

# REPORT

## **Boston Alternative Energy Facility**

Without Prejudice Habitats Regulations Assessment  
Derogation Case: Compensation Measures for Harbour  
Seal

Client: Alternative Use Boston Projects Ltd.

Planning Inspectorate EN010095

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## 1 Introduction

### 1.1 Reason for Report

1.1.1 This 'Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures for Harbour Seal' report has been provided for the Boston Alternative Energy Facility (the Facility). This report is prepared on behalf of Alternative Use Boston Projects Limited (AUBP, the Applicant), to support the application for a Development Consent Order (DCO) that has been made to the Planning Inspectorate under Section 37 of the Planning Act 2008 (the Act).

1.1.2 The report provides detail on the measures proposed to provide without prejudice compensation for harbour seals as a result of collision risk. The need for such measures results from a request by the Secretary of State in the letter issued by the Department for Business, Energy & Industrial Strategy dated 10 January 2023 (the BEIS letter) as well as previously in the letter dated 14 October 2022.

## 2 Marine Mammals Without Prejudice Compensation

### 2.1 Introduction

2.1.1 This section provides detail on the proposed 'without prejudice' compensation measures that have been requested by the Secretary of State to provide additional measures for the harbour seal within The Wash and North Norfolk Special Area of Conservation (SAC). The measures are provided in the event that the Secretary of State's Habitats Regulations Assessment (HRA) concludes that an Adverse Effect on Integrity (AEoI) of the SAC cannot be excluded as a result of collision risk during the construction and / or operation of the Facility

### 2.2 Conclusions of the HRA Process

2.2.1 HRA Screening was undertaken for the Facility, and it was determined there was the potential for a Likely Significant Effect (LSE) on certain qualifying features of The Wash and North Norfolk Coast SAC. These features were taken forward into a HRA by the Applicant to determine whether there would be AEoI on harbour seal, a designated feature of the SAC (or whether such an effect could not be excluded) as a result of the proposed project. The assessment concluded that there was not an AEoI on any of the qualifying features, including harbour seal, and that the mitigation proposed was sufficient to address any potential effects.

2.2.2 The feedback from BEIS (in its letter dated 10 January 2023: Reference EN010095) was that:

*“The Secretary of State notes that, despite Natural England and other Interested Parties raising concern regarding the potential for an adverse effect on the integrity of the harbour seal population of The Wash and North Norfolk Coast Special Area of Conservation during pre-application and Examination and in response to the Secretary of State’s consultation letter of 14 October 2022, the Applicant has not provided a without-prejudice compensation package for this qualifying feature.”*

2.2.3 The Applicant maintains that the AEoI on harbour seal can be excluded for The Wash and North Norfolk Coast SAC. However, in light of the comments from BEIS, the Applicant has engaged with Natural England to understand any remaining concerns as indicated in the letter from BEIS discussed above.

2.2.4 The Applicant considers that the mitigation and management measures that have already been proposed (which are secured by conditions in the deemed marine licence contained in Schedule 9 to the draft DCO (document reference 2.1(6), REP10-004)) are sufficient to ensure there is no adverse effect on integrity on The Wash and North Norfolk Coast SAC due to any effects on harbour seal from vessel collision risk. It is therefore considered, by the Applicant, that there is no requirement for compensation measures. However, the Secretary of State has requested details on proposed ‘without prejudice’ compensation measures for vessel collision risk to harbour seal, and therefore, proposed without prejudice compensation measures have been proposed by the Applicant in **Section 2.3**. The proposed measures aim to understand more about the reasons for the decline in the local harbour seal population and aid the recovery of harbour seals in The Wash.

