



**Response to the Applicant's Comments on our Written
Representations submitted at Deadline 1
for the
Royal Society for the Protection of Birds**

Submitted for Deadline 4

13 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

Table 1: The RSPBs comments on Written Representations submitted at Deadline 1

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
2. Summary of the RSPB's position with respect to the Application			
2.2 and 2.3		The Applicant stresses that the proposed Facility can play a role in the RSPB and other interested parties' pursuit of a coastal landscape-scale vision of ecosystem health for The Wash, through a) reducing reliance on the extraction of fossil fuels, b) no additional land or road haulage of RDF and aggregates during operation, and c) provision of a net gain in supporting habitat for birds in The Wash through management of land outside of the Facility itself.	Such developments must be appropriately located to ensure that they can meet the public need and minimise environmental impacts. This has not been demonstrated in the Application. We discuss this issue in our initial comments on the Applicant's derogation case submitted at Deadline 4 (13 December 2021).
2.3		The Applicant stresses that no damage or removal of habitat is foreseen within designated site or RSPB site boundaries due to any phase of the proposed development. It is acknowledged that there may be some functional connectivity between the SPA and the saltmarsh along The Haven and measures have been put in place to ensure that the functionality can be maintained through placement of roosting habitat in adjacent areas and habitat enhancement measures.	We do not agree that the worst-case habitat loss has been presented by the Applicant or that it can be stated that habitat loss will not impact on qualifying features of The Wash SPA/Ramsar. Scour protection and erosion from ship wash are still being discussed with the Environment Agency and Natural England. We provide some comment on this in response to the Applicant's response to the Examining Authorities First Written Questions (Q3.0.5; REP3-033).
2.4		The Applicant has acknowledged all of the designations and status listed for the local region in this Written Representation, in the original Habitats Regulations Assessment (HRA) (ES Appendix 17.1 - Habitats Regulations Assessment (document reference 6.4.18, APP-111)).	We note that locations for the Refuse Derived Fuel (RDF) have been identified in the Without Prejudice derogation case document on alternatives (REP2-011). Where such sites are known we recommend that all sites within the National Site Network that could be affected by vessel movements be included in the Habitats Regulations Assessment.
2.5		The Applicant calls for objectivity regarding the condition of The Wash SSSI - the latest published, official condition assessment must form the basis for any assessment and the Examination. It is	The information we have used to inform our position on breeding redshank on The Wash comes from RSPB reserve surveys and national breeding redshank surveys:

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		<p>noted that the latest SSSI condition assessment, undertaken by Natural England in December 2019, for the SSSI units directly around the mouth of The Haven recorded these units as favourable. Cited "declines in number and increasing concern" for some features are anecdotal unless captured by the condition assessment. The Applicant also requests a citation for the source of the described declines in breeding redshank.</p>	<ul style="list-style-type: none"> • RSPB Frampton Marsh Annual Reserve Monitoring data, unpublished, RSPB. • Sharps, E., Smart, J., Mason, L. R., Jones, K., Skov, M. W., Garbutt, A., and Hiddink, J. G. (2017) Nest trampling and ground nesting birds: Quantifying temporal and spatial overlap between cattle activity and breeding redshank. <i>Ecology and Evolution</i>, 7(16), 6622–6633. https://doi.org/10.1002/ece3.3271 • Natural England Survey, unpublished, Natural England. • Natural England Survey, unpublished, Natural England. • Natural England Survey, unpublished, Natural England. • Sharps, E., Smart, J., Mason, L. R., Jones, K., Skov, M. W., Garbutt, A., and Hiddink, J. G. (2017) Nest trampling and ground nesting birds: Quantifying temporal and spatial overlap between cattle activity and breeding redshank. <i>Ecology and Evolution</i>, 7(16), 6622–6633. https://doi.org/10.1002/ece3.3271 • National Breeding Redshank Survey data in Malpas, L.R. Smart, J. Drewitt, A. Sharps, E. and Garbutt, A. (2013) Continued declines of Redshank <i>Tringa totanus</i> breeding on saltmarsh in Great Britain: is there a solution to this conservation problem?, <i>Bird Study</i>, 60:3, 370-383, <div style="background-color: black; height: 15px; width: 100%; margin-top: 5px;"></div>

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			We have submitted a detailed note on breeding redshank on The Wash that contains the information we have used to date to inform our position (REP3-034).
2.6		The Applicant has acknowledged the mechanisms of impact from development and disturbance on bird populations, via their immediate body condition and survival and via carryover effects on their condition upon entering the breeding season and their breeding success, in the HRA (ES Appendix 17.1 - Habitats Regulations Assessment (document reference 6.4.18, APP-111)) and the HRA Ornithology Addendum (document reference 9.13). Disturbance from vessel movements is a particular focus of the addendum to the HRA (ES Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026)), specifically in Appendix A1.	We accept the Applicant has acknowledged some impacts but disagree that a complete or accurate assessment is being used to inform their conclusions. We provide comments on this in our initial comments on the Ornithology Addendum (REP2-045).
2.7		The cited generic potential impacts of development are already assessed by the Applicant in the Environmental Statement (ES) (document reference 6.2.13, APP-051, document reference 6.2.15, APP-053, document reference 6.2.16, APP-054, document reference 6.2.17, document reference APP-055) and where necessary mitigation has been recommended within the updated Register of Environmental Actions and Commitments submitted at Deadline 1 (document reference 7.6, REP1-014) setting out all such commitments. WeBS Alerts for all occurrent species, including species accounts and implications, have been considered in Table 3-2 and section 3.2 of the ES Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026).	We accept the Applicant has acknowledged some impacts but disagree that a complete or accurate assessment is being used to inform their conclusions. We also do not consider that the survey area has been sufficient to ensure that all potential qualifying features of The Wash SPA/Ramsar/SSSI have been considered in the assessments to date. We provide further comments on this in our initial comments on the Ornithology Addendum (REP2-045).
2.8		The Applicant recognises the potential for localised areas of The Wash to hold disproportionate importance to some designated SPA feature waterbird species, and has used BTO WeBS and	We accept the Applicant has provided information on the WeBS data but disagree that a complete or accurate assessment has been completed to with respect to

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		<p>project-specific survey data to quantify relative importance of The Haven local area to SPA waterbirds and their vulnerability to/rate of disturbance in Appendix A1 to the Addendum to the ES and HRA (ES Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026)).</p>	<p>assessing the full importance of this area of The Wash to inform their HRA conclusions. There has been no further detailed work to inform the exact locations where birds are congregating (WeBS sectors are large and birds will not be distributed evenly across these areas). We also have seen no assessment of how birds are utilising The Wash as a whole to understand the relative importance of The Haven and its approaches. For example, black-tailed godwit numbers are significant at the mouth of The Haven (c.20% of The Wash SPA population). Information such as this needs to be interrogated by the Applicant to inform their Habitats Regulations Assessment and any conclusions that will be drawn on the potential impacts that could arise from the Application. We provide comments on this in our initial comments on the Ornithology Addendum (REP2-045).</p>
2.9		<p>The cited loss of habitat is to take place outside the boundary of designated sites (The Wash SPA/Ramsar/SSSI). Loss of roosting redshank from the location (Survey Sections A and B) is not a certain outcome as the species will have access to expanded roosting substrate within Section B downstream (Paragraphs 6.1.31 to 6.1.45 of the Addendum to the HRA (ES Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026)).</p>	<p>We do not agree that the worst-case habitat loss has been presented by the Applicant or that it can be stated that habitat loss will not impact on qualifying features of The Wash SPA/Ramsar. Scour protection and erosion from ship wash are still being discussed with the Environment Agency and Natural England. We provide comments on this in response to the Applicant's response to the Examining Authorities First Written Questions (REP3-033).</p> <p>We do not agree that any certainty can be placed on the proposed 'Habitat Mitigation Area'. Therefore a precautionary approach must be taken to ensure appropriate measures will be provided that can be demonstrated to be effective and have the ability to be secured and delivered. We provided comments on this in</p>

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			our initial comments on the Ornithology Addendum (REP2-045), with additional comments provided on the Applicant's high-level 'without prejudice' derogation case.
2.10		<p>The Applicant has collected two seasons of survey data for the spring passage, overwintering and breeding birds and one season of data for the autumn passage birds at the Application Area. Data has also been collected to survey disturbance at the mouth of The Haven for the baseline situation, information that was not available on commencing the Environmental Impact Assessment. At the time of survey design, data was available for the WeBS count sectors which included around the Mouth of The Haven and for Slippery Gowt Pits, which is close to the Principal Application Area. . The Applicant considers the geographic coverage of the baseline data collection to have been appropriately designed as it includes 1. the land and water adjacent to the proposed Facility and 2. the section of The Haven shipping channel that lies within the boundary of The Wash SPA/Ramsar/SSSI. These were considered to be the two critical geographic areas for assessing environmental impact and Likely Significant Effect for Appropriate Assessment for the HRA. During the initial development of the survey there was no information to indicate that there were any additional areas of importance for birds. This was also implied by the lack of any WeBS count sectors in the remainder of The Haven and the SPA boundary stopping short of the remainder of The Haven. The area of The Haven between the Application site and the mouth of The Haven was also considered in light of its habitats and width of The Haven. The interim section is narrow and does not have extensive areas of saltmarsh, it is also not recognised by any designations for its bird interest and has a footpath extending along the seawall along the stretch which has the potential for causing disturbance, particularly to roosting birds. Reference to</p>	<p>We disagree with the Applicant and have provided further comments on this in our initial comments on the Ornithology Addendum (REP2-045).</p> <p>The lack of WeBS sectors along The Haven cannot be taken as evidence of a lack of birds being present along the entirety of The Haven. This is not appropriate because it is of similar intertidal habitat present in The Wash which is relied upon by the significant number of internationally important waterbird populations, is functionally linked to The Wash and connects the development site to The Wash via a linear corridor that waterbirds would be expected to feed, roost and/or transit along.</p> <p>The designation of the WeBS sectors may also have been a pragmatic decision to align with The Wash SPA/Ramsar/SSSI boundary. There are a significant number of count sectors in The Wash (21 count sectors with each of these divided into multiple sub-sectors) and some take more than one counter. It is difficult to find enough counters for the Core sections, so a degree of prioritisation will have been required when establishing the survey areas.</p> <p>Whilst the area along the whole of The Haven is not designated, this should also not be taken as having low importance for waterbirds. This has been reflected by the surveys undertaken adjacent the application site.</p>

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		<p>the document produced by Natural England (2018) to provide an overview of the England Coast Path along this stretch does not identify any saltmarsh areas that were identified for exclusion zones for access and did not identify any sensitive bird areas that were not part of the survey or covered by the WeBS sectors. Should there be any birds using the interim areas they would only be subject to the increase in vessels of up to two additional large vessel movements per high tide period. Given that any birds using these areas are already subject to vessel movements along this stretch and remain in this location indicates that this level of increase would not cause them to leave the roost site. The comment concerning a lack of consideration of the full suite of conservation objectives of The Wash SPA/Ramsar/SSSI has been addressed previously by the Applicant in Comments on Relevant Representations (document reference 9.2, REP1-035), Table 1-3, row 1.</p>	<p>Currently there is no information to support the Applicant's position that there are no other areas of The Haven that are important for waterbirds. The Wash SPA/Ramsar/SSSI were designated on the basis of the evidence on waterbird numbers and distribution at the time. However, since then our understanding of the importance of functionally-linked land (i.e. areas outside the SPA that the birds use at certain times) upriver and in terrestrial habitats has improved. In addition, the available evidence is showing that bird numbers and distributions have changed over time and this may mean that areas outside of The Wash SPA/Ramsar/SSSI boundary are now more important as functionally linked land. This does not mean such areas are less important and do not warrant detailed surveys. Indeed, such areas are likely more important to survey to ensure that the latest evidence is being used to assess impacts on qualifying features of The Wash SPA/Ramsar/SSSI based on their current abundance and distribution. This is supported by the findings of the Applicant's surveys adjacent the application site where such significant numbers of birds were unknown until the data were collected.</p> <p>We also disagree that it can be assumed that additional vessel movements would not cause birds to leave roosting areas. The additional vessel movements would increase disturbance to all navigable tides, during the winter these navigable tides would mainly be during the hours of darkness and no nocturnal surveys have been completed to assess the sensitivity of birds at night, as well as a range</p>

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			of other reasons. We comment on why we disagree with the Applicant's position in our initial comments on the Ornithology Addendum (REP2-045).
2.11		The Applicant has taken seriously the potential for impact on The Wash. A 'without prejudice' Derogation case is been prepared and will be submitted for Deadline 2. This documents the Alternatives Assessment (document reference 9.28) which includes for consideration of alternative locations. Options for compensation sites are also being investigated and are listed in the Compensation Report (document reference 9.30).	The Applicant has only started to develop a 'without prejudice' derogation case during the Examination phase. This is despite interested parties having asked that a derogation case be developed and agreed pre-examination, as detailed in our Written Representation (REP1-060). We provide initial comments on the Applicant's high-level 'Without prejudice' derogation case at Deadline 4 (13 December 2021), but do not consider the currently presented derogation case to be adequate.
2.12		Noted by the Applicant.	Noted
2.13		The Applicant is investigating measures for biodiversity net gain. An update of the Outline Landscape and Ecological Mitigation Strategy (OLEMS) will be provided for Deadline 3. This will provide an update on the potential net gain sites but these sites will require further work and ongoing discussion during the examination process. It should be noted however, that Biodiversity Net Gain is not yet a statutory requirement and the Applicant is putting forward measures for biodiversity net gain as good practice.	We will review the additional information at Deadline 3 and provide comments. The Applicant must make it clear what measures constitute compensation measures and which are biodiversity net gain options.
2.14		The Applicant maintains the position that the Facility as assessed in the Environmental Statement, HRA and the addenda submitted at Deadline 1, does not stand to significantly impact on environmental features or have an Adverse Effect on Site Integrity of protected sites in the area.	Activities that have the <u>potential</u> to cause a likely significant effect to qualifying features of The Wash SPA/Ramsar must be identified and assessed. We do not consider the Applicant is correctly applying the strict tests of the Habitats Regulations. We discuss this further in our initial comments on the Ornithology Addendum (REP2-045).

