



THE PLANNING ACT 2008
THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES
2010

Boston Alternative Energy Facility

Appendix B7 to Natural England's Deadline 9 Submission

**Natural England's Comments on Without Prejudice Habitats Regulations Assessment
Derogation Case: Compensation Measures [REP8-006]**

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

24th March 2022

Natural England's Comments on Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures [REP8-006]

Introduction

This document provides Natural England's response in relation to the Applicant's Deadline 8 Submission Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures [REP8-006].

This response should be read alongside our Deadline 8 response [REP8 – 023] as many of the nature conservation concerns raised in that document remain relevant due to REP8-006 being submitted prior to the Applicant reviewing our concerns.

Summary

It's Natural England view that issues are slowly progressing towards a satisfactory outcome. And, had this been the start of the examination process there would have been opportunity to agree and secure appropriate compensation measures prior to the end of examination. But with 13 days remaining until the end of examination, insufficient clarity on some elements of the project design and evidence gaps, it is unlikely that our nature conservation concerns in relation of the adequacy of the derogations case will be resolved.

We advise that the identified sites are unlikely to support all impacted species but should be sufficient to mitigate development site impacts and would potentially compensate for a substantial part of the impacts at the Mouth of the Haven. Critical to a positive derogation case will be (a) securing the sites and (b) refining site plans and (c) establishing appropriate governance. If options for creating an alternative roost close to the impact site (best option for the SPA looking at this in a birds-only manner) are not going to be considered further, then we advise that the proposed compensation location/s provide a suitable option.

Natural England queries if there are other options for oystercatcher and turnstone which are unlikely to be supported by the proposals? However, we would expect utilization of the sites by additional species, as legally, the compensation site become part of the SPA at a feature level this could be acceptable.

No.	Paragraph No/Section	Comment	RAG status
1.	3.2.5	<p>NE recognises that the measures proposed at Site B are appropriate to support redshank and enhance the value of this area. However, because Site B is subject to disturbance by vessels and will no longer be able to function in conjunction with the Site A, NE is of the view that there is no certainty these measures alone will be able mitigate the loss of Site A. It should be noted also that as foraging habitat, while better than saltmarsh, saltmarsh lagoons are likely to be less good foraging habitat than intertidal sediments.</p> <p>While the proposed measures will lessen the impact of the loss of Site A they are unlikely to fully mitigate it. Consequently, NE is of the view the proposed measures at Site B will constitute a partial mitigation for the impacts at the development site with regards redshank.</p> <p>To act as HRA compliant compensation in the long term it will be necessary to have an effective and enforceable management arrangement to ensure the habitat is maintained.</p> <p>The actual number of roosting rocks is not increased (therefore no increased capacity), but they are simply moved from the wharf construction area to the Habitat Mitigation Area.</p> <p>We are still awaiting further clarification on the detail around the proposed works particularly the removal of low-profile banks - as per our comments on 15/03/22.</p>	
2.	3.2.6	<p>The text here notes that the habitat mitigation site is providing mitigation for loss of roosting and foraging habitat for waders (particularly Redshank) through construction at the wharf. But it also implies it is also part of compensation for AEOI?</p> <p>The 'HMA' at Area B will provide mitigation for impacts at the Development Site which are in an area functionally linked to the SPA. If these fail to provide the required level of Mitigation then residual impacts will need to be Compensated for.</p>	
3.	Table 3.1	NE queries if map images of the two missing locations i.e., between the Habitat Mitigation Area to the SPA boundary & SPA boundary to HMP North Sea Camp could be added for consistency?	
4.	3.4	Natural England draws the ExA attention to the fact that it is Vessel Transit that is of concern with proposed mitigation Area B and this is not discussed.	
5.	3.4.4	Natural England advises that the Waterbird Assemblage is a Site Feature in its own right and need considering as such either here or as a separate paragraph.	

