

National Infrastructure Planning  
The Planning Inspectorate  
Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

RSPB Norwich Office  
Stalham House  
65 Thorpe Road  
Norwich  
NR1 1UD

15 March 2022

By email only

Dear Mr Wiltshire,

### Cover letter to the RSPB's Deadline 8 submissions to the Boston Alternative Energy Facility Examination

As requested by the Examining Authority, the RSPB has reviewed responses to the Third Written questions. We have focussed on the Applicant's submissions. Within the comments we have also provided further detailed comments to address Q3.3.1.31 outlining why the Applicant's suggestion that the area around the Application site is not functionally linked to The Wash SPA and Ramsar is fundamentally flawed. Our position remains as set out in our Deadline 7 response to the Third Written Questions that the whole of The Haven, including the area adjacent to the Application site is functionally linked land and must be treated appropriately under the Habitats Regulations. We also set out further comments to Q3.3.1.29 regarding the current lack of detail to give any confidence that any mitigation and compensation measures proposed by the Applicant can be delivered and effective in maintaining the integrity of The Wash SPA and Ramsar.

We have noted the request for comments on the Applicant's updated without prejudice derogation case (REP6-026). We provided comments on this document in our Deadline 7 submission. We have no confidence that the alternative redshank roost area will be effective, and outlined those uncertainties in response to Q3.3.1.34 of the Third Written Questions (REP7-030). To meet the requirements of Regulation 68 of the Habitats Regulations requires tangible, targeted compensation measures to be identified that will meet the ecological requirements of the impacted species. There are no such measures in front of the examination. Our comments on this have been set out against clause 3 and its sub-clauses of the draft Schedule 11 (REP7-031; pp.6-13). These comments still remain.

We have not submitted further comments on the without prejudice derogation case, as we note that an updated version is due to be submitted by the Applicant at Deadline 8. We will therefore consider the latest version and provide comments at Deadline 9 as appropriate.

RSPB England Headquarters  
First Floor  
One Cornwall Street  
Birmingham  
B3 2JN

Tel: 01767 693777  
Facebook: RSPBLoveNature  
Twitter: @Natures\_Voice  
rspb.org.uk



The RSPB is part of BirdLife International,  
a partnership of conservation organisations  
working to give nature a home around the world.

### *Revision to maximum vessel speeds and the Applicant's ability to control this along The Haven*

Having reviewed the Applicant's updated documents, we are disappointed and have serious concerns to see in the Marine Mammal Mitigation Protocol that vessel speeds will simply be *"Subject to the pilotage requirements for navigational safety and efficiency (vessel management), and the application of the principle of 'safe speed' (application of COLREGS), vessel speeds of 'as low a speed as reasonably practicable' are to be encouraged within The Haven and The Wash."* (para 3.3.2, p.10; REP7-004). Previous commitments by the Applicant have been that vessel speeds would be limited to 4 knots (mitigation measures discussed with Applicant prior to the DCO submission and set out in the Table on p.viii of the Marine and Coastal Ecology Chapter (APP-055) and subsequently to 6 knots, for example, paragraph 18.6.35 (p.27) of the Navigational Issues Chapter (APP-056) states that *"There is a speed limit of 6 knots over The Haven"*. The Applicant's Habitats Regulations Assessment submitted at Deadline 1 (REP1-026) identified in Appendix 1 that *"Speed restrictions for vessels using The Haven, particularly for pilot vessels"* was an appropriate measure to manage disturbance to all key species assessed (dark-bellied brent geese, black-tailed godwits, oystercatchers, redshanks, turnstones, lapwings, golden plovers and common terns). The Applicant confirmed at Issue Specific Hearing 2 on Environmental Issues (agenda item 4h) only mentioned speeds of 4 knots and 6 knots (as set out in the Applicant's summary; REP3-023). The latest information is a significant change to the Applicant's commitments with respect to vessel speeds along The Haven.

