



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

Boston Alternative Energy Facility

Secretary of State Additional Information Request

**Natural England's updated advice on Ornithology impacts**

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

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8<sup>th</sup> December 2022

## Natural England's updated advice on Ornithology impacts

This response has regard to:

- Applicants - Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (tracked) November 2022
- Applicant's response to the Secretary of State's letter of 14 October 2022

### **Summary**

Natural England notes that the only real developments have been the naming/confirming of the proposed mitigation sites and a proposed new mitigation measure at the docking area. In principle the new mitigation measure could be taken forward, but there is a level of detail missing about the site and potential pressures on it to allow a conclusion to be reached at the current time.

As such, Natural England advises that there is no certainty within the information provided by the Applicant to Secretary of State in November 2022 to material change our previous advice. Natural England advice remains that there is Adverse Effect on Integrity (AEoI). And whilst the potential is there the compensation package remains insufficiently worked up at the current time to provide any assurances that the impacts can be fully offset.

Should the Secretary of State be minded to grant consent for the proposal then there will need to be assurance that appropriate conditions can be put in place that will provide sufficient reassurance that SPA interests are secure and the delivery of appropriate extent and quality of compensatory habitat quality is guaranteed.

**Detailed Comments**

Point	Section	Comment	Suggestions for resolution	RAG
2.2	Response to Question 3.1 - Without Prejudice Additional Mitigation / Enhancement to Reduce Bird Disturbance			
	General	<p>Overall, Natural England advises that no new information has been provided to change our advice and notes that the Applicant has only chosen to respond on selective points we have previously raised. We continue to advise, that an Adverse Effect on Integrity (AEol) on The Wash SPA cannot be excluded for the reasons set out in our written representations during examination.</p> <p>Some of the amendments/commitments are considered by Natural England to be adequate in principle. But as currently set out these are not currently considered enforceable, and/or will not realistically sufficiently mitigate/compensate impacts. With many areas of concern remaining.</p>		
	2.2.3	Natural England is content that no further mitigation measures are required for construction noise disturbance, but this is dependent on the requirement to undertake real time monitoring and any issues reported to LPA and NE within 24hr to agree adaptive management measures in consultation with LPA and NE should impacts be greater than predicted	Agree a suitable condition	
	2.2.9	Natural England agrees that Palisade fencing on the landwards side could mitigate human disturbance, but this doesn't address concerns we raised in relation to (a) long term habitat management and (b) water bourn disturbance	Consider other concerns	
	2.2.13	Natural England remains unconvinced that raised awareness of		

		protected species is sufficient to reduce disturbance when there is no alternative sailing route, unlikely to be able to change course in The Haven and its approaches and slowing vessels is unlikely to sufficiently reduce disturbance responses. Thereby, we do not consider this to be mitigation.		
	2.2.14	For avoidance of doubt and for audit trial purposes Natural England doesn't support the inclusion of this condition as mitigation as set out above. We also highlight practical implementation issues with this condition with the Port being in control of operations.  We highlight that legally securable measures need to be reliable, measurable and enforceable. We are unconvinced that latitude is there to be Habitat Regulations compliant		
	2.2.16 and 2.2.17	Natural England doesn't agree with the Applicant's position re disturbance from subsequent vessels at the mouth of The Haven and our advice remains unchanged to that set out in the examination i.e. AEol from vessel disturbance at the mouth of The Haven can't be excluded.		
	2.2.18	Natural England advises that if no mitigation is possible at the mouth of The Haven then compensation measures are required		
	2.2.26	Natural England advises that there is currently no guarantee that a Habs Regs compliant (i.e. no impact) version of a Navigational Management Plan can be developed, so we cannot be reassured that it is a suitable tool to sufficiently reduce the impacts to remove an Adverse Effect on Integrity.		
	2.2.29	Natural England understands that the vessel speed reduction to 10 knots for an unknown proportion of the vessels transiting down The Haven, is a suggestion to reduce existing background disturbance allowing more leeway with development associated		

