



**Comments on Responses to the Examining Authority's First
Written Questions**

**for the
Royal Society for the Protection of Birds**

Submitted for Deadline 3

6 December 2021

Planning Act 2008 (as amended)

In the matter of:

**Application by Alternative Use Boston Projects Limited for an
Order Granting Development Consent for the
Boston Alternative Energy Facility**

Planning Inspectorate Ref: EN010095

Registration Identification Ref: 20028367

We have reviewed the Applicant's responses to the Examining Authority's first written questions. Below we set out our responses on key questions that we consider to be pertinent to our concerns. There may be topics we have not responded to that we develop a position on in future submissions.

Question number	Question addressed to	ExA question	Applicant's Response	RSPB comments
1. General and Cross-topic Questions				
Q1.0.4	The Applicant	In the Funding Statement please confirm details of the timing and availability of funding.	<p>The Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land (September 2013) (DCLG) states at para 18: <i>"The timing of the availability of the funding is also likely to be a relevant factor... . Applicants should be able to demonstrate that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period following the order being made, and that the resource implications of a possible acquisition resulting from a blight notice have been taken account of."</i></p> <p>The Applicant seeks compulsory acquisition powers in the draft DCO (document reference, 2.1(1), REP1-003) for a period of 5 years (see article 27). Plot 19, 19b, 21 and 23 are subject to permanent acquisition. Plot 3 is the only plot subject to temporary possession. The owners of these plots are unknown, despite reasonable attempts by the Applicant to identify them. Expert valuation advice has been sought in respect of these interests.</p> <p>As set out in section 5.4 of the Funding Statement (document reference 3.2, APP-009), the value of compulsory acquisition elements of the Project are estimated to be less than £30,000 in total (including an allowance for professional and associated fees).</p>	When considering funding this will have a direct relevance to the ability of the Applicant to secure, deliver and maintain in perpetuity the appropriate mitigation and compensation measures to address any adverse effects on The Wash SPA/Ramsar. The issue of funding is therefore a topic that will need to be addressed with respect to the Applicant's Habitats Regulations Assessment (HRA) and the conclusions that are drawn.

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			<p>The Applicant will fund these costs through private equity investment (on the same basis it has been funding the Project to date). Article 53 of the draft DCO provides a guarantee in respect of compensation. Powers of compulsory acquisition may not be exercised unless a suitable guarantee for the compensation has been provided by the Applicant and approved in writing by the Secretary of State.</p> <p>Section 5.4.5 of the Funding Statement explains that no blight claims are expected, but any possible claims would be met via the private funding that has funded the Project to date.</p> <p>The Project has to date been funded by private equity investment and this arrangement will continue up to financial close of the major lending arrangements required for construction.</p> <p>As set out in section 5.3 of the Funding Statement, the Applicant intends to raise funds for the capital cost of construction of the Project following the grant of the DCO. As is common of projects of this nature, details of funding are commercially sensitive. However, funding will be sourced from a combination of commercial debt and additional equity.</p>	
3. Environmental Statement				
Q3.0.5	The Applicant	Please can the Applicant provide examples of the scour protection methods that are likely to be	Depending on river currents it may or may not be necessary to provide scour protection to the river embankment at either end of the wharf, therefore	The Applicant's response suggests that there is a possibility that scour protection will be required. In order

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		used in order to avoid loss of habitats and disturbance, as stated.	<p>this would avoid the loss of habitat and is clearly the preferred solution which would be prioritised under any detailed engineering design. However, if scour protection is absolutely necessary detailed design will include consideration of the following options, with the key design principle being minimisation of habitat loss:</p> <ol style="list-style-type: none"> 1. Articulated precast concrete mattress; 2. Grout injected fabric mattress; and 3. Individual stone/rock armour 	to understand the worst-case implication of the development with respect to habitat loss and impacts on waterbirds and other wildlife using The Haven, it would seem appropriate to base any habitat loss calculations on scour protection being required. There is uncertainty conveyed in the Applicant's response and we recommend that calculations for compensatory habitat creation should include the area that would be impacted by scour protection if required. A range of habitat loss could be presented as a way to address the differences in opinion at this stage.
Q3.0.6	The Applicant	Please can the Applicant confirm both the total number of ships and number of movements that would be needed annually to deliver the Refuse Derived Fuel (RDF) and export the manufactured aggregate and also the figure that has been used to inform the assessments. It is stated in ES Chapter 5 (and other ES chapters) that approximately 580 ships/year would be required but also that there would be 10	<p>Section 5.6.20 of Chapter 5 Project Description (document reference 6.2.5, APP-043) notes there could be 'up to 12 per week' and this is rounded up from the 11.1 ships per week required, which totals approximately 580 ships per year required and therefore sets out a worst-case assessment in respect to vessel numbers.</p> <p>The figures on vessel movements do not include pilot cutter movements however further information on pilot movements is provided in the Ornithology addendum to the ES and HRA (document reference 9.13, REP1-026) in paragraph 4.3.16. As a summary the paragraph states the following:</p>	<p>The RSPB is currently satisfied with the information set out by the Applicant with respect to the evidence provided on the number of vessels required for the facility as currently planned. We will continue to keep this under review as new evidence/information is provided.</p> <p>However, we note the uncertainty that the Environment Agency has with respect to the Lightweight Aggregate Plant and whether this</p>

