

REPORT

Boston Alternative Energy Facility

Comments on Interested Parties Responses to the
Examining Authority's Third Written Questions

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Glossary of Acronyms

Terms	Definition
AUBP	Alternative Use Boston Projects Limited
BAEF	Boston Alternative Energy Facility
BFFS	Boston and Fosdyke Fishing Society
CL	Critical Load
DCO	Development Consent Order
DML	Deemed Marine Licence
ES	Environmental Statement
ExA	Examining Authority
ExQ3	Examining Authority's Third Written Questions
HRA	Habitats Regulations Assessment
LEMS	Landscape and Ecological Mitigation Strategy
MCA	Marine Coastguard Agency
MMO	Marine Management Organisation
NE	Natural England
NMP	Navigation Management Plan
NRA	Navigation Risk Assessment
OLEMS	Outline Landscape and Ecological Mitigation Strategy
PC	Process Contribution
PRoW	Public Rights of Way
RSPB	The Royal Society for the Protection of Birds
SHA	Statutory Harbour Authority
SPA	Special Protection Area

1 **Comments on Interested Parties Responses to the Examining Authority's Third Written Questions**

- 1.1.1 This 'Comments on Interested Parties Responses to the Examining Authority's Third Written Questions' document for the Boston Alternative Energy Facility (the Facility) supports the application for the Development Consent Order (DCO) (the DCO application) that has been made to the Planning Inspectorate under Section 37 of the Planning Act 2008 (the Act) by Alternative Use Boston Projects Limited (AUBP) (the Applicant).
- 1.1.2 Table sets out each of the Examining Authority's (ExA's) Written Questions issued on 15th February 2022 (ExQ3), followed by the Interested Parties response, along with the Applicant's response to the Interested Parties. Only the questions directed to Interested Parties (in full or part) are answered.

Table 1-1 Comments on ExQ3 for the Environment Agency (REP7-023)

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
Q3.2.0.4	<p>Have the final numbers and locations of deposition monitoring locations been agreed with Natural England and the Environment Agency? If not, when is it expected that they will be agreed?</p> <p>If monitoring at these locations identifies significant effects, what measures will the Applicant use to reduce adverse effects and how would these measures be secured?</p> <p>Do NE/EA have any outstanding concerns regarding the Air Quality Deposition Monitoring Plan?</p>	<p>We have not received any information about proposed deposition monitoring.</p>	<p>The Outline Air Quality Deposition Monitoring Plan was submitted at Deadline 4 (document reference 9.51, REP4-016) and an amended version was subsequently submitted at Deadline 6 (document reference 9.51(1), REP6-027). The Applicant has also sent a copy of this document to the Environment Agency. The final Air Quality Deposition Monitoring Plan is secured as part of the Landscape and Ecological Mitigation Strategy (LEMS) approved under requirement 6 of the DCO and condition 18 of the Deemed Marine Licence (DML). Following on from the Applicant's response to Q3.2.0.4 at Deadline 7 (document reference 9.75, REP7-007), the Applicant has amended the requirement and condition to add the following to be included as part of the LEMS: <i>"an air quality deposition monitoring plan that must be substantially in accordance with the outline air quality deposition monitoring plan and must include the final numbers and locations of deposition monitoring locations, as agreed with the relevant statutory nature conservation body and the Environment Agency."</i> This amendment to the draft DCO is included in the version submitted at Deadline 8.</p> <p>As such, an agreement in principle is not considered to be required at this stage, as the final</p>

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
			locations will be agreed with all parties prior to commencement of monitoring.
Q3.3.1.23	Please provide an update on a permit for the LWA plant. Please outline your proposals for dealing with this issue if a permit is not agreed by the close of the Examination.	Pre-application discussions are ongoing, but our position remains as in our reply to ExQ2.	This is noted, please refer to the Applicant's response to this question in the Applicant's Responses to the Examining Authority's Third Written Questions (ExQ3) (document reference 9.75, REP7-007).

Table 1-2 Comments on ExQ3 for the Marine Management Organisation (MMO) (REP7-024)

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
Q3.3.0.19	Are the MMO and the Port of Boston satisfied with the Applicant's position regarding vessel speed as stated in their Comments on Interested Parties Responses to the Examining Authority's Second Written Questions [REP6-030], and if not please detail specific reasons?	The MMO has reviewed the applicant's response regarding a maximum vessel speed limit and are content to take steer from the Port of Boston as Harbour Authority.	The Applicant confirms that discussions on vessel speed have been progressed with the Port of Boston to the satisfaction of both parties. The Applicant has updated the Marine Mammal Monitoring Protocol (document reference 9.12(2), REP7-003) already to take account of the port's requirement on vessel speed and is reviewing all other application documents to ensure consistency on this matter.

Table 1-3 Comments on ExQ3 for the Maritime and Coastguard Agency (MCA) (REP7-025)

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
Q3.10.0.24	<p>Have you been consulted by the Applicant in respect of the Navigational Risk Assessment? If so, please provide details of your response. If not, please confirm whether or not this is a matter over which you should be consulted.</p>	<p>We can confirm that the MCA has been consulted on the Navigation Risk Assessment (NRA) documentation, submitted as part of the application for development consent. The location of all works associated with the marine environment for the project fall within the jurisdiction of a Statutory Harbour Authority (SHA) – The Port of Boston. The SHA therefore has the responsibility for maintaining the safety of navigation within their waters during the construction and operational phase of the project. The MCA would expect the applicant to consult with the Port of Boston with regards to NRAs, and the subsequent risk mitigation measures to ensure the risk is ALARP.</p> <p>The MCA has no concerns to raise at this time with regards to the 'Navigational Issues' document, or the NRA, on the understanding that the Port of Boston are consulted on the acceptability of the assessment. It is the MCA's understanding that the Navigation Management Plan (NMP) will be a condition of the Deemed Marine Licence and will be in accordance with the recommendations set out in the NRA. The MCA will also expect the project to be carried out in accordance with the Port Marine Safety Code and its Guide to Good Practice. Although the final</p>	<p>The MCA's understanding of the situation regarding navigation risk and management is correct. The Applicant has, and will continue to, work closely with the Port of Boston on such matters as the Statutory Harbour Authority.</p>

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
		NMP is yet to agreed, it is our understanding that the Port of Boston are fully engaged on the agreement of the document in order discharge the condition. We note that other statutory bodies will be consulted on the NMP, including UK Hydrographic Office and Trinity House from the safety of navigation perspective. The MCA is happy to continue to be consulted on the NRAs although would defer to the Port of Boston with regards to its acceptability.	

Table 1-4 Comments on ExQ3 for the Port of Boston (REP7-030)

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
Q3.3.0.14	Do NE have any outstanding concerns in relation to light spillage across the estuary during hours of darkness, and the impacts this may have on European smelt larvae?	The Port of Boston is concerned to ensure that the lighting of the facility does not cause significant impact on navigation, and that this does not lead to excessive light spillage. The Port notes that design submissions in this regard should be subject to agreement with the Port.	This issue of lighting during both construction and operation of the Facility is assessed in Environmental Statement (ES) Chapter 18 Navigational Issues (document reference 6.2.18, APP-056) and proposed mitigation is identified. The Applicant will work closely with the Port of Boston during the detailed design stage for the Facility to ensure lighting does not have a significant effect on navigation and does not lead to excessive light spillage, ensuring the safety of all vessels utilising The Haven.
Q3.3.0.19	Are the MMO and the Port of Boston satisfied with the	Statements submitted by the applicant in the draft NRA and elsewhere have incorrectly	The draft NRA was updated at Deadline 6 (document reference 9.27(1), REP6-022) which

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
	<p>Applicant's position regarding vessel speed as stated in their Comments on Interested Parties Responses to the Examining Authority's Second Written Questions [REP6-030], and if not please detail specific reasons?</p>	<p>characterised vessel speed and are inconsistent with current practice. The Port has asked the Applicant to make changes to the draft NRA to ensure that the actual prevailing situation regarding vessel speed, and the current implementation of 'safe speed', is properly described in the DCO submission documents. The Applicant has given assurances that it will do this.</p>	<p>included amendments to the description of the prevailing situation regarding vessel speed within the Haven. The Marine Mammal Mitigation Protocol submitted at Deadline 7 (document reference 9.12(2), REP7-005) has also been updated to ensure the Port's view on vessel speed is taken account of. A review of all submitted documents will be undertaken for reference to vessel speed and any amendments, if required, will be submitted to the Examination at Deadline 9.</p>
Q3.10.0.17	<p>I note from the Applicant's response to my second written question Q2.10.0.5 [REP5-004] that the BFFS had misgivings regarding the Navigation Risk Assessment (NRA), and that there were resourcing issues for the BFFS in reviewing this document. Please provide an update on progress with agreeing the NRA.</p>	<p>The Port notes that BFFS will be consulted on the NRA but has no role to approve or agree the NRA. The Port is the primary approver of the NMP (and the NRA which informs the assessment of mitigation in the NMP) and will ensure that BFFS would be consulted on all concerns expressed by their organisation, and indeed we note that the Port has separately recently written to invite BFFS to make any specific representations on this topic directly to the Port.</p>	<p>No further comment needed.</p>
Q3.10.0.18	<p>I note that you have advised that the Navigation Management Plan (NMP) will be produced post consent; please submit at</p>	<p>In conjunction with the Port the Applicant has prepared an outline NMP for submission at Deadline 7, and has also agreed a Technical</p>	<p>The process for consulting on and agreeing the NMP is set out in the NMP Template which is reissued to the Examination at Deadline 8</p>