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2.15		<p>The Applicant acknowledges that the Facility will increase the levels of disturbance. It should be noted that there is already disturbance to birds in this area, which has been highlighted by the survey work undertaken. The baseline impact causes some birds to relocate to alternative roost sites and it is expected that this would continue. The assessment has therefore considered the potential impact of additional levels of disturbance over the baseline in order to understand the potential to impact the features of interest. Noise, visual disturbance and lighting have been assessed as part of the Environmental Impact Assessment process.</p>	<p>The increase in vessel movements will result in all navigable tides being affected. However, this will result in an increase in disturbance events (not fully quantified by the Applicant) over and above existing levels. The current effect of disturbance has been acknowledged by the Applicant. A number of qualifying species of The Wash SPA/Ramsar/SSSI are also identified as declining due to site-specific issues (as we identify in our Written Representation (REP1-060) and initial comments on the Ornithology Addendum (REP2-045)). Where species are already being affected by disturbance additional pressures will make maintenance and restoration increasingly more difficult. We therefore disagree with the Applicant's position.</p>
3. Overview of the nature conservation interest of the area affected by the proposed Facility			
3.1 to 3.84		<p>Paragraphs 3.1 to 3.84 are contextual and The Applicant notes this information.</p>	Noted
3.2		<p>The Applicant acknowledges the RSPB's acceptance that there will be no impacts on the Greater Wash SPA.</p>	Noted
3.16		<p>The Applicant acknowledges the RSPB's acceptance that there will be no impacts on the Greater Wash SPA.</p>	Noted
3.21		<p>The Applicant has since provided evidence of the availability of wetland habitat in and around the mouth of The Haven, at Deadline 1, in Figure 4-2 and Appendix A1 of Chapter 17 Marine & Coastal Ecology and Appendix 17.1 HRA - Ornithology Addendum (document reference 9.13, REP1-026). Appendix A1 of this document highlights species most prone to displacement, and quantifies for all SPA feature species the importance of the immediate area around The Haven to their Wash SPA populations. Figure 4-2 illustrates the peak counts of these species on WeBS</p>	<p>We do not consider the available information quantifies the available habitat for the qualifying features of The Wash SPA/Ramsar/SSSI or that it demonstrates suitable capacity for birds to move to different areas. We also disagree that there has been evidence presented to demonstrate that disturbance is not affecting the abundance and distribution of qualifying features of The Wash SPA/Ramsar/SSSI along the navigation channel between the application site and the Port of Boston</p>

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		sectors around the Haven, which demonstrate that there is ready capacity for surrounding wetland areas to hold numbers of each species equivalent to those recorded to have been present (and therefore 'available' to be disturbed) at the mouth of the Haven during project-specific surveys of disturbance from vessels. The Applicant acknowledges ecological consequences (survival and fitness) of displacement into potentially sub-optimal or low-preference areas of habitat in Appendix A1 species accounts, and outlines in each case how the probability and level of disturbance to each species does not lead to conclusion of an adverse effect on integrity.	anchorage area. Our position has been set out in our initial comments on the Ornithology Addendum (REP2-045).
3.37		Responses are covered within Section 7 below.	Noted
Table 2	Overview of the population targets and current status of species observed at the Application site and mouth of The Haven.	The Applicant queries the validity of the black-tailed godwit SPA population given at time of designation and citation. Percentage of UK population quoted in the same citation document (available at European Site Conservation Objectives for The Wash SPA - UK9008021 (naturalengland.org.uk)) does not align with this population size estimate, and suggests that either the percentage or the population size were incorrect by a factor of ten at citation. The Applicant requests Natural England address the error and clarify which specific variable is subject to error. The continued use of a potentially deflated SPA population size under the guise of an official figure creates confusion and overestimation of impact in assessments.	We agree the need to have clarity on the conservation targets for qualifying features of The Wash SPA/Ramsar and SSSI. For black-tailed godwits, the population size at designation was 260. Since that time, the number of non-breeding black-tailed godwits in the UK has increased. This is documented in 'The Status of UK SPAs in the 2000s: the Third Network Review.' ¹ Between 1980-2010, the long-term trend for the UK has been a 614.3% increase and a short-term increase of 66.7% based on WeBS data. Whilst numbers have increase on The Wash in line with the national increases, there has also been a WeBS Alert for black-tailed godwit indicating that site-specific pressures

¹Stroud, D.A., Bainbridge, I.P., Maddock, A., Anthony, S., Baker, H., Buxton, N., Chambers, D., Enlander, I., Hearn, R.D., Jennings, K.R, Mavor, R., Whitehead, S. & Wilson, J.D. - on behalf of the UK SPA & Ramsar Scientific Working Group (eds.) 2016. The status of UK SPAs in the 2000s: the Third Network Review. JNCC, Peterborough. Black-tailed godwit (non-breeding) account pp.747-752. At: [REDACTED]

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			can have a limiting effect on this species. A full understanding of the species for which adverse effects cannot be ruled out must be provided that also includes a full ecological assessment given that black-tailed godwits have been identified as being in energy deficits during the winter. We will continue to work with the Applicant and Natural England to clarify the position on the species potential significance of increased disturbance on qualifying interest features of The Wash SPA/Ramsar/SSSI.
4. Overview of the Wetland Bird Survey data and its use in assessing impacts on The Wash			
4.1 to 4.11	Background on the Wetland Bird Survey, Conservation and Monitoring of Migratory Waterbirds and Alerts 2016/17 summary for The Wash SPA	Paragraphs 4.1 to 4.11 are contextual and The Applicant notes this information.	Noted
4.12	Table 6	Although the table in question is not identified, the Applicant presumes the table in question is Table 6.	This is a reference to Table 6, as identified by the Applicant.
4.13 to 4.19	Review of WeBS Alerts for species that could be significantly impacted by the Application	The Applicant highlights lack of concordance of key species between sections which could introduce confusion to Examination. The species highlighted in 3.27 that "[the RSPB] have concerns about" due to percentages observed in disturbance events are dark-bellied brent goose, shelduck, oystercatcher, black-tailed godwit, lapwing, golden plover, curlew, ruff, common tern and turnstone. Species cited in Table 6 as "potentially affected by the Application" are dark-bellied brent goose, shelduck, oystercatcher,	The Applicant's comment highlights a discussion point that should ideally have been addressed pre-examination, namely, what are the species of concern. It was for such reasons that a pause in the examination was requested to give time to resolve such issues. We are continuing to review the available data and will provide clarity on the species we consider to be of most concern at Deadline 5 (25 January 2022).

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		<p>black-tailed godwit, turnstone and redshank. The species addressed in 4.13 to 4.19 that “could be significantly impacted...” are dark-bellied brent goose, shelduck, curlew, black-tailed godwit, turnstone and dunlin.</p> <p>The Applicant maintains their position from Deadline 1 (Comments on Relevant Representations (document reference 9.2, REP1-035) (RR1-035, Table 1-3 Row 70)). WeBS Alerts for all recorded designated feature waterbird species have been considered in Table 3-2 and section 3.2 of the ES Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026).</p>	
4.20	Review of WEBS Alerts for species that RSPB consider will not be significantly impacted at the Application site or mouth of The Haven	The Applicant agrees with the RSPB's consideration that the species set out in paragraphs 4.20 to 4.27 will not be significantly impacted at the Application Site or at the mouth of The Haven. WeBS Alerts concerning these designated SPA feature species were considered in section 3.2 but were not recorded in project-specific site surveys and so were screened out for Appropriate Assessment within ES Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026).	Whilst the limited surveys at the application site and the mouth of The Haven have not observed significant numbers of the species mentioned in this section (Bewick's swan, gadwall, pintail, common scoter, goldeneye and grey plover). However, there are areas of The Haven for which no data exist to draw conclusions and a number of these species could be affected along the navigation channel out to the Port of Boston anchorage area. We are aware that common scoter occurs close to the anchorage area, as well as other waterbird species. No data are available to consider impacts out into The Wash. We have also identified in our initial comments on the Ornithology Addendum a number of additional WeBS sectors that data should be considered that may be of greater importance for some of the species identified in this section (REP2-045). We will look to provide clarity on our position regarding these species for Deadline 5 (25 January 2022).

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4.28	Implications of the WeBS Alerts	Noted and agreed. This is also acknowledged in full in section 3.2 of ES Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026). The area with any potential for impact is a small localised area of The Wash and the WeBS data for these sectors have been reviewed in detail in Appendix A1 to determine the potential for impact.	We disagree with the "small, localised area" being considered for impacts, as set out in our initial comments on the Ornithology Addendum (REP2-045). Impacts from vessel movements occur along the entire navigation route and qualifying features of The Wash SPA/Ramsar/SSSI will use the area from the Application site to the Port of Boston anchorage area. Confining impact assessments to only small areas of The Haven and its approaches misrepresents the importance of the area for waterbirds, the significance of disturbance impacts on abundance and distribution of qualifying features of The Wash SPA/Ramsar/SSSI, and risks biasing the assessments. We continue to have serious concerns about the assessment approach being applied by the Applicant.
4.29 and 4.30	Key WeBS sectors that are applicable to the assessment of the Boston Alternative Energy Facility	Data for all but two of the listed WeBS sectors was acquired from the BTO by the Applicant. The exceptions were Freiston 30, which had last received survey coverage in 2008/9 and therefore could not provide up-to-date data, and Witham 21 which was only flagged as a sector requiring inclusion since the start of Examination (email from RSPB 05 October 2021). The analysis of the accessed WeBS data is provided in ES Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026).	Having further reviewed the area, we have highlighted additional WeBS Sectors for which data should be assessed. We set this out in our initial comments on the Ornithology Addendum (REP2-045).
5. The RSPB's engagement with the Application			
5.1 and 5.2	RSPB's engagement with the	Noted by the Applicant. The RSPB is thanked for their constructive input to date and bringing to the Applicant's attention their concerns.	Noted

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5.3	Application through 2019	Since the discussion between the Applicant and RSPB in September 2019, the Applicant has commissioned surveys to quantify waterbird usage in the vicinity of the proposed wharf development site and studies of the behavioural response of birds using the mouth of The Haven over the high tide period to vessel traffic. The Applicant has also undertaken an analysis of waterbird WeBS count for those parts of The Haven included in the WeBS core count coverage in Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026) Appendix A1.	We continue to have serious concerns about the assessment approach being applied by the Applicant. We address this in our initial comments on the Ornithology Addendum (REP2-045).
5.4			We continue to have serious concerns about the assessment approach being applied by the Applicant. We address this in our initial comments on the Ornithology Addendum (REP2-045).
5.5	RSPB's engagement with the Application through 2020	Noted by the Applicant. RSPB is thanked for their further engagement through 2020 and their clarity on what they consider to be the most important issues.	Noted
5.6		See response to 5.5 above. An HRA addendum (notably ES Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026)) has been issued at Deadline 1 which provides additional data and assessment of potential impacts to address the key concerns raised.	We continue to have serious concerns about the assessment approach being applied by the Applicant. We provided our initial comments on the Ornithology Addendum at Deadline 2 (REP2-045).
5.7	RSPB's engagement with the Application through 2021	<p>Noted by the Applicant. RSPB is thanked for their continued engagement and advice through 2021.</p> <p>The Applicant is disappointed that the RSPB has been unable to find any opportunities for compensation measures (noting that compensation could be Biodiversity Net Gain if compensation is not required) to be sited on either of the two nearby RSPB reserves. Given that these reserves cover a high proportion of the estuarine habitat close to the mouth of The Haven, this decision severely constrains and potentially significantly reduces the potential for practical measures to be deployed that would reduce</p>	We note the Applicant's disappointment that we cannot accommodate measures on our reserves. The reasons for this have been discussed with the Applicant. Criteria have been developed for providing roosting and foraging habitat for waterbirds affected by disturbance at the mouth of The Haven and adjacent the application site. Our reserves are unlikely to be suitable due to the distance they are located from the areas of disturbance, so are not in the right place to offer as compensation. Our reserves are also well managed and already support significant numbers of waterbirds year-round. It would therefore be

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		vessel disturbance (both existing and future) at the mouth of The Haven.	<p>difficult to demonstrate value and or that measures would be genuinely additional to the existing value and function in respect of both the reserves themselves and the adjacent SPA/Ramsar site, and meeting the Habitats Regulations tests.</p> <p>The Applicant has not identified what measures are compensatory and what measures are net gain options. Once this has been clarified we may be in a position to discuss further proposals with the Applicant.</p>
5.8		RSPB's continuing concerns are noted. Further information was submitted at Deadline 1 by the Applicant (notably ES Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026)) which the RSPB will not have had chance to review for their submission.	None of our concerns have been allayed by the additional information provided by the Applicant, as set out in our initial comments on the Ornithology Addendum at Deadline 2 (REP2-045).
6. The RSPB's concerns regarding the quality and limitations of the survey data collected to inform conclusions about the impact of the Facility on The Wash SPA/Ramsar/SSSI			
6.1	Failure to collect bird data to inform the PEIR	<p>The Applicant recognises that the consultation process identified a number of information gaps and shortcomings of varying levels of importance in the baseline information available to inform the assessment of the proposed development.</p> <p>In response to this, the Applicant has commissioned surveys to quantify waterbird usage in the vicinity of the Principal Application Site and studies of the behavioural response of birds to vessel traffic over the high tide period at the mouth of The Haven.</p>	We continue to have serious concerns about the assessment approach being applied by the Applicant. We discuss the limitations of the surveys in our Written Representation (REP1-060) and our initial comments on the Ornithology Addendum (REP2-045).
6.2	Limited bird data gathered to	Further surveys have been undertaken of the vessel disturbance at the mouth of The Haven, and these are on-going until end of November 2021. The Applicant has commissioned monthly bird	We are also concerned that further survey may continue to be submitted during the Examination. We seek clarity on additional survey and assessment information that will

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	inform the Application	<p>surveys of north-west end of The Haven in the vicinity of the Principal Application Site. These were conducted from August to October 2021 and the report will be circulated by Deadline 3.</p> <p>The central part of The Haven (i.e., away from the mouth and the wharf) was not identified as an area with potential concerns for bird disturbance. For this reason bird surveys were not commissioned for these parts. However, it is correct that these central parts of The Haven have not been regularly counted as part of the national coordinated waterbird counts (WeBS). As such there is, regrettably, an information gap regarding the usage of these central parts of The Haven by waterbirds. It is relevant to point out that these central parts (and the northwest end) are not within the boundary of The Wash SPA/SSSI. The lack of WeBS coverage and lack of inclusion in the SPA/SSSI designations of these part of The Haven presumably reflect low ornithological importance. Evidence that at least some of these parts have low importance is also found in the 2005-2010 Management Plan for the Havenside Local Nature Reserve (Lincolnshire County Council 2005) (this includes some of the parts of The Haven lacking waterbird WeBS counts). This does not list any bird species as having importance for the reserve; indeed, it would appear that the reserve's primary interests are botanical.</p> <p>The Applicant maintains that the potential for project vessels transiting through the central part of The Haven to cause additional significant disturbance to birds is likely to be limited as discussed in 2.10 above.</p>	<p>be submitted by the Applicant and the implications of this for the examination timeline. Interested parties will need sufficient time to review and respond, as well as meet any additional requests made by the Examining Authority.</p> <p>We note the additional information provided by the Applicant on the Havenside Local Nature Reserve. However, it is not clear if this includes The Haven channel. It will also not include the southern bank of The Haven. We note that the information cited is from 2005 and is therefore not based on the current distribution or abundance of waterbirds. We refer to the CIEEM Advice note on "The lifespan of ecological reports & surveys" that was released in 2019². This states that where surveys are 18 months to three years old that (emphasis added):</p> <p><i>"A professional ecologist will need to undertake a site visit and may also need to update desk study information (effectively updating the Preliminary Ecological Appraisal) and then review the validity of the report, based on the factors listed below. Some or all of the other ecological surveys may need to be updated. The professional ecologist will need to issue a clear statement, with appropriate justification, on:</i></p> <ul style="list-style-type: none"> • <i>The validity of the report;</i> • <i>Which, if any, of the surveys need to be updated; and</i> • <i>The appropriate scope, timing and methods for the update survey(s).</i>

² Available at: [REDACTED]

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			<p><i>The likelihood of surveys needing to be updated increases with time, and is greater for mobile species or in circumstances where the habitat or its management has changed significantly since the surveys were undertaken. Factors to be considered include (but are not limited to):</i></p> <ul style="list-style-type: none"> • <i>Whether the site supports, or may support, a mobile species which could have moved on to site, or changed its distribution within a site...;</i> • <i>Whether there have been significant changes to the habitats present (and/or the ecological conditions/functions/ecosystem functioning upon which they are dependent) since the surveys were undertaken, including through changes to site management...;</i> • <i>Whether the local distribution of a species in the wider area around a site has changed (or knowledge of it increased), increasing the likelihood of its presence..."</i> <p>For surveys that more than three years old, CIEEM state that:</p> <p><i>"The report is unlikely to still be valid and most, if not all, of the surveys are likely to need to be updated (subject to an assessment by a professional ecologist, as described above)."</i></p> <p>We therefore question the validity of the Havenside Local Nature Reserve Management Plan to justify a lack of importance of parts of The Haven for waterbirds.</p> <p>Please refer to our comments on 2.10 above.</p>
6.3		Noted by the Applicant. See response to paragraph 2.10. above.	Please refer to our comments on 2.10 above.