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		<p>deliveries/week and two exports/week, which equates to 624 ships/year. Please can the Applicant also confirm whether the figures include the pilot boats that would be required.</p>	<ul style="list-style-type: none"> • One cutter is sufficient for all but the most exceptionally busy high water navigation periods, so one (exceptionally two) cutter trip(s) are undertaken per tide when commercial vessels would utilise The Haven, noting that the tidal window is not long enough for three cutter trips. • The cutters are certified for eight on board – two crew and six pilots. • Due to the tidal constraints, it is likely that Pilots will be transported to the Facility by road to board vessels leaving the wharf. <p>The paragraph concludes “The Facility is therefore unlikely to increase the number of times the Pilot cutters move up and down The Haven per day but will increase the absolute number per year as more high tides are used.”</p>	<p>infrastructure would be possible to permit (as discussed at the Issue Specific Hearing 2). If the Lightweight Aggregate Plant could not be constructed, would this have any implications for additional vessel movements? We consider this issue important to resolve, as it could have implications for the conclusions of the Habitats Regulations Assessment.</p>
Q3.0.7	The Applicant	<p>It is stated in ES paragraph 5.6.75 that the ships that would deliver clay to the wharf could also be used to remove the aggregate. It is not clear whether any additional separate deliveries of clay by ship would be required, in which case the total required number of ships would be higher than the figure given. In addition, paragraph 5.6.85 explains that the silt used in the manufacture of the Lightweight Aggregate</p>	<p>In paragraph 5.6.19 of Chapter 5 Project Description (document reference 6.2.5, APP-043) it is noted that 100 ships of approximately 3,000 tonne capacity per year would be required for the export of 300,000 tonnes of aggregate. As noted, the ships will be used to bring in clay to the Facility and these same vessels will be used to export aggregate. The aggregate load is the key driver of vessel movements as there will be less clay input compared to aggregate output. It is estimated that of the 100 vessels per year required for the export of the aggregate per year, 62 of these will be required for clay input, including any associated with the import to the Facility of dredged</p>	As above

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		<p>(LWA) would be from dredged material obtained from The Haven from maintenance dredging of the wharf berthing pocket or from other maintenance dredging on The Haven. If additional ships were required to transport material obtained from dredging outwith the site this also could increase the total number of ships required. Please can the Applicant confirm the position and explain how these movements have been considered in the assessments.</p>	<p>material from maintenance dredging on The Haven outwith the site.</p>	
Q3.0.9	The Applicant	<p>I note that the Environment Agency (EA) state, in their RR, that they are unlikely to be in a position to provide any assurance before the end of the Examination on whether they can grant a permit for the Proposed Development. Please can the Applicant provide an update on progress with each of the Environmental Permit (EP) applications referenced in the ES. Please could it also confirm whether the applications include</p>	<p>The Applicant has held a pre-application meeting (20 October 2021) with the EA in relation to the relevant Environmental Permits required, i.e., environmental permits for both the construction and the operation of the Facility.</p> <p>Both the Applicant and the EA are in agreement that a bespoke Integrated Environmental Permit is required for the operation of the Facility. The EA will confirm which Environmental Permits are required for the construction phase. A programme detailing when the Environmental Permit applications will be submitted has yet to be agreed. However, the Applicant has</p>	<p>The RSPB notes that details of the Environmental Permits are still under discussion. The timeline for the Environmental Permit process remains unclear. Once the Applicant and the Environment Agency agree what Environmental Permits are required we anticipate that there would be a significant period of consultation. We are concerned that should this overlap with the Examination period this will limit Interested Parties ability to engage in both processes.</p>