2.2.5 Natural England has provided further detail on its perspective of the potential for effects on harbour seals, in an e-mail to the Applicant, dated 13 February 2023, stating (as provided in Appendix A of The Applicant’s Response to the Comments Raised by Natural England and RSPB document (document reference (9.111))):

*“From Natural England perspective it has always been about strengthening your mitigation measures to avoid an adverse effect on integrity. We therefore did not identify the need for a derogations case for Annex I harbour seals. This position hasn’t changed, therefore in order to help the project progress we have identified the key mitigation measures below that would go a long way to allaying our concerns”.*

2.2.6 While the Applicant does not consider the additional mitigation measures requested by Natural England are necessary, it has agreed to include the majority of these measures to address Natural England’s concerns. Further details on

these measures and responses to all of Natural England's remaining concerns on mitigation measures and outstanding issues are provided in the Applicant's Response to the Secretary of State's Letter of 10 January 2023 (document reference 9.109) and the updated Outline MMMP (document reference 9.12(3)).

## 2.3 Without Prejudice Proposed Compensation Measures for Marine Mammals

2.3.1 While the Applicant does not consider that there as an AEoI that would necessitate the provision of compensation measures for collision impacts on harbour seals as a result of the Facility, in recognition of the fact that there has been a significant decline in the local harbour seal population, and of Natural England's outstanding concerns for both the Project and the decline of the harbour seal in the area, the Applicant is proposing to undertake the below measures to provide support to the local harbour seal population regardless of the decision made by the Secretary of State. The measures are therefore proposed as either compensation (should the Secretary of State's HRA conclude that such measures are needed) or as an additional element of the Applicant's biodiversity enhancement/net gain package, if compensation is not required.

2.3.2 Two without prejudice measures are set out in the following sections which the Applicant is committed to. The current agreement status of these measures is also indicated below.

### Measure 1: Funding of Harbour Seal Rehabilitation

2.3.3 The Applicant proposes to provide funding to the value of £10,000 per year throughout the operational lifetime of the Facility for the rehabilitation of harbour seals in The Wash. The Applicant is seeking to deliver this measure through partnering with the Skegness Natureland Seal Sanctuary. This is a family-run facility<sup>1</sup> that rehabilitates harbour seals into The Wash and covers the area from Anderby Creek to Boston. Natureland has been approached with regard to funding its ongoing work and has advised it would be very happy to be working collaboratively with AUBP to further the rehabilitation of seals should the project gain consent (see letter of support in **Appendix A**). The funding would be specifically directed towards harbour seal populations, although the facility does also rehabilitate grey seals.

2.3.4 The £10,000 annual funding proposed by the Applicant equates to funding the value of successfully rehabilitating approximately five seals per year for the operational lifetime of the Project (which is anticipated to be at least 25 years).

<sup>1</sup> Natureland is currently a privately owned business, with the ownership maintained in the same family as the original founder. The current Directors fully intend to move the organisation to a charitable status and are currently taking legal advice on this matter.

These costs cover every aspect of seal care from the fish that they eat, medication for illness and parasites and more intense medical care that may be required. Ongoing discussion is being held to determine the most appropriate process for achieving this.

- 2.3.5 Should the DCO be granted the Applicant would enter into a contractual funding arrangement with Skegness Natureland.
- 2.3.6 Natural England has indicated its agreement with this approach to compensation (or net gain) (as provided in Appendix A of The Applicant's Response to the Comments Raised by Natural England and RSPB document (document reference (9.111))).
- 2.3.7 **Paragraph 2.5.4** sets out how this measure would be secured in the DCO either as compensation or marine net gain.

## **Measure 2: Funding and Support of Research to Understand the Reasons for Population Decline and Threats**

- 2.3.8 A number of approaches and avenues to support research into the cause of the harbour seal decline have been investigated and are provided below.
- 2.3.9 Funding (or other support) can be provided to support research within The Wash area which would focus on developing understanding of the current threats to harbour seal, and the reasons for the recent population decline. This research could investigate a number of potential reasons for the decline, including disease (avian flu), competition with (or predation by) grey seals, disturbance by walkers and dogs, disturbance from recreational activities/boating/water sports, education in prey and vessel disturbance, and vessel strikes (as well as other possible anthropogenic causes of decline).
- 2.3.10 The Applicant has been in contact with the Sea Mammal Research Unit (SMRU) to investigate supporting their research in the region. The SMRU's planned and ongoing research includes tagging of both harbour and grey seal, and health and diet studies. Two options for the Applicant to support this research are through financial contributions, and / or through the provision of contemporary AIS vessel data to be used alongside the tagging. This could be used to investigate seal reaction and behaviour due to (and distance from) any vessel in the vicinity of the tagged individual.
- 2.3.11 Following discussions with Lincolnshire Wildlife Trust (telecon of 17<sup>th</sup> February 2023), a collaborative approach to researching the pressure levels of recreational vessels on the harbour seal population within The Wash could be adopted. This would include research into the current number of recreational vessels (including