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
	<p>Deadline 7 (1 March) an Outline NMP (or at least a full template and proposal of how it will be completed). Please also provide details of how the NMP post-consent will be secured and who will be the discharging authority. I will expect the IPs to comment on, or agree, the Outline NMP before end of Examination.</p>	<p>Note in respect of bird risk to aid understanding of the scope and development of the NMP.</p> <p>The outline NMP describes the consultation that will take place with statutory bodies and other IP's.</p> <p>Comments received during the Examination will be carried forward into the development of the final NMP. IP's do not have any role to approve or agree the final NMP but ongoing consultation will take place as may be needed.</p> <p>The status of the outline NMP is made clear in the document itself but the final NMP cannot be constrained or limited by anything in the outline document.</p>	<p>(document reference 9.80(1)). No further comment.</p>
<p>Q3.10.0.26</p>	<p>Please advise any navigational requirements from your point of view you consider that the Applicant should consider regarding the fishermen's interests by Deadline 7.</p>	<p>The Port is content that the Port's Pilotage Statement and outline NMP will provide further clarity on the impact of the BAEF on navigation, including the impact on the BFFS.</p> <p>The Port contends that the Fishermen's concerns will be listened to such that their concerns should be incorporated into the further development of the NRA and NMP.</p> <p>The Port has stated and explained why it is content that the additional vessels calling at the facility can be safely managed and can co-exist with BFFS current practices.</p>	<p>No further comment required.</p>

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
		<p>The increase in vessels using the swinging area, may have an impact on the fishing fleet should the fleet wish to pass the swinging hole area at the same time that ships are swinging but recent ship bridge simulations conducted by the Port during the Boston Barrier detailed design have shown the actual swing manoeuvre only takes between 10 to 15 minutes to complete.</p> <p>Furthermore, it is likely that a proportion of BAEF commercial ships will swing in the dock basin, reducing the number of tides when BFFS vessels could be impacted.</p> <p>The cockle season is when the majority of the BFFS vessels go to into The Wash. Eastern IFCA place quotas on the catch and this generally limits the number of days that the BFFS can catch cockles to around 110 to 120 per annum. Outside of this season a much-reduced number of fishing vessels use the river daily (anywhere from 0 to perhaps 8).</p> <p>It is also worth emphasising that the tidal window for commercial cargo vessels navigating in the river is not expected to change due to the prevailing tidal restrictions on the draught of large ships.</p> <p>It is current practice that commercial cargo ships and BFFS discuss on VHF any out of the ordinary manoeuvres (to minimise conflict of</p>	

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
		<p>space) and the Port would likely seek both a continuation and increase in this practice.</p> <p>Overall, the Port is content that the BAEF will not cause any significant impact on other river users (including Port of Boston vessels, fishing vessels and others), and that where practicable measures for mitigating impact will be introduced or reinforced.</p>	
Q3.10.0.27	<p>The Applicant identifies major adverse significance of effects to the fishermen resulting from the following operational impacts in delivering refuse derived fuel to the Boston Alternative Energy Facility [APP-056]:</p> <ul style="list-style-type: none"> • increase in the number of vessels using The Haven; and • the increased use of the turning circle. <p>Post mitigation the Applicant identifies moderate adverse residual effects to the fishermen resulting from the above impacts.</p> <p>What in your view would be appropriate mitigation of these effects?</p>	<p>The Port contends that the increase in commercial shipping numbers (of itself) does not lead to any significant impact on the safety or efficiency of navigation in the Haven.</p> <p>This opinion is supported by experience when commercial ship numbers arriving at the Port were similar to that predicted when BAEF would become operational.</p> <p>Port of Boston vessel traffic is irregular and unpredictable, and it is quite usual to have tides with 2 or 3 ships arriving or sailing. In contrast the BAEF vessels are forecasted to generate a predictable and steadier (albeit higher) flow of traffic, which would aid traffic management.</p> <p>As noted in our response to Q3.10.0.26, the Port anticipates that BAEF vessels will be turning either in the river or in the Port's wet dock. The decision to use the wet dock for swinging would</p>	No further comment required.

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
		<p>be taken by the pilot on board the vessel in conjunction with Port Control and be based on several factors, including whether there was a likelihood of a significant delay to BFFS.</p> <p>At the dock entrance there is short length of quay known as the 'Lead-In Jetty' and just upstream of the wet dock entrance is a new NAABSA berth, both of which could be used to temporarily hold a vessel in the circumstances of a timing clash between BFFS and commercial ships that cannot be otherwise safely mitigated by adjustment of speed by one party or the other.</p> <p>It is the Port's opinion that on most occasions, discussions between BFFS and Port Control (or the on-board pilot) would allow a window of 10 to 15 minutes in which commercial cargo vessels could be swung unhindered and without causing a significant delay to other river traffic including BFFS.</p> <p>Overall, mitigation of both vessel numbers and increased swinging in the river, is likely to be focussed on measures to improve the management of shipping, as described in the Port's separate Pilotage Statement.</p>	

Table 1-5 Comments on ExQ3 for Natural England (REP7-026)

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
Q3.2.0.4	<p>Have the final numbers and locations of deposition monitoring locations been agreed with Natural England and the Environment Agency? If not, when is it expected that they will be agreed?</p> <p>If monitoring at these locations identifies significant effects, what measures will the Applicant use to reduce adverse effects and how would these measures be secured?</p> <p>Do NE/EA have any outstanding concerns regarding the Air Quality Deposition Monitoring Plan?</p>	<p>Natural England will submit comments on Air Quality documents at Deadline 8. And in doing so respond to this question.</p>	<p>The Applicant notes that Natural England (NE) will submit their comments at Deadline 8.</p> <p>The Outline Air Quality Deposition Monitoring Plan was submitted at Deadline 4 (document reference 9.51, REP4-016) and an amended version was subsequently submitted at Deadline 6 (document reference 9.51(1), REP6-027). The final Air Quality Deposition Monitoring Plan is secured as part of the Landscape and Ecological Mitigation Strategy (LEMS) approved under requirement 6 of the DCO and condition 18 of the DML. Following on from the Applicant's response to Q3.2.0.4 at Deadline 7 (document reference 9.75, REP7-007), the Applicant has amended the requirement and condition to add the following to be included as part of the LEMS: <i>"an air quality deposition monitoring plan that must be substantially in accordance with the outline air quality deposition monitoring plan and must include the final numbers and locations of deposition monitoring locations, as agreed with the relevant statutory nature conservation body and the Environment Agency."</i>. This amendment to the draft DCO will be included in the version submitted at Deadline 8.</p> <p>As such, an agreement in principle is not considered to be required at this stage, as the final</p>

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
			locations will be agreed with all parties prior to commencement of monitoring.
Q3.2.0.16	Do NE agree with the conclusions provided in the Applicant's document at D6 'Comparison of Predicted Critical Load and Level Results Using Maximum Permissible Emissions Limits and Realistic Emission Scenarios' [REP6-035] that although the in-combination NOx and ammonia concentrations remain above 1% of the respective Critical Levels at all sites; due to the total PEC values being well below (i.e., less than 75% of) the Critical Levels, it is considered unlikely that significant effects would occur?	Natural England will submit comments on Air Quality documents at Deadline 8. And in doing so respond to this question.	The Applicant awaits the response from NE.
Q3.3.0.14	Do NE have any outstanding concerns in relation to light spillage across the estuary during hours of darkness, and the impacts this may have on European smelt larvae?	Natural England has not raised any concerns in relation to smelt larvae as smelt are not an designated site interest feature or one that interest features are reliant on as a prey resource.	No further comment
Q3.2.2.1	In light of the additional information provided to the	Natural England intended to provide a table on this with comments on the RIES at Deadline 9,	The Applicant awaits the response from NE

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
	<p>Examination to date on features of the designated sites that may be affected by the Proposed Development, please could NE, the RSPB and LWT specify the qualifying features of The Wash SPA, The Wash Ramsar site, The Wash SSSI, and The Wash and North Norfolk Coast SAC on which they consider there would be an adverse effect alone and those on which they consider that there would be an adverse effect in combination. Please identify the location at which those species may be affected, i.e. the application site, the mouth of The Haven or along The Haven. This could be presented in tabular form for ease.</p>	<p>but given the ExA request this will be included in our Deadline 8 response.</p>	
<p>Q3.3.1.31</p>	<p>Please could NE and the RSPB respond to the Applicant's view that the application site ('Area A') and adjacent area ('Area B') are not functionally linked to the SPA and Ramsar site, notwithstanding that it has been assumed for the purposes of the</p>	<p>Natural England considers that Area A and Area B are Functionally Linked Land. Please see Appendix B4 at Deadline 7.</p>	<p>Appendix B4 stated that NE "accepts that there is uncertainty over the strength of Functional Linkage" They therefore wished to apply, due to lack of information, the precautionary principle that requires that in the absence of information an approach is taken which assumes connectivity as this is the more precautionary approach.</p>

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
	derogation case that they are functionally linked.		Information has been collected for this area over two years to show that the site does support overwintering redshank (which is a qualifying feature of the Special Protection Area (SPA)) and smaller numbers of passage redshank but no breeding redshank were recorded using the area (the latter two are not qualifying features of the SPA). This data, along with other available data, were used to support the Applicant's finding that Area A and Area B are not functionally linked to the SPA. Where there was uncertainty over the use of an area then the precautionary approach has been applied, for example, for the central area of The Haven between the SPA boundary and Areas A and B. In this instance it was concluded that there could be a functional link over the central area of The Haven.
Q3.3.1.32	Please could NE and the RSPB confirm whether they consider that the Ornithology Compensation Measures set out in Schedule 11 of the dDCO adequately secure the proposed compensation measures.	Please see Appendix F4 at Deadline 7.	Please refer to the Applicant's Fourth Outstanding Submissions Report (document reference 9.90) submitted at Deadline 8.
Q3.3.1.34	In light of the Applicant's references in REP6-025 to the proposed Habitat Mitigation Area (HMA) and statement that	Natural England has reservations in relation to the Habitat Mitigation Area which have been raised in all of Natural England's Ornithological and Coastal Ecology responses to date. But we	The Applicant has responded to the comments from NE regarding the Habitat Mitigation Area throughout the examination process and awaits the summary response from NE at Deadline 8.

