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Your ref: TR030001

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Dear Secretary of State for the Department for Transport,

Thank you for your consultation on 11 June 2025 to advise on the following proposal:

Consultation: THE ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER 2014 (S.I. 2014/2935). Request made by Able Humber Ports Limited ("the Applicant") for the Secretary of State's approval to extend the completion period of the Able Marine Energy Park Development Consent Order 2014 (S.I. 2014/2935).

We have provided advice to the Department for Transport via the Planning Inspectorate for this proposal in a number of consultation responses (06 June 2024, 13 August 2024, and 01 October 2024). We have also provided advice to the Applicant through our Discretionary Advice Service (DAS), most recently in April 2025, in which we advised on previous versions of the documents presented for this consultation. We welcome the Applicant's responses to the points we raised and note their comments.

We understand that the only parameter of change outlined in this consultation is an extension of time for the development that was outlined in the original Development Consent Order (DCO) in 2014. Therefore, the conclusions of the Habitats Regulations Assessment (HRA) remain the same as for the original consent; that adverse effects on the integrity (AEOI) of the Humber Estuary SAC/SPA/Ramsar cannot be ruled out, and that compensation (and overcompensation) measures are required, as outlined in Part 5 of the HRA, Compensation Measures (March 2025).

In summary, it is our opinion that sufficient information and evidence has been provided to address the points relevant to Natural England's remit, and in particular, address those raised in the 28th October 2024 decision letter.

However, we do not fully agree with the Applicant's approach for some issues (see below comments for key points). While we would like these issues addressed, we acknowledge that for this particular project it is unlikely to make a material difference to our advice or the outcome of the decision-making process. However, we reserve the right to revise our opinion should further evidence be presented. It should be noted by interested parties that whilst these issues/comments are not raised as significant concerns in this instance, it should not be understood or inferred that Natural England would be of the same view in other cases or circumstances.

1. Habitats Regulations Assessment (HRA)

1.1 +/-10% increase/decrease justification

We acknowledge the statement in the HRA that within the Humber Estuary SPA populations '*Peak numbers will vary for natural reasons*' annually, although we contest that '*changes of less than 10% either way are not considered noteworthy*'. Whether 10% can be considered a 'significant' change can be dependent on factors such as timeframes. For instance, when comparing peak counts in 2012 and 2024, a -8% population change may be considered significant, whereas '*Year to year*' this change might be considered non-significant, if it wasn't indicative of a wider trend. We advise that the use of 10% as the threshold for 'major' change should be justified for completeness. Whilst we acknowledge that this amendment will not result in a material change to the outcome of the assessment, due to the compensation measures remaining unchanged, a firm understanding of what constitutes a major change could be used to inform the targets and future management of the compensation areas.

2. Outstanding ecological surveys

Natural England are satisfied that the existing data will be adequately supported by the ecological surveys required through the pre-commencement conditions, as outlined in 'Table 1: List of Pre-Construction Surveys' of the additional information document submitted by the Applicant.

2.1 Benthic surveys

Due to the age of the existing data, the completion of additional benthic surveys will be carried out in the pre-commencement phase to inform prey targets for black-tailed godwit at the compensation site, as confirmed in point 4.5 of the HRA LSE Report (June 2025). These pre-commencement surveys will be carried out to establish a baseline that will inform targets for benthos in the compensation areas.

We have previously advised that these surveys should be carried out using the methodology as summarised below:

- Surveys should be carried out between late June to July (we understand these will now occur in 2026).
- They should use a core depth of 30cm rather than 15cm.
- The number and biomass of benthic prey species within different size classes should be recorded.

It should be clearly stated within the MEMMP that pre-commencement benthic surveys will be conducted using this methodology.

3. Compensation and overcompensation measures

Our primary concerns related to the development still remain for the delivery of compensation and overcompensation measures.

However, considering the proposal is a simple time extension, we recognise that these measures are the same as those agreed during the original Examination and are likely to remain appropriate within the context of the proposal, if they are delivered correctly. However, please refer to the sections below in relation to additional comments on compensation and overcompensation delivery.

3.1 Timeline of Cherry Cobb Sands delivery

We note the Applicant's statement that it *'has been agreed with Natural England that development of Cherry Cobb Sands compensation site will commence at least 7 months before Work No.1'*. We reiterate our position that the compensation site should be delivered as soon as practicably possible, and at the latest commenced seven months prior to the construction of the quay. It is our advice that the compensation site should be operational before work on the quay begins, in order to adequately compensate for the loss of feeding resource (see Annex 1 for context).

We highlight the statement made by the previous Secretary of State (Annex 1, paragraph 39 of his decision letter, 18 December 2013) that *'further reduction of the risk would be possible by starting work on the Cherry Cobb Sands Wet Grassland Site earlier'*.

In relation to the delivery of the overcompensation measures, we note there has been progress with this, in terms of the approval of planning application 23/01384/STPLF. Natural England responded to this application on 03 September 2024 confirming we would have no objection, subject to the securing of the relevant mitigation measures as outlined in the HRA. Whilst we would welcome further detail; we acknowledge that the approval of this planning application represents significant progress in this issue.

We recommend that moving forward, a detailed timing schedule is provided around when permissions and works (including surveys and monitoring reports) will commence and be completed. This timing schedule should include check points that would facilitate confidence that all components of the project will be delivered in reasonable time.

