Annex 1 – Letter from the Environment Agency to Able UK dated 19 June 2012

Mr Peter Stephenson
Able Uk Ltd
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Our ref: AN/2012/113982/01-L06
Your ref: IPC-Pro-11

Date: 19 June 2012

Dear Peter

Marine Energy Park, Killingholme Marshes, North Lincolnshire
Piling Mitigation & Compensation proposal

Thank you for your letter dated 11 May 2012 in respect of salmon disturbance. I have shared the letter with our Defra partners (the Marine Management Organisation (MMO) and Natural England (NE)) and now provide our joint response to your mitigation proposals.

General Mitigation
The general construction proposals outlined in your letter are welcomed. We would like to inform you of the following detailed requirements, which we will seek to secure in respect of your general proposals:

Soft Start
We will be requiring that the soft-start procedure for percussive piling recommended by the Joint Nature Conservation Committee (JNCC), for a period of not less than 20 minutes is implemented. Should piling cease for a period of greater than 10 minutes, then the soft-start procedure must be repeated. This is required to allow commercial and migratory fisheries, such as herring, sole, plaice, salmon and lamprey, together with marine mammals to move away from the noise source and reduce the likelihood of exposing them to sounds which can cause injury. If you believe that the 20 minute requirement should be reduced, we will be please to review any evidence that you have to substantiate this.

Noise Shrouds
We note that the use of piling shrouds is only possible up to the piling gate. This technique is primarily for the protection of birds and only provides partial mitigation. However, I can confirm that this is acceptable to NE, providing full mitigation is

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implemented as soon as the pile gate is removed.

Pile Pads
The use of pile pads is welcomed.

Monitoring of water temperature/dissolved oxygen
Your proposal to cease impact piling if water temperature in the estuary exceeds 21.5ºC is welcomed. The Environment Agency will also require cessation of impact piling if dissolved oxygen drops below 5mg/l. Active monitoring will be necessary to ensure compliance with this requirement.

Piling restrictions
We are satisfied that the piling restrictions proposed will provide some mitigation for the species of concern, in particular the complete cessation of piling between 7 April and 1 June for the protection of migratory salmon, elvers and river lamprey. We agree that the piling period should commence at the start of percussive piling, roll throughout (which includes any quiet periods when piles may be being placed) and cease at the end of the piling day. This is required as the expected time periods for the setting up/placing of piles, i.e. 30 minutes, is not considered an adequate period of quiet for fish to swim through the zone of potential impact before piling recommences.

Compensation proposal
We can confirm that enhancing the development of the Cherry Cobb Sands compensation site for juvenile fish is welcomed. We have evidence of similar schemes at Alkborough and Chowderness working well. We will require this work to be secured through the appropriate mechanism, together with a scheme to monitor its effectiveness. As previously discussed, it would be helpful if you could provide a monetary value for this work.

Development Consent Order and Deemed Marine Licence requirements
In order to provide clarity on this issue, we provide below a schedule of requirements and conditions that we are proposing:

We recommend that a definition of “percussive piling” is included in the Interpretation section of the deemed marine licence as follows:

> “percussive piling” means the driving of piles by percussive means but does not include the handling, placing and vibro-driving of piles.

We recommend that a definition of “marine piles” is included in the Interpretation section of the deemed marine licence as follows:

> “marine piles” being defined as a pile that will be in the marine area.

Prior to works commencing:

DCO and DML Condition 1
No development shall be commenced until a Piling Method Statement has been submitted to and agreed in writing by the Marine Management Organisation [substitute LPA for MMO when in Requirements schedule], following consultation with the Environment Agency and Natural England. The Piling Method Statement shall include the following measures:-

- Utilisation of pile pads;
- Utilisation of pile shrouds;
- Specification of piles to be used;
- Soft-start procedures to be followed;

- Marine mammal observation;
- Implementation of the Active Monitoring Scheme.

Development shall thereafter proceed only in strict accordance with the agreed Piling Method Statement.

Reason: To reduce the risk to sensitive mobile receptors, including Atlantic salmon, sea trout, river and sea lamprey, eel, herring, sole, plaice and marine mammals.

DML Condition 2
No development shall be commenced until an Active Monitoring Scheme has been submitted to and agreed in writing by the Marine Management Organisation, following consultation with the Environment Agency and Natural England. The Scheme shall include the following details:-

- Location of Active Monitoring Buoy(s) and depth and design of sensors;
- Full details of the frequency of measurement of temperature and dissolved oxygen in order to ascertain compliance with condition 9;
- 24 hours a day, 7 days a week monitoring of noise in order to ascertain compliance with conditions 4-7;
- Full details of when monitoring will commence and cease, which will include a 2 week period of pre and post construction monitoring in order to establish baseline conditions and the return to baseline conditions once construction activity has finished;
- A log of the number and approximate location of piling rigs which are in operation on any given day;
- Full details of how the monitored information will be accessed by or communicated to the site contractor and the Marine Management Organisation where necessary.

The Monitoring Scheme shall thereafter be implemented in accordance with the timetable approved as part of the scheme.

Reason: To ensure appropriate information is available to allow noise mitigation measures to be implemented and monitored. To avoid periods when water conditions will make fish more vulnerable to disturbance. To reduce the risk to fish species including Atlantic Salmon, Sea Trout, River and Sea Lamprey, Eel, Herring, Sole and Plaice.