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6.4		Noted by the Applicant. See response to paragraph 2.10. above.	Please refer to our comments on 2.10 above.
6.5	Limitations of the available evidence to inform the Application	<p>Noted by the Applicant. The Applicant agrees that their commissioned studies have identified an existing issue with vessel disturbance at the mouth of The Haven and have identified the regular presence of moderate numbers of some non-breeding waterbird species at the proposed development site (i.e., the wharf site) well outside The Wash SPA/SSSI boundary. The results of the survey work have been circulated to the stakeholder group as it has become available. Presentations of the data have also been held with the stakeholder group.</p>	<p>We note the acknowledgement that there is an existing issue with vessel disturbance at the mouth of The Haven. Such disturbance also occurs at the Application site. The Applicant must demonstrate that the additional disturbance from their Application will not exacerbate the situation or limit the ability for the disturbance to be effectively managed. We discussed this issue in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments on this point at future submissions as required.</p> <p>We disagree with the Applicant's implied suggestion that waterbirds have been recorded "...well outside The Wash SPA/SSSI boundary..." and therefore are not part of the site. The waterbirds using The Haven are functionally linked to The Wash SPA/Ramsar/SSSI given the linear nature of the site and the habitat available. We have commented on this in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments on this point at future submissions as required.</p>
6.6		The Applicant has recently undertaken further analysis of the results of baseline vessel disturbance study and WeBS count data and prepared an updated assessment of the potential additional mouth of The Haven vessel disturbance that could result in the development went ahead. This is presented in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026).	We have provided initial comments on the Ornithology Addendum (REP2-045). We disagree that the Applicant has developed a suitable baseline evidence base and that the Applicant can ignore the current levels of disturbance. We set out why this is inconsistent with the Habitats Regulations process in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as appropriate, in future submissions.

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		<p>It should be noted that the baseline study of vessel disturbance was undertaken to characterise baseline conditions, and not to assess the existing levels of disturbance against the SPAs conservation objectives. The Applicant limits the assessment of vessel disturbance at the mouth of the Haven presented in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026) to the predicted additional disturbance that would result if the development of the Facility goes ahead.</p>	
6.7		<p>Noted by the Applicant. The Applicant is aware of the potential physiological stress that severe weather, such as periods of prolonged freezing, can cause birds that feed on inter-tidal habitats and the increase in sensitivity to disturbance that this can cause. The Applicant also recognises the potential value of agreements for voluntary restraints of certain human activities such as wildfowling during periods of defined severe weather. Extreme weather events have been discussed further in the HRA Ornithology Addendum (document reference 9.13, REP1-026).</p>	Noted
6.8	Note about cold weather periods	<p>The Applicant requests that RSPB make available any data they hold that shows that The Haven has additional importance to wintering waterbirds during periods of severe weather.</p> <p>Extreme weather events have been discussed further in the HRA Ornithology Addendum (document reference 9.13, REP1-026).</p>	<p>We hold anecdotal evidence that more birds use The Haven during adverse weather conditions. This is made up of observations from RSPB reserve staff and local birdwatchers. For example during the last storm (which had high winds as well as being cold) red-throated divers, black-throated diver, eider and guillemots were observed sheltering in The Haven. We also have reports of four divers (unknown species) taking flight when a boat came down the river. Dark-bellied brent geese were also observed using the river more than usual in the very strong winds.</p>

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			<p>We also refer the Applicant to Section 4.7.3 (p.52) of 'Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC' report that states:</p> <p><i>“The onus is therefore on demonstrating the absence of adverse effects rather than their presence, reflecting the precautionary principle (C-157/96 paragraph 63). It follows that the appropriate assessment must be sufficiently detailed and reasoned to demonstrate the absence of adverse effects, in light of the best scientific knowledge in the field (C-127/02 paragraph 61).”</i></p> <p>We will provide information to assist the Applicant where we are able. However, where data are limited the Applicant will need to secure available data or undertake appropriate surveys to address such data gaps.</p>
6.9		<p>Noted by the Applicant.</p> <p>Extreme weather events have been discussed further in the HRA Ornithology Addendum (document reference 9.13, REP1-026).</p> <p>The Applicant agrees that it is best practice to adopt a precautionary approach where there are uncertainties over an assessment.</p>	<p>Noted and we welcome the Applicant's clarification of their position on the Precautionary Principle.</p>
<p>7. The RSPB's concerns regarding impacts arising from the Application</p>			
7.1	Introduction to the RSPB's concerns	While the Applicant welcomes the inventory of documents, the Appendix in question is redacted in the copy on the PINS Project Webpage.	The document was not redacted by us. We will look to provide a reference list at a future deadline.

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7.2		Noted by the Applicant. Lighting is designed to minimise any disturbance and will be targeted to light up the vessel and the wharf and not the surrounding areas.	Noted
7.3		Potential impacts from the Facility and associated vessel traffic regarding water quantity and quality are discussed in the original ES Chapter 15 Marine Water and Sediment Quality (document reference 6.2.15, APP-053) and Chapter 17 Marine and Coastal Ecology (document reference 6.2.17, APP-055). The Applicant submitted an Outline Surface Water Drainage Strategy (document reference 9.4, REP1-017) at Deadline 1. The Applicant does not consider there to be a route to impact on designated sites and site features from the proposed Facility via quality or quantity of water in the terrestrial drainage system, therefore this was not included in ES Appendix 17.1 Habitats Regulations Assessment (HRA) (document reference 6.4.18, APP-111). Pollution from vessels would be subject to control measures under the Marine Pollution Contingency Plan, secured by condition 16 of the deemed marine licence in Schedule 9 to the draft DCO (document reference 2.1(1), REP1-003).	Water from the drainage network is pumped directly into The Haven from the Wyberton Marsh pumping station. Please refer to our comments on the Outline Surface Water Drainage Strategy (REP2-052).
7.4		Noted by the Applicant.	Noted
7.5-7.6	Loss of saltmarsh and intertidal mudflat habitat at the wharf site	Saltmarsh quality is assessed within ES Chapter 17 Marine and Coastal Ecology (document reference 6.2.17, APP-055) and the ES Appendix 17.1 HRA (document reference 6.4.18, APP-111) using the most recently available evidence at the time. As stated in Addendum to Chapter 17 and Appendix 17.1 - Benthic Ecology, Fish and Habitats' (document reference 9.15, REP1-028) submitted at Deadline 1, "the potential to change [saltmarsh condition] from poor condition to moderate will be considered in the updated OLEMS document to be submitted to the Examination at Deadline 3 which will include an update to the biodiversity net gain calculation." The surveys undertaken for the Environment Agency	We await to hear the outcome of discussions with Natural England on the quality of saltmarsh.

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
		included monitoring survey undertaken in 2017 which confirmed the status of the saltmarsh as of poor quality following previous surveys undertaken over a period of six years. It is recognised that the more extensive area of marsh adjacent to the Principal Application Area is more diverse and more likely to be of interest than the narrow strip of marsh affected by the proposed works. This area would not be significantly affected by the works.	
7.7-7.8		Noted by the Applicant. The saltmarsh as a habitat for birds has been fully considered.	Noted
7.9		The Applicant does not consider that disturbance of birds from mudflats constitutes a 'loss', by definition, of available habitat, as 'loss' implies a permanent or long-term removal whereas disturbance is temporary. However, the Applicant recognises that displacement from habitat can have effects on birds that are akin to habitat loss. The activities potentially reducing availability of mudflat through disturbance are by nature confined to lower tide periods where mudflat is exposed and potentially available for foraging, and to months when non-breeding waterbirds are present. Such activities include on-site construction noise likely to be intermittent (and small [fishing] vessels unrelated to the proposed Facility). The Applicant therefore maintains that the area of mudflat lost is represented by the area within the permanent footprint of the proposed wharf construction as detailed in the ES Chapter 17 Marine and Coastal Ecology (document reference 6.2.17, APP-055). Additionally, the Applicant reiterates that the habitat loss is outside the boundaries of all protected sites, in particular well outside The Wash SPA/SSSI boundary.	The key issue is the availability of functional habitat for qualifying features of The Wash SPA/Ramsar/SSSI to use to feed, roost, bathe, etc during their daily pattern of activity. This will vary from species to species. During construction there will be a level of activity that will prevent birds from foraging within a certain distance from the Application site. Given the time to construct the wharf this will be for an extended period time which will limit birds access to habitat, effectively making this habitat unavailable and lost. This displacement away from suitable foraging habitat must be considered in calculations for compensation to ensure an appropriate level of habitat will be created. We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments in future submissions.
7.10-7.11	Impact to foraging birds associated with	The Applicant confirms that the methodology for wintering bird counts at the site follows established methods and visit frequency used by the BTO WeBS Core Counts, and that two winter seasons of surveys have been carried out as now reported in the	We continue to disagree with the Applicant on this issue. There have not been two <u>full</u> winter periods surveyed and only a single Autumn passage survey has been carried out (we are continuing to review the August to October 2021

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	The Wash SPA/Ramsar/SSSI	Ornithology Addendum to the ES and HRA (ES Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026)).	surveys submitted at Deadline 3 (REP3-019). We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions.
7.12-7.13		The Applicant confirms that noise disturbance by vessels at the proposed Facility is not expected during low water periods, and so is not expected to be a factor in loss of feeding area availability. Maintenance dredging effects are covered in the original ES Chapter 17 Marine and Coastal Ecology (document reference 6.2.17, APP-055). Activities at the wharf closest to the area that birds will use for roosting and foraging and feeding during low water periods is the aggregate wharf and is only predicted to have two vessels a week at the wharf. The Waterbird Disturbance Mitigation Toolkit (Cutts et al. 2013 / Cutts, N, Hemingway, K & Spencer, J (2013). <i>Waterbird Disturbance Mitigation Toolkit Informing Estuarine Planning & Construction Projects Version 3.2</i> , March 2013 Copyright University of Hull), suggests that redshank have high resilience to visual disturbance and are unlikely to be excluded from foraging habitat close to plant or workers. The level of disturbance is therefore expected to be low.	<p>It is not clear whether offloading and loading of vessels would occur around low tide. These activities would involve use of the cranes and would generate noise and visual disturbance. Such activity will have an effect on foraging birds. This is particularly true if activity happens at night and there is no understanding of the behaviour of waterbirds on The Haven at night. We request clarity from the Applicant on the activity that would be taking place whilst vessels are present at the wharf to better inform levels of noise and visual disturbance that could occur at low tide.</p> <p>We also request information on nocturnal bird activity to understand waterbird sensitivity on The Haven and how they might behave around activity at the wharf.</p>
7.14		Impacts on foraging and roosting birds, and consideration of provisions to mitigate loss of the roost site in Section A, are updated in Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment – Ornithology Addendum (document reference 9.13, REP1-026). Area A and B are adjacent to each other and subject to very similar conditions. The redshank have been observed to favour roosting on the artificial habitat that is in front of the saltmarsh in both Areas A and B. This habitat occurs will be increased in width in Area B to provide additional roosting habitat.	We continue to have serious concerns about the assessment approach being applied by the Applicant and the effectiveness of the proposed alternative roost for redshank. We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions.

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7.15		The without prejudice derogation case will include for compensation for habitat loss and take account of bird species that could be displaced.	The current derogation case information is high-level and does not provide sufficient detail to demonstrate that the measures proposed are appropriate, would be effective or constitute compensation measures rather than biodiversity net gain options. We provide initial comments on the without prejudice derogation case at Deadline 4.
7.16-7.17		The area of mudflat and saltmarsh that would be lost from The Haven is minimal. This has been assessed in ES Chapter 17 Marine and Coastal Ecology (document reference 6.2.17, APP-055). The intertidal area would remain albeit with a different habitat type and vessels aground on the mudflat at low tide.	We do not agree that the worst-case habitat loss has been presented by the Applicant or that it can be stated that habitat loss will not impact on qualifying features of The Wash SPA/Ramsar. Scour protection and erosion from ship wash are still being discussed with the Environment Agency and Natural England. We provide comments on this in response to the Applicant's response to the Examining Authorities First Written Questions (REP3-033).
7.18-7.21	Loss of redshank roost and foraging area	The Applicant agrees that the Application Site could potentially provide a functional area of habitat for some of the SPA birds. However, not all of the birds using this area are likely to be SPA populations. It is also clear from the data that Area B, which will remain, provides habitat for a greater number of birds. Area A does not provide a consistent resource for high numbers of birds, either at low or high tide.	We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions.
7.22		The Applicant acknowledges a restore objective is in place for redshank although this does not reflect the BTO WeBS information for The Wash: The most recent mean 5-year annual WeBS peak of redshank for The Wash exceeds 5,000 birds (and therefore is demonstrably greater than the target 4,331 birds), there is no WeBS Alert for the species, and there are not considered to be site-specific pressures in driving their Wash population trend. The data used to set the restore objective can be viewed on the WeBS data and clearly shows that around the time of designation there was a peak for redshank, which is part of a fluctuating cycle of	Noted. We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions.