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
	options for compensation will be required in the event that it was determined that there would be an AeOI, please could NE and the RSPB confirm whether they consider the HMA would constitute a mitigation or a compensation measure according to the Habitats Regulations, and provide their view of its effectiveness accordingly.	will summarise at Deadline 8 when the derogations case will be considered in more detail.	
Q3.3.1.36	Do NE and LWT consider that the mitigation set out in the updated Outline Marine Mammal Mitigation Protocol [REP6-020] would be sufficient to avoid impacts on harbour seal?	Natural England will provide further detail at Deadline 8.	The Applicant awaits the response from NE.
Q3.12.0.6	Are NE satisfied with the Applicant's position regarding realignment of the England Coast Path as stated in their Comments on Interested Parties Responses to the Examining Authority's Second Written Questions [REP6-030], and if	Natural England is not satisfied with the Applicant's position regarding realignment of the England Coast Path. In [REP5-015] we have advised that the route replacement proposed for the England Coast Path would reduce coastal access for future users of the path. We therefore maintain our suggested alternative route which directly follows the coast.	The Applicant's position remains as at Deadline 7 and a full justification for the proposed route and consideration of an alternative proposed by NE is set out in REP3-023. NE's alternative route is very short (approximately 200m), and the Applicant does not consider that the proposed route significantly reduces access to the coast given the small distances involved, with the user experience improved via measures set out in the Outline

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
	not please detail specific reasons?		Public Right of Way (PRoW) Design Guide and Stopping Up Plan (document reference 9.41(1)).

Table 1-6 Comments on ExQ3 for the RSPB (REP7-031)

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
Q3.3.1.7	In light of the additional information provided to the Examination to date on features of the designated sites that may be affected by the Proposed Development, please could NE, the RSPB and LWT specify the qualifying features of The Wash SPA, The Wash Ramsar site, The Wash SSSI, and The Wash and North Norfolk Coast SAC on which they consider there would be an adverse effect alone and those on which they consider that there would be an adverse effect in combination. Please identify the location at which those species may be affected, i.e. the application site, the mouth of The Haven or along The Haven. This could be	We set out concerns for key species in our position summary at Deadline 5 (REP5-018). Tables setting out our species concerns for different sections of The Haven are submitted in Appendix 1 of REP7-031. Whilst data are available to draw some conclusions in the upper reaches of The Haven and around the mouth of The Haven, there remain significant data gaps for the central section of The Haven and for the area of The Wash out to the Port of Boston anchorage area. Due to a number of colleagues being off sick since Deadline 5 and 6 submissions, we have not been able to progress a detailed review of all the relevant submissions. Whilst we continue to review the additional information on waterbird behaviour on The Haven (REP6-034), however, it is clear that the more surveys that are conducted the more interest is observed. For example, the observation of significant numbers of ruffs using The Haven in September 2021, as well as redshanks. The additional surveys only heighten concerns that The Haven is an important	The Applicant welcomes the clarity obtainable from the RSPB's tables of species for sequential sections of The Haven at Deadline 7. The winter 2021-22 programme of surveys has sought to close the geographic data gap regarding waterbird use of the intervening length of The Haven between the Principal Application Site and the Mouth of The Haven (there is no programme for surveys of The Wash or anchorage, requiring boat-based methods, as previously justified regarding safety, practicality and time limitations). The Applicant acknowledges that additional survey effort captures additional interest. However, this is a general fact of survey effort which can be demonstrated to be decreasingly influential through production of an accumulation curve, should this be requested by the Examining Authority. Furthermore, more recent, outlier observations from baseline surveys, considered not to be replicated by other observations within the earlier baseline bird data, have typically not required any change to assessment outcomes or

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
	presented in tabular form for ease.	area for waterbirds associated with The Wash SPA and Ramsar site and that appropriate measures will need to be implemented to ensure adverse effects are avoided.	plans for management. For example, the autumn counts and the observation of greater numbers of ruff did not require movement of the existing seasonal window for piling activity already outlined for the Principal Application Site. Lastly the Applicant considers that the RSPB's response does not ultimately answer the question posed by the Examining Authority, regarding which features on which they consider there would be project alone or in-combination adverse effect.
Q3.3.1.29	<p>HRA process Where adverse effects cannot be ruled out, the HRA Regulations provide for the possibility of a derogation which allows plans or projects to be approved provided three tests are met:</p> <ol style="list-style-type: none"> 1. There are no feasible alternative solutions to the plan or project which are less damaging; 2. There are imperative reasons of overriding public interest (IROPI) for the plan or project to proceed; and 3. Compensatory measures are secured to ensure that the 	<p>We have noted the ExA's question and the reference to the position of the Norfolk Boreas ExA. We consider the current Application is in a similar position to that described by the Norfolk Boreas ExA i.e. there are not sufficiently detailed proposals for compensation in front of the examination.</p> <p>We will await the Applicant's response to Q3.3.1.29 before responding more fully.</p>	Please refer to the Applicant's response to Q3.3.1.29 in the Applicant's Responses to the Examining Authority's Third Written Questions (document reference 9.75, REP7-007).

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
	<p>overall coherence of the national site network is maintained.</p> <p>I would draw the attention of the Applicant to the recent Decision Letter in respect of the Norfolk Boreas Offshore Windfarm dated 10 December 2021; in particular paragraph 5.13 which states the following: <i>"...the ExA could not recommend compensatory measures for the Secretary of State to consider because it did not have sufficiently detailed proposals for compensation. It therefore recommended that the Secretary of State should seek further information from the Applicant regarding alternative solutions or compensatory measures. The Secretary of State notes that the development consent process for nationally significant infrastructure projects is not designed for consultation on complex issues, such as HRA, to take place after the</i></p>		

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
	<p><i>conclusion of the examination. he wishes to make it clear that, in order to maintain the efficient functioning of the development consenting regime, he may not always request post examination representations on such matters, indeed it should be assumed that he will not do so, and he may therefore make decisions on such evidence as is in front of him following his receipt of the ExA's Report."</i></p> <p>The ExA notes that the information contained in REP6-025 contains limited detail on the proposed compensation package, identifies a reduced number of compensation site options to that in the previous version of the document [REP2-013], and does not include a figure that depicts the location of the newly identified compensation site options. Please can the Applicant set out how the information provided to date satisfies the derogation</p>		

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
	<p>tests and identify the location of the additional options. In so doing, to provide clear references from the Examination Library as to which documents address these matters. Natural England, the RSPB, The Lincolnshire Wildlife Trust and any other IPs are invited to comment.</p>		
Q3.3.1.31	<p>Please could NE and the RSPB respond to the Applicant's view that the application site ('Area A') and adjacent area ('Area B') are not functionally linked to the SPA and Ramsar site, notwithstanding that it has been assumed for the purposes of the derogation case that they are functionally linked.</p>	<p>The RSPB continues to review the submissions made by the Applicant. In summary, we do not agree with the Applicant that the area adjacent the Application site is not functionally linked to The Wash SPA and Ramsar site.</p> <p>In our Written Representations (Section 6, pp.46-48; REP1-060) we identified the gaps in survey coverage and highlighted that all areas of The Haven could be used by features of The Wash SPA and Ramsar site. The Applicant's own surveys have identified that species which are features of The Wash SPA and Ramsar occur along The Haven and can occur in significant numbers; redshanks and ruffs are most notable, but the full importance of The Haven for waterbirds has not been assessed by the Applicant. We set out more detail on our concerns about the Applicant's approach to assessing the</p>	<p>The Applicant maintains its position at Deadline 6 that the redshank and other specified feature species of The Wash SPA show limited to no connectivity with the Principal Application Site population. However, the Applicant has composed the Without Prejudice Habitats Regulations Assessment (HRA) Derogation Case on the assumption that this position is not accepted by Interested Parties or the ExA and that the Principal Application Site is functionally linked to The Wash SPA populations of all waterbird species.</p> <p>Gaps in survey coverage of the intervening length of The Haven have since been addressed through the programme of winter surveys 2021-22. This enables the importance of The Haven for waterbirds along the length transited by project-related (and baseline) vessels, to be assessed.</p>

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
		<p>importance of The Haven to draw conclusions regarding the impact of vessel disturbance in our comments on the Ornithology Addendum (in particular, Section 2, REP4-026). As we stated in paragraph 2.59 of our comments on the Ornithology Addendum (p.19) the Applicant's approach (emphasis added) "...to the HRA fails to appreciate that the test of Likely Significant Effect must consider, on a precautionary basis, whether the project is likely to have a significant effect on the SPA, either alone or in combination with other plans or projects." We have highlighted the need for this precautionary approach to be applied to the Application in both our Written Representations (REP1-060) and comments on the Ornithology Addendum (REP4-026) and this is especially the case when data deficiencies exist to draw conclusions (see Appendix 1 below). It is the applicant's responsibility to prove "beyond reasonable scientific doubt" that there will be no adverse effect on the integrity of the qualifying features of the SPA/Ramsar site (or in this case no functional link to the SPA/Ramsar site). The concerns raised by the RSPB are based on legitimate scientific interpretation. We will provide greater detail at Deadline 8 (15 March 2022) on the Applicant's updated Habitats Regulations Assessment.</p>	<p>As of February 2022, the Applicant reports that surveys highlight that only two SPA feature species have been recorded in significant numbers (by virtue of exceeding 1% of the mean peak 5-year WeBS population count of The Wash SPA) in the intervening length of The Haven inside or outside the SPA around high water (the tidal period where a disturbance pathway could occur through vessel movements). These are dark-bellied brent goose on adjacent saltmarsh (173) and gadwall (2), both inside the SPA, neither of which have been observed to be disturbed by vessels. Other species present and/or undertaking disturbance responses in this section of The Haven, are similar to those at the Principal Application Site. Namely, redshank, turnstone and ruff, and mixed aggregations of gulls, have exhibited disturbance response, of which only the assemblage species have been present in significant numbers as defined above. Other assemblage species similar to those recorded at the Principal Application Site have been recorded in significant numbers, but not observed being disturbed by vessels (cormorant, little grebe). Other SPA feature species have been recorded in very low numbers (<12 individuals in or outside the SPA during high water; black-tailed godwit, curlew, grey plover, oystercatcher, wigeon). In summary, the conclusion of the HRA and HRA Addendum that the non-breeding</p>

