

REPORT

Boston Alternative Energy Facility

Fourth Report on Outstanding Submissions

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Glossary of Acronyms

Term	Definition
AEOI	Adverse Effect on Integrity
BAEF	Boston Alternative Energy Facility
BEIS	Business, Energy and Industrial Strategy
BFFS	Boston and Fosdyke Fishing Society
BNG	Biodiversity Net Gain
CCGT	Combined Cycle Gas Turbine
CEMP	Construction Environmental Management Plan
DCO	Development Consent Order
DML	Deemed Marine Licence
EA	Environment Agency
ES	Environmental Statement
ExA	Examining Authority
FLL	Functionally Linked Land
GHG	Greenhouse Gas
HMA	Habitat Mitigation Area
HRA	Habitats Regulations Assessment
IFCA	Eastern Inshore Fisheries and Conservation Authority
LEMS	Landscape and Ecological Mitigation Strategy
LNR	Local Nature Reserve
MCA	Maritime and Coastguard Agency
MHWS	Mean High Water Springs
MMMP	Marine Mammal Mitigation Protocol
MMO	Marine Management Organisation
MOTH	Mouth Of The Haven
NE	Natural England
NMP	Navigation Management Plan
NRA	Navigation Risk Assessment
OCIMP	Ornithology Compensation Implementation and Monitoring Plan
OEG	Ornithology Engagement Group
OLEMS	Outline Landscape and Ecological Mitigation Strategy
PoB	Port of Boston
RDF	Refuse Derived Fuel

Term	Definition
SAC	Special Area of Conservation
SoS	Secretary of State
SPA	Special Protection Areas
SOCG	Statement of Common Ground
SSSI	Site of Special Scientific Interest
UKWIN	United Kingdom Without Incineration Network

1 Introduction

- 1.1.1 This 'Fourth Report on Outstanding Submissions' is for the Boston Alternative Energy Facility (the Facility). This report is on behalf of Alternative Use Boston Projects Limited (the Applicant), to support the application for a 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).
- 1.1.2 This report responds to any outstanding comments raised by Interested Parties at Deadline 7.
- 1.1.3 In order to assist the Examining Authority, we have provided a summary of all the documents submitted by Interested Parties at Deadline 7 and whether a response is considered required and if so where it is provided (see **Table 1-1**).

Table 1-1 Deadline 7 Submissions

Stakeholder	Document	Response Status
Boston Borough Council	Deadline 7 Submission - Other: Comments on Draft Development Consent Order (DCO), S106, Statement of Common Ground (SOCG), Habitats Regulations Assessment (HRA) derogation case and Biodiversity Net Gain (REP7-021)	The Applicant notes Boston Borough Council's submission. No further response is required.
Eastern Inshore Fisheries and Conservation Authority (IFCA)	Deadline 7 Submission - Responses to Third Written Questions (ExQ3) (REP7-022)	The Applicant has provided a response within the Comments on Interested Parties Responses to the Examining Authority's Third Written Questions (document reference 9.85).
Environment Agency	Deadline 7 Submission - Responses to Third Written Questions (ExQ3) (REP7-023)	The Applicant has provided a response within the Comments on Interested Parties Responses to the Examining Authority's Third Written Questions (document reference 9.85).
ESP Connections Ltd	Deadline 7 Submission (REP7-039)	This response is noted by the Applicant.
Marine Management Organisation (MMO)	Deadline 7 Submission - Responses to Third Written Questions (ExQ3), Comments on revised draft Development Consent Order (DCO), Comments to any information submitted by the Applicant or Interested Parties at Deadline 6 (REP7-024)	The Applicant has provided a response below in Table 2-1 . The Applicant has commented on the MMO's response to the Examining Authority's Written Question within the Comments on Interested Parties Responses to the Examining Authority's Third Written Questions (document reference 9.85) document.

Stakeholder	Document	Response Status
Maritime and Coastguard Agency (MCA)	Deadline 7 Submission - Comments on The Examining Authority's third Written Questions (ExQ3) (REP7-025)	The Applicant has provided a response within the Comments on Interested Parties Responses to the Examining Authority's Third Written Questions (document reference 9.85).
Natural England	Deadline 7 Submission - Cover Letter (REP7-026)	The Applicant has provided a response within the Comments on Interested Parties Responses to the Examining Authority's Third Written Questions (document reference 9.85).
	Natural England's Comments on Chapter 17 Marine and Coastal Ecology and Appendix 17.1 Habitats Regulations Assessment Update [REP5-006] (REP7-027)	The Applicant has provided a response below in Table 2-2 .
	Deadline 7 Submission - Appendix F4 – Natural England's Comments on Schedule 11 of Draft Development Consent Order (DCO) [REP6-003] (REP7-028)	The Applicant has provided a response below in Table 2-3 .
	Deadline 7 Submission - Appendix H6 – Natural England's Risk and Issues Log (Ornithology section) (REP7-029)	The Applicant notes Natural England's updated Risk and Issues log, particularly the new issues which have been addressed in response to Natural England's other submissions at Deadline 7.
Port of Boston	Deadline 7 Submission - Responses to Third Written Questions (ExQ3) (REP7-030)	The Applicant has provided a response within the Comments on Interested Parties Responses to the Examining Authority's Third Written Questions (document reference 9.85).
RSPB	Response to the Examining Authority's Third Written Questions (REP7-031)	The Applicant has provided a response within the Comments on Interested Parties Responses to the Examining Authority's Third Written Questions (document reference 9.85).
	Deadline 7 Submission - The RSPB's comments on the Applicant's response to the Examining Authority's commentary of the draft Development Consent Order (DCO) and Critique of draft DCO Schedule 11 (REP7-032)	The Applicant has provided a response below in Table 2-4 .
Boston and Fosdyke Fishing Society (BFFS)	Deadline 7 Submission - Responses to Third Written Questions (ExQ3) (REP7-033)	The Applicant has provided a response within the Comments on Interested Parties Responses to the Examining Authority's Third Written Questions (document reference 9.85).
	Deadline 7 Submission (REP7-034)	The Applicant has provided a response below in Table 2-5 .

