]

Summary

As set in our written representations and Deadline 2 submission [RR-021, REP2-045], the Application and subsequent submissions have insufficient data and as a result the assessment of the potential impacts remains incomplete. Therefore, in relation to ornithological issues Natural England has only been able to highlight uncertainties with the Application and subsequent documents and raise concerns on the potential impact pathways to classified/notified features and the associated risks. We are unable to clearly define the significance of these risks until further information has been provided.

Under the Habitat Regulations and following the precautionary principle therein, where there is scientific doubt (i.e., uncertainties) we cannot rule out an adverse effect on integrity (AEoI) of the protected sites. Our advice therefore remains unchanged to that in our written representations.

Natural England's initial view of the compensation measures identifies that the information provided is at a high level and does not provide enough detail or certainty to have confidence that an AEoI can be offset. Once the Applicant has submitted an updated derogations case, we can review and provide further advice on ecological merits of the compensation measures and their adequacy in addressing our concerns.

1. Generic Comments on Derogations Hierarchy

In addition to the ongoing technical issues with the ornithological assessments in determining the project alone impacts, the competent authority must be certain that every effort has been made to minimise the project impacts as much as possible. Therefore, every effort should be made to avoid, reduce and mitigate the impacts. Then once this is complete [with considerations and decision pathways clearly documented], appropriately informed discussions can happen in relation to the revised/finalised impacts which may or may not need to be compensated for. Thus, ensuring that the Worst-Case Scenario (WCS) impacts are known/fixed and there are no ambiguities in relation to the need for, and the scale of compensation measures required.

2. Detailed Comments

No.	Para.	Pg.	Comment	RAG
Assessment of Alternative Solutions [REP2-011]				
1.	Generic		Natural England assumes that transporting materials during construction and operation down the River Witham has been discounted by the Applicant for technical and logistical reasons such as the source location of waste? It would be helpful for this to be confirmed by the Applicant.	Yellow
2.	Generic		Natural England advises that the submission of addendums to the ES chapters have not addressed Natural England's concerns and therefore NE's advice remains unchanged.	Purple
3.	Generic		Natural England continues to have doubts in relation to the suitability and effectiveness of the proposed mitigation measures in minimising impacts to acceptable levels, especially in relation to Marine Mammals.	Purple
4.	1.1.4	2	Natural England advises that there may be other concerns (not yet identified) as the final project design is still being modified to take into account interested party feedback i.e., diversion of PROW.	Yellow
5.	1.3.8	7	Natural England seeks further clarity from the Applicant on the overland conveyor location, and associated impacts, especially in relation to 89 shipments.	Yellow
6.	6.2.1	25	There remain issues in relation to direct/indirect loss of supporting intertidal habitat through scouring and dredging.	Yellow
7.	9.1.3	43	Natural England agrees with the Applicant that the use of a larger vessel wouldn't sufficiently reduce the number of vessel transits to address our concerns. And in addition, other impacts e.g., vessel wash are likely to increase.	Purple

No.	Para.	Pg.	Comment	RAG
Compensatory Measures [REP2-013]				
8.	1.1.2	1	Please see REP2-043 for Natural England's advice on the sufficiency of the Marine Mammals mitigation measures. Until this is considered further by the Applicant our advice on the significance of the impacts on Marine Mammals remains unchanged.	
9.	1.1.5	2	Natural England advises that section need further clarification by including: - "...the loss of <i>both priority saltmarsh and mudflat</i> habitat" "...and an increased level of disturbance <i>to a wide range of SPA listed wader and wildfowl species (and SPA assemblage)</i> " so not just Redshank.	
10.	1.1.5	2	"The remainder of The Haven is not known to support populations of roosting birds but..." Natural England advises that the wording of this sentence is ambiguous. We advise that data of roosting Redshank along The Haven (beyond the Principal Application Area) has not been collected therefore the roosting status of this area is unknown. And therefore, it may not be the case that other roosting locations along the Haven are absent.	
11.	1.1.5	2	Natural England notes the Applicant recognise all scenarios for disturbance issues, which are captured separately, and whilst this is appropriate for HRA they may act in-combination as well as independently which will need consideration in any derogations case	
12.	1.1.6/7 3.4.3	2, 14	Natural England highlights that we are not in agreement with the Applicant in relation to the significance of the impacts.	
13.	1.1.11	5	As per our Deadline 2 response, the addendums submitted by the Applicant do not address our concerns and therefore our advice remains unchanged.	
14.	1.1.14	5	Whilst separate to the derogations case, we highlight to the ExA that no details on biodiversity net gain (BNG) has been submitted - including the BNG calculations which take into account the priority saltmarsh and mudflat habitat that will be lost from the construction of the Wharf.	
15.	1.2.3	6	Natural England is still awaiting further information on how the loss of priority saltmarsh and mudflat, which is supporting habitat for Annex I species, will be accounted for.	
16.	1.2.5, 3.2.5	6, 13	Natural England advises that the proposed mitigation may be beneficial for birds, but it could have wider implications for habitats. Therefore, both direct and indirect impacts through loss and scouring of priority habitats needs to be thoroughly explored before this can be agreed as bird mitigation. And as with compensation measures consideration on ongoing management is required.	