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		abundance for this species. In addition, the whole Wash trend is showing a similar trajectory to the trend for Great Britain.	
7.23		Loss of roosting redshank from Survey Sections A and B is not a certain outcome and the species will have access to enhanced and extended roosting habitat within Section B downstream through the Habitat Mitigation Area.	The proposed mitigation is within an area that will continue to be affected by vessel movements and recreational pressures. There can be no guarantees that the proposed alternative roost can be effective. We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions.
7.24		As can be seen from the data collated during the surveys, as summarised in RSPBs written representations, the numbers of redshank using Areas A and B fluctuate widely. It is therefore expected that there are alternative roosting sites that the birds use that can also support such high numbers. Alternative roost locations are being investigated as part of the proposed net gain for the project.	Whilst numbers fluctuate (as would be expected due to weather patterns bringing more or less birds to the area, breeding success meaning that there are more or less birds wintering in the area etc) the Applicant's surveys (which are limited) demonstrate the area adjacent the Application site supports significant numbers of birds. This has been shown for redshank and is also now demonstrated for ruff ³ in the surveys conducted in August and October 2021 (ruffs were recorded in numbers representing c.40-64% of The Wash population; Section 5.1.1, p.16, REP3-019). The key factor is that the area has been demonstrated to support significant numbers of qualifying species of The Wash SPA/Ramsar. Despite this, the Applicant has failed to undertake more detailed assessment along the whole of The Haven to understand the full importance abundance and distribution of waterbirds, or to assess how birds can utilise different areas of The Haven at different states of the tide throughout the year. It is therefore difficult to see how

³ Whilst ruffs are not a feature of The Wash SPA, they are a feature of The Wash Ramsar (with 25 birds cited at classification). Ruffs are also an Annex 1 species given their special protection year-round.

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			<p>alternative roosts could be appropriately identified as part of "compensation measures" when a baseline understanding of roost sites has not been conducted.</p> <p>We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions.</p>
7.25		<p>The sites being investigated to provide additional roosting locations are being considered in light of what redshank are using to roost at the existing and adjacent roosting location(s).</p>	<p>Noted. We requested clarity on when such detail will be submitted to the examination.</p>
7.26		<p>Counts of redshank, impacts on roosting birds, and consideration of provisions to mitigate loss of the roost site in Section A, have received updated consideration in Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment – Ornithology Addendum (document reference 9.13, REP1-026).</p>	<p>We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions.</p>
7.27-7.28	Mitigating impacts to the redshank roost	<p>The Applicant does not consider it necessarily the case that provision of habitat for redshank should be defined as compensation, especially as no Adverse Effect On Site Integrity has been concluded to The Wash SPA non-breeding redshank feature. The Applicant highlights that consideration of provisions for redshank is updated in Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment – Ornithology Addendum (document reference 9.13, REP1-026). The rocks to be placed to provide additional roosting location would be placed in front of rocks already in this location and are not a new feature in this area.</p>	<p>We disagree with the Applicant's position. The redshank population are functionally linked to The Wash SPA/Ramsar site. Measures to mitigate impacts have not been identified, as the redshanks roosting at the application site will be forced to seek an alternative site (which may or may not be available to them), foraging waterbirds close to the application site will also be forced away from the area during construction and operation when vessels and the wharf are in operation. This will affect significant numbers of redshanks and other waterbirds that are features of The Wash SPA/Ramsar. As such impacts will not be avoided, any measures to address them cannot be considered "mitigation" and are properly described as compensation. We discuss this in our initial</p>

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			comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions.
7.29-7.30		The Applicant agrees that the outlined characteristics for an alternative roost are essential for effective provision for waterbirds. The Applicant highlights that the Habitat Mitigation Area lies within the Order limits of the Application Site and so is secured, and the measures in this area are included in the OLEMS which is secured by Requirement 5 of the draft DCO. Further information on roost design will be included in the updated OLEMS to be submitted at Deadline 3.	We continue to have concerns about the proposed Habitat Mitigation Area. We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions.
7.31 to 7.38	Construction and operational noise – effect of noise on birds using The Haven, definitions of daytime and night-time , impulsive noise disturbance threshold	Piling is subject to a seasonal restriction to avoid overwintering periods for birds. There is also proposed monitoring of noise levels with regard to a threshold for birds at which noisy activities would be stopped. The threshold is to be agreed with Natural England but is expected to be similar to that used for groundwork investigations undertaken by the Environment Agency in the localised area. Noise impacts are addressed in the ES Chapter 17 Marine and Coastal Ecology.	<p>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.</p> <p>We note Natural England's written response to this question for Issue 4b of the Environmental Matters 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>

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7.39		<p>The Applicant acknowledges the RSPB's preference for a specifically quantitative analysis of noise levels during construction and operation to inform the HRA and its worst-case scenario (WCS). However, the Applicant stresses that the presence and potential impacts of construction and operation-phase noise have already received consideration within the HRA (ES Appendix 17.1, document reference 6.4.18, APP-111), the Addendum to ES Chapter 17 and Appendix 17.1 - Marine Mammals (document reference 9.14, REP1-027) and Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026) to the full extent necessary to inform conclusions regarding adverse effect on integrity.</p>	<p>In order to fully understand the impact of the proposed application on waterbirds along The Haven it will be important to have a clear picture on current noise levels and the predicted future changes. We discuss this further in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as required, in future submissions.</p> <p>We also refer the Applicant to Section 4.7.3 (p.52) of 'Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC' report that states:</p> <p><i>“The onus is therefore on demonstrating the absence of adverse effects rather than their presence, reflecting the precautionary principle (C-157/96 paragraph 63). It follows that the appropriate assessment must be sufficiently detailed and reasoned to demonstrate the absence of adverse effects, in light of the best scientific knowledge in the field (C-127/02 paragraph 61).”</i></p>
7.40-7.44	Lack of noise maps to understand sound levels along The Haven	Noise monitoring and thresholds will be developed further for the updated OLEMS including noise contour plots.	Noted and welcomed
7.45	Consideration of noise associated with the operation of the Wharf	Noise from the wharf and vessels during construction phase is considered for birds and marine mammals in paragraphs 17.8.65 to 17.8.91 of the ES Chapter 17 Marine and Coastal Ecology (document reference 6.2.17, APP-055) and paragraphs A17.6.4 to A17.6.12 of ES Appendix 17.1 HRA (document reference 6.4.18, APP-111). Operational noise is considered in paragraphs 17.8.204 to 17.8.206 of the ES Chapter 17 and paragraphs A17.6.23 to	We do not agree that suitable noise assessments have been conducted for birds, as the noise surveys were not targeted to address this issue. We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions. We welcome additional work on noise thresholds.

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
		A17.6.24 of ES Appendix 17.1 HRA. Noise monitoring and thresholds will be developed further for the updated OLEMS.	
7.46		Noted by the Applicant. Noise contour plots will be developed and included in the updated OLEMS.	Noted and welcomed
7.46 [sic]	Proposed mitigation of noise impacts during construction	The noise monitoring and thresholds specifically for this project will be developed further in the updated OLEMS document	Noted and welcomed
7.48		Other sources of (lower level) noise are not explicitly outlined or discussed by the Applicant as they are not considered a significant factor in assessment of impacts on birds outside the boundary of protected sites.	We disagree with the Applicant, for the reasons noted in our response to 7.39 above. This needs to be addressed to provide a complete assessment of noise impacts cumulatively and in combination with other activities. We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions.
7.49		Paragraph 17.8.77 of the ES Chapter 17 Marine and Coastal Ecology (document reference 6.2.17, APP-055) details the precedent successful use (Environment Agency 2019, Boston Barrier 2019 Survey Report) of a radius of 500 m (i.e. a much larger monitoring area than the currently proposed 250 m distance) for mitigating against disturbance to foraging waterbirds, and the Environment Agency's suggestion from bird monitoring that, "250 m is a more reasonable distance to consider potential disturbance effects of GI (geotechnical investigation) activities on non-breeding waterbirds. There was no evidence of any visual or noise disturbance affecting birds over this distance." The Applicant therefore considers the approach, in principle, to be sound. The Applicant acknowledges that absence of birds during periods of in-progress construction activity may in fact have a causal	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.

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		relationship, but also that this is impossible to either confirm or rule out on a case-by-case basis. The scale at which birds would be excluded can be seen in the counts of waterbirds present during baseline surveys and for the vast majority of species the numbers present are not significant from a Wash SPA population perspective (less than 1% of Wash SPA population, see Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment – Ornithology Addendum (document reference 9.13, REP1-026)). The Applicant considers that the measure will seldom be triggered due to counts of birds present being low, but when used will see a successful reduction in disturbance to waterbirds. The Applicant does not consider it proportionate that broad changes to permitted activities be introduced for the Haven area as a result of project-specific baseline survey data.	<p>We note Natural England's written response to this question for Issue 4b of the Environmental Matters 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> <p>We have also discussed this in our initial comments on the Ornithology Addendum (REP2-045). We will provide more details in future submissions as appropriate.</p>
7.50		The noise monitoring and thresholds specifically for this project will be developed further in the updated OLEMS document.	Noted and welcomed
7.51		The noise monitoring and thresholds specifically for this project will be developed further in the updated OLEMS document.	Noted and welcomed
7.52	Conclusions regarding the impact of noise associated with construction and operation of the Facility	The location of the roosting areas and the proposed works have been assessed in relation to distances for potential disturbance. This is reported in the Chapter 17	We disagree that any detailed assessment has been carried out. We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions.
7.53		The Applicant agrees and considers the mitigation measure to be demonstrably suitable with applied precedent in the local area. The noise monitoring and thresholds specifically for this project will be developed further in the updated OLEMS document.	<p>Noted. We continue to have concerns with the proposed mitigation and compensation measures. We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions.</p> <p>We welcome additional work on noise impacts.</p>

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7.54-7.55	Visual disturbance on birds using The Haven adjacent to the Application site	Noted by the Applicant. The Applicant maintains that the evidence base, such as the Waterbird Disturbance Mitigation Toolkit (Cutts et al. 2013), suggests that redshank have high resilience to visual disturbance and are unlikely to be excluded from foraging habitat close to plant or workers.	We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions.
7.56		Noted by the Applicant.	Noted
7.57	Clarity on the numbers of vessels using the wharf	The Applicant highlights that the quantitative baseline and worst-case-scenario vessel numbers and transits are clarified as of Deadline 1 in section 4.1 of Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment – Ornithology Addendum (document reference 9.13, REP1-026).	We continue to have concerns with the Applicants assessments. We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions.
7.58		Vessel movements quoted encompass transits relating to both RDF and aggregate.	Noted.
7.59		This question has been addressed at Deadline 1 in row 84 of Table 1-3 of Comments on Relevant Representations (document reference 9.2, REP1-002). Further additional work on the turning of BAEF vessels is presented in the Navigation Risk Assessment (document reference 9.27) submitted at Deadline 2. It should be noted that the use of the wet dock at the Port of Boston will be made available and utilised for approximately 50% of vessels requiring turning (as confirmed by the Port of Boston).	Noted
7.60	Visual disturbance arising from construction and operation activities at the Application Site	Noted. The Applicant also highlights that the species for which The Haven adjacent to the proposed Facility is recorded to be of higher importance (as measured by % of The Wash SPA estimated populations) (redshank, ringed plover) are documented by Cutts et al. (2013) to be largely tolerant of visual disturbance from construction and many are furthermore tolerant of noise stimuli.	We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions.
7.61	Impact of vessel movements on	The Applicant agrees that the baseline situation has an impact on birds which are disturbed by vessel movements. This seems to	The key factor is that there is an acknowledged impact of vessel movements on birds using The Haven, both at the

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	birds at wharf area	occur due to all types of vessel. .The birds are however still using this area but it is not known how much of an effect this has had since the vessels started using The Haven. The assessment is about whether the increase over baseline levels is likely to cause a significant change.	Application site and the mouth of The Haven (as demonstrated by the Applicant's survey data. This is new information that was not previously known. The significance of this information has not been fully assessed to determine how much of an effect vessel disturbance is already having to the abundance and distribution of qualifying features of The Wash SPA/Ramsar. A number of species already have WeBS Alerts due to site-specific pressures and a number of species have restoration targets. Until the baseline situation has been explored in detail it cannot be concluded that there is not an adverse effect integrity of The Wash SPA/Ramsar already occurring from existing pressures. This is critical to enable an accurate assessment of the additional impacts that would be created by the Application. At this stage, given the available evidence, we cannot conclude that there is not an adverse effect on integrity occurring as a result of current vessel movements or additional vessel movements predicted during construction and operation of the facility. We also discuss this in our initial comments on the Ornithology Addendum (REP2-045).
7.62		Noted. The assessment is focussing on vessel movements over and above the baseline levels. There is expected to be an additional number of vessel movements up to 2 movements per tide as a result of the operational phase. This increase is small compared to the number of all vessels using The Haven on a daily basis.	We disagree with the Applicant's position, given the significant impacts arise from large vessels (as shown by the Applicant's surveys). Large vessels will increase to all navigable tides and will increase the maximum vessel numbers to between 3 and 5 vessels per tide. A more detailed assessment of vessel movements per tide is required. We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as required, at future submissions.

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7.63		Noted. The Applicant confirms that these distances are similarly reported at Deadline 1 in Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment – Ornithology Addendum (document reference 9.13, REP1-026).	Noted
7.64-7.65		Noted by the Applicant. Publications by N Burton and BTO on the Cardiff Bay waterbirds have been key resources in the Applicant's assessment.	Noted
7.66		The Applicant agrees and considers that a site-specific picture of waterbird responses to disturbance factors has been collected, both at the Application Site and within the sub-area of the designated site (The Wash SPA/Ramsar/SSSI) through which project vessels would pass.	We disagree that a suitable site-specific assessment has been carried out. We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions.
7.67	Visual disturbance at the mouth of The Haven and its approaches	<p>The Applicant agrees with RSPB that there is significant existing vessel activity in The Wash and that this can cause disturbance of birds. The Applicant has presented a detailed analysis of the frequency and consequence of existing vessel disturbance at the mouth of The Haven in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026).</p> <p>The Applicant also agrees that conclusions relating to vessel disturbance at the mouth of the Haven is set in the context of the SPA conservation objectives and Natural England's Supplementary Conservation Advice relating to this. The assessment of vessel disturbance presented in Appendix 1 of the Ornithology Addendum only considers the additional disturbance predicted to occur as a result of the proposed development. It makes no attempt to consider whether the existing (baseline) vessel disturbance compromises The Wash SPA conservation objectives.</p>	Noted. We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions.

