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2010

Boston Alternative Energy Facility

Appendix B5 to Natural England's Deadline 8 Submission

**Natural England's Comments on Without Prejudice Habitats Regulations Assessment
Derogation Case: Compensation Measures [REP6-026]**

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

15th March 2022

Natural England's Comments on Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures [REP6-026]

Introduction

This document provides Natural England's response in relation to the Applicant's Deadline 6 Submission Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures [REP6-026].

Summary

Natural England's previous concerns with the in-principle compensation measures provided at Deadline 3 [REP3-031] remain unresolved. Natural England continues to advise that an adverse effect on Integrity can't be excluded due to the reasonable scientific doubt, as a consequence of there being limited project specific ornithological data presented, key operational impacts not being clearly defined and therefore assessed (e.g., vessel movements and speeds) and concerns over the adequacy of proposed mitigation measure and/or securing of mitigation measures to ensure impacts are suitably minimised.

Natural England advises that from the data we have seen, and the information submitted into examination by the Applicant, there is no evidence to determine that an AEol on integrity would not occur as a result of the proposals.

Thus, we advise that the Applicant must make full use of the mitigation hierarchy to avoid, reduce and mitigate the impacts. And where considerable uncertainty remain, in relation to the impacts, we advise that a more precautionary approach to account for the uncertainty in line with the Habitats Regulations is adopted.

Therefore, Natural England advises that the requirements for compensation measures are determined as part on the consenting phase. With sufficient details on the compensation measures provided in order to have certainty in the ability to implement and deliver the measures to more than offset any worst-case scenario and address uncertainties in relation to the scale and significance of any AEol.

The EC Guidance on Article 6 (4) of the Habitats Directive states that "*compensation ratios of 1:1 or below should only be considered when it is demonstrated that with such an extent, the measures will be 100% effective in reinstating structure and functionality within a short period of time*". We do not believe that sufficient evidence has been provided to suggest this is the case.

In addition, no evidence has been presented to demonstrate that the proposed locations for compensation measures have been secured, can be adapted and/or manage to be 100% effective in reinstating supporting habitat structure and functionality and/or maintain the coherence of the national site network. With no adaptive management measures identified to address non delivery of the compensation measures.

Until these issues are resolved we do not believe that that the proposed derogations case will adequacy offset the AEol.

Main Concerns with proposals

1. Redshank (and Ruff) at development site: Natural England doesn't believe that the measures proposed are sufficient to mitigate impacts. The principle of the approach is sound but the whole site is subject to disturbance, and the bird response study confirms that birds are sensitive to large vessels, and the current option of roost swapping by birds between Site A (development site) and Site B (roost to be enhanced) will no longer be possible. With no Site A if displaced from Site B where will birds go? If they have somewhere nearby then effectively the Status quo is maintained, but if they don't then the measures will fail. There is substantive risk here and the current OLEMS does not seem robust enough to ensure that if the measure fails there will be an adaptive solution. Consequently, there needs to be a compensation allowance, ideally a roost area in the Haven proximate to Areas A or B, but far enough apart that it is not subject to disturbance at the same time as Site B.
2. Loss of the mouth of Haven as a functional roost area for most species utilizing it: Waterbird disturbance study shows that most birds abandon the roost in response to the presence of large vessels. While already disturbed (and therefore sub-optimal) this development will increase pressure which is contra the conservation objectives for distribution of features. While individual species may adapt, there is still a net loss of a roost site from the roost network around the Wash. Compensation would ideally consist of a roost area close to the mouth of the Haven, but sufficiently removed from the disturbance radius of the vessels so that vessel passage does not displace birds.
3. Repeated disturbance of golden plover and lapwing at the Mouth of Haven roosts: This is calculated to increase daily energy requirements by 3% per day. It is not known if the birds can compensate for this level of loss in the local area (and requiring the birds to

compensate forage would be contra to the Conservation Objectives). Bird responses of compensatory feeding; emigration; or mortality would all be contra site objectives. Two compensatory approaches are valid (a) the provision of an alternate roost sufficiently removed from vessel passage so as to not impact daily energy balance through repeated disturbance (as identified for issue (2)); or (b) provision of enhanced foraging close to the site such that birds can efficiently compensate for increased energetic demands as are not lost from the system (by mortality or emigration).

The compensation package would need to be able to address these impacts; (2) is recognised but not adequately dealt with (1) and (3) are impacts for which no effective compensation appears to be in scope at the current time.