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
			<p>waterbird assemblage is the key feature of The Wash SPA for Likely Significant Effect within The Haven, remains robust when the outstanding length of The Haven is considered. The HRA therefore captures the importance of The Haven for waterbirds within existing assessments.</p> <p>The winter surveys have investigated but found limited evidence that redshank using the SPA at other periods of the tidal cycle are present on The Haven upstream of the SPA boundary during high water, and these individuals are not indicated to be using the Principal Application Site. Therefore, the route to impact of the Applicant Project on SPA birds such as redshank is likely to be limited to vessel movements, and predominantly within the SPA boundary.</p> <p>The Applicant confirms that the March baseline data concluding the winter programme of surveys has been received and the full ornithology baseline has been summarised to Interested Parties and the ExA for Deadline 8 (document reference 9.91).</p> <p>The Applicant awaits RSPB's response to 9.59 Habitats Regulations Assessment Update (document reference 9.59, REP5-006) at Deadline 8.</p>

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
Q3.3.1.32	Please could NE and the RSPB confirm whether they consider that the Ornithology Compensation Measures set out in Schedule 11 of the dDCO adequately secure the proposed compensation measures.	We refer you to our detailed comments on Schedule 11, as submitted at Deadline 7 (1 March 2022).	Please see the Applicant's response to these points in the Deadline 8 submission 'Fourth Report on Outstanding Submissions' Table 2-4 (document reference 9.90).
Q3.3.1.34	In light of the Applicant's references in REP6-025 to the proposed Habitat Mitigation Area (HMA) and statement that options for compensation will be required in the event that it was determined that there would be an AEoI, please could NE and the RSPB confirm whether they consider the HMA would constitute a mitigation or a compensation measure according to the Habitats Regulations, and provide their view of its effectiveness accordingly.	<p>As we set out in our concerns for key species in our submission at Deadline 5 (REP5-018), waterbirds that are features of The Wash SPA and Ramsar site have been recorded roosting at the Application site and foraging adjacent to the Application site.</p> <p>This is particularly the case with redshanks and ruffs which have been recorded in significant numbers.</p> <p>Redshanks, ruffs and other waterbirds will be displaced by the construction of the wharf and increased vessel movements associated with the construction and operation of the facility. This would result in the loss of the existing redshank roosting area, and result in birds being disturbed and displaced from foraging habitat adjacent to the facility. The displacement will be due to the noise and visual impact of construction and operation of the wharf, as well as the presence of vessels being unloaded and loaded. Whilst</p>	<p>Roosting</p> <p>1. The Applicant maintains its position held at Application Submission, that the Habitat Mitigation Area is of sufficient size and appropriate design to host a roost containing the maximum number of redshank, ruff and other Scolopacidae recorded in any one high water survey visit to the Principal Application Site (bird survey areas A and B) (175 birds). A roost is already established at this location. The Habitat Mitigation Area will be functional as habitat by the construction phase. The low level of increased vessel traffic above baseline during construction is not anticipated to cause disturbance and displacement to birds downstream of the construction site. Flexibility for birds to roost and move between multiple option sites will be increased ahead of the operation phase of the Facility (where vessel traffic is higher above baseline and has been argued by Interested Parties to impact roosting birds), by the creation of</p>

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
		<p>waterbirds may habituate over time to port activities this is very dependent on species specific behaviours, as well as the site-based conditions surrounding the port. In the context of The Haven, this is a comparatively narrow channel compared to a wider estuary and therefore noise and visual disturbance have the potential to result in greater impacts, as birds will have more limited options available to move away from the disturbance source yet continue to forage in optimum areas adjacent to the Application site. The ability to mitigate impacts are limited due to the narrowness of The Haven and the limited opportunities that exist close to the Application site to address the impacts arising from construction and operational activities.</p> <p>The provision of an alternative roosting area for redshank, which may have benefits for other waterbirds during high tide, does have the potential to mitigate impacts arising from construction and operational activities provided there is no reasonable scientific doubt as to its effectiveness. However, the effectiveness of the roosting area will be dependent on:</p> <ol style="list-style-type: none"> Being of a suitable scale to accommodate all birds displaced by the construction and operation of the 	<p>a wetland site with roosting capacity within 1 km of the Habitat Mitigation Area. A site has already been identified as part of Without Prejudice HRA Derogation site searches but will be created regardless of need for Compensation. This site in turn is within 1 km of a further site selected to form part of the In Principle Compensation wetland site network.</p> <ol style="list-style-type: none"> The Applicant notes the RSPB's comments regarding shelter from prevailing conditions at the Habitat Mitigation Area. The lowering of the bank mentioned in the provisional design has the purpose of expanding the sightline of redshank roosting at the existing roost location. This is likely to benefit roosting conditions for waders and shelter from the west and south will still be afforded by height of the land further from the roost. Flattening of this bank is not expected to alter the level of shelter from other wind directions, and the loose rocks roosting substrate itself will effectively provide wind shelter. Other landscaping to reduce gradients in the Habitat Mitigation Area relates to areas of foraging habitat such as pool and creek sides, separate to existing roosting habitat, and therefore not expected to affect shelter of roosting birds.

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
		<p>wharf. We accept that the proposed relocation of the rock armour from the Application site does have the potential to create a roost area that could accommodate the birds that would be displaced. However, it is our understanding that the proposed alternative roost would be smaller than the current roost area, which will need to be addressed by the Applicant. We also highlight that the construction of the wharf will permanently remove a roost site and reduce the flexibility of birds using the upper reaches of The Haven to choose where they roost. It is unclear how this overall loss of roosting area has been factored into the Applicant's mitigation and compensation calculations.</p> <p>2. Provision of suitable shelter from prevailing wind and weather conditions to ensure birds are attracted to the alternative roost site. The alternative roost site would be on the same bank of The Haven as the roosting area that would be lost. It is possible that the alternative roost area would provide the right aspect to shelter birds from prevailing conditions. However, we note the queries by Natural England regarding</p>	<p>3. The Applicant maintains that i) the existing roost location has demonstrated consistent use by waders at high tide under baseline vessel traffic conditions, ii) that this indicates that baseline vessel disturbance conditions do not affect viability of the roost, and iii) as assessed in the HRA the magnitude of change in utilised navigable tides and number of vessels is insufficient in severity to alter viability of the roost.</p> <p>4. The Applicant notes the RSPB's comments regarding protection from vessel wash. The Applicant stresses that the final design of the Habitat Mitigation Area will include consideration of management to further increase the proportion of highest tides where roosting would still be possible, for example providing a variety of heights of refugia above water. At the same time, the Applicant recognises that many prominent high tide roosts under exceptional circumstances become briefly unusable by roosting birds, unavoidably, and that spring high tides are associated with Scolopacidae seeking non-tidal roosting sites. The Applicant anticipates that the large off-Haven wetlands created within 1 km of one another (including from the Habitat Mitigation Area) as mentioned above, can cater to this requirement and their size will enable thousands of roosting birds to use the small network of sites</p>

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
		<p>the effect of proposed changes to bank heights and profiles within the alternative roost area (REP5 -017). It is essential that the impact of such changes is understood to ensure the effectiveness of any proposed mitigation measures would not be undermined.</p> <p>3. Avoidance of disturbance. It remains unclear if disturbance from the additional vessel movements, or indeed current vessel movements, would be at a level that birds would be able to tolerate when roosting. This is especially the case at night where no evidence has been gathered to understand numbers of birds using The Haven and their response to night -time disturbance events. Whilst management measures could be put in place to try and limit disturbance from people, dogs and predators from the land (but details on management and monitoring are still required from the Applicant on this matter), there will be no effective means to mitigate disturbance from vessels and other watercraft passing close to the roost site. This, therefore, remains a significant area of uncertainty regarding the effectiveness of an alternative roost in the location identified.</p>	<p>(which form part of a wider network with established off-Haven sites e.g. Frampton Marsh.</p> <p>Foraging</p> <p>1. The Applicant maintains its position held at Application Submission, that the Habitat Mitigation Area is of sufficient size and appropriate design to host the maximum number of foraging redshank, ruff and other Scolopacidae recorded in any one low water survey visit to bird survey area A (foraging at low tide is not expected to be impacted in survey area B, see document '9.50 Noise Modelling and Mapping Relating to Bird Disturbance at the Principal Application Site' (document reference 9.50, REP4-015)) (85 birds).</p> <p>2. The Applicant notes the RSPB's comments on foraging requirements of ruff and other waterbirds. The Applicant stresses that design of the Habitat Mitigation Area will include consideration of providing a range of foraging substrates for the widest diversity of waders and waterfowl (isolated lagoons, intertidal substrates, intact saltmarsh etc).</p> <p>3. The Applicant stresses that the assessments submitted at previous deadlines show that project-related activities are not expected to impact foraging waterbirds in the vicinity of the Habitat Mitigation Area (bird survey area B) and that</p>