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		The Applicant notes that WeBS Alerts are not mentioned in Natural England's Supplementary Conservation Advice on conservation objectives for The Wash SPA. However, WeBS alerts have been used to provide information to support the assessments undertaken for the Facility.	
7.68		The Applicant agrees with RSPB that the existing vessel disturbance of birds at the mouth of the Haven has not previously received the attention it merits and that as a consequence its potential importance may have been under appreciated. In recognition of this the Applicant has commissioned surveys to collect systematic data on baseline vessel disturbance at the mouth of The Haven and presented a quantified analysis of baseline disturbance in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026).	Noted. We consider there to be significant limitations with the Applicant's surveys. We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions.
7.69		The Applicant notes that many of recommendations in 2015 <i>Wash Wader Decline</i> report have not been taken forward. The assessment has considered where there have been declines in bird numbers and whether these have been in line with the regional or national trends. This is discussed further in the Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026).	Noted. We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions.
7.70		Noted by the Applicant. The Applicant would also like to point out that there are no local targets with respect to bird numbers for different local areas within The Wash, only for The Wash as a whole. This is relevant because The Wash covers a very large area (615 km ²) and the potential vessel disturbance from the proposed development would be highly localised.	Whilst there are no local targets for different areas within the Wash, birds that are displaced from one area of The Wash have to go somewhere else and that will obviously increase competition at the site they move to and therefore reduce the overall carrying capacity of the Wash. The loss of a roosting or feeding area also reduces the resilience of the SPA by reducing the number of potential alternative feeding/roosting areas that birds can

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			use in different weather/tide conditions or if there is disturbance or low food supply elsewhere.
7.71	Clarity on vessel movements on rising and falling tides along The Haven and within The Wash	Noted by the Applicant. Fundamentally, vessel movements will be restricted to one to two hours before high tide to 1.5 hours after the high tide period, when water depths in The Haven are sufficient for vessel transit, and for most species (especially waders) this coincides with the period when intertidal feeding grounds are covered by water and thus birds are generally roosting. While some disturbance or displacement of foraging birds cannot be ruled out, this is likely to be of relatively low importance compared to disturbance of roosting birds.	It cannot be concluded that there will not be foraging birds affected. The fact that birds have been recorded in front of the Cut End Bird hide indicates that they are using mudflat. This will enable some foraging to continue close to the navigation channel. The importance of birds to be able to continue to forage on these lower tides has not been considered. The importance of such foraging, especially for species such as black-tailed godwit that can be in energy deficit, has not been considered by the Applicant. We continue to disagree with the Applicant's position and discuss this in our initial comments on the Ornithology Addendum (REP2-045).
7.72		Noted by the Applicant. The Applicant agrees that this could be included in monitoring and will be considered further.	Noted
7.73	Impact from pilot vessels	The Applicant agrees that baseline observation demonstrate that activity by pilot vessels pilot can lead to bird disturbance. The Applicant recognises that speed restrictions on pilot vessels are likely to be effective at reducing disturbance by pilot vessels but that this is outside of the control of the Applicant.	Noted
7.74		The assertion that pilot vessel activity was formerly greater is based on the assumption that there is likely to be a strong positive and causative relationship	Noted

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7.75		Noted by the Applicant. The operation of the Facility will not require pilot boats to operate outside of their current operational periods as the transiting of BAEF vessels will be the same as for the current commercial vessels using The Haven (restricted by high water times).	Noted
7.76		Noted by the Applicant. A more detailed analysis of the results of baseline vessel disturbance study is presented in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026).	We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions.
7.77	Assessing impacts of vessel movements across the tidal cycle	The Applicant agrees that night-time observations on baseline vessel disturbance are desirable but point out the practical difficulties of observing birds during the hours of darkness. The assessment carried out assumes that night-time disturbance is similar to that which occurs during the day because many of the shorebird species in question can undertake nocturnal roosting and foraging (Rogers 2003, Lourenço <i>et al.</i> 2008). While there is often a difference in sites selected for these activities between night and day (Rogers 2003, Jourdan <i>et al.</i> 2021), it is precautionary to assume the site has suitability for some individuals and species of the relevant waterbird assemblage at both day and night time. Previously, N. Burton and the BTO's research of effects of the Cardiff Bay Barrage on redshank has highlighted nocturnal foraging in areas of mudflat which were not used during the day when disturbance [from aircraft and noise] was higher (Burton <i>et al.</i> 2003).	We agree that waders can feed and roost at night, and that their habitat use may vary compared to the daytime (as in the Cardiff Bay studies). The numbers using the site at night may be similar, lower or greater than in the day and it would be valuable to assess which is the case (if the numbers using the site at night are much greater then the risk of nocturnal disturbance will be greater; it is reasonable to think this may be the case given there is likely more human activity along the banks of the Haven during the day). Numbers at night can be assessed using night vision equipment or other techniques, though we acknowledge that identification to species level can be challenging.
7.78	Assessing the impact of successive vessel movements	Noted, the Applicant agrees that the paragraph under discussion does not clearly describe the situation. The analysis of the results of baseline vessel disturbance study is presented in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026) shows that repeat	We note the Applicant's comments regarding assessing baseline conditions and the link to conservation objectives and condition assessment. We recognise that it is not for the applicant to assess the conservation status of designated features – that is for

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		<p>disturbance events (i.e. within the same high tide period) were sometimes observed for some species.</p> <p>It should be noted that the baseline study of vessel disturbance was undertaken to characterise baseline conditions, and not to assess if the existing (baseline) levels of vessel disturbance are against the SPA's conservation objectives. It is not the Applicant's responsibility to assess baseline disturbance or make a judgement as to whether or not this may contravene the SPA conservation objectives. The Applicant understands that this responsibility falls to Natural England and that any failure to meet conservation objectives should be apparent through Natural England's programme of regular site conditioning monitoring. The Applicant limits the assessment of vessel disturbance at the mouth of The Haven to the predicted impact of the additional disturbance that would result if the proposed development goes ahead.</p>	<p>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 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>

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7.79		<p>The analysis of the results of baseline vessel disturbance study presented in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026) shows that it is the case that in the great majority of incidents of disturbance observed, the birds affected were able to relocate to an alternative location where they resumed roosting behaviour. It is acknowledged that repeat disturbance was sometimes observed and that some species are more susceptible to this than others. The Natural England's guidance on the SPA conservation objectives defines the circumstances under which disturbance should be considered significant. The Applicant asserts that disturbance that does not categorise as significant according to the definitions in the NE guidance is necessarily acceptable, as it would not contravene the SPA conservation objectives. The Applicant has based the assessment of predicted additional vessel disturbance in Appendix 1 to the Ornithology Addendum on NE's conservation objectives guidance. The Applicant also acknowledges that even if the additional disturbance is deemed acceptable, any additional disturbance is nevertheless undesirable and should be avoided or minimised as far as is reasonably practical.</p> <p>Again, the Applicant wishes to point out that the assessment of vessel disturbance at the mouth of The Haven set out in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026)) is limited to consideration of the additional disturbance that would result from the proposed development [<i>sic</i>]</p>	<p>The key factor is that there is an acknowledged impact of vessel movements on birds using The Haven, both at the Application site and the mouth of The Haven (as demonstrated by the Applicant's survey data. This is new information that was not previously known. The significance of this information has not been fully assessed to determine how much of an effect vessel disturbance is already having to the abundance and distribution of qualifying features of The Wash SPA/Ramsar. A number of species already have WeBS Alerts due to site-specific pressures and a number of species have restoration targets. Until the baseline situation has been explored in detail it cannot be concluded that there is not an adverse effect integrity of The Wash SPA/Ramsar already occurring from existing pressures. This is critical to enable an accurate assessment of the additional impacts that would be created by the Application. At this stage, given the available evidence, we cannot conclude that there is not an adverse effect on integrity occurring as a result of current vessel movements or additional vessel movements predicted during construction and operation of the facility. We also discuss this in our initial comments on the Ornithology Addendum (REP2-045).</p> <p>We also refer back to our comment on paragraph 7.78 with respect to condition assessments for The Wash SPA.</p>
7.80		<p>A more detailed assessment of the vessel disturbance observations has since been undertaken and is presented in Appendix 1 of the Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026). This shows that the baseline level of vessel disturbance at the mouth of The Haven is high for</p>	Noted

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		<p>some species either in terms of the frequency (proportion of high tides with disturbance) or the proportion of the SPA population affected, or both. The Applicant agrees with RSPB that repeated disturbance (i.e., within the same high tide period) materially contributes to the overall levels of baseline disturbance.</p>	
7.81		<p>The Applicant recognises that an appropriate degree of precaution in light of uncertainty is best practice.</p> <p>The meaning of the sentence "<i>There is a trend towards birds being displaced by successive disturbance events, but there are occasions where birds displaced are equivalent or greater than on the first event (29% of events).</i>" is not clear.</p>	<p>Noted.</p> <p>The sentence being referenced is in relation to the numbers of birds being disturbed on different disturbance events. On some occasions, the same number of birds were displaced, as on the first disturbance event. There were even instances when the numbers of birds disturbed on a successive disturbance event were greater than the first event. This highlights some species persistence at remaining close to the area of disturbance.</p>
7.82	Consideration of the number of birds using The Wash SPA	<p>The Applicant agrees that the assessment of impacts should consider the conservation objectives for The Wash SPA and the supplementary Conservation Advice.</p> <p>The Applicant has examined these and did not find specific targets concerning "<i>maintaining or restoring the distribution of qualifying features</i>" (i.e. species) relating to the mouth of The Haven locality. Indeed, the Applicant is unaware of documents that present evidence that the current distribution of qualifying features in the mouth of the Haven locality is different to that at the time of SPA citation. To help identify whether restoring the distribution of any qualifying species is a relevant consideration, the Applicant requests that RSPB make available any evidence it holds that shows the current distribution of SPA qualifying species using the mouth of The Haven locality is materially different to what it was formerly (i.e. at the time of SPA citation).</p>	<p>Where the RSPB holds any data on bird numbers using the mouth The Haven we are happy to provide these to the Applicant via a data request. We hold some records, but these are limited.</p> <p>However, a detailed review of WeBS data would provide for a more rigorous assessment of species trends over time and how these may have altered around The Haven and its approaches. We recommend a more detailed WeBS assessment be presented to enable this issue to be scrutinised in more detail.</p>

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7.83		The Applicant agrees on the value of establishing the baseline importance of the mouth of The Haven locality to each SPA qualifying feature. An analysis of WeBS count data for the mouth of the Haven and wider local area has recently been completed by the Applicant and is provided in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026).	Noted. We highlight that a wider assessment of WeBS data is required. We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions.
7.84		<p>The relevance of an 800m buffer is questioned, as this distance is greater than the distance at which most species are likely to show a significant disturbance response (for example see, "Cutts, N, Hemingway, K & Spencer, J (2013). <i>Waterbird Disturbance Mitigation Toolkit Informing Estuarine Planning & Construction Projects Version 3.2</i>, March 2013 Copyright University of Hull" https://gat04-live-1517c8a4486c41609369c68f30c8-aa81074.divio-media.org/filer_public/8f/bd/8fbd7e9-ea6f-4474-869f-ec1e68a9c809/11367.pdf)</p> <p>It is acknowledged that WeBS count sector coverage for those parts of The Haven that lie outside The Wash SPA /SSSI boundary is largely lacking. The fact that these areas were excluded from the SPA /SSSI presumably reflects that the designating authority had knowledge that bird numbers using these parts were too low to merit designation.</p>	The 800m buffer is based on the Applicant's own surveys which demonstrated displacement to this distance. This highlights the need to ensure recommendations are site-specific to understand how waterbirds using The Haven and its approaches respond to disturbance.
7.85		The review of WeBS data for The Haven count sectors is presented in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026).	Noted. We highlight that a wider assessment of WeBS data is required. We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide more details in future submissions.
7.86	Assessing the effect of displacement on qualifying	The Applicant agrees that the potential for additional vessel movement to lead to redistribution of qualifying species roosting at the mouth of The Haven is a key issue. An assessment of the potential for additional vessel disturbance at the mouth of The	The key factor is that there is an acknowledged impact of vessel movements on birds using The Haven, both at the Application site and the mouth of The Haven (as demonstrated by the Applicant's survey data. This is new

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	features of The Wash SPA/Ramsar	<p>Haven to compromise The Wash SPA's conservation objectives is presented in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026). The Applicant asserts that NE's Supplementary Conservation Advice regarding the conservation objectives provides a good framework for judging if the consequences of additional vessel disturbance is significant, and could therefore compromise The Wash SPA conservation objectives.</p>	<p>information that was not previously known. The significance of this information has not been fully assessed to determine how much of an effect vessel disturbance is already having to the abundance and distribution of qualifying features of The Wash SPA/Ramsar. A number of species already have WeBS Alerts due to site-specific pressures and a number of species have restoration targets. Until the baseline situation has been explored in detail it cannot be concluded that there is not an adverse effect integrity of The Wash SPA/Ramsar already occurring from existing pressures. This is critical to enable an accurate assessment of the additional impacts that would be created by the Application. At this stage, given the available evidence, we cannot conclude that there is not an adverse effect on integrity occurring as a result of current vessel movements or additional vessel movements predicted during construction and operation of the facility. We also discuss this in our initial comments on the Ornithology Addendum (REP2-045).</p> <p>We also refer back to our comment on paragraph 7.78 with respect to condition assessments for The Wash SPA.</p>
7.87		<p>The Applicant agrees that it is desirable for roost sites to be close to feeding areas, but the actual distance needs to be considered in the context of the range of distances a species typically travels between foraging sites and roost sites. An assessment of the potential for additional vessel disturbance at the mouth of The Haven to compromise the roosting potential is presented in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026). The addendum</p>	<p>Any discussions about distances should be based on a site-specific understanding of species behaviour. We discuss this in our initial comments on the Ornithology Addendum (REP2-045).</p>

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		also provides additional information on the implications of extreme weather.	
7.88		The surveys have been undertaken to gain an understanding of the behavioural responses of birds to disturbance around the high-water period. There are always limitations to any survey work but the results have shown a reasonably consistent response by the species that use this area during these periods.	We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as required, in future submissions.
7.89		The availability of potential alternative roost sites for redshank and other species roosting at the mouth of The Haven that are disturbed by vessels is examined in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026). The baseline study of vessel disturbance showed that redshank disturbed by vessels were able to relocate to alternative roost sites within 1 km of the mouth of The Haven. None of the redshanks that were disturbed by vessels during the study were observed to respond by moving to the lagoon at RSPB Freiston Shore Reserve; all birds that were disturbed moved to locations that were considerably closer. The relatively large numbers of redshank regularly recorded in WeBS sectors adjacent to the mouth of The Haven sectors also provides additional evidence that there are multiple alternative roost sites for redshank that are closer to the mouth of The Haven than the Freiston Shore Reserve lagoon. This also applies to other species.	We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as required, in future submissions.

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7.90		The consequences of additional vessel disturbance at the mouth of The Haven on oystercatcher is examined in detail in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026). In all cases of observations of vessel disturbance of wintering oystercatcher at the mouth of The Haven, the birds affected were seen to move to alternative locations between 150 m and 800 m away.	We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as required, in future submissions.
7.91		The consequences of additional vessel disturbance on black-tailed godwit are examined in detail in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026). The baseline study observations of vessel disturbance of wintering black-tailed godwit at the mouth of The Haven, showed that birds that were disturbed from the roost were able to move to alternative locations between 150 m and 800 m away. Also see response to para 7.102 below.	We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as required, in future submissions.
7.92		The consequences of additional vessel disturbance at the mouth of The Haven on turnstone is examined in detail in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026).	We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as required, in future submissions.
7.93		The analysis of WeBS Core count data presented in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026) shows that the count sectors in the vicinity of mouth of The Haven have high importance for wintering shelduck. However, the analysis of the baseline observations on vessel disturbance at the mouth of The Haven presented in Appendix 1 shows that vessel disturbance affected relatively small numbers of shelduck in the context of the numbers occurring locally and in The Wash as a whole. The Applicant agrees that the causes of The Wash shelduck decline are not well	Noted. We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as required, in future submissions.