jet skis and Rigid Inflatable Boats (RIBs)) in the area, and whether this has increased in recent years, as well as use of The Wash by these vessels (such as vessel speed, areas of use, purpose of vessel movements and movements in relation to harbour seal haul-out sites).

- 2.3.12 Recreational vessels have the potential for disturbance and collision risk to seals due to their increased speed when compared to larger commercial (e.g., cargo) vessels. At present it is unknown whether there has been an increase in these types of vessels that may be contributing to the wider disturbance of harbour seals within The Wash. One option to better understand the number of recreation vessels in The Wash would be to investigate the trend in the number of vessel launch fees at nearby launch sites.
- 2.3.13 The research options as outlined above would need to be co-ordinated with other ongoing research in the area. The Project will provide support to facilitate this co-ordination through ongoing discussion with the Lincolnshire Wildlife Trust, Natural England and SMRU to understand the research that is currently being undertaken and to ensure that the research funds are being used to maximise the potential to understand the changes within the local harbour seal population.
- 2.3.14 The Applicant has agreed to fund research up to the value of £10,000 per year for a period of three years, starting from commencement of construction period which is expected to be around 2025.
- 2.3.15 Natural England has indicated its agreement with this approach to compensation (or net gain), (as provided in Appendix A of The Applicant's Response to the Comments Raised by Natural England and RSPB document (document reference (9.111)).
- 2.3.16 **Paragraph 2.5.4** sets out how this measure would be secured in the DCO either as compensation or marine net gain.

## 2.4 Other Options Considered by the Applicant

- 2.4.1 In Natural England's e-mail to the Applicant on 13 February 2023, it suggested three avenues for compensation (or net gain) measures, namely (1) Supporting the National Trust in reducing disturbance to harbour seals at Blakeney Point by funding site management measures; (2) Undertaking an awareness campaign with key stakeholders to target sources of disturbance within The Wash and North Norfolk Coast SAC, such as recreational craft and cockle fishermen; and (3) Help fund ongoing evidence gathering into causes of the decline in The Wash harbour seal population, which will in turn help determine management measures to help restore the population.



- 2.4.2 Natural England's suggested measure 1 was not taken further due to the distance between Blakeney Point and the Facility. In addition, Blakeney Point, while an important haul-out site within The Wash and North Norfolk Coast SAC, holds a high number of grey seal (in comparison to harbour seal). Greys are also known to predate on harbour seal. As these are known to predate harbour seal it was decided this would not significantly benefit the harbour seal population. This was discussed further with the Lincolnshire Wildlife Trust (LWT) at a meeting on the 17 February 2023, where LWT was in agreement with the Applicant's proposed approach to provide without prejudice compensation measures for harbour seal through supporting seal rehabilitation in The Wash, as opposed to supporting the work at Blakeney Point.
- 2.4.3 Natural England's suggested measure 2 has not been taken further at this stage as the funding into the reasons for harbour seal decline are still under investigation.
- 2.4.4 However, the support for research (the Applicant's measure 2) and which directly addresses Natural England measure 3 could include investigations into recreational and other disturbance (such as human presence) in order to identify and where possible implement targeted interventions.

## 2.5 Summary of Without Prejudice Compensation Measures

- 2.5.1 While the Applicant believes that compensation measures are not required, and Natural England believe adverse effects can potentially be mitigated, the above measures are provided on a without prejudice basis, and in response to that request from the Secretary of State. In order to satisfy the request from the Secretary of State, and to show that the following proposed measures would have a tangible benefit to harbour seal, the without prejudice measures have been assessed against generic compensation measure criteria as detailed below in **Table 2-1**:

- Measure 1: Funding of Harbour Seal Rehabilitation; and
- Measure 2: Funding and Support of Research to Understand the Reasons for Population Decline and Threats.