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		<p>a bespoke application for the discharge of surface water during construction, as suggested in ES Chapter 5.</p> <p>If the Applicant considers that any of the EPs are not required, please detail what alternative form of protection are proposed to satisfy the EA's concerns.</p>	<p>agreed to meet with the EA onsite as part of the pre-application discussions (date to be agreed).</p> <p>Should an Environmental Permit for a surface water discharge activity be required, either during construction or the operational phases, then the Applicant will apply for the appropriate Environmental Permit, providing the relevant details of the activity the application documents.</p>	<p>We request clarity on the Applicant's timeline for completing both processes and whether this could have implications for the examination.</p>
3.1 Biodiversity, Ecology and Natural Environment (including Habitats Regulations Assessment (HRA))				
Q3.1.1	The Applicant	<p>Net gain is only sought in connection with the saltmarsh and mudflats habitats and the bird species that use them. The National Planning Policy Framework and South East Lincolnshire Plan seek to secure overall net gain. What net gain is proposed in relation to the terrestrial habitats and the marine environment?</p>	<p>The Applicant has undertaken a baseline and post development calculation of Biodiversity Net Gain (BNG) which is presented in the Outline Landscape and Ecology Mitigation Strategy (OLEMS) (document reference 7.4, APP-123).</p> <p>BNG opportunities have been identified (and captured within the calculations to date) for onshore terrestrial receptors such as but not limited to hedgerow improvements, creation of new hedgerows, landscape planting etc.</p> <p>As presented in the OLEMS, the proposed terrestrial habitat and biodiversity measures demonstrate a -36.80% total net unit change for habitats units (primarily associated with the loss of arable land) and a +57.27% net change for the hedgerows. The Applicant is continuing to explore other off-site BNG opportunities with Boston Borough Council (BC) and</p>	<p>We note the Applicants response and will review the proposals against the criteria we have set out within our Written Representation (Section 13, pp.110-120; REP1-060). Where measures are put forward they must demonstrate the ecological requirements that will be met. For example, whilst debris clearance will remove plastics, the Applicant must demonstrate how this is not simply best practice management for such a facility.</p> <p>We also note that there has been no consideration of the beneficial use that could be made of arisings from dredging operations. There may be areas around The Haven and The Wash that are eroding and the</p>

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			<p>an update of the OLEMS will be submitted to the Examination if suitable opportunities are identified.</p> <p>With regard to the marine environment net gain measures are being pursued which include assisting the restoration of saltmarshes through debris clearance and creation of wetland habitats where possible. These are detailed in the updated OLEMS submitted at Deadline 3.</p>	<p>material could be used to help restore areas. We recommend more consideration be given to a nature-based use for any arisings. The beneficial re-use of dredged material is reviewed in the following report produced by the RSPB, ABPmer and other coastal consultants:</p> <p>████████████████████ ████████████████████ ████████████████████. We recommend the Applicant consider how arisings from the dredging could be used to support habitat creation and restoration.</p> <p>We will review the updated OLEMS and provide comments in future submissions.</p>
Q3.1.3	The Applicant	Please can the Applicant update the HRA to include specific references to where the information to support its conclusions, such as species and habitats surveys, can be found in other application documents.	The Applicant confirms that the additional submission 'Chapter 17 Marine and Coastal Ecology and Appendix 17.1 Habitats Regulations Assessment - Ornithology Addendum' (document reference 9.13, REP1-026) includes specific cross-referencing to the data underlying its conclusions. As a key purpose of the Addendum document was to report from the final, larger datasets produced following a period of additional baseline surveys and data collection (and acquisition of WeBS data from the British Trust for Ornithology (BTO)), these datasets constitute the bulk	<p>We note that the Applicant has collated the information from their ornithological surveys to date, but we are not aware that the actual reports have been submitted.</p> <p>We request confirmation from the Applicant when the actual survey reports will be submitted to the Examination Library.</p>

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			<p>of the information underlying conclusions, and they are enclosed within the document itself in the form of Tables 3-3, 3-4, 6-2, 6-3 and 6-4 in the main body and Appendices A1 to A3. Where information is found in other application documents, cross-referencing including hyperlinks is made to these documents, typically in the footnotes, for example on page 1 of the Ornithology Addendum .</p>	
Q3.1.4	The Applicant	<p>Please can the Applicant provide an update on the additional bird surveys due to be undertaken between March and June 2021, as stated in ES Chapter 5 paragraph 17.4.3, and indicate when they will be made available to the Examination. Please confirm when the assessments in the HRA and the ES will be updated to take account of the results.</p>	<p>The Applicant confirms that the details and results of the additional bird surveys undertaken between March and June 2021 (namely, 1. project-specific surveys of wintering birds at The Haven adjacent to the Application Site, 2. project-specific Breeding Bird Surveys at the Application Site and the same adjacent section of The Haven, and 3. project-specific Changes In Behaviour observation sessions at the mouth of The Haven and at the same section of The Haven adjacent to the Application Site), are available to the Examination as of Examination Deadline 1 (19 October 2021) within the document 'Chapter 17 Marine and Coastal Ecology and Appendix 17.1 Habitats Regulations Assessment - Ornithology Addendum' (document reference 9.13, REP1-026). This document also contains updates to the relevant assessments in these additional surveys. The surveys are discussed in sections 3.4 and 3.5 of the Ornithology Addendum . The survey data for the above surveys is enclosed within Appendices A2 and A3 of the Ornithology Addendum. Results and reports from additional</p>	<p>We note that the Applicant has collated the information from their ornithological surveys to date, but we are not aware that the actual reports have been submitted.</p> <p>We welcome the additional information that will be supplied at Deadline 3 and will provide comments at future deadlines.</p> <p>For clarity, we request confirmation from the Applicant on whether further survey work is ongoing and whether any new survey data may therefore be presented at future deadlines and if so, at which deadlines. We understood from Point 1 of the Applicant's evidence under Issue 5a of the Issue Specific Hearing on Environmental Matters that additional wintering bird</p>