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
		<p>understood, but point out that WeBS count data show that this species has undergone significant long-term decline across the UK.</p>	
7.94		<p>The consequences of additional vessel disturbance at the mouth of The Haven on brent geese are examined in detail in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026).</p> <p>The Applicant requests RSPB to make available to them data that support their suggestion that brent geese are likely to occur in large numbers in the vicinity of the central parts of The Haven.</p>	<p>We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as required, in future submissions.</p>
7.95		<p>The consequences of additional vessel disturbance at the mouth of The Haven on lapwing and golden plover are examined in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026).</p> <p>The Applicant considers it is relevant to clarify here that neither lapwing nor golden plover are qualifying interests of The Wash SPA in their own right. Furthermore, although lapwing and golden plover are cited as species that contribute to The Wash SPA non-breeding waterbird assemblage feature, neither species is listed as a 'main component species' of the waterbird assemblage.</p> <p>Also see response to para 7.102 below.</p>	<p>We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as required, in future submissions.</p>
7.96		<p>The Applicant recognises that moderate numbers of individuals of some of The Wash SPA qualifying non-breeding species remain at The Wash through the summer months and that these birds are potentially affected by vessel disturbance. However, vessel disturbance during the summer is relatively unlikely to cause adverse energetic stress to these birds due to the warmer temperatures and longer day length (more potential feeding time) in comparison to the winter months.</p>	<p>We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as required, in future submissions.</p>

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
7.97		Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026) clarifies how the potential frequency of vessel disturbance is predicted to change as a consequence of the proposed development. The Applicant also notes that the future frequency of vessel disturbance incidents at the mouth of The Haven is also likely to change as a consequence of the shifting baseline in vessel traffic using The Haven.	We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as required, in future submissions.
7.98		The relevance of higher levels of historical vessel evidence is not that this may indicate a lack of impact on birds, rather that, irrespective of the proposed development under consideration, commercial vessel activity may increase in the future and that this increase could occur without regulation. In other words, even if the proposed development does not go ahead, this would not prevent a future rise in vessel activity and an associated increase in vessel disturbance to birds.	Where there is an identified adverse effect on integrity of The Wash SPA/Ramsar site, then measures will need to be considered with all relevant stakeholders to identify actions to maintain and restore qualifying features. The fact that such increase could occur in the future is not justification to consent a plan or project that could give rise to an adverse effect on integrity on The Wash SPA/Ramsar site, or exacerbate pressures causing deterioration. This is counter to the purpose of Habitats Regulations to avoid adverse effects on the integrity of SPAs (and Ramsar sites) and would not be acceptable. We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as required, in future submissions.
7.99		The surveys target the high water period as this is when there would be a change from the baseline in terms of disturbance levels. There would not be any change at other states of the tide. In terms of vessel movements within The Wash the numbers of vessels using the wider area are considerably higher and the relative increase is therefore much smaller.	We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as required, in future submissions.

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
7.100	Energy budget	<p>In the case of golden plover and lapwing (species that are neither qualifying species of the SPA, nor considered core assemblage species) the Applicant notes that very large areas of agricultural land are available locally for foraging and roosting (unlike other wintering waders these species are not dependent on intertidal feeding grounds), and that both these species are adapted to also feed at night.</p> <p>Also see response to para 7.102 below.</p>	<p>Both lapwing and golden plover are named in the assemblage in the UK SPA Review 2001 site account⁴: this means they are notable components as they are present in more than 1% national population levels (the threshold required for inclusion within the SPA Site Account in the 2001 Review).</p> <p>The UK SPA Review 2001 also clearly highlights that golden plover is a feature of The Wash SPA. It is also an Annex 1 species and requires special protection throughout its range year-round. Lapwing is also clearly listed under the assemblage qualification.</p> <p>We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as required, in future submissions.</p>
7.101		<p>The Applicant agrees that alternative roost sites might have higher predation risks for some species, this matter is discussed in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026). The Applicant notes that the colonising shrubs on the (man-made) seawalls along The Haven are likely to increase predation risk to small shorebirds, for example through the potential to provide cover to sparrowhawks and foxes. The Applicant would welcome discussion with RSPB (and other stakeholders) regarding reducing predation risks by appropriate vegetation management.</p>	<p>Whilst predation risk is factor that can affect waterbirds there is no evidence presented by the Applicant that predation risk is a significant factor affecting waterbird use of the navigation channel from the application site to the Port of Boston anchorage area. There is also no evidence provided to indicate what predators the Applicant considers to be a problem along The Haven. Understanding whether the predator is, for example, domestic cats, birds of prey, foxes, otters, badgers, stoats or mink (not an exhaustive list), will identify any management measures that would be appropriate to address any problem that may exist. No such information has been provided by the Applicant.</p>

⁴ See assemblage text at p216 out of 397 in the Sites volume: <https://data.incc.gov.uk/data/3634580a-cabc-4218-872f-8660a1760ad8/uk-spa-vol3-web.pdf>

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
			<p>No connection is made by the Applicant to demonstrate that predation risk has any relevance to the key issues identified by the data collected by the Applicant that need to be addressed. Whilst management of predation risk may be important when considering the location and design of new habitat, the relative importance of predation risk as a key pressure impacting on roosting and foraging waterbirds along The Haven and its approaches must be set in the context of other activities that are causing disturbance. For example, how important is predation risk when compared to disturbance from vessel movements or recreational activities?</p> <p>Whilst we are happy to discuss the issue further with the Applicant more detail is needed to understand their proposed vegetation management plans, where they consider this would be appropriate and their justification for progressing such work.</p>

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
7.102		<p>Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026) includes additional information on the energetic costs of the additional vessel disturbance to bird roosting at the mouth of The Haven as a consequence of the proposed development.</p> <p>It is already apparent that the distances birds using the mouth of The Haven typically move in response to vessel movements is small and that birds typically resettle quickly. Therefore, any increase in energy expenditure as a result of the proposed development are likely to be very small in the context of baseline energy expenditure. The proposed increase in vessel movements will not affect the feeding periods as during low tide periods the vessels will not be using The Haven due to depth restrictions. Therefore, the energy inputs are not affected.</p>	<p>We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as required, in future submissions.</p>
7.103	Displacement around the shipping lane	<p>The Applicant considers that the assessment of the potential consequences of vessel disturbance on birds' energy and time budgets need to take account of the time of year. Non-breeding individuals during the summer months (such as the oystercatchers under consideration here) are relatively unlikely to experience adverse energetic stress because of the warmer ambient temperature and longer day length (more potential feeding time) in comparison to the winter months. For this reason, it is considered that the response of birds to vessel disturbance observed during the wintering months are of greatest value for informing the assessment of impacts on wintering bird populations.</p>	<p>We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as required, in future submissions.</p>
7.104		Noted by the Applicant. Also see response to para 2.10 and 6.2.	Noted

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
7.105		<p>It is relevant to point out that the parts of The Haven lacking WeBS count data lie outside The Wash SPA/SSSI. It is reasonable to assume that these parts did not merit inclusion in the designations (at least at the time of designation) because bird numbers using these areas was low. Also see response to paragraph 6.2.</p>	<p>We disagree with the Applicant and have provided further comments on this in our initial comments on the Ornithology Addendum (REP2-045).</p> <p>The lack of WeBS sectors along The Haven cannot be taken as evidence of a lack of birds being present along the entirety of The Haven. This is not appropriate because it is of similar intertidal habitat present in The Wash which is relied upon by the significant number of internationally important waterbird populations, is functionally linked to The Wash and connects the development site to The Wash via a linear corridor that waterbirds would be expected to feed, roost and/or transit along.</p> <p>The designation of the WeBS sectors may also have been a pragmatic decision to align with The Wash SPA/Ramsar/SSSI boundary. There are a significant number of count sectors in The Wash (21 count sectors with each of these divided into multiple sub-sectors) and some take more than one counter. It is difficult to find enough counters for the Core sections, so a degree of prioritisation will have been required when establishing the survey areas.</p> <p>Whilst the area along the whole of The Haven is not designated, this should also not be taken as having low importance for waterbirds. This has been reflected by the surveys undertaken adjacent the application site. Currently there is no information to support the Applicant's position that there are no other areas of The Haven that are important for waterbirds. The Wash</p>

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
			<p>SPA/Ramsar/SSSI were designated on the basis of the evidence on waterbird numbers and distribution at the time. However, since then our understanding of the importance of functionally-linked land (i.e. areas outside the SPA that the birds use at certain times) upriver and in terrestrial habitats has improved. In addition, the available evidence is showing that bird numbers and distributions have changed over time and this may mean that areas outside of The Wash SPA/Ramsar/SSSI boundary are now more important as functionally linked land. This does not mean such areas are less important and do not warrant detailed surveys. Indeed, such areas are likely more important to survey to ensure that the latest evidence is being used to assess impacts on qualifying features of The Wash SPA/Ramsar/SSSI based on their current abundance and distribution. This is supported by the findings of the Applicant's surveys adjacent the application site where such significant numbers of birds were unknown until the data were collected.</p>
7.106		<p>RSPB's acceptance of 420 cargo vessels per year as the current baseline is noted.</p> <p>It is relevant to point out here that, irrespective of the proposed development going ahead, the future baseline vessel traffic will change in line with changes to commercial activity at Boston port and that these changes could occur without the need for EIA/HRA assessments.</p> <p>Based on Department for Transport (DfT, 2021) data, and as presented in the Navigation Risk Assessment (document reference</p>	<p>Where there is an identified adverse effect on integrity of The Wash SPA/Ramsar site, then measures will need to be considered with all relevant stakeholders to identify actions to maintain and restore qualifying features. The fact that such increase could occur in the future is not justification to consent a plan or project that could give rise to an adverse effect on integrity on The Wash SPA/Ramsar site, or exacerbate pressures causing deterioration. This is counter to the purpose of Habitats Regulations to avoid adverse effects on the integrity of SPAs (and Ramsar sites) and would not be acceptable.</p>

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
		9.27) there has been a general downwards trend in commercial port callings over the period since 1994. Callings at the Port of Boston peaked in 1996 (804 callings in total), with a general decline then observed, with callings during 2017 the lowest on record (377 callings in total).	We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as required, in future submissions.
7.107		The Navigation Risk Assessment (document reference 9.27) provides further clarity on vessel movements. It is outside of the control of the Applicant to determine vessel movements. This is controlled by the Port of Boston.	Noted
7.108		The number of vessels using the Port of Boston varies on an annual basis as discussed above in paragraph 7.106. The wet dock is due for expansion as part of the Boston Barrier project (prior to the construction of the Facility) to increase the size of vessels that can access the dock gate The wet dock expansion is not anticipated to result in an increase in vessels, rather an increase in vessel size, which has the potential to result in a decrease in the number vessels calling at the Port of Boston.	Noted. We will continue to review and provide comments as appropriate at future submissions.
7.109	Understanding the dynamics of birds at the mouth of The Haven	Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026) includes a detailed account of the use of the mouth of The Haven by The Wash SPA species.	We disagree that the Applicant has provided a detailed account for the whole of The Haven and its approaches. We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as required, in future submissions.
7.110		The Applicant has not attempted to examine the reasons for the low counts in 2021 and doubt this reflects more than stochastic variation. Counts of waterbirds using the mouth of The Haven are influenced by numerous factors, and small samples are naturally subject to stochastic variation. The predictions of the potential for the proposed development to cause additional disturbance presented in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026)	Noted. We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as required, in future submissions.

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
		takes this into consideration and bases the predictions on the numbers of birds counted in monthly WeBS counts over a five-year period.	
7.111	The need to better understand the trend in bird numbers and distribution	See response to para 7.112 below.	Noted
7.112		<p>The Applicant agrees that it is not reasonable to assume that there have been no long-term changes in the numbers of birds using the mouth of The Haven for roosting as a consequence of vessel disturbance there. This matter is discussed in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026). In any case, the changes that may have occurred in the past due to historical vessel disturbance are peripheral, the question that needs to be addressed is whether the additional disturbance that would result from the proposed development will lead to change from the current baseline.</p> <p>The list of SPA Supplementary Conservation Advice attributes that RSPB consider relevant is noted. The Applicant does not agree that all these are relevant. For example, the proposed development will not affect the extent of habitat in the vicinity of the mouth or The Haven, nor will it affect the safety of birds passing between roosting and feeding areas (this is understood to refer to risks of injury and death from shooting and collision with man-made hazards).</p>	<p>Noted.</p> <p>We discuss this further in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as required, in future submissions.</p>
7.113		The Applicant agrees that consensus on the matters of importance is desirable and will continue to liaise with Natural England in relation to the matters of importance.	Noted

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
7.114		<p>The information presented in Appendix 1 of Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026) details the target SPA population sizes for the species examined in detail.</p> <p>The Supplementary Conservation Advice for The Wash SPA states that the target for redshank is to: <i>"maintain the size of the population at a level which is above 4,331 individuals"</i>. The 2014-2019 five year mean peak WeBS count (the recognised measure of the population size for The Wash SPA) was 5,239 birds, a figure that is over 20% greater than the target figure. There is also no WeBS alert for The Wash redshank feature. See response to paragraph 7.22 for additional points.</p>	Noted. We discuss this in our initial comments on the Ornithology Addendum (REP2-045) and will provide further comments, as required, in future submissions.
7.115	Vessel movements	The Applicant agrees that the discussion of vessel traffic trends should focus on the types of vessels most likely to cause disturbance which appears to be the large cargo vessels at the mouth of The Haven and the pilot vessels. The assessment has focussed on the large cargo vessels as there are not predicted to be an increased number of pilot vessels as the pilot vessel just takes additional pilots out on the pilot vessels and drops them off on the vessel or takes them back to port.	Noted
7.116 7.117 7.118 7.119	Lighting impacts during construction and operation	<p>For construction, Requirement 10, Code of Construction Practice, of the draft DCO (document reference 2.1(1), REP1-003) includes the requirement for an artificial light emissions management plan. The plan will detail the appropriate management and mitigation measures to be taken to manage artificial light emissions, with outline details provided in the Outline Code of Construction Practice (document reference 7.1, APP-120).</p> <p>An outline lighting strategy (document reference 7.5, APP-124) has been developed that details the lighting requirements for</p>	Noted. We continue to review the revised DCO and will provide comments at a future submission.

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
		<p>operation. Lighting is expected to be directional and limited as much as possible to ensure it does not affect areas outside of the required areas of the wharf and the vessel.</p> <p>An assessment on lighting effects will be undertaken and submitted to the Examination.</p>	
7.120 7.121 7.122 7.123 7.124 7.125 7.126 7.127	Pollution impacts and control measures associated with the increased vessel movement	An Outline Surface Water Drainage Strategy (document reference 9.4, REP1-017) has been produced and was submitted for Deadline 1. This covers pollution control measures that are to be implemented to reduce risks of pollution.	We provided comments on the Outline Surface Water Drainage Strategy at Deadline 2 (REP2-052). We will provide comments at a future submission, as required.
7.128 7.129 7.130 7.131 7.132 7.133 7.134	Water discharge, run-off and control measures	An Outline Surface Water Drainage Strategy (document reference 9.4, REP1-017) has been produced and was submitted for Deadline 1. This covers the surface water drainage strategy.	We provided comments on the Outline Surface Water Drainage Strategy at Deadline 2 (REP2-052). We will provide comments at a future submission, as required.
7.135	Water Supply for the Facility	No abstraction from surface or groundwaters will be required for the operation of the Facility.	Noted
7.136	Comments on the proposed mitigation for	Noted by the Applicant.	Noted
7.137	the proposed mitigation for	Agreed, with final terrestrial ecology measures to be set out in the OLEMS (document reference 7.4, APP-123).	We will review the revised OLEMS and provide comments at a future deadline.