17.	1.2.5	6	Natural England also advises that the supporting habitat mitigation area is not spatially isolated from disturbance arising from boats accessing the site and utilizing the Haven. Measures to control disturbance and to ensure long term suitability have been added to the OLEMS. As we understand from REP1-026 (para 4.3.5) this document was to have been updated for Deadline 2.	
18.	1.2.6 onwards	7	Delivery of raw materials – we advise that further information and assessment is required of the Worst-Case Scenario (WCS) in terms of environmental impacts to understand the significance and therefore the risk of an Adverse Effect on Integrity. For example, in Natural England Submission AS-001 we set out the position in relation to scouring that may or may not occur, before agreeing which impacts require compensation. [NB: Scouring is not an exclusive issue].	
19.	1.3	9	Once the Applicant has submitted an updated derogations case we will review and provide further advice on the ecological merits of the compensation measures and their adequacy in addressing our concerns.	
20.	1.3.1	9	NE note a further Compensatory Measures Report will be submitted at Deadline 3. However, that report will not have taken into account comments provided by interested parties at Deadline 2. Therefore, there are risks that issues are not being addressed.	
21.	1.3.3	9	Natural England agrees with the Applicant that it is challenging exploring options for providing compensation measures. Hence our standard best practice advice to all NSIPs (including this one) is to address this prior to application submission or at the latest prior to the start of examination.	
22.	2.1.6	11	Natural England advises that there is a hierarchy to providing compensation measures. Starting within same designated site. Please see DEFRA 2021 draft guidance on this matter	
23.	2.1.7	11	Natural England submits our checklist in relation to derogations case in Annex 1 to this Appendix.	
24.	3.1.1.	12	Natural England notes that because the project design is still being refined, and further data and assessment is required, there may be significant impacts to different species/habitats which are not yet identified.	
25.	3.2.5	13	Natural England acknowledges that the proposal has the potential to substantively reduce impact on redshank associated with the development site roosts if it is effective. However, Natural England continues to have concerns relating to both terrestrial and water-based sources of disturbance; the need to secure long-term management; and the need for an adaptive management protocol in the event that measures are ineffective. These are not addressed in the existing OLEMS.	
26.	3.3.2	13	Natural England queries how far are the roosting rocks used by the redshanks (both existing rocks and those proposed to be moved from the Principal Application Area) from the channel edge where there will be increased vessel movements because of the proposed application?	

27.	3.4	14	Natural England advises that this section does not pick up management of risk associated with the proposed replacement roost site, or risks to some other areas put forward in section 3.2.9 (and associated Table 3.1 and Figure 3.1) as potential compensation areas. Therefore, further consideration by the Applicant is required.	
28.	3.4.3	14	The statement presented here have two potential conflicts with the Conservation objectives for the Wash SPA: (1) energetic cost to birds, particularly in species that habitually return to the roost post-disturbance leading to loss of fitness and impacts on the abundance target; and (2) Conservation Objectives related to feature distribution and site function. Specifically, the site's roost network is diminished and loses integrity if Mouth of Haven is rendered unsuitable as a roost.	
29.	3.4.4	15	Natural England advises that the Applicant needs to have due regard for the Non-breeding Assemblage as a whole as a feature in its own right. Of the listed species, the first two (lapwing; golden plover) are particularly at risk of population abundance objectives through increased energy expenditure as a result of repeated displacement as they return to the roost from which they were disturbed. But some more easily displace species such as black-tailed godwit (which is at the edge of its energetic capacity on the Wash in winter) may also be susceptible. The other species, those identified in the Ornithology Addendum document [REP1-036] and the assemblage as a whole are likely most at risk from re-distribution and roost site loss.	
30.	3.5.3	16	Natural England advises that roosts are most well utilized where they are surrounded by, or situated in, shallow water as this provides additional protection from terrestrial predators. Therefore, this should be taken into consideration by the Applicant when exploring compensation measures.	
31.	3.5.4	16	Natural England has some additional criteria for compensation roosts that should be considered (but not exclusively): <ul style="list-style-type: none"> • Located away from land-based or boat disturbance • Accommodate all key species • Have water as protective feature • Be difficult to access by terrestrial predators • Not have agricultural bird scarers nearby 	
32.	3.5.5	17	In the Ornithology Addendum [REP1-026], it was clarified (Appendix A1, Table 3) that the Mouth of Haven high tide roosts support at least 22 species with at least 19 of those exceeding 1% of the SPA population and 14 species exceeding 5% of the Wash population on occasion. In total over 20,208 individuals (over 5% of current Wash population) are recorded. While the species listed in in section 3.5.5 are broadly representative of the wider suite of species utilizing the area, appropriateness of	