**Table 2-1 Analysis of the proposed compensatory measures (Measure 1 and Measure 2) in light of the requirements for seals as a feature of The Wash and North Norfolk Coast SAC**

<b>The Compensation Requirement Must<sup>2</sup>:</b>	<b>Conclusion</b>
<b>Be appropriate for the area and the loss caused by the Facility</b>	<p>The without prejudice compensatory measures proposed are considered appropriate in that they would provide a greater understanding of the reason for the declines in harbour seal in the SAC and directly provide funding for work that rehabilitates harbour seals that have been affected by a number of causes within the site.</p> <p>The without prejudice measures incorporate a high degree of precaution / conservatism, namely that without mitigation the additional vessel numbers are predicted likely to affect up to two seals a year. With mitigation in place, this was expected to reduce to no seals affected. The without prejudice compensatory / net gain measures would seek to fund the rehabilitation of five seals (above the level predicted for effect without mitigation) per year, representing a highly precautionary approach above the predicted effects from the Facility (of up to 1.7 harbour seal, before mitigation measures as provided in the OMMMP are taken into account; Addendum to Environmental Statement Chapter 17 and Appendix 17.1 - Marine Mammals (document reference 9.14, REP1-027)).</p>
<b>Be capable of protecting the overall coherence of the national site network</b>	<p>The without prejudice compensatory / net gain measures are intended to address an effect which is not predicted to occur once mitigation is in place. The project or the proposed measures would not result in a physical direct adverse effect on any seals or their habitats within the boundaries of the SAC. As a result of the measures, there would be a likely net gain and enhanced resilience to the national site network.</p>
<b>Be capable of implementation</b>	<p>Both funding for measure 1 (seal rehabilitation over the operational lifetime of the Facility) and for measure 2 (or research into the reasons for the decline in numbers of harbour seal in the SAC) are very capable of implementation. Funding would be made available once construction of the Facility commences. The necessary legal agreements would be entered into to ensure funding continued to be delivered as agreed (for rehabilitation over the Facility's operational lifetime and for research funding would be in place for up to three years). The fund for research would be provided to experienced organisations undertaking research into the reasons for the decline of harbour seal in the SAC.</p> <p>The rehabilitation funding would go directly to an organisation that is already set up and undertaking effective rehabilitation of seals. These measures do not involve the adoption of innovative or untested measures. This demonstrates that the measures are clearly capable of implementation.</p>
<b>Be capable of ensuring that the national site network is not irreversibly affected by the Facility before the compensation is in place</b>	<p>The without prejudice compensatory / net gain measures would help to address an ongoing issue that is already happening on the site, namely, a decline in numbers of harbour seals in the SAC. As outlined above, Natural England does not consider that the increase in vessel numbers would constitute an AEoI (as long as appropriate mitigation is in place) and therefore the enhancement measures are likely to provide a net gain rather than compensate for any AEoI or any effect the project could have on the SAC. Given that no significant damage would occur to the seals, it can be concluded that the SAC site would not be irreversibly affected.</p>

<sup>2</sup> These requirements are derived from the National Policy Statement for Nuclear Power Generation (EN-6) (Department of Energy and Climate Change, 2011), but are considered generally applicable to compensatory measures.