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
7.138	impacts on terrestrial ecology	<p>Section 12.7 of the ES Chapter 12 Terrestrial Ecology (document reference 6.2.12, APP-050) presents the potential impacts on terrestrial ecological receptors (including specific species and habitats where impacts have been predicted). These impacts are identified for during construction and operation and where embedded mitigation measures have been identified for those predicted impacts, these are also referred to in Section 12.7.</p> <p>Details relating to the establishment of the proposed landscaping mitigation proposals are presented in updated Chapter 9 Landscape and Visual Impact Assessment (document reference 6.2.9, REP1-004) and within the OLEMS (document reference 7.4, APP-123).</p>	Noted. We will review the revised OLEMS and provide comments at a future deadline.
7.139		<p>Noted by the Applicant.</p> <p>Paragraph 7.2.7 of the OLEMS (document reference 7.4, APP-123) presents the mitigation measures that will be adopted should vegetation clearance not be possible (or fully) completed outside of the nesting bird season.</p>	Noted. We will review the revised OLEMS and provide comments at a future deadline.
7.140 7.141 7.142	Reliance on the RSPB's reserves at Freiston Shore and Frampton Marsh to deliver compensation	It is acknowledged that these were high level discussions regarding potential net gain/compensation sites and that this is no longer available as an option. There are ongoing discussions with regard to alternative options that could be used for biodiversity net gain or compensation sites.	Noted
7.143	Relocation of the Fishing Fleet to the south of the Facility	The relocation of the Boston fishing fleet to any new wharf south of the Facility is not under consideration by the Applicant either as part of the DCO application or external to it, as part of any future plans. This was previously addressed in Comments on Relevant Representations (document reference 9.2) Table 1-3, row 29.	

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
7.144	Assessment of alternative options	The Applicant has prepared a without prejudice derogation case that will be submitted at Deadline 2. This includes an Assessment of Alternative Solutions (document reference 9.28).	We will provide comments on the derogation case at Deadline 4.
7.145		The provision of increased roosting areas in the area adjacent to the Principal Application Site is designed to increase the existing roosting area (which forms part of the existing roost site) rather than provide a new site. This is expected to provide sufficient habitat for the birds that were already using this larger roost site. The Applicant stresses that additional options for provision of alternative roost sites for redshank have been in-progress, during the period since submission of documents that are subject to the Written Representations here. These will be outlined at Deadline 3 in the updated OLEMS. The options are also outlined briefly in the Compensation report (document reference 9.30) produced as part of the 'without prejudice' derogation case.	We have not seen a detailed assessment of current roost locations. This information will be helpful in informing locations of search for compensation measures. We will review the updated OLEMS and provide comments at a future deadline.
7.146			
7.148	Summary or RSPB's position	Opinion noted by the Applicant with individual points responded to in other parts of this document.	Noted
8. Policy and Legislation Background			
8.1 to 8.3	Ramsar Convention, Birds Directive and SPA tightly drawn boundaries	Noted by the Applicant.	Noted

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
8.14 and 8.15	SPA tightly drawn boundaries	Comments from RSPB on the UK approach to implementation of the Birds Directive and the area designated compared to EU member states are beyond the remit and concern of the Applicant. In relation to the Facility, the Applicants HRA takes into account the concept of functional linkage, whereby land or sea beyond the boundary of a European site might fulfil a role in supporting the populations for which the site was designated or classified (Chapman and Tyldesley (2016)). Thus, although the Facility is outside the Wash SPA boundary, the HRA considers whether effects on SPA qualifying species may affect the integrity of the SPA (section 6 of Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026)).	Noted
8.16 to 8.29	The Habitats Directive, Uncertainty and the Precautionary Approach, the Habitats Regulations (including SPA and SAC Conservation Objectives, Principles of undertaking an Appropriate Assessment and Site Integrity)	Noted by the Applicant.	Noted

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
8.30	Functionally linked land	The Applicant agrees that the NE commissioned report on functional linkage is relevant to redshank and other waterbirds using the Application site and The Haven.	Noted
8.31		The Applicant disagrees with the statement that functional linkage is not consistently applied to SPA species. Detailed consideration is set out in section 6 of the ES Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026).	Noted. We accept that consideration is being given to the functional link between the Application site and The Wash SPA/Ramsar/SSSI. However, we remain concerned but some statements that downplay the functional link.
8.32		The Applicant disagrees with the statement in relation to functional linkage there is a serious gap in the HRA. Detailed consideration is set out in section 6 of the ES Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026).	Noted. We accept that consideration is being given to the functional link between the Application site and The Wash SPA/Ramsar/SSSI. However, we remain concerned but some statements that downplay the functional link.
8.33	Mitigation Measures	Noted by the Applicant.	Noted
8.34		The Applicant disagrees with the statement that the Applicant must set out how mitigation measures must be "financially secured". PINS and DEFRA Guidance do not require this.	Noted. However, the Applicant must demonstrate to the Examining Authority that sufficient funding will be available to enable mitigation, compensation and biodiversity net gain measures to be secured and delivered, as well as maintained in perpetuity.
8.35		Noted by the Applicant.	Noted
8.36	Habitats Regulations General Duties	Noted by the Applicant.	Noted
8.37		Noted by the Applicant.	Noted
8.38		Noted by the Applicant.	Noted
8.39		Noted by the Applicant.	Noted
8.40		Noted by the Applicant.	Noted
8.41		Noted by the Applicant.	Noted
8.42		Noted by the Applicant.	Noted
8.43		Noted by the Applicant.	Noted

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
8.44	The Wildlife and Countryside Act 1981	Noted by the Applicant.	Noted
8.45	Sites of Special Scientific Interest	Noted by the Applicant.	Noted
8.46		Noted by the Applicant.	Noted
8.47		Noted by the Applicant.	Noted
8.48		Noted by the Applicant.	Noted
8.49		Noted by the Applicant.	Noted
8.50		Noted by the Applicant.	Noted
8.51	Energy Policy Background	Noted and agreed by the Applicant.	Noted
8.52		<p>We note that the RSPB's representation refers to a now superseded version of the National Planning Policy Framework (NPPF). The NPPF (July 2021), Chapter 2 sets out current NPPF policy with respect to achieving sustainable development with paragraph 8 highlighting the three interdependent overriding objectives of: economic, social and environmental and at paragraph 9, their delivery through the preparation and implementation of plans and the application of policies in the NPPF. Paragraph 10 states 'So that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development, as set out in paragraph 11.'</p> <p>Chapter 15 of the NPPF concerns Conservation and Enhancement of the Natural Environment. Paragraph 179 to 182 set out up to date policy with respect to Habitats and Biodiversity which adopts a common approach to now superseded policy referenced by the RSPB. It is noted at paragraph 182 those circumstances where a presumption in favour of sustainable development does not apply.</p>	Noted. We will review and update in a future submission.
8.53			
8.54			
8.55			
8.56			

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
8.57	The Biodiversity Duty	Noted by the Applicant.	Noted
8.58	EIA Requirements	Noted by the Applicant.	Noted
8.59	EIA Directive Preamble	Noted by the Applicant.	Noted
8.60		Noted by the Applicant.	Noted
8.61		Noted by the Applicant.	Noted
8.62	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017	Noted by the Applicant.	Noted
8.63		Noted by the Applicant.	Noted
8.64		Noted by the Applicant.	Noted
8.65		Noted by the Applicant.	Noted
8.66		Noted by the Applicant.	Noted
8.67	The Worst Case Scenario	Noted by the Applicant.	Noted
8.68	All Aspects of the Proposed Development	Noted by the Applicant.	Noted
8.69		Noted by the Applicant.	Noted
8.70		The Applicant disagrees with the statement that potential cumulative effects and in-combination effects are lacking in the Environmental Assessment. Further detail is provided in responses to specific comments above.	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 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

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
			<p>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 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.</p>
8.71		<p>The Applicant disagrees with the concerns expressed about the level of data available, the assessment and mitigation measures. Further detail is provided in responses to specific comments above.</p>	<p>We discuss this further in our comments on the Ornithology Addendum (REP2-045) and will provide further comments in future submissions as required.</p>
8.72		<p>Further detail on the assessment of impacts was provided in Deadline 1 as discussed in the specific responses provided above. The Applicant is actively working to ensure an appropriate level of detail in relation to proposed mitigation measures is provided for the DCO examination. Potential options are being discussed with relevant landowners/managers to further the development of biodiversity net gain/compensation sites.</p>	<p>We discuss this further in our comments on the Ornithology Addendum (REP2-045) and will provide further comments in future submissions as required.</p> <p>We provide our initial comments on the high-level compensation options at Deadline 4. We do not consider the current derogation case to be fit-for-purpose based on the current level of detail provided by the Applicant.</p>

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
8.73	DCO – Initial Concerns	Noted by the Applicant.	Noted
8.74		The Applicant is actively working to ensure an appropriate level of detail in relation to proposed mitigation measures/biodiversity net gain and compensation sites is provided for the DCO examination, and a without-prejudice compensation case is being prepared. This includes for an appropriate level of monitoring to ensure that the measures proposed are effective.	We discuss this further in our comments on the Ornithology Addendum (REP2-045) and will provide further comments in future submissions as required. We provide our initial comments on the high-level compensation options at Deadline 4. We do not consider the current derogation case to be fit-for-purpose based on the current level of detail provided by the Applicant.
8.75	Legal Conclusions	Noted by the Applicant.	Noted
8.76		Further detail on the assessment of impacts was provided in Deadline 1 as discussed in the specific responses provided above. As above, the Applicant disagrees with the concerns expressed about the level of information provided and is actively working to ensure an appropriate level of detail in relation to proposed mitigation measures is provided for the DCO examination. Further detail is provided in responses to specific comments.	We discuss this further in our comments on the Ornithology Addendum (REP2-045) and will provide further comments in future submissions as required. We provide our initial comments on the high-level compensation options at Deadline 4. We do not consider the current derogation case to be fit-for-purpose based on the current level of detail provided by the Applicant.
9. The RSPB's concerns regarding failure to provide an in-principle derogation case			
9.1		Further detail on the assessment of impacts was provided in Deadline 1 as discussed in the specific responses provided above. Specific comments relating to the assessments are provided in the responses above.	We discuss this further in our comments on the Ornithology Addendum (REP2-045) and will provide further comments in future submissions as required. We provide our initial comments on the high-level compensation options at Deadline 4. We do not consider the current derogation case to be fit-for-purpose based on the current level of detail provided by the Applicant.
9.2		The 'Without Prejudice' Derogation Case will include compensation measures to be taken forward should they be	We provide our initial comments on the high-level compensation options at Deadline 4. We do not consider

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
		required. The potential compensation options are being taken forward with site visits and ongoing consultation with landowners/managers to progress these options.	the current derogation case to be fit-for-purpose based on the current level of detail provided by the Applicant.
9.3		The compensation measures have been outlined as part of the 'Without Prejudice' Derogation Case (document reference 9.30).	We provide our initial comments on the high-level compensation options at Deadline 4. We do not consider the current derogation case to be fit-for-purpose based on the current level of detail provided by the Applicant.
9.4		As this is a 'without prejudice' derogation case the Applicant will set out how the compensation measures will be secured if the SoS determines that there is an AEOL. The measures won't be secured in the DCO until such a determination is made.	A mechanism must be provided to enable the compensation to be secured and delivered within the DCO. We are unclear the implications of needing to revise the DCO following determination. We will provide further comments once we have completed our review of the revised DCO.
9.5		See response to paragraph 9.2 above.	We provide our initial comments on the high-level compensation options at Deadline 4. We do not consider the current derogation case to be fit-for-purpose based on the current level of detail provided by the Applicant.
9.6		The 'Without Prejudice' Derogation Case has been submitted to the Examination at Deadline 2 (document references 9.28, 9.29 and 9.30).	We provide our initial comments on the high-level compensation options at Deadline 4. We do not consider the current derogation case to be fit-for-purpose based on the current level of detail provided by the Applicant.
9.7		The 'Without Prejudice' Derogation Case has been submitted to the Examination at Deadline 2 (document references 9.28, 9.29 and 9.30).	
9.8		Noted by the Applicant.	
10. RSPB's approach to evaluating compensation measures under the Conservation of Habitats and Species Regulations 2017 (as amended)			
10.1		Noted by the Applicant.	Noted

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
10.2-10.8	The need to submit an "in principle" derogation package for public scrutiny	Noted by the Applicant.	Noted
10.9-10.15	The RSPB's approach to assessing compensation proposals	The Applicant notes that the Defra Guidance has been withdrawn on 15 March 2021 and has been replaced by the guide "Habitats regulations assessments: protecting a European site". The updated Defra guidance requires that compensatory measures will need to fully offset the damage which will or could be caused to the site" and that the "compensatory measures themselves must not have a negative effect on the national network of European sites as a whole, despite the negative effects of the proposal on an individual European site".	Noted. We will review and provide further comments in submissions as required.
10.16-10.24	What level of detail is required on proposed compensation measures	The Applicant considers that the appropriate balance must be struck with regards to the level of detail required for a without prejudice habitats derogation case. For example, while it would be appropriate to demonstrate that any land and legal consents can be secured, the Applicant does not agree with the position of RSBP that is necessary to show that any land has been secured and any other consents approved where there is disagreement as to whether compensation required.	We disagree with the Applicant's position, as there needs to be certainty that measures can and will be provided. We will continue to review the Applicant's evidence and provide further comments in future submissions, as required.
11. Assessment of cumulative and in combination impacts			
11.1		The potential for cumulative and in-combination impacts are covered at the end of each section within the ES documents.	
11.2		Appendix 17.1 HRA (document reference 6.4.18, APP-111) section A17.5 covers in-combination effects and notes that "in some circumstances it may be appropriate to include plans and projects not yet submitted to a competent authority for consideration but for which sufficient detail exists on which to make judgements on	Noted and we welcome the additional information from the Applicant. We are unclear if Natural England and the MMO have confirmed that all such plans and projects have been included. We will review future submissions on this point.