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			surveys covering autumn wader migration season of 2021 will be submitted at Deadline 3.	surveys may have been started in the week commencing 15 November 2021. We request clarity on this point and its potential implications for latter stages of the Examination if new evidence is to be submitted.
Q3.1.5	The Applicant	Please can the Applicant respond to NE's comments regarding the appropriateness of the 250m monitoring zone used to assess disturbance effects on Ruff and Redshank.	The Applicant confirms it has responded to Natural England's comment B4 made in Relevant Representation RR-021 Appendix B Offshore Ecology, and follow-up comments on the matter. This response is provided in 'Comments on Relevant Representations' Table 1-13, Row 20 (document reference 9.2, REP1-035). Buffer zones for works to avoid and minimise disturbance to species are taken from Cutts et al. (2008) (Cutts, N., Phelps, A. & Burdon, D., 2008. Construction and Waterfowl: Defining Sensitivity Response, Impacts and Guidance. Report to Humber INCA., s.l.: Institute of Estuarine and Coastal Studies, University of Hull.) which provides peer reviewed data on disturbance distances for waders. Cutts et al. (2008) is used as a data source to provide generic information. Site specific surveys are also used to provide site specific information on actual disturbance levels. These surveys focused on changes in behaviour specifically resulting from vessel movements. As recorded in Appendix A3 of 'Chapter 17 Marine and Coastal Ecology and Appendix 17.1 Habitats Regulations Assessment - Ornithology Addendum' (document reference 9.13), redshank and ruff adjacent to the Application Site exhibited flight	It remains unclear whether the activities proposed by the Applicant are of a similar nature to the works undertaken by the Environment Agency during their Ground Investigation works. Whilst the type of works might be similar, it is not known, for example, whether the scale of works, the duration of works and the equipment involved are directly comparable to the Environment Agency's works upon which the buffer was proposed. We request more detail from the Applicant setting out the similarities and differences between the works associated with both projects to enable more detailed consideration of the appropriateness of this mitigation measure. We note Natural England's written response to this question for Issue 4b of the Environmental Matters

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			<p>response to passing commercial vessels including fishing boat, cargo boat and pilot boat. In half of disturbance events where the species are listed as responding, a subset of birds present demonstrated no response. The width of The Haven at this location (70-80 m, per Paragraph 3.5.2) places all vessels in closer proximity to roosting birds than 250 m. In summary, at less than 80 m redshank and ruff are liable to disturbance as species, but even at this short distance some individuals do not demonstrate disturbance behaviour. A 250 m distance of works from birds in the roosting or foraging assemblage is therefore considered appropriate, based on field-based peer-reviewed data and site-specific data.</p> <p>The buffer for monitoring has also been set following monitoring undertaken by the EA for Groundwork Investigations. The Environment Agency (EA) originally monitored birds within an areas of 500m to determine if a threshold was reached to stop noisy activities. The EA recommendation was that 250m would be a more appropriate buffer. The threshold values have not yet been agreed with Natural England.</p>	<p>Issue Specific Hearing (p.3; AS-001) and support fully the need for further evidence to be submitted to support the Applicant's assertion that the proposed buffer would be appropriate.</p>
Q3.1.7	The Applicant	Please can the Applicant confirm if the list of plans and projects to be considered in the in-combination assessment was agreed with key consultees, eg NE, Marine Management	Agreement was made with Boston Borough Council on the cumulative plans and projects to be included in the EIA, which were subsequently also used for the in-combination assessment as part of the HRA. The list of plans and projects was not agreed with other consultees such as NE or the MMO.	Whilst it may be possible to agree the projects and plans to include within the HRA, it is less clear how additional activities have been addressed in the Application. The banks of The Haven are used for a range of recreational activities such

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		<p>Organisation (MMO), the local authority.</p>		<p>as walking (with and without dogs) and cycling. There may be additional activity taking place that can cause disturbance. For example, observations by our reserve staff have noted that recreational angling can cause some disturbance, with jet skis and hovercraft using the area infrequently and these can also cause disturbance. Disturbance can also occur from low flying aircraft. However, none of this activity has, as far as we are aware, been assessed and quantified.</p> <p>Whilst the Applicant has suggested that recreational activities have been considered in the baseline situation it is not clear what data have been used and how it has been used in the assessments. Data on all activities that are causing disturbance to waterbirds along The Haven will be important to understand the cumulative and in combination pressures on qualifying features of The Wash SPA/Ramsar. We request more detail from the Applicant to demonstrate how, for example, walking, cycling, dog-walking, recreational watercraft, aircraft, and</p>

