

**Able Humber Ports Ltd
Marine Energy Park
Proposal to build a quay and associated development on the
south bank of the River Humber**

Planning Inspectorate Reference: TR030001

**Environment Agency
representations in respect of DCO/DML Requirements and
Legal Agreements
Unique Reference Number: 10015552**

26 October 2012

In accordance with the inquiry timetable the following submission provides comments on the draft Development Consent Order (DCO) including the Deemed Marine Licence (DML) submitted on 9 October to the Examining Authority by Able Humber Ports Limited (Able). It also gives an update on the progress of the draft legal agreements being negotiated between the Environment Agency (EA) and Able.

Current State of Play

1. On 24 October the EA sent a number of minor comments on the version of the DCO submitted to the Examining Authority by Able on 9 October. These are appended to this submission as Appendix A.
2. We pointed out at the same time that our comments on the draft DCO to date have been predicated on the basis that a number of very significant issues would be covered in legal agreements with Able. We stated that, at the time of sending these comments on the draft DCO, despite the EA having sent a draft agreement covering a number of matters of concern to Able's solicitors, Bircham Dyson Bell on 6 September, no substantive response to this had been received and nothing had been agreed.
3. We stated that if no satisfactory agreement can be reached we may recommend to the Examining Authority that some matters covered in the existing draft agreement should instead be covered by provisions in the DCO.
4. We also stated that there will be some very significant issues that will not be capable of being dealt with in the DCO. (An example is adequate compensation for the potential adverse effect on salmon in the Humber Estuary). We stated that if no agreement is concluded we will have no choice but to maintain an objection to the proposed development on certain grounds set out in our written representations and supporting evidence.
5. We received the same day (24 October) a substantive response from Able's solicitors to the draft agreement, sent to them on 6 September.
6. The mitigation measures in relation to migratory salmon have now been included within the latest draft of the DML (Revision 4, dated 9 October 2012).
7. We have discussed this issue with Able over a lengthy period of time and had hoped that, in addition to the agreed mitigation, they would voluntarily enter into an obligation in respect of compensation for residual risk.
8. We have recently put a proposal to Able on 25 October (attach as Appendix B) in lieu of any meaningful proposal from them and await a response.

9. We are therefore hopeful that progress will be made very soon so that the outstanding issues between the EA and Able can be resolved and our objection to the proposed development withdrawn. We will keep the Examining Authority apprised of progress on the legal agreements.
10. We do however reserve the right to seek further additions to the draft DCO in the event that satisfactory legal agreements cannot be concluded between the EA and Able.
11. In addition, on 16 October we received a considerable volume of fresh information from Able which we are still examining and on which we will be responding to Able by 9 November (and copying in the Examining Authority). We reserve the right to recommend further amendments that may prove necessary as a result of considering this further information.

APPENDIX A

**EA Comments in respect of the DCO/DML
and Bircham, Dyson, Bell response (in red)**

APPENDIX A

1. Page 42 - 8 (d) We did not think from the draft Black & Veatch (B&V) report that it was going to be entirely possible to dispose of all the excavated material within the site now? Has Able confirmed they are happy to accept this requirement? We will need to check the final B&V Report and may have further comments on this in due course.

This will be removed following comments from the MMO.

2. Page 43 - We are unsure as to the values in this Table as we cannot find where the density value used by Able is to convert m³ to tonnage?

Being checked.

3. Page 43 - 10 (f) Why does the pumping station have a maintenance dredge to -3 Chart Datum when the capital dredge is to 0.5m Chart Datum?

Being checked.

4. Page 44 - Berthing pocket dredge tonnage – this seems high when compared to the volumes in the maintenance dredge volumes produced by HR Wallingford (unless we have used the wrong density for conversion from tonnage to m³ - could this figure be checked please).

Being checked.

5. Page 45 - 23 (3) We think this should read 9 (1) (b), not 10 (1) (b) as it is referring to the capital dredge.

Agreed.