		impacts. While this is helpful and would have wider environmental benefits from reduced wash; we advise that it is unlikely to be sufficient as the proposal is to (more than?) double the existing vessel number/impacts and there no evidence presented to demonstrate that slow moving boats are less disturbing to birds		
	2.2.29	The inclusion of ‘...where practicable to do so’ from an operational perspective is not Habitats Regulations compliant in relation to adoption of mitigation measures. Natural England queries what is the alternative/adaptive management measure if is can't be implemented?	Provide alternative adaptive management measure	
	2.2.33	Whilst Natural England has a regulator responsibility under the Wildlife and Countryside Act 1981 (As amended by CROW) for impacts relating to Sites of Special Scientific Interest in this instance we are not the regulator in relation to discharging conditions relating to the NMP. That would either be the Secretary of State (SoS) relating to compensation measures and the Local Planning Authority (LPA) and/or the Marine Management Organisation (MMO).  Natural England also highlights that ‘consulted’ does not mean that our advice will be respected. Thus, consulting Natural England does not rule out the risk of an AEol.		
	2.2.35	Natural England notes that the intension of the NMP is ‘...the NMP is intended to address nature conservation concerns, where this does not conflict with safe operation of the vessels, and, along with additional plans, will enable mitigation of impacts and adaptation of management measures if necessary, during the ongoing project development and operation...’		

		Because of the inclusion of the highlighted text, <u>we are unable to advise that the inclusion of this post consent commitment to develop an NMP will exclude an AEol from occurring</u>		
2.8	Response to Question 3.6 - Further Information regarding the without-prejudice proposed compensation sites for The Wash SPA			
	General	<p>Natural England's position remains that the proposed compensation locations should, in principle, be able to compensate for most SPA impacts, but we can't advise with certainty until the required surveys and compensation design are complete so we can see what the art of the possible actually is.</p> <p>We advise that the SoS would need to be reassured that conditioning can provide a secure mechanism to ensure that SPA requirements are met and that there are safeguards to protect against the lack of current certainty.</p>	More Detail required	
	2.8.3	Having not seen the October 2022 bird surveys Natural England is unable to support the Applicant's statements in relation to the acceptability of compensation locations	Provide latest surveys and updated Ornithology Assessment	
	2.8.7	Natural England highlights that all of our previous comments included in REP9-058 remain outstanding, with only a plan for (a) offered. We advise that a proposed site design and management plan is required.		
	2.8.10	Natural England advises that the Ornithology Compensation and Implementation monitoring plan proposed alternative roosts is likely to be optimal for at least some of the Wash SPA features. However, as set out in our advice during examination the SAC/priority habitat impacts would need to be additionally dealt with.	Consideration of compensation for SAC features	
	2.8.12	Natural England is unable to advise further on the Fields at Wyberton Road, without the inclusion of a map	Provide a map	

	2.8.13	Natural England advises that without a field survey there is not certainty that ' <i>Standing water was found to already be present on site where ruts and hollows occurred, indicating the potential for creation of shallow water areas.</i> ' The pooling could be a result of compaction and heavy rain prior to the walkover	Further detail	
	2.8.35	Natural England is supportive of the exploration of the dock level roosting site especially if it will be less disturbed than the mitigation area.	Further detail	
	2.8.39	<i>Heysham Heliport wader roost, Lancashire</i> – Natural England's ornithologist is familiar with this site. We agree that when people are kept well back it works for the birds. However, we are not clear how comparable the standoff distance is for the proposed Boston site. We require critical information on the boat/recreational disturbance at the Boston site – the Heysham site is periodically emptied at high tide by windsurfers and kayaks. The Heysham site also has space for the birds to retreat over the wall top on big tides while still being separated from people. How will be this be replicated at BAEP?	Further detail	
	2.8.40	<i>Seaham Harbour and Marina, County Durham</i> – Natural England doesn't know this site, but are aware of comparable ones. Thereby, we can agree the principle presented, but much greater detail is required in relation to BAEP, but we could advise with certainty that the impacts would be offset by the proposals.	Further detail	
	2.8.43	<i>Rocks placed in the intertidal zone or shallow subtidal zone within the SPA</i> – Natural England agrees that this option is only viable if there is no Likely Significant Effect on the Special Area of Conservation or that the impacts can be compensated for.  In addition, we agree that turnstone and oystercatchers are the key beneficiaries as less likely to adopt an inland site.	Further detail	

