

Dear Mike,

Please find enclosed our submission on the case for Cross Examination.

Kind regards,

Mark

Mark Williams

Casework Officer

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RSPB, UK Headquarters, The Lodge, Sandy, Bedfordshire, SG19 2DL.
www.rspb.org.uk

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nature's voice

Mr M Harris
National Infrastructure Directorate
Temple Quay House
Temple Quay
Bristol
BS1 6PN

27 July 2012

Dear Mr Harris

**Re Able Marine Energy Park – PINs reference TR030001
Submission on the case for Cross Examination at any Issue Specific Hearing
From the RSPB (Reference number – [REDACTED])**

I am writing on behalf of the RSPB to set out its submissions in relation to the above.

There are two areas where cross examination of expert evidence is required:

- (1) the medium term delivery of the assumed quantum of compensation intertidal mud flat at Cherry Cobb Sands; and
- (2) the ecological function lost and the ability of the compensation package to replicate or replace it.

The question for the Panel and the Secretary of State is whether there is reasonable scientific doubt as to whether adequate compensation will be provided, assessed on a precautionary basis. Given the stark difference of expert approach on both issues, it is not possible rationally to be satisfied on that question without the evidence having been tested.

In respect of (1), the current position of experts for the Applicant appears to be that "alternative approaches" are required but can be worked up later in discussion with Natural England. Those proposals are not before the Panel and the scheme has to be judged on the basis of the current proposals. On that there is a major difference in the expert evidence as to the extent of accretion over time (including the heights at which it occurs) and the quantum of initial intertidal mudflat compensation which will remain available in particular time frames (immediate, 5 and 7 years). Putting to one side for the moment the dispute as to the necessary quantum of compensation, even on the Applicant's case as to the quantum required, there is a stark difference about the extent to which that quantum can be expected to be provided under the current proposals. This issue goes to the heart of the legality of a grant of any consent. The RSPB therefore formally requests that it be permitted to cross examine the Applicant's consultants as to the medium term quantum of intertidal mud flat which can be expected to be delivered at the Cherry Cobb site.

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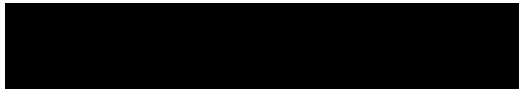
In respect of (2), the RSPB's approach re: replication/replacement of the ecological function lost has been made clear throughout. The focus is on black-tailed godwits. There appears to be a very substantial difference between the experts on:

- (a) the extent to which it is relevant or necessary to replicate the package of North Killingholme Marshes and North Killingholme Haven Pits in any compensation; and
- (b) whether the compensation sites:
 - (i) replicate that package; and
 - (ii) are of a suitable quality per hectare to do so.

In this regard, the differences between the Applicant's consultants and Dr Prater for the RSPB are very substantial indeed. It will be necessary for the Panel to decide which of these experts' view is to be accepted. That can only be done here through allowing that evidence to be tested in cross examination.

The RSPB therefore formally asks to be allowed to cross examine the Applicant's consultants on the package issue and the extent to which the intertidal mudflats at the compensation site can replicate hectare for hectare that lost.

Yours sincerely

A solid black rectangular box used to redact the signature of Mark Williams.

Mark Williams
Casework Officer