Detailed Comments

No.	Paragraph No.	Comment	RAG status
1.	1.1.14	As identified in comments on Chapter 17 Marine and Coastal Ecology and Appendix 17.1 Habitats Regulations Assessment Update [REP5-006], NE does not agree that no AEoI can be concluded on this point and that the area is not functionally linked land	
2.	1.1.15	<i>"... the Applicant is still committed to undertake measures to provide a biodiversity net gain for the project.."</i> We are not aware of any proposed net gain measures?	
3.	1.1.16	Please see NE Appendix F5 for comments on compensation measures and draft DCO.	
4.	Figure 1-1	We note that the addition of 580 vessels per year to current numbers would increase vessel movements to greater levels than any since 1994 at least.	
5.	1.3.3 and 2.1.5	<p>This section sets out that <i>"Discussions have also been held with Natural England in relation to the potential for management measures to create new roosting sites within the designated sites themselves. Natural England have advised that as this initiative would affect habitat within The Wash and North Norfolk Coast Special Area of Conservation it would not be acceptable. Sites for compensation are therefore being sought outside of the designated sites and outside of the RSPB reserves."</i></p> <p>NE refutes this as our position. Natural England advises that any compensation measures should not be to the detriment of the SAC features such that the conservation objectives for that site are hindered as a consequence of the compensation measures. But, if there are no other</p>	

		viable alternatives then this option should still be considered, albeit there would then be consequential impacts on the SAC to address. (Which has not been done)	
6.	1.3.4	Natural England advises that as a minimum prior to works commencing there needs to be definite certainty that compensation measures are deliverable and impacts will be offset.	
7.	2.1.4	<i>"..The works proposed as compensation/net gain measures would help to reduce potential for significant effects occurring within the area of The Haven. Potential sites for compensation/net gain have been considered to ensure that they provide the same ecological function (roosting, foraging and bathing) for the species that would be affected and are not adversely affecting any other sites or features. In providing these additional habitats for birds close to the SPA boundary this should ensure that any potential impacts are reduced in scale to ensure the integrity of the SPA and Ramsar site..."</i> NE questions what this refers to? No Net Gain has been proposed and the identified Site B works would be <u>mitigation not compensation</u> . The need to compensate impacts at the Mouth of the Haven is not addressed.	
8.	3.2.5	NE continues to request further clarification on the proposed Habitat Mitigation Area - in particular regarding the removal of the low-profile banks. We specifically require details of where the bank will be removed, the method, a calculation of the volume of material to be removed and where this will be disposed of. In addition, the location of the created 3 shallow pools and methods used. Also, regarding the placement of rocks from the Principal Application Area to the proposed Habitat Mitigation Area - to facilitate roosting of Redshank - will these function in the same way as the remaining banks (Old sea wall) that is presumably not being removed? This may restrict visibility of predators. Natural England suggest one additional mitigation option here: restricting access by Members of Public and dog walkers onto the Habitat Mitigation Area from the Coastal Path using fencing. This would minimise disturbance if this area is being used more regularly by roosting birds. Signage actively asking Members of public to keep dogs on the lead (and why this habitat is important) would be beneficial.	
9.	3.3.1	For clarity it would be good to include the annual number of vessels here so it is comparable with the values given in the following sentence.	

10.	3.4.3	NE does not concur with the conclusion “.. <i>The HRA (document reference 6.4.18, APP-111) concluded no AEOI of The Wash SPA (either alone or in-combination with other plans and projects)..</i> ” There will be the loss of a roost area on all tides diminishing the network of roost sites around the Wash, contra the Conservation Objectives.	
11.	3.4.4	Also, the distribution of the Assemblage feature as a whole would be affected.	
12.	3.5.3	Natural England’s comment on paragraph 3.2.5 with regards to the use of the rocks within the proposed Habitat Mitigation Area applies here too.	
13.	3.5.4	Natural England’s comment on paragraph 3.2.5 with regards to dogs accessing the proposed Habitat Mitigation Area applies here too. NE advises that a ratio of greater than 1:1 is applied.	
14.	3.5.5	NE agrees with the recognition of these as key species of concern at the Mouth of the Haven but also has concerns about the Assemblage Feature as a whole.	
15.	3.5.6	NE recognises that vessel traffic is already impacting features of The Wash SPA the impact of this development is therefore additive.	
16.	3.5.7	It should be noted that, although not a named component species as species with population of over 2000 individuals, both lapwing and golden plover can be considered Key Assemblage species despite the description here ‘.. <i>both not being SPA species in their own right..</i> ’	
17.	3.5.9	NE request clarity on what is being proposed in reference to: ‘... <i>The works proposed within the Havenside LNR are currently related more to Biodiversity Net Gain but could also offer some potential for compensation and so are included within the table...</i> ’ Without detail it is hard to comment on likely efficacy, however interventions at this site are only likely to be effective for birds already utilizing areas within the Haven. And how this will be additive to the required compensation measures	
18.	Table 3.1 Option 1	No clarity as to location, scale of habitat to inform decisions related to likely efficacy of these sites	
19.	Table 3.1 Option 2	No clarity as to location, scale of habitat to inform decisions related to likely efficacy of these sites. Text suggests limited scope.	