6. Page 45 - 23 (3) We think this wording is not correct – it should require infilling to -11m ?

Being checked.

7. Page 66 – The AWS provision refers to our permits and in 84(b) it says that “such approvals not to be unreasonably withheld”. Plainly the DCO cannot place this restriction on our permitting process and we require the deletion of this wording and the substitution of “granted by the Environment Agency”.

Agreed.

8. Page 71 – 11(1) and 12(1) have both missed us off the consultation list (we are the organisation that originally asked for these conditions).

Agreed.

9. Page 73 – 17(1), (2) & (3), the EA should be included in the list of consultees for the EMMPs.

Agreed.

10. All references to the Water Framework Directive should be capitalised rather than all in lower case.

Agreed.

APPENDIX B

**EA letter to Able of 25 October 2012
Outlining a salmon compensation proposal**

Mr Richard Cram
Able UK Ltd
Able House (Billingham Reach Industrial
Estate) Haverton Hill Road
Billingham
Cleveland
TS23 1PX

Our ref: AN/2012/113982/01-L13
Your ref: IPC-Pro-11
Date: 25 October 2012

Dear Mr Cram

**Compensation for piling noise impacts on migratory salmon
Marine Energy Park, Killingholme Marshes, North Lincolnshire**

We have discussed this issue of salmon mitigation/compensation over a lengthy period of time and had hoped that Able would enter into an obligation in respect of compensation voluntarily. As the close of the Examination period is now rapidly approaching we would ask that you give urgent attention to this matter.

Able has offered to design the habitat compensation site at Cherry Cobb Sands for the maximum benefit for juvenile fish. However, you have not been able to quantify the value of these compensatory works as the detailed design was still to be finalised. Now that we are in receipt of the 3rd iteration of the Black and Veatch report we wonder if you are any closer to being able to evaluate this benefit.

As outlined in our submission to the Examining Authority (3 August 2012), in relation to a similar project on the north bank at Green Port Hull (GPH), Associated British Ports (ABP) has entered into an obligation to pay £180,000 to the Rivers Trust to be used on projects intended to improve the success of salmon migration to the Humber tributaries. They are also providing further benefits at other sites/structures in their ownership. Although there are differences in the piling proposals/schedules of the projects, we believe there are also similarities, which warrant a consistent approach to providing compensation.

ABP is proposing to pile over a 12 month period. Able is proposing to pile over a 6 month period, and you do not presently know when this will commence. It is our opinion that if you are able to schedule piling to take place between 1st October and 31st March, the residual risk to the salmon would be minimal and may not warrant compensation over and above the Cherry Cobb Sands work (until details on the value of these works are received we cannot confirm our view on this).

As outlined in Paragraph 5.4 of Dr Adrian Fewings' Statement (Appendix D of the EA's Written Representations) we are able to estimate the overall proportion of fish likely to be disturbed or diverted, on a daily or annual basis, taking into account factors such as hours of working and the distribution of fish presence in the estuary. The period when residual risk remains is between 2nd June and 10th September –

adult salmon can be migrating upstream during this time. During this period (of 101 days) Able is allowed to pile as outlined below.

Piling period	Hours of piling
2 Jun to 22 July	1 rig =4.2 2 rigs = 7 (3.5 per rig)
23 July to 10 Sept	1 rig = 4.1 2 rigs = 7 (3.5 per rig)

The hours for piling available to ABP for the GPH project during this period are approximately 14% less.

As ABP is restricted to approximately 14% less hours for piling during this same period, it is our opinion that Able should, therefore, make a contribution, which is consistent with that made by ABP plus an appropriate increase for the additional available piling hours, i.e. £180,000 plus 14% = £205,200. This should be made on a daily basis (£2,031 per day) should piling take place during this period.

I would be grateful if you could consider the above and advise whether or not Able is prepared to enter into such an obligation. I would also like to make you aware that we are also sending representations on this issue to the Examining Authority.

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

Yours sincerely

Annette Hewitson
Principal Planning Advisor

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