The Compensation Requirement Must <sup>2</sup> :	Conclusion
<b>Be directed in measurable proportions to the habitats and species negatively affected</b>	The without prejudice compensatory / net gain measures proposed are directly related to changes in numbers of harbour seal within the SAC. The measures are likely to result in a net gain.
<b>Be related to the same biogeographical region (within the UK)</b>	The without prejudice compensatory / net gain measures are proposed within the SAC in the same biogeographical region in the UK.
<b>Serve functions that are comparable to those that motivated the original area's submission for designation</b>	The SAC includes harbour seal as a designated feature. Harbour seal haul out and forage within the site. The proposed without prejudice compensatory / net gain measures would a) result in research into why there could be a decline in numbers of harbour seal and b) increase numbers of seals within the site through rehabilitation and release of seals that may otherwise not survive. The without prejudice compensatory/net gain measures do, therefore, serve a function that would provide greater understanding to why there is a decline in numbers and would increase numbers within the SAC.
<b>Be clearly defined, with implementation goals and managed so that the compensatory measures can achieve the goal of maintaining or improving the overall coherence of the national siter network</b>	The without prejudice compensatory / net gain measures are clearly defined, with qualitative (research results) and quantified targets (number of seals to rehabilitate). The research would help to understand the reasons behind a decline in numbers of harbour seal and determine measures that would aim to reduce that decline in the longer term in order to ensure that the site continues to achieve its objectives and maintain the overall coherence of the national site network.

- 2.5.2 In summary, the analysis presented in **Table 2-1** demonstrates that the proposed without prejudice compensation measures would meet the requirements should the Secretary of State's HRA conclude that there is a need for compensation. The measures proposed would also provide a net gain.
- 2.5.3 The Applicant is committed to providing measure 1 and measure 2 whether the compensation is required or not, and in this latter case this would be considered part of the net gain package for the Facility.
- 2.5.4 The Applicant proposes that these measures would be secured by the inclusion of a new Schedule 12 to the DCO. This is set out in the tracked change and clean copy of the draft DCO (document reference 2.1(7)). Text has been included in square brackets to provide drafting depending on whether the measures are determined to be compensation or net gain. Either 'net-gain' or 'compensation' would need to be deleted from the square brackets as appropriate.



## Appendix A - Letter of Support from Skegness Natureland



Skegness Natureland Ltd  
North Parade  
Skegness  
Lincolnshire  
PE25 1DB

Email - [Redacted]  
[Redacted]  
[Redacted]

Dear Sir/Madam,

I am writing to confirm that Skegness Natureland Seal Sanctuary is working with Alternative Use Boston Projects Limited (AUBP) to agree to a funding agreement to support Natureland’s work, rescuing, rehabilitating, and releasing Harbour and Grey seal pups within The Wash and around Britain.

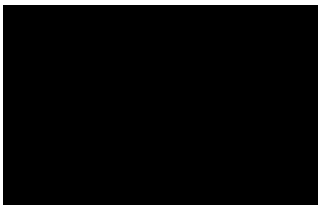
Skegness Natureland Seal Sanctuary is a third generation family business, dedicated to giving seals in need a second chance at life in the wild. Since 1965, Natureland has been rescuing seals between Anderby Creek in Chapel St Leonards and the Southern areas of Boston in Lincolnshire. In the 1960’s and 1970’s, between 5 and 10 seal pups were rescued each year, but as the colonies of seals have grown over the years, Natureland’s rescue numbers have increased to between 60 and 70 pups each year.

Each seal that comes into Natureland’s care costs approximately £2000.00 to successfully rehabilitate. These costs cover every aspect of seal care, from the fish that they eat (each seal eats around 2.5-3kg of herring each day), medication for any range of illnesses and parasites, more intense medical care such as surgeries or treating severe injuries that can be caused by pollution-based entanglements and human interaction, as well as paying our dedicated team for their tireless care that they provide the pups.

Currently, Natureland does not receive any outside funding from government or council grants, funding from large organisations such as the lottery, so we rely purely on visitors to the site and their kind donations towards our rescue and rehabilitation work. This kindness allows us to continue our care with seal pups in need, and allows us to give them a second chance at life in the wild. The support that AUBP is committing to provide would be a substantial help, and would provide compensation for the potential effects of increased traffic in The Wash, as well as helping with Natureland’s goals to improve facilities, allowing an even higher standard of seal care and rehabilitation.

Natureland consents to this letter being disclosed to the Department for Energy Security and Net Zero.

Yours sincerely,



Matthew Yeadon  
Director

Directors: - Matthew, Daisy, Richard, Nicola, and Cheryl Yeadon [Redacted]