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
		<p>The creation of an alternative roost close to the Application site and behind the seawall would provide more certainty about its effectiveness. We await further details from the Applicant to understand if alternative options have been explored to provide alternative roosting and foraging habitat close to the Application site.</p> <p>We note that during piling the area affected extends out to 450m, as identified by Natural England in their comments on the Outline Landscape Mitigation and Enhancement Strategy (OLEMS) at Deadline 5 (REP5 - 017). We already have concerns about the appropriateness of the proposed 250m works buffer and how this will be enforced during construction. The increased area affected further adds to the uncertainty regarding the effectiveness of this measure. Our concerns set out in paragraph 7.49 of our Written Representations (REP 1 - 060) have not changed, as we have not seen evidence that this has been addressed by the Applicant.</p> <p>4. Protection from overtopping by vessel wash, especially on high tides. The</p>	<p>project vessels will not cause disturbance by movement during the main foraging period for shorebirds which is low water. The Applicant will ensure the design of the Habitat Mitigation Area maximises potential for baseline forms of disturbance to be excluded e.g. off-lead dogs, but stresses that these factors are already restricted by the significant height drop to the area from the Coastal Footpath.</p> <p>4. Please see the Applicant's previous response within the updated Outline Landscape and Ecological Mitigation Strategy (OLEMS) submitted at Deadline 7 (document reference 7.4(2), REP7-037) Appendix 1 paragraph A1.2.1, that saltmarsh naturally includes pools, including in vicinity of the Habitat Mitigation Area, therefore that improvement or creation of pools should not be considered habitat loss.</p>

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
		<p>success of an alternative roost is also dependent on tidal wash/wave action and this depends on the height of the tide when ships will be passing. The higher the tide the further any wash created by vessels will extend onto and potentially over any roosting area. We are not aware that the applicant has provided any details to demonstrate that the tidal heights would be such that such events are unlikely.</p> <p>We consider the provision of alternative foraging habitat is also essential to address the direct loss of foraging area from construction and operation of the wharf area, as well as the additional area that is likely to be made unsuitable due to the activity around the wharf. The effectiveness of any additional foraging habitat will be dependent on:</p> <ol style="list-style-type: none"> 1. Being of a suitable scale to accommodate all birds displaced by the construction and operation of the wharf. It is not clear from the Applicant's submissions that sufficient foraging habitat could be created alongside the alternative roost to accommodate all redshanks, ruffs and other waterbirds that 	

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
		<p>would be displaced by the construction and operation of the wharf.</p> <p>2. Be of a suitable design to meet the foraging requirements of the species displaced. The creation of pools within the saltmarsh may provide alternative foraging for redshanks, subject to it being of a suitable scale and design to accommodate displaced birds. It is not certain that the foraging habitat, at the scale suggested, would meet the ecological and/or behavioural requirements of other waterbirds such as ruff. The ecological requirements will be based on suitable areas of bare mud with plenty of food. The behavioural requirements will include factors such as openness of habitat to scan for predators and maintain contact with other birds in a flock. Detailed design proposals are required to assess the suitability of any alternative foraging habitat for the different species.</p> <p>3. Avoidance of disturbance. It remains unclear if disturbance from the additional vessel movements, or indeed current vessel movements, would be at a level that birds would be able to tolerate when foraging. This is especially the case at</p>	

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
		<p>night where no evidence has been gathered to understand numbers of birds using The Haven and their response to night -time disturbance events. Whilst management measures could be put in place to try and limit disturbance from people, dogs and predators from the land (more details on management and monitoring are still required from the Applicant on this matter), there will be no effective means to mitigate disturbance from vessels and other watercraft passing close to the foraging site. This, therefore, remains a significant area of uncertainty regarding the effectiveness of an alternative foraging area in the location identified. The creation of an alternative foraging area close to the Application site and behind the seawall would provide more certainty about its effectiveness. We await further details from the Applicant to understand if alternative options have been explored to provide alternative roosting and foraging habitat close to the Application site.</p> <p>4. Replacement of a Priority Habitat. The creation of pools to create foraging habitat would result in the loss of saltmarsh. This is a priority habitat.</p>	

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
		<p>Irrespective of the disagreements over the quality of the saltmarsh, as a priority habitat this should ideally be maintained, restored and enhanced. Where it would be lost then the habitat would have to be compensated.</p> <p>Whilst we accept that the alternative roost site could be considered a mitigation measure, this is dependent on enough evidence being presented to demonstrate that it would address the act to avoid the adverse impact from construction and operation of the Facility. For the reasons set out above, we remain unconvinced that sufficient evidence has been provided, at this time, to demonstrate the alternative roost would be effective beyond reasonable scientific doubt i.e. an adverse effect on the integrity of The Wash SPA/Ramsar site through the loss of this functionally-linked land cannot be ruled out. The alternative roost location would also not address the loss of foraging habitat for waterbirds given the uncertainties listed above. Therefore, there is also no evidence before the examination that the adverse effect on The Wash SPA/Ramsar site arising from the loss of functionally-linked foraging habitat can be ruled out beyond reasonable scientific doubt.</p>	

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
		<p>For measures to be accepted as mitigation in this context, the competent authority must be confident they will (rather than might) avoid harm to site integrity. In this context, this relies on having complete, precise and definitive information on the proposed mitigation measures. We, therefore, consider the lost roost and foraging habitat should more properly be considered as part of the compensation package set out in the Applicant's derogation case rather than as mitigation given the continued uncertainties regarding its effectiveness. Where there would be losses of priority habitat (of which coastal saltmarsh¹ and intertidal mudflats² are such habitats) due to the creation of the proposed alternative roost site (as set out in the Outline Landscape and Ecological Mitigation Strategy: REP3-008) these will need to be compensated.</p>	

Table 1-7 Comments on ExQ3 for the Boston and Fosdyke Fishing Society (REP7-033)

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
Q3.10.0.16	Please provide details of the constitution and size of membership of the BFFS.	The Boston And Fosdyke Fishing Society Limited is an active company incorporated on 1 January 1970 with the registered office located in Boston, Lincolnshire. Boston And Fosdyke Fishing	No comment required.

¹ <https://data.jncc.gov.uk/data/6e4e3ed1-117d-423c-a57d-785c8855f28c/UKBAP-BAPHabitats-08-CoastSaltmarsh.pdf>

² <https://data.jncc.gov.uk/data/6e4e3ed1-117d-423c-a57d-785c8855f28c/UKBAP-BAPHabitats-22-IntertidalMudflats.pdf>

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
		<p>Society Limited has been running for 52 years. It is a not for profit limited company and represents approximately 23-26 vessels which currently work and operate out of the Port of Boston and the River Haven.</p>	
<p>Q3.10.0.17</p>	<p>I note from the Applicant's response to my second written question Q2.10.0.5 [REP5-004] that the BFFS had misgivings regarding the Navigation Risk Assessment (NRA), and that there were resourcing issues for the BFFS in reviewing this document. Please provide an update on progress with agreeing the NRA.</p>	<p>BFFS continues to have serious misgivings about the NRA submitted by the Applicant. These include serious concerns over navigational safety and have been communicated multiple times to the Applicant and been highlighted to the Port of Boston. The Port have themselves suggested that the NRA submitted was inaccurate and unclear (see further below) and the fishermen share this view.</p> <p>However, the Applicant has consistently maintained that their NRA is satisfactory, and the Port have indicated no desire to commission an independent audit of this document, despite the implications of what an inaccurate or insufficient NRA could mean for the long-term future.</p> <p>Therefore, BFFS have had to commission, at its own expense, a specialist navigation firm, Marico, to produce their own Report by independently auditing the documentation submitted by the Applicant.</p> <p>The Examiner has been provided with a position statement in respect of this Report and the reasons it has been slightly delayed (please see email and attachment submitted to the Case</p>	<p>The draft NRA has been updated to ensure the facts reported within it are accurate, in full consultation with the Port of Boston, and the amended version was submitted to the Examination at Deadline 6 (document reference 9.27(1), REP6-022)). The Applicant understands that the inaccuracies referred to in correspondence between BFFS and the Port of Boston harbour master have been resolved. The Examining Authority should note that even in correspondence with the Port of Boston as recently as February 2022, BFFS have failed to "clearly state the extent or reasons why safety cannot be maintained".</p> <p>The process for updating the NRA and accompanying NMP is set out within the NMP Template which has been updated and resubmitted at Deadline 8 (document reference 9.80(1)) and states that the views of BFFS will be sought during the development of the plan, and each time the plan is amended. This template is included within Condition14 of the DML (Schedule 9 to the draft DCO submitted at Deadline 8) to</p>