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				fishing have all been considered in the HRA. These activities may already be causing disturbance to the features of The Wash SPA/Ramsar and affecting their distribution and the Applicant must take account of this in their Appropriate Assessment. We will discuss this further in future submissions.
Q3.1.8	The Applicant	Please can the Applicant update the HRA screening and integrity matrices to include habitat loss and include Evidence Notes (ENs) that identify the location of the supporting information.	The Applicant confirms that the HRA screening and integrity matrices make reference to the locations of supporting information, in their form as updated in 'Chapter 17 Marine and Coastal Ecology and Appendix 17.1 Habitats Regulations Assessment - Ornithology Addendum' (document reference 9.13, REP1-026). Supporting information includes the project specific data enclosed in Appendices A2-A3, the WeBS data outlined in Appendix A1 (document reference 9.13, REP1-026), and in-text citations of research articles and consultancy reports. As a key purpose of the Ornithology Addendum document was to report from the final, larger datasets produced following a period of additional baseline surveys and data collection, these datasets constitute the bulk of the supporting information and they are enclosed within the document itself. However, for clarity the screening and integrity matrices will be updated with cross referencing and submitted for Deadline 3.	The Applicant is suggesting that there is not the need to include habitat loss as a worst-case scenario within the HRA. Whilst losses can be defined around the wharf area there remains uncertainty over: <ul style="list-style-type: none"> • The worst-case loss of habitat at the wharf site as scour protection does not appear to have been included (see our comment on the Applicant's response to Q3.0.5). • There are ongoing discussions between the Applicant, the Environment Agency and Natural England about the potential erosion associated with increased vessel movements and maintenance dredging.

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			<p>No habitat loss is expected to take place within designated site boundaries and the level of impact of wharf construction habitat loss on waterbird foraging and roosting at the Application Site, once the Habitat Mitigation Area is implemented, is considered to be low (Ornithology Addendum paragraphs 4.3.4-4.3.10), therefore habitat loss is not included in the HRA screening and integrity matrices.</p>	<ul style="list-style-type: none"> • There is no consideration of indirect habitat loss as a consequence of construction activity and the increase disturbance associated with vessel movements (during construction and operation). <p>We do not consider the current approach by the Applicant accurately reflects the scale of habitat loss that could occur from the Application (see our response to Q3.0.5 above).</p> <p>We set out our position regarding considerations of likely significant effect and how this should be addressed in our initial comments on the Ornithology Addendum (Section 3(d), pp.23-25; REP2-045). We also provided more detailed comments in our Written Representations (Section 8(e), pp.87-91; REP1-060). A decision regarding whether a likely significant effect may occur must be taken on a precautionary basis. Where supporting habitat could be affected by the Application there is the potential to affect qualifying features of The Wash SPA/Ramsar. The HRA must therefore include all</p>

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				<p>factors that have the potential to adversely affect The Wash SPA/Ramsar, either alone or in combination.</p> <p>We request more detail from the Applicant on the range of habitat loss that could be expected to occur due to direct and indirect impacts from the Application.</p>
Q3.1.9	The Applicant	If it is confirmed, in response to ExQ 3.0.6, that the number of vessels required annually during operation is 624 please can the Applicant explain if this has any implications for the conclusions of the HRA, which appear to have been based on 580 vessels/year.	Please see response to Q 3.0.6.	Please refer to our comments on the Applicant's response to Q3.0.6.
Q3.1.10	Natural England	Please can NE confirm whether it is satisfied that the Applicant has identified all of the relevant European sites and features in the HRA.		The RSPB supports the position of Natural England that additional features need to be considered in the HRA, as set out in their additional submission for Issue 4d of the Environmental Matters Issue Specific Hearing (AS-001). We agree that the waterbird assemblage must be considered in its own right, as well as passage species.

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				<p>We also note that the Applicant's data is incomplete. We set this out in our initial comments on the Ornithology Addendum (REP2-045). For example, there is a need to account for 30-40% of The Wash SPA/Ramsar population of common terns that breed at Freiston Shore and Frampton Marsh. A more comprehensive screening of features of The Wash SPA/Ramsar must be provided. We highlight in our initial comments on the Ornithology Addendum that a number of species appear to have been screened out as they were observed in low numbers in the limited surveys conducted by the Applicant. We consider this approach is not consistent with the Habitats Regulations tests and would mean more features would be retained within the appropriate assessment stage of the HRA.</p> <p>We request confirmation from the Applicant when a revised HRA will be made available.</p>
Q3.1.13	The Applicant	The HRA does not identify the conservation status of the European designated sites carried	The Applicant acknowledges that the condition and conservation status of each designated site as a whole is not explicitly stated within the HRA (document	Whilst the WeBS data can provide general trends for qualifying features of The Wash SPA we note that there