20.	Table 3.1 Option 3	No clarity as to location, scale of habitat to inform decisions related to likely efficacy of these sites. Text suggests limited scope. But may provide an alternative site when birds are displaced from Site B roost.	
21.	Table 3.1 Option 4-6	NE notes that the options with most potential to compensate for impacts on the SPA are now discounted.	
22.	Table 3.1	Natural England advises that the EA may require notification (Flood Permit) if works are undertaken along the banks of The Haven. Prior to the Boston embankment works, the saltmarsh along The Haven was cattle grazed in several places maintaining a short-sward with open bare patches. NE are uncertain whether grazing is still undertaken (due to the removal of the old fences). This may be something that could be investigated. The fences will have reduced the disturbance impact of dogs accessing the saltmarsh/ mudflats from the PROW/ LNR. But habitat management may still need to be provided over the lifetime of the project.	
23.	Section 4	Natural England advises that the proposed approach is reasonable, however, enacting key elements of this approach is a must prior to determination to provide the necessary confidence. As such there is not assurance that a suitable site(s) will be secured and the appropriate management implemented.	
24.	4.5.4	It is not clear how the 'shortlisted sites' will address the compensation needs.	
25.	4.5.14	<i>".. the intertidal habitat is reinstated to an acceptable condition to enable waterbirds to return to use this area for roosting..."</i> Presumably this should say foraging not roosting as it refers to intertidal?	
26.	Figure 3.1	NE presume the locations of the two arable fields being put forward is not yet common knowledge and this information will be shared?	
27.	4.6.3 and 4.6.4	Natural England queries over what timeframe is this being secured? I.e. as a minimum for the duration of the life-time of the site occupation (and decommissioning phase)? What about the wharf? If that is left in-situ as currently expected? This land (as long as it is used by SPA/ Ramsar bird species) should be considered Functional Linked Land and should be included within the SPA network to retain the sites network coherence. And will need to be managed as such.	

28.	4.6.10	NE comment on Table 3.1 applies here too.	
29.	4.6.14	NE comment on paragraph 4.6.3 applies here too.	
30.	4.7.1	Natural England requests a map of the locations so we can see which side of The Haven it is on. Is the Applicant considering both sites or one/ or the other?	
31.	4.7.2	<p>Natural England has several queries in relation to this section of the HRA. For example: Which bank of the Haven does this paragraph refer to?</p> <p>Regarding the creation of shallow lagoon with an island, presumably water depth will be deep enough to restrict predator access to the island? Or will there be predator fencing? Also, how will the water levels of the lagoon be maintained and where will the water be sourced? Will there be any impacts on RSPB water requirement?</p> <p>Natural England advises that Fencing may be necessary to restrict dog access from the coastal footpath to minimise disturbance.</p> <p>Further clarification is required as the above may all have further impacts to priority saltmarsh habitat, which should be avoided</p>	
32.	4.8.1	<p>Natural England's comment on Table 3-1 is also relevant here regarding the possibility of grazing, Also, fencing to minimise access along channel itself.</p> <p>Natural England advises that some of the scrub within the Havenside LNR might be important for migrant birds - RSPB would be able to advise further. Further along the Haven there are records of Turtle Doves using scrub.</p>	
33.	4.9.1	<p>Note all impacts will commence during the construction phase, though disturbance at the mouth of the Haven will not peak until the site is operational.</p> <p>Comments on 1.3.4 also apply here.</p>	
34.	4.10.1	The need to maintain the sites in a condition to allow them to function as Compensatory Habitat is correctly identified, but the mechanism by which this will be achieved and how its effectiveness will be ensured is not identified. This needs to be clearly established.	
35.	4.11.1	<p>The OEG will need to have more than an advisory role it will need to be empowered to ensure compliance with Compensatory requirements.</p> <p>Who is the applicant considering is part of the Ornithology Engagement Group?</p>	

		We note that the OCIMP in its current form is only theoretical.	
36.	5.1.2	NE agree this is an appropriate framework for the OCIMP. Natural England is pleased to see monitoring mentioned. However, we have further queries including but not exclusively; For how long? Will this cover the proposed sites and what about the Habitat Mitigation Area? Also, will it cover The Haven mouth with regards to the vessel movements/ disturbance?	
37.	5.1.3	Agree this is an appropriate monitoring framework, however, the surveys will need to be carried out for more than two years and the OEG will need more than a discursive role in site management. NE notes the recognition that birds show negative behavioural responses to vessels akin to those that will service the development site during both the construction and operational phases.	
38.	5.1.4	NE is pleased that the potential need for further investment and implementation of measures is recognised and acknowledged, however, the manner by which it will be secured needs clarifying.	