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
		<p>Officer on 23 February 2022). The Report is currently being finalised by Marico and should be available in the next 7 days for submission to the Examination. This will assist BFFS and the Examination to determine how robust or otherwise the NRA and the Applicant's position is in respect of navigation safety and proposed mitigation. At present, the situation is unchanged in that BFFS cannot accept the Applicant's assertions. We have also forwarded the Examination correspondence from the Port of Boston's Harbour Master which highlighted inaccuracies and errors in the NRA. We appreciate that the Port and the Applicant suggest that further versions of the NRA will resolve matters, but this is a fundamentally flawed position in our opinion. These issues cannot be postponed for resolution to a later date - the NRA and subsequent draft NMP the Examiner has requested are critical to be resolved before consent is granted. BFFS therefore maintain their objections on this front and are not satisfied as to the current responses provided. No settlement has been reached with BFFS.</p>	<p>ensure that it is followed in the ongoing production and updating of both the NRA and NMP.</p> <p>The NMP template submitted at Deadline 8 identifies that an updated NRA will be produced which will include consideration of all users of The Haven, including other commercial vessels, the pilot cutters and recreational users. This updated NRA will be a live document and amended, as considered necessary by AUBP and the Port of Boston, to account for changes in the construction or operational activities at the Facility, or indeed any wider changes in The Haven which may affect navigational risk. The updated NRA will be carried through to the NMP (Step 4) and consulted on as per the development process set out above.</p> <p>As most recently stated in their Response to the ExA's third written questions (REP7-030) the Port is content that the Facility will not cause any significant impact on other river users (including Port of Boston vessels, fishing vessels and others), and that where practicable measures for mitigating impact will be introduced or reinforced.</p> <p>The Applicant received the Marico report on 8th March 2022 and will submit comments to the Examination at Deadline 9. This is the first time BFFS have substantively communicated their</p>

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
			<p>concerns on the NRA. The Examining Authority should note that BFFS declined to meet with the Applicant when the NRA was submitted in November.</p>
Q3.10.19	<p>Given the resourcing issues noted by the BFFS; are there any further steps the Applicant could take to assist the BFFS in their participation in this Examination?</p>	<p>No assistance has been provided by the Applicant to resolve any resourcing issues experienced by BFFS. Solicitors acting for BFFS have sought the payment of their legal fees for correspondence directly with the Applicant, including for meetings held to find a potential solution but these comprise a very limited part of the spend BFFS have already incurred in making their objection and making representations to this scheme. These fees have only just been agreed by the Applicant after having been submitted over 3 months ago and payment is still outstanding. The Applicant has made clear that there is only potential to recover costs directly involved with seeking a settlement with them and not in objecting. However, BFFS have been put in this position by the Applicant, whose proposals will have a detrimental and potentially fatal impact on their continued livelihood. As mentioned above, BFFS have had to go to huge expense in commissioning a Report by an independent body, Marico, as there is otherwise no audit of the</p>	<p>The Applicant strongly disagrees with the notion that it has not provided any assistance to BFFS. The Applicant has always been open to meet with BFFS, and it is BFFS who have declined meetings.</p> <p>The Applicant has as a gesture of goodwill, agreed to contribute towards BFFS's fees, subject to receipt of an invoice and narratives. An invoice for those fees was only received on 3 March 2022 after BFFS submitted their response to written question 3.10.19. Notwithstanding the quality of information included within the narrative the Applicant has arranged for payment of BFFS's fees.</p> <p>In the Applicant's view, there is a risk of misleading the Examining Authority by claiming that "<i>payment is still outstanding</i>" without having issued an invoice for those fees. The Applicant had not had an opportunity to pay BFFS's representatives at the point BFFS submitted their response to the third written questions.</p>

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
		<p>Applicant's submitted documentation despite the NRA containing matters still to be resolved.</p>	<p>The Examining Authority will be well aware of the Guidance: <i>Awards of costs: examinations of applications for development consent orders</i> (July 2013) (DCLG). Part C to this guidance sets out examples of unreasonable behaviour that may be grounds for procedural awards. It is noteworthy that BFFS's conduct falls directly within the scope of several examples, including: late submission of documents (BFFS's Marico Report was only provided on 8 March 2022 despite having sight of the NRA since November), lack of cooperation (BFFS's legal representatives have declined a meeting with the Applicant), and introducing fresh or substantial evidence at a late stage (as above, BFFS have introduced a substantial report after Deadline 7, despite having access to the NRA since Deadline 2).</p> <p>BFFS are an objector to the scheme and have chosen to incur additional costs. The Planning Act 2008 does not entitle objectors to costs of this nature. The Applicant respectfully requests that the Examining Authority remind BFFS's legal representatives that their costs are not a material or relevant consideration for the purposes of examining the DCO.</p>

Table 1-8 Comments on ExQ3 for UKWIN (REP7-036)

No.	ExQ3	IP Response	Applicant's Comments on the IP's Response
Q3.1.0.7	I note the Applicant's response to UKWIN's comments [REP5-009] and UKWIN's latest submission [REP6-042]. It would assist the ExA if UKWIN summarised their position on each of the main issues, in a similar way to Table 1-1 in REP5-009, highlighting the key differences with the Applicant's position.	To assist the inquiry UKWIN has repeated the Applicant's position summary from Table 1-1 in REP-009 and Table 2-15 in REP6-032 adding a summary of the key ways UKWIN's position differs from that of the Applicant (REP7-036).	The Applicant notes UKWIN's position.

Table 1-9 Comments on ExQ3 for Eastern IFCA (REP7-022)

Consultee and Date	Response	Chapter Section Where Consultation Comment is Addressed	Eastern IFCA comments for Deadline 7	Applicant's Comments on the IP's Response
<p>Section 42 Consultation Response – Eastern IFCA, 6th August 2019</p>	<p>(1) Eastern IFCA consider that the potential for cumulative impacts from the Project and nearby industrial sources should be fully considered. The combined effects of airbourne emissions from different sources and discharges (e.g. washing out of clay delivery vessels, release of sodium hydroxide-dosed water) into the river (Haven) and into The Wash should be set out for consideration. Also the combined effect of restrictions to navigation from the Boston Barrier (when operating) and the Project requires consideration in the navigation risk assessment.</p>	<p>Airborne emissions have been assessed within Chapter 14 Air Quality and potential impacts of these on marine and coastal ecology is covered under Section 17.8 of Chapter 17 Marine and Coastal Ecology.</p> <p>Note: The baseline includes all existing air quality sources with cumulative projects set out in Table 14-36 of Chapter 14 Air Quality.</p> <p>There is no direct discharge of water to The Haven of any sort with surface water being discharged inland to the surface water drainage system and discharge to sewer under licence for sewage.</p> <p>Navigation impacts have been addressed in Chapter 18 Navigational Issues.</p> <p>A Navigation Risk Assessment with specific regard to the fishing vessels</p>	<p>(1a) Re Airborne Emissions. Within Section 17.8 of Chapter 17 Marine and Coastal Ecology consideration begins on document page 131. Section 17.8.244 contains text “..that moderate enrichment may be beneficial to plant communities within a saltmarsh. Nitrogen is typically a limiting nutrient in saltmarsh ecosystems and added nitrogen resulted in increased primary production and decomposition...”, supported by papers from 1974 & 1983.</p> <p>A more recent paper “Deegan, L.A., Johnson, D.S., Warren, R.S., Peterson, B.J., Fleeger, J.W., Fagherazzi, S. and Wollheim, W.M., 2012. Coastal eutrophication as a driver of salt marsh loss. Nature, 490(7420), pp.388- 392.” identifies that additional nutrient</p>	<p>Critical Load values for nutrient nitrogen deposition for The Wash in Table 14-9 (of Chapter 14 of the ES, REP1-007, document reference 6.2.14(1)) were obtained from the Air Pollution Information System (APIS) website (http://www.apis.ac.uk/)</p> <p>The abbreviations in Table 14-22 have the following meanings:</p> <ul style="list-style-type: none"> • PC – process contribution – the contribution to Critical Levels or Critical Loads made by the Project alone and in-combination with other sources. • PC/CL - the process contribution divided by the Critical Load limit. • %CL – the process contribution divided by the Critical Load limit, expressed as a percentage.

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		<p>using The Haven is provided in REP6-022 9.27(1) Navigation Risk Assessment (Clean) (planninginspectorate.gov.uk)</p>	<p>inputs can drive saltmarsh loss, due to increase in above ground vegetative growth and loss of below ground roots, leading to increased susceptibility to erosion. Eastern IFCA recognise the value of saltmarsh as a nursery habitat for commercial fish species, as well as for providing numerous other ecosystem services. Thus, concerns over the possibility of impacts to saltmarshes is in line with our remit.</p> <p>Whilst it may well be the case that nutrient inputs from the proposed plant would be lower than from other sources, they should be considered in the light of best available evidence, both in isolation and in combination. Therefore, we do not think that the assessment of "negligible" for Operation / Impact 5 (Increased emissions to air and deposition on marine and estuarine habitats) within Table 17- 43 (starting on</p>	<p>The PC/CL of 6% for the NOx 24-hour mean is a short-term averaging period and this is considered not significant if less than 10%.</p> <p>The impacts on The Wash resulting from air emissions from the Facility were considered 'in-combination' with other sources to provide a total potential impact, as presented in Chapter 14 Air Quality (REP1-007, document reference 6.2.14(1)). In-combination impacts were also considered within other areas of saltmarsh, as presented in Table 14-35 of Chapter 14. The results of the assessment showed that, in The Wash and other areas of saltmarsh, total Predicted Environmental Concentrations (PECs) (i.e. the contribution from the Facility, other in-combination sources and the background) did not exceed the Critical Loads. The results presented in Chapter 14: Air Quality were based on the maximum</p>

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			<p>document page 150) is justified at this stage.</p> <p>Chapter 14 Air Quality contains table 14-9 "Critical Load Values for Nutrient Nitrogen Deposition in The Wash" (page 30 of document) which suggest a critical value of 20-30 kgN/ha/yr for several saltmarsh habitats. This table is seemingly unreferenced, and the source of this information seems not to be given.</p> <p>Table 14-22 "Construction Phase Ecological Impacts – The Wash" (page 51 of document) and table 14-30 "Operational Phase Ecological Impacts – The Wash" (page 62 of document) seemingly contain assessments of the predicted levels of various substances deriving from the proposed project in airborne emissions expressed as an impact per unit area. It is not clear what the abbreviations mean ("PC", "PC/CL", "% CL", etc.) but it</p>	<p>permissible pollutant emission limits from the Facility. Additional work was undertaken to consider a more realistic emission scenario, as presented in Comparison of Predicted Critical Load and Level Results Using Maximum Permissible Emissions Limits and Realistic Emission Scenarios (document reference 9.72, REP6-035), which showed that, under more realistic operating conditions, the in-combination impact on The Wash would be reduced below 1% of the Critical Load and can therefore be considered to be insignificant. It is also likely that the major inputs of contaminants into The Wash would derive from existing background sources in river water and runoff. The contribution from the Facility to contaminants in The Wash is expected to be small in comparison to other sources, for example the catchments of the sixty-five mile long River Welland, the eighty-two mile long River</p>