6.	3.5.1	<p>Natural England requests further clarity on what is being considered as Biodiversity Net Gain (BNG) is needed. Mitigation measures, Compensation and BNG need to be clearly identified in terms of location and purpose, especially where it be used to provide multiple purposes.</p> <p>In addition, we query what BNG is being proposed if compensation addressing AEOL is required?</p>	
7.	3.5.3	<p>Natural England notes that the Applicant has had discussions with the local landowners, but there is no letter of comfort provided to demonstrate that they are aimable to compensation being delivered on their land. Therefore, there remains a risk that suitable compensation locations will not be secured.</p>	
8.	3.5.5	<p>Natural England notes that the points here combine measures to accommodate both foraging and roosting impacts. As the two behaviours have different habitat requirements it would be helpful to differentiate the two. Different species also have different specific requirements – though there is broad overlap.</p>	
9.	3.5.6	<p>Natural England advises that Waterbird Assemblage should be identified as a feature at risk, not just the component species.</p> <p>The recent updated HRA submissions and NE's response to them have clarified that the matters to be compensated include both roosting (in particular in reference to distribution) for all identified species, and for lapwing and golden plover overall energetic balance which could be potentially addressed though either provision of disturbance free roosts or enhanced feeding.</p>	
10.	3.5.7	<p>See our previous comment on the Deadline 8 [REP8-025] point 5 which refutes this as our position.</p>	
11.	3.5.7	<p>Natural England requests that a map showing these proposed sites in relation to The Wash SPA and The Haven etc. are included.</p>	
12.	4.6.7	<p>Experience suggests that T&CPA1990 interpretation varies between local authorities and some require Planning for schemes analogous to that required for this project. Natural England advises that the description underrepresents the amount of surface water that would likely be needed for the site to be effective.</p>	
13.	4.7.2	<p>From the description the site is well positioned to support the role of Site B in mitigating the loss of Site A and thereby ensuring that no AEOL arises from the loss of functionally linked habitat. This is based on the assumption that management of the site can be secured that provides both</p>	

		foraging (larger area of lower quality than that lost) and a disturbance-free roost area. At present Natural England advises that this is not assured.	
14.	4.7.2	<p>From the description we believe this site is positioned such that it is likely to be able to support some of the features for which NE considers that it is not possible to conclude No AEol at the MOTH site.</p> <p>Based on the description provided, the site lies approximately 4.8km from the affected roost area identified as Area E in Fig 5.1 in 'Final Waterbird Survey Report Summary of Data' submitted at D8. Making it more distant from the site of impact than the other potential alternate roost areas. Natural England advises that it is therefore unlikely to be adopted by displaced individuals, but (as land that should be legally recognised as part of the SPA if secured as compensation) is likely to increase the carrying capacity of The Wash SPA.</p> <p>Whilst NE defers to RSPB who have local knowledge of bird densities, likelihood of appropriate management being securable and species likely to adopt the site; we consider that with appropriate management it is likely that the site could support lapwing, golden plover, redshank, black-tailed godwit. It is NE's view that it is unlikely to be utilised by significant numbers of oystercatcher (due to distance from the SPA) and turnstone (due to distance from the SPA and habitat requirements) or brent geese (due to presence of alternative areas of functionally linked land closer to the SPA).</p>	
15.	4.7.3	From the description provided, NE concurs that this area is more likely to be suited to golden plover and lapwing. It should be noted that both these species are less requiring of presence of surface water than some other SPA species, but a high water table in the soil is advantageous. Most critical is the availability of invertebrate-rich short swards or bare ground and the potential to restore invertebrate-rich soils should be investigated.	
16.	4.7.4	Natural England queries if the same level of site management will be provided in the compensation area to that of the RSPB reserves?	
17.	Table 4.1 'Lagoon'	Natural England advises that for roosting, open water has to be shallower than the leg length of the wader species trying to roost. Therefore, we advise that there is a requirement to provide areas of shallow water at both times of high and low water. In the absence of appropriate shallow water multiple roosting islands will be needed, with a suggested increase to min 40% of parcel area.	
18.	Table 4.1 'Gravel island' &	Natural England advises that it is unlikely to provide substantive foraging habitat except on margins. More smaller	