DCO and DML Condition 3
No percussive piling shall commence until a Cold Weather Construction Restriction Strategy for the months of February and March is agreed in writing with the Marine Management Organisation [substitute LPA for MMO when in Requirements schedule] in consultation with Natural England.
The strategy shall include the following elements/procedures:-
a) No percussive piling (other than to finish driving any pile that is in the process of being driven at the point the cold weather restriction comes into force) shall take place following seven consecutive days of zero or sub zero temperatures (where the temperature does not exceed 0°C for more than 6 hours in any day or any other pre-agreed formula to define short periods of thaw);
b) Three temperature monitoring points shall be agreed within the Humber Estuary such as Immingham, Killingholme, Grimsby, or Spurn;
c) Full details of how the monitored information will be accessed by or communicated to the site contractor and the Marine Management Organisation [substitute LPA for MMO when in Requirements schedule] where necessary.

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d) The restrictions will be reviewed as follows:

I. After 24 hours of above-freezing temperatures, the restrictions will be lifted on a "probationary basis", provided that the weather forecast (met office forecast location to be agreed) indicates that freezing conditions will not return within five days. If this weather forecast turned out to be wrong and freezing conditions did return, then there would have to be an immediate suspension of activity again;

II. After five clear days of above-freezing temperatures the restrictions will be lifted entirely and the "clock reset to zero".

The Monitoring Scheme shall thereafter be implemented in accordance with the timetable approved as part of the scheme.

Reason: To avoid an adverse effect on the interest features of the Humber Estuary SPA/Ramsar site.

During works

DML Condition 4

No percussive piling of piles shall take place between 7th April and 1st June inclusive in any one calendar year.

Reason: To reduce the risk to fish species including Atlantic Salmon, Sea Trout, River and Sea Lamprey, Eel, Herring, Sole and Place.

DML Condition 5

Percussive piling of piles shall be restricted in the following way:-

1. From 2nd June to 22nd July inclusive in any one calendar year, the maximum amount of percussive piling permitted within each four-week period shall be limited to:-

a. 101 hours where a single rig is in operation; or

b. A combined total of 168 hours where two or more rigs are in operation.

2. From 23rd July to 10th September inclusive in any one calendar year, the maximum amount of percussive piling permitted each week shall be limited to:-

a. 25 hours where a single rig is in operation; or

b. A combined total of 42 hours where two or more rigs are in operation.

3. From 11th September to 31st October inclusive in any one calendar year, the maximum amount of percussive piling permitted within each four-week period shall be limited to:-

a. 134 hours where a single rig is in operation; or

b. A combined total of 224 hours where two or more rigs are in operation.

4. From 1st November to 6th April inclusive in consecutive calendar years, the maximum amount of percussive piling permitted within each eight-week period shall be limited to:-

a. 336 hours where a single rig is in operation; or

b. A combined total of 560 hours where two or more rigs are in operation.

The measurement of each work block shall begin at the start of the first percussive piling strike, roll throughout the piling day, then cease at the end of the last piling strike. Measurement will begin again at the start of the next percussive piling day, on the start of the first percussive piling strike. This process will be repeated.

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Reason: To reduce the risk to fish species including Atlantic Salmon, Sea Trout, River and Sea Lamprey, Eel, Herring, Sole and Plaice.

DCO and DML Condition 6
No piling shall take place between 22.00hours on a Saturday and 06.00hours on the following Monday.

Reason: To ensure periods of quiet when no percussive piling is taking place for the benefit of fish species including Atlantic Salmon, Sea Trout, River and Sea Lamprey, Eel, Herring, Sole and Plaice.

DCO and DML Condition 7
No piling shall take place between 22.00hours and 06.00hours.

Reason: To ensure periods of quiet when no percussive piling is taking place for the benefit of fish species including Atlantic Salmon, Sea Trout, River and Sea Lamprey, Eel, Herring, Sole and Plaice.

DCO and DML Condition 8
The maximum diameter of marine piles shall be 2.1m.

Reason: The impact assessment was undertaken on a maximum diameter of marine piles of 2.1m and a greater diameter pile would have a greater environmental impact.

DML Condition 9
No piling shall take place during periods when the data from the Active Monitoring Buoy(s) shows temperature to be above 21.5 degrees Celsius and/or dissolved oxygen to be below 5mg/l.

Reason: To reduce the risk to sensitive mobile receptors, including Atlantic salmon, sea trout, river and sea lamprey, eel, herring, sole, plaice and marine mammals.

DCO and DML Condition 10
The Licence Holder must ensure that soft-start procedures are used to ensure incremental increase in pile power over a set time period until full operational power is achieved. The soft-start duration should be a period of not less than 20 minutes. Should piling cease for a period greater than 10 minutes, then the soft start procedure must be repeated.

Reason: To allow mobile sensitive receptors, including salmon sea lamprey, river lamprey, eel, herring, sole, plaice and marine mammals, bird species to move away from the noise source, and reduce the likelihood of exposing the animal to sounds which can cause injury***.***

In order to progress with our detailed Written Representations and the joint Statement of Common Ground, it would be helpful if you could confirm your agreement to the imposition of these requirements and conditions. We will then be able to give further consideration to any residual risk remaining, following implementation of these mitigation measures, and whether or not further compensatory works will be necessary.

Should you require any additional information, or wish to discuss these matters further, please do not hesitate to contact me on the number below.

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Yours sincerely

Ben Thornely
Area Planning & Corporate Services Manager

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