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		<p>forward to Stage 2 of the assessment, nor does it indicate whether any of the qualifying features are in an unfavourable condition. Please can the Applicant provide an updated version of the HRA that identifies the conservation status of the European sites and explains how the Proposed Development could affect the conditions of the features.</p>	<p>reference 6.4.18, APP-111) or the Ornithology Addendum (document reference 9.13, REP1-026). However the conservation status of feature and assemblage bird species including presence or absence of evidence for site-specific pressures/factors is assessed in the Ornithology Addendum section 3.2, predominantly via examination of BTO WeBS Alerts for the Wash SPA species.</p>	<p>has not been a formal update on the conservation status of features of The Wash SPA on the Marine Conservation Advice Package. We advise seeking direction from Natural England on the current conservation status of features of The Wash SPA.</p> <p>We recognise that it is not for the applicant to assess the conservation status of designated features – that is for Natural England. The applicant should be drawing on Natural England's assessments. These would normally include the underpinning features of The Wash SSSI. However, we are not aware that any assessment for The Wash SPA is currently available. The current condition assessment, therefore, is based instead on the underpinning SSSI, for which assessment data is lacking, out-of-date and does not cover all notified features. SSSI and SPA features do not match. For example, breeding redshank and non-breeding whooper swan are not listed as SPA features, however, they are notified features of The Wash</p>

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				<p>SSSI. Also, non-breeding black-tailed godwit, common scoter, gadwall, goldeneye, and wigeon are included in the SPA, but not in The Wash SSSI citation.</p> <p>WeBS is a useful source of data to inform Natural England's assessments of SSSI condition for wintering waterbirds. However, WeBS data will not help with the breeding bird SPA and SSSI features or the non-avian SAC / SSSI features.</p> <p>We set out our concerns regarding the information used to inform the Applicant's conclusions about impacts to qualifying features of The Wash SPA/Ramsar/SSSI in our initial comments on the Ornithology Addendum (REP2-045) and will provide further detail in future submissions.</p>
Q3.1.14	The Applicant	HRA para A17.6.26 (and ES Chapter 5 para 5.5.42) refers to the creation of four pools/scrapes in the Habitat Mitigation Area (whereas Outline Landscape and Ecological Mitigation Strategy (OLEMS) paragraph A1.2.1 refers to three, as shown on OLEMS	The number of scrapes has not been confirmed as yet. An update will be provided in the updated Outline Landscape and Ecology Mitigation Strategy to be submitted for Deadline 3.	We remain concerned by this proposed measure for the reasons set out in our written Representation (Paragraphs 7.27-7.29, pp.54-55; REP1-060) and initial comments on the Ornithology Addendum (Section 2(l), p.16; REP2-045). We will review the updated

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		Plate A1-3). Please can the Applicant confirm the proposed number of pools/scrapes.		OLEMS and provide our comments at a future deadline.
Q3.1.15	The Applicant	Please could the Applicant update the HRA to include an assessment of the potential effects on the features of the European sites of the construction and operational existence of the Habitat Mitigation Area. This should include consideration of potential effects on Redshank using the proposed Habitat Mitigation Area resulting from visual disturbance arising from users of the English Coast Path.	The Applicant confirms that these issues will be included in the updated Outline Landscape and Ecology Mitigation Strategy . The Habitat Mitigation Area will not be constructed within the boundaries of any designated sites. Visual disturbance from users of the England Coast Path has been considered. The footpath is not moving any closer to the habitat areas that are currently used by redshank. Impact of construction and operation of the Habitat Mitigation Area therefore does not require consideration in further depth within the HRA.	We remain concerned by this proposed measure and do not agree with the Applicant's position. There is insufficient evidence presented to demonstrate that this measure would be effective or that the location is appropriate. We set out our reasons in our written Representation (Paragraphs 7.27-7.29, pp.54-55; REP1-060) and initial comments on the Ornithology Addendum (Section 2(I), p.16; REP2-045). We will review the updated OLEMS and provide our comments at a future deadline.
Q3.1.16	The Applicant	It is proposed in para HRA A17.6.51 that control of speed restrictions in The Haven/approach to the Haven for vessels serving the Proposed Development "could" be used to mitigate disturbances caused by ship wash. No reference is made to where this is secured and it does not appear to be included in the dDCO. Please could the	The Applicant amended the draft DCO (document reference 2.1(1), REP1-003) at Deadline 1 to include reference in Condition 14 (Navigation Management Plan) of the Deemed Marine Licence to refer to a Marine Mammal Mitigation Protocol and the addition of a new Condition 17 which requires the MMO to approve the final Marine Mammal Mitigation Protocol, which must be in accordance with the Outline Marine Mammal Mitigation Protocol. The Outline Marine Mammal Mitigation Protocol (document reference 9.12, REP1-025) submitted at Deadline 1 sets out that "subject to safety	The RSPB supports the position of Natural England set out in their additional submission for Issue 4d of the Environmental Matters Issue Specific Hearing (AS-001). If this is the current vessel speed on The Haven this would not constitute a mitigation measure. There also appears to be no mechanism outlined to demonstrate that this measure would be enforceable.