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			<p>does seem as if there could be some levels which would indicate a requirement for deeper examination, if for instance a "PC/CL" of 6% for "NOx 24hr Mean (µg.m-3) indicates a likely increase in NOx level of 6% from the project alone.</p> <p>Especially in the light of Deegan et al 2012 (referenced above) Eastern IFCA would like to be assured that due consideration has been given to potential impacts arising from additional nitrate burden on sensitive habitats, both alone and in combination with other comparable pressures such as nitrogen loads in local freshwater sources draining into The Wash.</p>	<p>Witham, the ninety-one mile long River Nene and the one hundred and forty-three mile long River Great Ouse.</p>
			<p>(1b) Re Surface Water aspects. Eastern IFCA's original comments related to the Preliminary Environmental Information Report referring to washing out of clay delivery vessels and release of</p>	<p>The Applicant reiterates that there will be no direct discharges of untreated water of any sort to The Haven.</p> <p>Clay delivery vessels will be washed out whilst they are located</p>

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			<p>sodium hydroxide-dosed water. We seek clarification now whether these activities will take place as a result of the Project, and if they will, whether their impacts have been duly assessed.</p> <p>We assume from the comments "There is no direct discharge of water to The Haven of any sort" that there will be no discharge of water from any of the processes involved without full treatment. If that is the case, we defer to the competent authorities such as the Environment Agency in respect of the suitability of and compliance with discharge consents. If that is not the case, we request full details of the potential discharges, effects and mitigation measures.</p>	<p>in the berthing area. As noted in paragraph 17.8.157 of Chapter 17 Marine and Coastal Ecology (document reference 6.2.17, APP-055) the wash water will be retained on-site in sealed sumps prior to being used in the aggregate manufacture process with no release to the wider environment.</p> <p>Measures to prevent water pollution during the construction phase are set out in Section 11 of the Outline Code of Construction Practice (document reference 7.1, APP-120). This includes a suite of measures to prevent the supply of fine sediment, construction materials (including concrete) and oils and lubricants from construction machinery to the surface drainage network.</p> <p>Measures to prevent water pollution during the operational phase of the development are set out in Section 4.4 of the Outline Surface and Foul Water Drainage Strategy (document</p>

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				<p>reference 9.4(1), REP3-009). The site drainage system will include treatment measures such as a sealed drainage system for the operational wharf, oil interceptors and ditches to retain sediment, and discharges into the wider surface drainage network can be controlled through the use of penstocks. Foul water and industrial waste water will be discharged to the existing foul sewer network at a rate to be agreed with Anglian Water. Clean, site run off is directed to the surface water system inland of the Facility (in consultation with Black Sluice Drainage Board) with no direct discharge to The Haven.</p>
			<p>(1c) Re navigation risks and impacts. Eastern IFCA raised the matter to ensure that the requirements of the fishery had been adequately considered, as well as to urge direct liaison between the</p>	<p>The Applicant has included consideration of the impact on commercial fishing within the ES and measures to ensure effects on delays to fishing vessels will be incorporated within the NRA.</p>

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			<p>Applicant and representatives of Boston fishermen.</p> <p>Eastern IFCA accept that the ultimate decisions as to safe operation rest with the Port of Boston, and regulations such as ColRegs.</p> <p>We recognise that the developers have produced a Navigational Risk Assessment (ref. PB6934-RHD-ZZ- XX-RP-Z-4040). We do not offer comment as to the suitability or otherwise of the measures therein, as this is beyond our remit. However, in keeping with the East Inshore and Offshore Marine Plan, we highlight that impacts from developments on fishing activity or on access to fishing grounds should be avoided, minimised or mitigated (Policy FISH1).</p>	<p>In their Response to the Third Written Questions (REP7-030) the Port of Boston states very clearly that, <i>“Overall, the Port is content that the BAEF will not cause any significant impact on other river users (including Port of Boston vessels, fishing vessels and others), and that where practicable measures for mitigating impact will be introduced or reinforced.”</i></p>
	(2) Similarly, impacts on seabed habitats from the Project's increased shipping through The Wash and North Norfolk Coast SAC should be considered	Consideration of impacts on marine and coastal ecological receptors from shipping levels is included within Section 17.8. This is compared against existing shipping levels.	(2a) We could not identify coverage of the interaction between shipping and seabed habitats in Section 17.8, beyond a comment in	The BAEF vessels would only be encouraged to anchor inside the designated anchorage zone, but it is acknowledged that with the increase of vessel numbers, the

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	<p>alongside existing activities that could impact the same habitats.</p>		<p>17.8.161 that "...the increase in the shipping traffic would result in an increase in erosion.", which seem not to be examined any further.</p> <p>We request clarity as to the extent and results of assessments which have been conducted on the impacts of the increased shipping on seabed habitats. Our original response (to the PEIR) highlighted that our comment on this subject related to potential impacts on sensitive seabed habitats (of The Wash & North Norfolk Coast SAC) from increased anchoring (associated with the increased shipping levels needed for the Project), and the fact that Eastern IFCA has developed fisheries management measures to prevent damage to seabed habitats in some parts of The Wash. We note the comment (page 18 of Table 17-2) that anchoring will only take place in existing anchoring zones. We</p>	<p>number of anchoring vessels would likely also increase.</p> <p>Ships anchor in The Wash on arrival when their time of arrival does not coincide with the tidal window to allow transit to a berth. Similarly, vessels may wait at anchor on departure when their time of departure may not suit arrival at their next port, or weather necessitates this for safety and navigation reasons.</p> <p>Given the nature of the operation of the BAEF vessels (which will be steady state operations at loading and unloading) the vessel movements will comprise a more predictable service which should require significantly less time at anchor than shipments that arrive on a spot basis. It is in the interest of BAEF to not have vessels at anchor so this will be managed to keep anchoring at a minimum by routinely matching arrival times with</p>

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			<p>maintain that consideration should be made of whether the increase in anchoring activity could adversely affect protected Wash & North Norfolk SAC habitats. We query whether this matter has been raised with Natural England.</p>	<p>tidal windows (by adjustments of transit speed from the port of departure or adjustments of departure time from that port). Weather would also be a factor in this, but it is likely that the frequency of BAEF vessels anchoring would be less than current commercial shipping.</p> <p>NE has raised concerns over anchoring but only with regard to marine mammals and no concerns have been raised by NE as the statutory nature conservation body with regard to impacts on seabed with the Port of Boston or the Applicant.</p>
	<p>(3) The Non-Technical summary reported that "potential impacts from increased emissions to air and deposits on marine and estuarine habitats will be assessed when results of the air quality assessment are available".</p>	<p>Airborne emissions have been assessed within Chapter 14 Air Quality and potential impacts of these on marine and coastal ecology is covered under Section 17.8 of Chapter 17 Marine and Coastal Ecology.</p>	<p>(3a) See comments above under (1a) in connection with potential interactions with saltmarshes, and in relation to Chapter 14 Air Quality. Those comments are also applicable to this section.</p>	<p>The opinions expressed in the Human Health Risk Assessment report (document reference 9.9 REP01-022) are based upon professional experience of conducting numerous such assessments, combined with a view of the assessment results for</p>

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	<p>Eastern IFCA query when such potential impacts on marine and estuarine habitats, including shellfish beds in The Wash, will be considered. Mussel and cockle beds are an economic resource for local inshore fishermen as well as being attributes of the intertidal mudflats and sandflats feature of The Wash and North Norfolk Coast Special Area of Conservation. If impacts on shellfish habitats are anticipated, consideration must be given to potential impacts on the food chain as well as on biodiversity.</p>	<p>Specific regard to airborne emissions of key pollutants on human health is provided in Appendix 14.5 Human Health Risk Assessment (REP1-022) 9.9 Appendix 14.5 Human Health Risk Assessment (planninginspectorate.gov.uk) Page 8 of this document contains a discussion in relation to shellfish.</p>	<p>We note section 17.8.246 considers deposition onto intertidal habitats such as mudflats and shellfish beds, and concludes that although there is potential for this to contribute to a change in water quality, it is not considered to be significant. We are satisfied that this risk has been considered, but would seek confirmation from EA (as pollution experts) and NE (as ecological advisors) that this conclusion is robust, i.e. that there is not considered to be a risk of contamination of shellfish beds as a result of emissions from the Project and subsequent deposition.</p> <p>Appendix 14.5 Human Health Risk Assessment (ref. PB6934-ZZ-XX-RP-Z-4037) presents opinions as to the potential impacts on shellfish beds, this point having been raised by Eastern IFCA.</p>	<p>receptor locations much closer to the proposed Facility then is the case for shellfish beds in The Wash, which are a minimum of 5 km distant from the Facility. At and beyond this distance, dispersion and dilution of residual emissions in the atmosphere would decrease deposition onto intertidal surfaces and into the water column to negligible levels. It is also likely that the major inputs of contaminants into The Wash would derive from existing background sources in river water and runoff. The contribution from the Facility to contaminants in The Wash will be swamped by other sources, derived from a wide area that makes up the catchments of the sixty-five mile long River Welland, the eighty-two mile long River Witham, the ninety-one mile long River Nene and the one hundred and forty-three mile long River Great Ouse.</p>