3.2 Legal deed

We have engaged in preliminary discussions with the Applicant on how best to update the Legal Deed signed between ourselves and the Applicant (dated 2013). It is our understanding that there have been differences in interpretation of the legal agreement (around the commencement of the works at Cherry Cobb Sands wet grassland; now Cherry Cobb Sands brackish lagoons), and that it needs to be updated to clarify this matter, and we value the opportunity to refresh and update the Legal Deed. As noted with the Applicant previously, we are happy to engage in further conversation on matters relating to the Legal Deed.

3.3 Buffer zones

We previously raised a query with the Applicant in relation to whether the compensation site will be able to accommodate a suitable buffer zone. In point 1.1.14 of the *HRA Part 5 Compensation Measures* the applicant references Appendix UES11-2, point 4.1.6, which highlights that mudflat compensation will be delivered at a ratio of 1.36:1, and estuarine and saltmarsh habitat at 1.44:1. While this exceeds a 1:1 ratio, the development of a greater amount of habitat than 'required' will not necessarily result in a suitable buffer being incorporated into the design. We advise that all compensation/mitigation sites should be designed with a suitable buffer around each key ecological unit that is delivered. The land use within the buffer area should be secured for a purpose which will not affect the integrity of the compensation site.

4. Summary

In summary, it is our opinion that sufficient information and evidence has been provided to address the points raised in the 28th October 2024 letter that are relevant to Natural England's remit. As we have previously stated, our principal concerns are that the compensation (and overcompensation) measures are operational prior to works commencing and are designed to

meet the needs of the species impacted. We will continue to work with the Applicant as the project moves into the pre-commencement phase to aid in addressing these concerns.

For any queries relating to the specific advice in this letter please contact Louis Jones at [REDACTED] naturalengland.org.uk. For any new consultations, please send your correspondence to consultations@naturalengland.org.uk.

Yours sincerely

[REDACTED]

Yorkshire and Northern Lincolnshire Area Team
Natural England

Annex 1: Scale of ecological impact on SPA birds

As stated at the time of Examination, Natural England's most significant concern is for the loss of the area used as a foraging resource for SPA birds. Natural England provided detailed advice regarding impacts to the Humber Estuary SPA, which we set out for your Authority's reference below. Whilst some of the bird numbers have changed, Natural England maintains this position.

The area of mudflat at Killingholme Marshes is important for more than 5,000 SPA/Ramsar waterbirds thereby demonstrating exceptional ecological functionality in terms of its ability to attract and support high numbers of foraging birds. In particular, the mudflat supports internationally important numbers of black-tailed godwits (peak count 2,566 representing 66% of the entire Humber Estuary SPA/Ramsar population¹) in addition to large numbers of seven other species of SPA/Ramsar waterbirds². The high numbers of black-tailed godwits feeding at Killingholme Marshes means that this one area of mudflat meets the qualifying criteria for SPA status in its own right.

It is also recognised that the importance of Killingholme Marshes as a foraging resource is linked to its proximity to a secure roosting site at North Killingholme Haven Pits, and this is considered to be particularly important for black-tailed godwits during their Autumn moult. Therefore, whilst this roost site "will remain undisturbed," it is agreed by the Applicant that its value as a roosting site may be lost once the adjacent intertidal foraging habitat is developed.

Thus, the scale of impact reflects the exceptional ecological functionality provided by Killingholme Marshes and the large numbers of waterbirds, particularly black-tailed godwits, which use this area.

Black-tailed godwits migrate to the Humber Estuary to undergo their post-breeding moult, where numbers of passage birds result in the peak SPA count occurring during the autumn. Within the SPA, foraging black-tailed godwit numbers peak at Killingholme Marshes Foreshore, coinciding with peak usage at the adjacent North Killingholme Haven Pits, where foraging birds move to roost. Upon making the return migration from their breeding grounds, these two connected foraging and roosting sites are the preferred locality for black-tailed godwits in the Humber Estuary SPA.

As autumn and winter progress black-tailed godwit numbers decline both at Killingholme and across the estuary as a whole. Presumably, owing to resource depletion, as large numbers of foraging godwits reduce the amount of food available at Killingholme Marshes foreshore. Birds then distribute more evenly across the mudflats of the Humber Estuary or leave the SPA entirely as they move to other estuarine sites elsewhere within the SPA network for the remainder of the winter period.

It is clear that whilst other areas within the SPA can support wintering black-tailed godwits, after their arrival within the SPA and as the period of moult commences these moulting birds seek to exploit the richest resource first. Therefore, during the autumn moult birds congregate at the most favoured site offering a combination of the greatest prey densities available in proximity to a secure roost site.

Black-tailed godwit is listed as 'red' on the British Trust for Ornithology's assessment of Birds of Conservation Concern³.

¹ Informal counts of 3,800 black-tailed godwits at North Killingholme Marshes foreshore, September 2012.

² Two other species – redshank and ringed plover – were present in numbers equating almost 10% of the site population.

³ Stanbury, A., Eaton, M., Aebischer, N., Balmer, D., Brown, A., Douse, A., Lindley, P., McCulloch, N., Noble, D., and Win I. 2021. The status of our bird populations: the fifth Birds of Conservation Concern in the United Kingdom, Channel Islands and Isle of Man and second IUCN Red List assessment of extinction risk for Great Britain. British Birds 114: 723-747. Available online at <https://britishbirds.co.uk/content/status-our-bird-populations>.