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		Applicant confirm how this measure is secured.	considerations, and directions from the Port of Boston Pilot and / or the vessel Master, vessels travelling to and from the Facility, would be required to follow a strict speed limit of 6 knots or less when within The Wash or The Haven" and sets out further best practice measures relating to speed and direction.	
Q3.1.18	The Applicant	In addition to the 18 out of 22 features of The Wash Special Protection Area for which a Likely Significant Effect (LSE) was identified at screening stage, Common Tern and the Little Tern are included in the integrity matrices, in relation to disturbance effects and changes to noise levels, although no LSE was identified at screening stage. A LSE is identified on the waterbird assemblage in the screening matrix for both disturbance and changes to noise levels during both construction and operation, however only operational effects are considered in the integrity matrix and the EN states that a LSE was excluded at screening stage for the construction phase. Please can the Applicant provide	The Applicant directs the Examining Authority to section 5 of 'Chapter 17 Marine and Coastal Ecology and Appendix 17.1 Habitats Regulations Assessment - Ornithology Addendum' (document reference 9.13, REP1-026). The update to the HRA processes common tern and little tern through the Screening Exercise and Likely Significant Effect (LSE) (Ornithology Addendum paragraphs 5.3.4-5.3.5), and full justification is given for screening both species out for Appropriate Assessment. The non-breeding waterbird assemblage is screened in for Appropriate Assessment based on impacts (disturbance from vessels) during both the construction and operation phases (Ornithology Addendum paragraphs 5.3.2-5.3.3).	Whilst we accept that it is unlikely little tern would be impacted by the Facility, due to the proximity to the closest colony at Gibraltar Point being c.25km from the Haven mouth, we disagree with the screening out of common tern. We set out in our initial comments on the ornithology addendum that 30-40% of The Wash SPA population of common tern breed at RSPB Freiston Shore and RSPB Frampton Marsh, respectively c.3km to the North and West-South-West from the mouth of The Haven, with ringing recaptures showing birds move between these two breeding sites. The common terns will be foraging within The Wash and along The Haven. WeBS data and observations by our site staff have recorded large numbers of common terns congregating at the mouth of The Haven post-breeding. This species must therefore be fully

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		updated matrices and ENs to address these apparent errors.		assessed in the HRA. We will provide more detail on this feature at Deadline 4.
Q3.1.20	The Applicant	Please can the Applicant provide revised ENs to the screening and integrity matrices that include explicit cross-references to the location of the supporting information, including in relation to proposed mitigation measures, which are not currently described in the ENs.	<p>The Applicant confirms that the HRA screening and integrity matrices make reference to the locations of supporting information, within Chapter 17 Marine and Coastal Ecology and Appendix 17.1 Habitats Regulations Assessment - Ornithology Addendum' (document reference 9.13, REP1-026). As a key purpose of the Ornithology Addendum document was to report from the final, larger datasets produced following a period of additional baseline surveys and data collection, these datasets constitute the bulk of the supporting information.</p> <p>The screening and integrity matrices will be updated with cross referencing and submitted for Deadline 3.</p>	We welcome the additional information that will be supplied at Deadline 3 and will provide comments at future deadlines.
10. Navigation/fishing issues				
Q10.0.1	The Applicant	I note the intention to submit the Navigation Risk Assessment (NRA) at Deadline 2; please provide an update on its progress. Should the agreement of an NRA be secured as a requirement in the dDCO? Should the NRA be cross-referenced in any of the Articles?	The Applicant has submitted the Navigation Risk Assessment (NRA) at Deadline 2. The NRA focusses on the potential operational and construction impacts to navigational safety arising from the increase in the number of commercial vessels transiting the Haven as a result of the proposed scheme (detailed in paragraph 5.6.20 and paragraphs 18.7.58 to 18.7.131 in ES Chapter 18 Navigational issues (document reference 6.2.18, APP-056) and presents recommendations for the management of vessel movements on The Haven which will ensure the safety of all users.	We note the Applicant is deferring detailed information that could have implications for the Habitats Regulations Assessment to the Navigation Management Plan. We are particularly concerned with this approach given that the Applicant has confirmed in their responses to Q10.0.7 and Q10.0.11 that there has not been agreement with all relevant Interested Parties on navigational issues and therefore the measures

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			<p>The NRA will be used to inform the Navigation Management Plan (NMP) secured by Condition 14 of the Deemed Marine Licence (DML) in Article 9 to the draft DCO (document reference 2.1(1), REP1-003) and the Applicant considers that an amendment to that condition to refer to the NRA is appropriate. The Applicant will amend Condition 14 of the draft DML contained in the draft DCO in the version to be submitted at Deadline 3 as follows:</p> <p>14. —(1) The undertaker must submit a navigation management plan to the MMO for approval in accordance with the procedure in Part 5, following consultation with the harbour authority and the EA to the extent that it relates to matters relevant to its functions, at least 13 weeks prior to the commencement of any licenced activity.</p> <p>(2) The navigation management plan submitted for approval under sub-paragraph (1) must be informed by the assessment of risks to navigational safety in the navigational risk assessment and be substantially in accordance with the recommendations as to the management of vessel movements on the Haven as set out in the navigation risk assessment.</p> <p>...</p> <p>The Applicant does not consider the NRA needs to be cross referenced to any Articles of the draft DCO as it</p>	<p>needed to address any potential impacts.</p> <p>The Applicant's response to Q10.0.9 states that the NMP will <i>"set out a range of management measures, standard vessel and port procedures and Vessel Traffic Monitoring which will be implemented in full consultation and agreement with the Port of Boston, to minimise or prevent delays to river users."</i> Further work is also identified to develop the Navigation Management Plan. It would seem appropriate that clarity be given on the timeline for resolving this issue and enabling a draft NMP to be developed.</p> <p>It would seem appropriate that a draft of this plan be made available for interested parties to review during the Examination. This would also seem appropriate to inform the Examining Authority's Report on Implications for European Sites.</p>