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			<p>There seem to be no calculations to support these opinions, nor identification as to the parameters used as the basis for assessment. The relevant chapter seems only to refer to "shellfish beds". Whilst these are of the most immediate, direct relevance to the remit of Eastern IFCA in achieving sustainable utilisation of marine resources, we recognise the importance of all parts of marine ecosystems in supporting such sustainable utilisation. We suggest that a more analytical approach to the calculation and assessment of impacts from emissions to the air on local marine environments will be beneficial. We accept that such an assessment will contain degrees of uncertainty, due to incomplete understanding of the hydrology of the region, and intrinsic variability. Use of an approach incorporating the "Rochdale Envelope" will address this issue.</p>	

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	<p>(4) Furthermore, Eastern IFCA highlighted in previous engagement (May 2019) the potential for subtidal habitats of The Wash & North Norfolk Coast Special Area of Conservation to be impacted by the increased level of anchoring associated with the Project. This has not been reflected in the Non-Technical Summary document Eastern IFCA is currently expanding the extent of areas it has closed to towed demersal fishing in this SAC in order to protect habitats that are sensitive to abrasion and penetration – for further information, please see: https://www.eastern-ifca.gov.uk/wp-content/uploads/2019/09/2019_09_Management_measures_development_tracker.pdf . We suggest that this consideration needs to be raised with Natural England, the statutory conservation advisor.</p>	<p>Anchoring would only be within existing anchoring zones.</p> <p>We recognise that Eastern IFCA require a more specific response than that set out above. Our marine ecology lead (Chris Adnitt) will call Judith to discuss further.</p>	<p>4a) A call between the marine ecology lead (Chris Adnitt) and Eastern IFCA (Stephen Thompson) took place on 23rd February 2022. This identified that Eastern IFCA have assessed fisheries and concluded that certain areas are not compatible with bottom towed gear, and have put in place closures to protect those areas. Some of these areas are within designated anchorage zones, and we think there is a fundamental incompatibility in saying that an area is not able to sustain light bottom- towed fishing gear, but is not adversely affected by anchoring and the associated “dragging” of chain across the seabed as a vessel swings on its anchor as the tide turns. We accept that the Port of Boston is the ultimate regulator of these anchoring areas, and provided that they have conducted assessment as required by</p>	<p>Anchoring is sometimes required when tidal conditions and/or weather necessitates this for safety and navigation reasons. The designated anchoring zone is in place to encourage anchoring in one area, and to mitigate the risk from the presence of undersea wind farm power transmission cables. It does not prohibit anchoring in other areas.</p> <p>As discussed above, in response to 2a), given the nature of the operation of the BAEF vessels (which will be steady state operations at loading and unloading) the vessel movements will comprise a more predictable service which should require significantly less time at anchor than shipments that arrive on a spot basis. It is in the interest of BAEF to not have vessels at anchor so this will be managed to keep anchoring at a minimum by routinely matching arrival times with tidal windows (by</p>

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			<p>Natural England (if any) then we do not think they are breaking any laws. The issue is that of the incompatibility, and also to raise awareness that this issue is one where local fishermen perceive an inequality in the treatment of different activities.</p>	<p>adjustments of transit speed from the port of departure or adjustments of departure time from that port). Weather would also be a factor in this, but it is likely that the frequency of BAEF vessels anchoring would be less than current commercial shipping.</p> <p>NE has raised concerns over anchoring but only with regard to marine mammals and no concerns have been raised by NE as the statutory nature conservation body with regard to impacts on seabed.</p> <p>The Port of Boston have confirmed to the Applicant that NE have not discussed this issue of anchoring impacts on seabed features with them previously.</p>
	<p>(5) Eastern IFCA welcome the detailed consideration given to potential impacts from the Project on fish populations in The Haven. We urge that best practice is</p>	<p>A full assessment of underwater noise impacts to fish species has been undertaken in Section 17.8, including proposed mitigation measures.</p>	<p>(5a) Within Section 17.8 of Chapter 17 Marine and Coastal Ecology consideration of Impact 4 - Underwater noise (piling and</p>	<p>Barrier to fish movement: Construction activities would take place six days a week (Monday to Saturday) between 8am and 8pm (with an option of 7am to 7pm), with</p>

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	<p>followed to minimise impacts from underwater noise through appropriate timing of construction works. We also query whether noise reduction measures such as the use of bubble curtains, could be beneficial to further reduce impacts.</p>		<p>dredging) begins with section 17.8.92 on document page 89. Section 17.8.100 states that “Fish species are mobile, and would be expected to vacate the area with the onset of piling...” We accept that this is likely to be the case, but it does raise the issue that such underwater noise generated within a narrow channel may well in effect act as a barrier to fish movement. This could have the effect of preventing fish undertaking movements that they need to make either as a part of their migration, or as normal movement through an estuary as the tide rises and falls. The identified measure of soft-start is unlikely to mitigate this, as the intention of soft-start is to “scare” fish out of the area before full impact piling begins. If this is achieved, the fish are likely to vacate the area. It is identified in section 17.8.101, that “If piling is carried out at low</p>	<p>no bank holiday or public holiday working. These construction hours are secured by Requirement 12 in Schedule 2 to the draft DCO (document reference 2.1(2), REP3-004). The time restriction on piling throughout the year is already included in condition 13(2)(c) being May to September. In order to further minimise impacts on fish the Applicant agreed to amend the restriction on piling from June to September in the next iteration of the DCO submitted to the examination.</p> <p>The Applicant amended the draft DML at Deadline 3 to require under condition 12 the Construction Environmental Management Plan to include “the detailed methodology for the excavation and subsequent management of any dredged material removed including— ...(ii) details on the timing of dredging activities throughout the year to ensure they are undertaken during</p>

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			<p>tide when The Haven is at its narrowest, no underwater noise would be generated due to the piling being carried out in the dry (whilst the tide is out)". This would seem to offer the prospect of effective mitigation, and we ask what assessment has been done as to the ability to apply this approach.</p> <p>We asked in a response in September 2019 as to the potential use of bubble curtains as a measure to reduce transmission of noise generated by underwater pile driving. We can find no reference to such consideration in Section 17.8, but there is one relevant reference listed in the References (document page 175)</p>	<p>non-sensitive periods for juvenile fish (being July – February inclusive)".</p> <p>Further information on the potential for a barrier to fish movements and migrations has been provided within the Addendum to Chapter 17 and Appendix 17.1 - Benthic Ecology, Fish and Habitats (document reference 9.15, REP1-028) document. This provides an assessment of the piling noise against the known fish migrations periods, and the piling programme. Due to the piling programme, no piling would take place overnight, and most fish migrations would be at times outside of the piling period.</p> <p>Piling in dry only: Due to the existing piling restrictions of in daytime only, and between June and September only, it would not be possible to undertake the piling works if there was a further restriction to only pile in low tide (i.e.</p>

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				<p>in dry conditions). Further information on the potential for a barrier impact to fish migrations is provided in the Addendum to Chapter 17 and Appendix 17.1 - Benthic Ecology, Fish and Habitats (document reference 9.15, REP1-028).</p> <p>Further mitigations, such as use of bubble curtains, is not required, as impacts to fish populations and migrations have been found to be not significant. In addition, the format and programme of the piling mean that the use of a bubble curtain would not be feasible for this project (e.g. due to strong tidal flows, changing water depth, water depth being shallow).</p>
	(6) The Project would result in a significant increase in the number of large vessels using The Haven (up to 624 additional vessel movements per year). These vessels will be required to	A Navigation assessment has been undertaken to consider impacts on other users, with the findings being reported in Chapter 18 Navigational Issues.	(6a) See comments in section (1c) of this table relating to the Navigational Risk Assessment. Those comments also apply to this section.	The process for updating the NRA and accompanying NMP is set out within the NMP Template which has been updated and resubmitted at Deadline 8 (document reference 9.80(1)) and states that the views of

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	<p>turn in the Haven, either inside the Wet Dock or at the Knuckle (turning point) outside the Wet Dock. This increase in vessel activity in The Haven could impact on navigation of fishing vessels between The Wash (fishing grounds) and the London Road quay (fishing vessel moorings).</p> <p>Eastern IFCA acknowledge that the Project team have been liaising with representatives of Boston fishermen; we urge that this dialogue is continued with suitable frequency.</p>			<p>BFFS will be sought during the development of the plan, and each time the plan is amended. This template is included within Requirement 14(3) of the DML (Schedule 9 of the draft DCO submitted at Deadline 8) to ensure that it is followed in the ongoing production and updating of both the NRA and NMP.</p>
	<p>(7) The Wash supports shellfish production areas and has been highlighted in the East Marine Plan as an optimum potential aquaculture area.</p> <p>Eastern IFCA seeks assurance that these shellfish production areas (as well as the naturally-occurring cockle and mussel</p>	<p>Impacts of aerial deposition on marine and coastal habitats have been assessed within Section 17.8 of Chapter 17 Marine and Coastal Ecology for the construction and operation phases.</p> <p>See previous comment in relation to air quality deposits and human health assessment.</p>	<p>(7a)</p> <p>See comments above under Section (3a), relating to Appendix 14.5 Human Health Risk Assessment (ref. PB6934-ZZ-XX-RP-Z-4037). Those comments also apply to this section.</p>	<p>Please refer to the response to 3a above. These comments also apply to this section.</p>

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	beds in The Wash) will not be adversely affected by the "potential impacts from increased emissions to air and deposits on marine and estuarine habitats" noted in the Non- Technical Summary.			