	'Earth Island'	islands preferable to one larger one for both island types and to increase total area.	
19.	Table 4.1 'Wooden frames'	Natural England advises that wooden frames are unlikely to be significantly used by redshank and common sandpiper if shallow water and islands are available.	
20.	Table 4.1 'Wet grassland'	Natural England advises that wet grassland is unlikely to be significantly utilized by grey plover, knot, common sandpiper, shelduck, mallard, teal.	
21.	Table 4.1 Arable	While management benefiting species like turtle dove, meadow pipit, skylark, and yellow wagtail would be welcomed, these are not SPA species so this would be outside the compensation framework.	
22.	Table 4.1	Natural England advises that the addition of an anti-predator fence would be advantageous for many species. Measures to reduce disturbance from users of the adjoining footpath e.g. screening and promotion of scrub in places may be appropriate.	
23.	Table 4.1 7.5ha site	Natural England advises that given the site's separation from The Wash and Haven, the potential species list looks ambitious with regards regular usage. However, without precise information on site location, there remains uncertainty.	
24.	4.8.1	Natural England concurs with the view that two years should be allowed between site establishment and its need to provide compensation. Sites undergoing this type of restoration take time to establish and often require follow-up work after initial site establishment.	
25.	4.8.3	Natural England advises that annual maintenance will be required to maintain habitat suitability as Mitigation as well as initial establishment works described. Works in the Habitat Mitigation Area should be scheduled to avoid the nesting bird season and the migratory/ winter period. This in effect means works should be undertaken in August.	
26.	4.8.7	In the opening paragraph (1.2.7) the number of vessels expected during construction phase is quoted at 89. Here it notes 260 vessels per year. <u>Natural England draws the ExA to these inconsistencies in project parameters which are adding uncertainty in fully understanding the scale and significance of the project.</u>	
27.	4.9.1	Natural England advises that to be HRA compliant monitoring and maintenance need to be overseen by a governance group that is empowered to ensure that the site is accountable, on behalf of the competent authority, and can	

		ensure the site is delivering its compensatory requirements and can remedy any failings.	
28.	4.10.1	Natural England welcomes the establishment of an expert group to oversee planning, site establishment and ongoing maintenance. However, with regard to 4.9.1, the role of the OEG would need to be more than advisory – it needs to be able to ensure compliance with Statutory requirements.	
29.	5	Natural England broadly concurs with this section save for the lack of appropriate governance as identified in lines related to 4.9.1 and 4.10.1 above.	
30.	5.1.4	Natural England advises that for the reasons set out at 4.7.2, the sites described are unlikely to prove satisfactory for all impacted species.	

Natural England's key to RAG status	Risk
<p>Purple</p> <p>Note for Examiners and/or competent authority. May relate to DCO/DML.</p>	
<p>Red</p> <p>Natural England considers that unless these issues are resolved it will have to advise that (in relation to any one of them, and as appropriate) it is not possible to ascertain that the project will not affect the integrity of an SAC/SPA and/or comply fully with the Environmental Impact Assessment requirements and/or avoid significant adverse effect on landscape/seascape, unless the following are satisfactorily provided:</p> <ul style="list-style-type: none"> new baseline data; significant design changes; and/or significant mitigation; <p>Natural England feels that issues given Red status are so complex, or require the provision of so much outstanding information, that they are unlikely to be resolved during examination, and respectfully suggests that they be addressed beforehand.</p>	
<p>Amber</p> <p>Natural England considers that if these issues are not addressed or resolved by the end of examination then they would become a Red risk as set out above. Likely to relate to fundamental issues with assessment or methodology which could be rectified; preferably before examination.</p>	
<p>Yellow</p> <p>These are issues/comments where Natural England doesn't agree with the Applicant's position or approach. We would flag these at the PEI stage with the view that they would be addressed in the Application. But otherwise we are satisfied for <u>this particular project</u> that it will not make a material difference to our advice or the outcome of the decision-making process. However, it should be noted that this may not be the case for other projects. Therefore it should be noted by interested parties that just because these issues/comments are not raised as part of our Relevant Representations in this instance it should not be understood or inferred that in other cases or circumstances Natural England will take this approach. Furthermore, these may become issues should further evidence be presented.</p>	
<p>Green</p> <p>Natural England supports the Applicant's approach.</p>	