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			is the NMP, which will contain the approved management measures.	
15. Water Environment				
Q15.0.1	The Applicant	The Proposed Development will make use of the existing flood defences. Please provide details of the current condition of these assets, and proposals for maintaining them in the future.	<p>Paragraph 13.1.20 of the Flood Risk Assessment (Appendix 13.2, document reference 6.4.13, APP-106) notes that the Proposed Development benefits from the presence of existing tidal flood defences. Paragraph 13.1.32 further confirms that the Principal Application Site is located within the frontage that will be subject to improvement and upgrade works as part of the Haven Banks Project.</p> <p>Paragraphs 13.1.113 - 13.1.115 state that: "The Facility incorporates both primary and secondary flood defence lines. The primary flood defence line would be formed by the proposed wharf and would replace the existing EA flood defences at the Principal Application Site.</p> <p>The proposed primary defence line, comprising the proposed wharf, would tie in with the improved flood defences provided as part of the EA's Haven Banks Project. The design of the wharf carried out in communication with the Landowner and EA has set the crest height for the wharf at 7.2 mAOD."</p> <p>Therefore, the Applicant notes that as part of the Proposed Development there will be no reliance on the existing flood defences and the construction of the new wharf and sheet pile wall will form the flood</p>	This will also need to extend to any compensation proposals that are put forward by the Applicant. It is not clear at this stage how the Applicant and Environment Agency can determine such impacts given no sites have yet been identified.

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			<p>defence in front of the Proposed Development, which will tie into the EA defences to the north and south of the site.</p> <p>With regards to maintenance of the defence line, paragraph 13.1.117 notes that: “...it is understood that the Site Operator will take on the responsibility for maintenance along the length of the wharf and flood defence line that is within the Principal Application Site boundary. EA access to these flood defences would not be restricted.”</p> <p>The ongoing maintenance of the flood defences will be subject to an agreement with the EA. The Applicant is currently liaising with the EA as to the terms of this agreement.</p>	
Q15.0.2	The Applicant/The MMO	Please provide details of proposals for dredging and maintaining the berthing pocket that forms part of the Proposed Development including sampling of the dredged product.	<p>Paragraph 5.5.20 of ES Chapter 5 (Project Description) (document reference 6.2.5, APP-043) provides details of the capital dredge and states, "There will be two phases of dredging for the construction of the wharf and the berthing pocket.". Further detail on wharf construction has also been provided in Wharf Construction Outline Methodology (document reference 9.17, REP1-030) submitted at Deadline 1 of the Examination.</p> <p>The maintenance dredging will be undertaken via land-based equipment and the material will be used in the Lightweight Aggregate Plant with no disposal to sea. It is anticipated that maintenance dredging will</p>	We recommend further consideration of the beneficial reuse of arisings from dredging be considered as part of fuller and meaningful discussions on the issues of suitable compensation measures or additional net gain options.

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			<p>be required yearly or every two years based on the sedimentation rate predicted in ES Chapter 16 Estuarine Processes (document reference 6.2.16, APP-054) of 50cm/year.</p> <p>Under condition 12 of the Deemed Marine Licence (DML) included in Schedule 9 to the draft DCO (document reference 2.1(1), REP1-003) the Applicant must submit details of the detailed dredging methodology to be employed by the undertaker to the MMO's for approval in the form of a method statement at least 13 weeks before commencement of the licenced activity.</p> <p>The Applicant is currently liaising with the MMO as to the requirements for sampling and the wording of a condition relating to sampling to be included in the DML.</p>	
Q15.0.4	The Applicant	Please provide details of how any mitigation discussed in the ES is secured through conditions in the Deemed Marine Licence, taking account of the MMO's points raised in their RR [RR-008].	All mitigation set out in the ES relevant to the licensable marine area has been conditioned in the DML, with the exception of conditions relating to bathymetric monitoring surveys and sediment sampling, the wording for which is still under discussion between the MMO and the Applicant. Please refer to the Register of Environmental Actions and Commitments (document reference 7.6, REP1-014) for details of where mitigation set out in the ES relevant to the licensable marine area is secured.	We will review the revised DML and provide our comments in future submissions.