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		<p>their impact on the protected site", therefore, only plans and projects have been considered where sufficient detail exists. In addition, the assessment adopted the principle "for the proposed scheme to have the potential to contribute to in-combination effects, there must be sufficient cause to consider that a relevant habitat or species is sensitive to effects due to the project itself". Consequently, the list of plans and projects that have the potential to give rise to an in-combination effect were presented in Table A17-5. With regards to the specific projects the RSPB has noted, please see our comments as follows:</p> <ul style="list-style-type: none"> • The ground investigation works related to the Boston Barrier are historic works that have been completed, this is covered in Table A17.5; • The Havenside Flood Defence Scheme is due for completion in 2021, this is covered in Table A17.5; • It is acknowledged that the proposed route of the England Coast Path passes through the application site, however this is considered as part of the baseline of the assessment as it uses existing footpaths. In addition, the Riverside Industrial Estate, and there is no change in the footpath adjacent to the Habitat Mitigation Area; • Schemes have been considered from within the South-east Lincolnshire Local Plan where sufficient detail exists; • The review of plans and projects covered project with the potential to have in-combination effects, this included shipping and discharges into the Haven, where relevant (see Section A17.5 and Table 17-5); • The supplementary information for The Wash SPA (circulated to the RSPB on 5 March 2021) was used to determine other activities that are causing disturbance pressures. This includes for people 	<p>We disagree with the Applicant that evidence on additional activities that cause pressure on qualifying features of The Wash SPA/Ramsar/SSSI have been considered.</p> <p>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 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 fishing have</p>

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
		using the footpaths and has also taken consideration of the potential for predators using trees and scrub in the area.	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.
11.3		The cumulative and in-combination assessment includes for all plans and projects that were known at the time of the assessment. It is not appropriate to include all activities that form part of the baseline situation.	
11.4		As per response to 11.2 above, a comprehensive search has been made for plans and projects which may contribute to an in-combination effect and for which sufficient detail is available upon which to base an assessment. This includes plans and projects that may increase recreational pressure within the area	
11.5		See response to 11.2 above in relation to the England Coastal Path	
12. RSPB's concerns regarding the significant reliance on developing plans to address impacts post-consent			
12.1 to 12.3		<p>A number of outline plans have been submitted to the Examination which appropriately set out measures to be agreed post-consent with various regulatory and key stakeholders. The Applicant disagrees that the plans lack sufficient detail in order for final plans to be compiled and agreed that are substantially in accordance with the details set out in the outline plans. There have been very few comments on the outline plans to date from the regulatory bodies and this provides further confidence that the level of information is sufficient for them. The provision of outline plans as part of the DCO process is normal practice.</p> <p>The Navigation Management Plan (NMP) will be compiled post consent in accordance with the DCO requirement in agreement with the Marine Management Organisation (MMO) and full consultation with the Port of Boston and Environment Agency. The NMP will take full account of the Navigation Risk Assessment (document reference 9.27) provided to the examination at Deadline 2.</p>	<p>In our comments to the Applicant's response to the Examining Authority's first written questions (REP3-033), 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 needed to address any potential impacts.</p> <p>The Applicant's response to Q10.0.9 states that the NMP will "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." Further work is also identified to</p>

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
			<p>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>
13. Biodiversity Net Gain			
13.1	Summary of BNG Comments	Noted by the Applicant.	Noted
13.2		Noted by the Applicant. While the Environment Act has now been given royal assent, the Part relating to biodiversity net gain (BNG) is not yet in force and BNG will not be a requirement for NSIPs until such time as a biodiversity gain statement is consulted on and made. and for BNG to be required for NSIPs.	Noted. We will provide further comments on this topic in future submissions where it would prove helpful to the Examination.
13.3		The Applicant wishes reiterate that there is currently not a statutory requirement for BNG and Advice Note 11, Annex C provides that "NSIPs can make a significant contribution to delivering the environmental ambition in the Government's 25 Year Environment Plan. This aims to deliver an environmental net gain through development and infrastructure."	Noted. We will provide further comments on this topic in future submissions where it would prove helpful to the Examination.
13.4		The aim is to achieve a net gain for biodiversity, however this is dependent on the available measures and the requirement for compensation.	<p>We are unclear why biodiversity net gain would be dependent on any required compensation measures. We request clarity from the Applicant on this statement.</p> <p>This highlights the need to receive clarity on the measures being proposed by the Applicant:</p>

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
			<ul style="list-style-type: none"> • What are compensation measures, how much habitat would they deliver and how many species would benefit (if an appropriate measure)? • What are biodiversity net gain measures how much habitat would they deliver and how many species would benefit (if an appropriate measure)? <p>Currently, these compensation and biodiversity net gain are being grouped together which is causing uncertainty with the Applicant's approach to addressing Habitats Regulations issues and any residual biodiversity impacts.</p>
13.5		Noted by the Applicant.	Noted
13.6		Noted by the Applicant.	Noted
13.7		Noted by the Applicant.	Noted
13.8		The Landscape and Ecological Mitigation Strategy secured under requirement 5 of the draft DCO (document reference 2.1(1), REP1-003) must include "the results of the Defra biodiversity off-setting metric together with the off-setting value required, the nature of such off-setting and evidence that the off-setting value provides for the required biodiversity compensation, risk factors (including temporal lag) and long term management and monitoring."	Noted. We will review and provide further comments in future submissions, as appropriate.
13.9	Approach to BNG and direct adverse impact on The Wash	Noted by the Applicant.	Noted
13.10		Noted by the Applicant.	Noted
13.11		Noted by the Applicant.	Noted
13.12		Noted by the Applicant.	Noted
13.13		Noted by the Applicant.	Noted
13.14		Noted by the Applicant.	Noted
13.15		Noted by the Applicant.	Noted
13.16		The measures proposed for net gain will be outlined in the updated OLEMS document to be submitted at Deadline 3.	Noted. We review the revised OLEMS and provide comments at a future deadline.

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
13.17	BNG and Landscape Strategy	Noted by the Applicant.	Noted
13.18		Noted by the Applicant.	Noted
13.19		Noted by the Applicant.	Noted
13.20		Noted by the Applicant.	Noted
13.21		Noted by the Applicant.	Noted
13.22	BNG and Protected Species	Noted by the Applicant. In addition to the complement of surveys conducted during the breeding seasons of 2020 and 2021 (which include the spring wader migration period) and wintering seasons of 2019-2021, further surveys covering autumn wader migration of 2021 have now been conducted (Aug to Oct 2021) and the report from these surveys will be circulated by Examination Deadline 3. The Applicant is therefore confident that the bird assemblage currently using the Application Site has been effectively established.	Noted. We will continue to review the latest survey report and provide comments at Deadline 5 (25 January 2022).
13.23		Noted by the Applicant.	Noted
13.24	Inclusion of Mitigation and Compensation measures	Noted by the Applicant.	Noted
13.25		Noted by the Applicant.	Noted
13.26		The Applicant disagrees that mitigation and compensation measures will always be 'no net loss' activities and should be excluded entirely. In particular, compensation measures may also result in a net gain that should be taken into consideration	Noted. We will review and provide further comments in future submissions, as appropriate.
13.27		Noted by the Applicant.	Noted
13.28		Noted by the Applicant.	Noted
13.29		Noted by the Applicant.	Noted
13.30		Noted by the Applicant.	Noted
13.31		Biodiversity Metric 2.0	Noted by the Applicant.
13.32		The Applicant will use the metric to calculate biodiversity losses and gains as it is intended.	Noted. We will review and provide further comments in future submissions, as appropriate.
13.33		The Applicant disagrees that a 10% metric score should be included as a requirement in the draft DCO. While Environment	We welcome the Applicant's offer to provide biodiversity net gain measures, but they must ensure they address

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
	Mechanism for Securing Net Gain	Act has now passed, a requirement to provide 10% net gain is not yet statutorily required for NSIPs. The Applicant has agreed to provide net gain as good practice measures but the extent of gain provided will determined in through the Landscape and Ecological Mitigation Strategy (LEMS) secured under requirement 5 of the draft DCO (document reference 2.1(1), REP1-003), which must include "the results of the Defra biodiversity off-setting metric together with the off-setting value required, the nature of such off-setting and evidence that the off-setting value provides for the required biodiversity compensation, risk factors (including temporal lag) and long term management and monitoring." The final LEMS must be substantially in accordance with the OLEMS which will set out the potential net gain opportunities.	residual impacts on biodiversity and actually deliver measurable net gains. Clarity is needed on the Applicant's net gain measures and the scale of habitat that would be delivered. This must be more clearly differentiated from the proposed compensation measures. We will continue to review the Applicant's proposals and provide further comments at future deadlines, as appropriate.
13.34		Noted by the Applicant.	Noted
13.35		Noted by the Applicant.	Noted
13.36		Noted by the Applicant.	Noted
13.37		See response to paragraph 13.33 above.	We welcome the Applicant's offer to provide biodiversity net gain measures, but they must ensure they address residual impacts on biodiversity and actually deliver measurable net gains. Clarity is needed on the Applicant's net gain measures and the scale of habitat that would be delivered. This must be more clearly differentiated from the proposed compensation measures. We will continue to review the Applicant's proposals and provide further comments at future deadlines, as appropriate.
13.38	Baseline	The baseline for the Biodiversity Net Gain calculation was set out in the OLEMS document (document reference 7.4, APP-123).	Noted. We will review and provide further comments in future submissions, as appropriate.
13.39		Noted by the Applicant.	Noted
13.40		The Baseline for the BNG measures is set out in the OLEMS document (document reference 7.4, APP-123). This document is to be updated and submitted for Deadline 3.	Noted. We will review and provide further comments in future submissions, as appropriate.

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
13.41	Time for Habitats to Reach target Condition	Noted by the Applicant.	Noted
13.42		Noted by the Applicant.	Noted
13.43		Noted by the Applicant.	Noted
13.44		Noted by the Applicant.	Noted
13.45		Noted by the Applicant.	Noted
13.46		Noted by the Applicant.	Noted
13.47		Noted by the Applicant.	Noted
13.48		Noted by the Applicant.	Noted
13.49	Net % Change Calculation	Noted by the Applicant.	Noted
13.50	Evidence Base for On-Site Habitat Creation	Noted by the Applicant.	Noted
13.51	Evidence Base for Off-Site Habitat Creation	Noted by the Applicant.	Noted
13.52	Replacement of higher distinctiveness habitats with those of lower distinctiveness	Noted by the Applicant.	Noted
13.53		Noted by the Applicant.	Noted
13.54		Noted by the Applicant.	Noted
13.55		Noted by the Applicant.	Noted
13.56		Noted by the Applicant.	Noted
13.57		Noted by the Applicant.	Noted
13.58		Noted by the Applicant.	Noted
13.59	Conclusions regarding the Applicant's approach to BNG	It should be noted that the BNG is not currently a statutory requirement for NSIPs therefore any BNG are undertaken as good practice measures and not required under current planning legislation.	Noted. We will review and provide further comments in future submissions, as appropriate.
13.60		See response above paragraph 13.59.	Noted. We will review and provide further comments in future submissions, as appropriate.
14. Conclusions			

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
14.1-14.6		The Applicant notes the RSPB's conclusions. Our responses on each individual, salient point are provided in this document.	Noted
Appendix 1 Species Accounts		The Applicant again queries the validity of the black-tailed godwit SPA population given at time of designation and citation. Percentage of UK population quoted in the same citation document (available at European Site Conservation Objectives for The Wash SPA - UK9008021 (naturalengland.org.uk)) is not concordant and suggests that either the percentage or the population size were incorrect by a factor of ten at citation. The Applicant requests Natural England address the error and clarify which specific variable is subject to error. The continued use of a potentially deflated SPA population size under the guise of an official figure creates confusion and overestimation of impact in assessments.	We agree the need to have clarity on the conservation targets for qualifying features of The Wash SPA/Ramsar and SSSI. For black-tailed godwits, the population size at designation was 260. Since that time, the number of non-breeding black-tailed godwits in the UK has increased. This is documented in 'The Status of UK SPAs in the 2000s: the Third Network Review.' ⁵ Between 1980-2010, the long-term trend for the UK has been a 614.3% increase and a short-term increase of 66.7% based on WeBS data. Whilst numbers have increase on The Wash in line with the national increases, there has also been a WeBS Alert for black-tailed godwit indicating that site-specific pressures can have a limiting effect on this species. A full understanding of the species for which adverse effects cannot be ruled out must be provided that also includes a full ecological assessment given that black-tailed godwits have been identified as being in energy deficits during the winter. We will continue to work with the Applicant and Natural England to clarify the position on the species potential significance of increased disturbance on qualifying interest features of The Wash SPA/Ramsar/SSSI.

⁵Stroud, D.A., Bainbridge, I.P., Maddock, A., Anthony, S., Baker, H., Buxton, N., Chambers, D., Enlander, I., Hearn, R.D., Jennings, K.R, Mavor, R., Whitehead, S. & Wilson, J.D. - on behalf of the UK SPA & Ramsar Scientific Working Group (eds.) 2016. The status of UK SPAs in the 2000s: the Third Network Review. JNCC, Peterborough. Black-tailed godwit (non-breeding) account pp.747-752. At: [REDACTED]

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
Appendix 2 Detailed Account of Engagement with the Applicant		The Applicant's comments in relation to engagement with RSPB are provided in response to Section 5 above.	Noted
Appendix 3: Data table of bird disturbances from bird survey reports to inform impacts....		Table is informative and welcomed but The Applicant queries the validity of the black tailed godwit population as set out in the response to Section 3 Table 2 above. The information in this table is also set out in the addendum to the HRA (ES Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - Habitats Regulations Assessment - Ornithology Addendum (document reference 9.13, REP1-026)),	<p>We agree the need to have clarity on the conservation targets for qualifying features of The Wash SPA/Ramsar and SSSI.</p> <p>For black-tailed godwits, the population size at designation was 260. Since that time, the number of non-breeding black-tailed godwits in the UK has increased. This is documented in 'The Status of UK SPAs in the 2000s: the Third Network Review.'⁶ Between 1980-2010, the long-term trend for the UK has been a 614.3% increase and a short-term increase of 66.7% based on WeBS data. Whilst numbers have increase on The Wash in line with the national increases, there has also been a WeBS Alert for black-tailed godwit indicating that site-specific pressures can have a limiting effect on this species. A full understanding of the species for which adverse effects cannot be ruled out must be provided that also includes a full ecological assessment given that black-tailed godwits have been identified as being in energy deficits during the winter. We will continue to work with the Applicant and Natural England to clarify the position on the species</p>

⁶Stroud, D.A., Bainbridge, I.P., Maddock, A., Anthony, S., Baker, H., Buxton, N., Chambers, D., Enlander, I., Hearn, R.D., Jennings, K.R, Mavor, R., Whitehead, S. & Wilson, J.D. - on behalf of the UK SPA & Ramsar Scientific Working Group (eds.) 2016. The status of UK SPAs in the 2000s: the Third Network Review. JNCC, Peterborough. Black-tailed godwit (non-breeding) account pp.747-752. At: [REDACTED]

Section / Paragraph of RSPB Written Representations	Summary Heading	Applicant's Response	The RSPB's response
			potential significance of increased disturbance on qualifying interest features of The Wash SPA/Ramsar/SSSI.
Appendix: Reference list		It is unclear why redactions have been made to the reference list.	We do not know why the references have been redacted. We will look to provide a reference list at a future submission.