The revised text in the Marine Mammal Mitigation Protocol indicates that vessel speeds would aim to be below 10 knots, but provides no certainty that this would be the case. Indeed, paragraphs 3.3.5 and 3.3.6 (REP7-004) then highlight that vessels actually travel up to approximately 12 knots along The Haven and that there is no enforcement of the *"...advisory speed limit of 6 knots along The Haven..."*. This suggests that vessels could actually travel faster than 12 knots, given that this is an approximate figure, and that any measure to manage speed cannot be considered as mitigation because there is no effective mechanism to ensure that speed limits can be adhered to. The RSPB notes the Applicant's reasons why speed restrictions are not appropriate:

*"An enforced speed limit is inconsistent with current safe practice and it would [sic] restrict the number of vessels able to transit to the Port each tide (i.e. it would increase the transit time, reducing the number of vessels able to transit each tide, and significantly increase the number of vessels within the anchorage area)." (para 3.3.7, p.10; REP7-004)*

The RSPB has a number of concerns regarding this new information:

- This information appears to have only been included within the Marine Mammal Mitigation Protocol and has not been mentioned in any of the Applicant's submissions relating to impacts on birds and their supporting habitats.
- A vessel travelling at 12 knots along The Haven will generate a greater wash and more noise. Given the relative narrowness of The Haven, this has significant implications for erosion of foraging and roosting habitats, and the disturbance and displacement of birds along The Haven. No evidence has been presented by the Applicant to enable these impacts on features of The Wash SPA and Ramsar to be assessed.
- The rock armour protecting the edge of The Haven in the upper reaches of The Haven is not very high (Plate A1-1, p.42 of Outline Landscape and Mitigation Strategy; REP7-038). No assessment has been made of whether wash from vessels inundates this area and impacts on birds using the rocks and area behind them. This is an important area to investigate given the proposed 'Habitat Mitigation

Area' to provide additional roosting for redshanks, ruffs and other waterbirds. If the area is inundated when vessels pass, due to the high speed and inability to mitigate impacts through speed restrictions, this has serious implications for the effectiveness of the alternative roost site.

- Given the speed that vessels use The Haven is double the speed which the Applicant had previously indicated, it is not clear how these higher speeds have been considered in the Habitats Regulations Assessment (HRA) for:
  - disturbance and displacement of waterbirds using The Haven
  - the erosion of supporting habitats
  - The scale and type of mitigation measures needed to avoid an adverse effect on integrity beyond reasonable scientific doubt<sup>1</sup>
  - The scale and type of compensation measures needed to ensure the overall integrity of the National Sites Network will be maintained.

This change with respect to vessel speeds at such a late stage in the Examination only heightens our concerns regarding the uncertainties of the effectiveness of the proposed alternative redshank roost area and the failure of the Applicant to identify any compensation measures that can be considered to meet the ecological requirements of the impacted species at this time. It is essential that the Applicant ensures that this change regarding vessel speeds is updated across all relevant documents and clarity is needed on how this change affects the Applicant's Habitats Regulations Assessment and Without Prejudice Derogation Case.

#### *Initial comments on Sections 5 and 7 of the HRA update (REP5-006)*

The Applicant provided further information regarding the impact of disturbance on waterbirds using The Haven at Deadline 5. In relation to disturbance, sections 5 and 7 focuses on energetics, which is a very mechanistic view. The Applicant is effectively saying that as long as the birds can get enough food to survive with the level of disturbance and the number of flight responses this causes then everything is fine. We do not consider this an adequate approach.

The impact of disturbance is not limited only to energetics (e.g. do birds get enough food to meet their energy needs), but also needs to consider bird behavioural ecology (e.g. do birds behavioural responses to disturbance reduce the carrying capacity of the protected site (i.e. the total number of birds that it can support), for example, if some birds completely avoid areas with high disturbance). Then there's also the potential impact of stress, which can affect overall fitness/survival.

The Applicant also focusses on the existing levels of disturbance as an excuse for creating more disturbance i.e. there's already a lot of vessel movements, so the additional vessel movements associated with the facility won't make much difference. This is an erroneous approach, as the starting point should be based on

---

<sup>1</sup> We note that paragraph 1.2.4 (p.2) of the Technical Note for Navigation Management and Ornithology (REP6-033) states (emphasis added) "thereby ensuring (**within** reasonable doubt) that No Adverse Effect on Integrity (AEoI) will occur in relation the designated national network sites due to management of vessels within The Haven". This approach is not compatible with the Habitats Regulations tests, which requires the Application demonstrate that adverse effects on integrity of The Wash SPA and Ramsar **beyond** reasonable scientific doubt will be avoided. An approach that seeks to lower the standards against which the DCO Application is to be held is not acceptable. We continue to review the Technical Note for Navigation Management and Ornithology.

whether vessel movements don't affect bird distributions. We are continuing to review the updated HRA and will respond in more detail at Deadline 9.

We trust that these comments are helpful.

Yours sincerely,



Philip Pearson (Dr)  
**Senior Conservation Officer (Norfolk & Lincolnshire)**  
**RSPB England Norwich Office**