			compensation measures should be considered against their suitability and capacity to support this whole species suite and the numbers affected, not just those currently listed.	
33.	3.5.5 Oyster catcher	17	Natural England advises that compensatory feeding over high tide when birds are not securing enough food on the shellfish beds should not be confused with roost requirements (bare substrate, close to water being favoured).	
34.	3.5.5 Redshank	17	Natural England doesn't agree that short-damp grassland provides a good roosting and foraging site for redshank. Short damp grassland provides foraging. Open areas with water around provide roosts.	
35.	3.5.5 Lapwing and Golden plover	17	Natural England does not agree that 47% or 20% are 'relatively infrequent'. Short pasture is satisfactory for roosts but so are bare flats and shallow water.	
36.	3.5.8	19	Natural England advises that it is essential for the compensation measures to accommodate the full suite of species exposed to disturbance.	
37.	Table 3.1 Option 1	20	Natural England advises that more information should be provided on the prison's objectives to determine if they are compatible with the requirement of the affected species.	
38.	Table 3.1 Option 1	20	Option 1: Good potential to support SPA interest affected at Mouth of Haven.	
39.	Table 3.1 Option 2	20	Option 2: Potential for supporting species displaced at the development site if an undisturbed area is available. Unlikely to be suitable for Mouth of Haven Species. Havenside LNR - Some improvements to site fencing to restrict dog/people access to the areas of saltmarsh and grassland here might be welcomed - prior to the recent embankment works the fencing here was in poor condition. It is uncertain whether the fencing here was reinstated by the EA after completion of the works.	
40.	Table 3.1 Option 3	20	Option 3: Potential for supporting species displaced at the development site if an undisturbed area is available. Unlikely to be suitable for Mouth of Haven Species.	
41.	Table 3.1 Option 4	20	Option 4: Natural England's default position is not to support this option as the implementation of compensation shouldn't be to detriment of another designated site feature.	
42.	Table 3.1 Option 5	20	Option 5: While beneficial, this is unlikely to meet roost site resource requirements.	

Annex 1: Natural England 'check list' for compensatory measure submissions

Natural England has developed a checklist of those aspects of compensatory measures that need to be described in detail when developers are submitting or updating applications where impacts on MPAs are anticipated. Whilst not exhaustive, it lists key areas where sufficient detail is needed to provide the Secretary of State with appropriate confidence that compensatory measures can be secured.

- a) What, where, when: clear and detailed statements regarding the location and design of the proposal.
- b) Why and how: ecological evidence to demonstrate compensation for the impacted site feature is deliverable in the proposed locations
- c) For measures on land, demonstrate that on the ground construction deliverability is secured and not just the requirement to deliver in the DCO e.g. landowner agreement is in place. For measures at sea, demonstrate that measures have been secured e.g. agreements with other sea or seabed users.
- d) Policy/legislative mechanism for delivering the compensation (where needed)
- e) Agreed DCO/DML conditions
- f) Clear aims and objectives of the compensation
- g) Mechanism for further commitments if the original compensation objectives are not met – i.e. adaptive management
- h) Clear governance proposals for the post-consent phase – we do not consider simply proposing a steering group is sufficient
- i) Ensure development of compensatory measures is open and transparent as a matter of public interest, including how information on the compensation would be publicly available
- j) Timescales for implementation especially where compensation is part of a strategic project, including how timescales relate to the ecological impacts from the development
- k) Commitments to ongoing monitoring of measure performance against clear objectives with specified success criteria
- l) Proposals for ongoing 'sign off' procedure for implementing compensation measures throughout the lifetime of the project, including implementing feedback loops from monitoring.
- m) Continued annual management of the compensation area, including to ensure other factors are not hindering the success of the compensation e.g. changes in habitat, increased disturbance as a result of subsequent plans/projects.