Stakeholder	Document	Response Status
United Kingdom Without Incineration Network (UKWIN)	Deadline 7 Submission - Comments on submissions received at Deadlines 5 and 6 (REP7-035)	Where relevant, responses to outstanding points are provided below in Table 2-6 . The Applicant has no further comments to make on UKWIN's comments on National Policy Statements.
	Deadline 7 Submission - Responses to Third Written Questions (ExQ3) (REP7-036)	The Applicant notes this response within the Comments on Interested Parties Responses to the Examining Authority's Third Written Questions (document reference 9.85).

2 Responses to Unanswered Points

2.1 MMO

Table 2-1 Responses to outstanding points within MMO’s Deadline 7 Submission - Comments on revised draft Development Consent Order (DCO), Comments to any information submitted by the Applicant or Interested Parties at Deadline 6 (REP7-024)

No.	Comment	The Applicant’s Response
Comments on revised draft DCO		
2.1.	<p>Due to the short notice of the change in date of Deadline 7 (from 15 March 2022 to 1 March 2022), the MMO is unable to provide a detailed response on the draft DCO for Deadline 7. The MMO is committed to making progress during this examination and believes, rather than preparing a detailed response that may not resolve all issues, it is more efficient to use this time to bring outstanding matters to resolve.</p>	Noted.
2.2.	<p>The MMO notes that Part 1, 2. (1)(b) states the local office for the works as the Beverly office. The MMO has since checked this and the coastal office which would be responsible for the BAEF would be the Lowestoft office. The address and contact details for this office are as such:</p> <ul style="list-style-type: none"> Lowestoft office, Pakefield Road, Lowestoft, Suffolk, NR33 0HT ; Email: lowestoft@marinemanagement.org.uk ; Phone: 01502 573 149. 	The Applicant has updated the deemed marine licence (DML) with the correct address in the updated draft DCO (document reference 2.1(4)) submitted at Deadline 8.
2.3.	<p>The MMO has reiterated to the Applicant that the wording around a sampling condition was submitted at Deadline 3. This wording is yet to be included within the DML, and current wording of the Condition 12.(2)(c)(ii) is not sufficient to cover the requirements of sampling for the MMO. The MMO and the Applicant have agreed on the following wording for the sampling condition and updated wording for the relevant part of the Construction Environmental Management Plan (CEMP) condition:</p> <p><i>CEMP</i></p>	The Applicant has included the wording as set out in the MMO’s Deadline 7 Submission in the updated draft DCO (document reference 2.1(4)) submitted at Deadline 8.

No.	Comment	The Applicant's Response
	<ul style="list-style-type: none"> • (c) The detailed methodology for the excavation and subsequent management of any dredged material removed in the construction and maintenance of the berthing pocket including - <ul style="list-style-type: none"> (i) the volume of material to be dredged; (ii) sediment sample analysis results, which must not exceed three years in age and which must be completed by a laboratory validated by the MMO and undertaken in accordance with the sample plan approved under condition 25; (iii) where contamination is identified by the sediment sample analysis results, a monitoring and action plan to address in the potential release of contaminants from dredged material into the watercourse (iv) provision that dredging activities must only be undertaken from 1 July to 28 February inclusive and the details on the timing of dredging activities throughout those months (v) provision that no dredged materials are to be disposed of at sea or in other waters otherwise than in accordance with a marine licence; <p><i>Sediment Sampling</i></p> <p>1.—(1) <i>The undertaker must submit a sample plan request in writing to the MMO for written approval of a sample plan in accordance with the procedure in Part 4, following consultation with the Environment Agency.</i></p> <p>(2) <i>The sample plan request must be made—</i></p> <ul style="list-style-type: none"> (a) <i>for capital dredging; at least six months prior to the commencement of any capital dredging; or</i> (b) <i>for maintenance dredging, at least six months prior to the end of every third year from the date of the previous sediment sample analysis.</i> <p>(3) <i>The sample plan request must include details of—</i></p> <ul style="list-style-type: none"> (a) <i>the volume of material to be dredged;</i> (b) <i>the location of the area to be dredged;</i> (c) <i>details of the material type proposed for dredging;</i> 	

No.	Comment	The Applicant's Response
	<p><i>(d) the type and dredging methodology (including whether it is a capital or maintenance dredge, depth of material to be dredged and proposed programme for the dredging activities); and</i></p> <p><i>(e) the location and depth of any supporting samples.</i></p> <p><i>(4) Unless otherwise agreed by the MMO, the undertaker must undertake the sampling in accordance with the approved sample plan.</i></p> <p><i>(5) For capital dredging, the undertaker must submit sediment sample analysis results as part of the CEMP in accordance with condition 12 and the undertaker must not undertake the dredging activities until the MMO has approved the CEMP.</i></p> <p><i>(6) For maintenance dredging, the undertaker must submit sediment sample analysis results completed by a laboratory validated by the MMO at least 6 weeks prior to undertaking any maintenance dredging and the undertaker must not undertake any dredging until the MMO has approved the sediment sample analysis results.</i></p>	
2.4.	<p>The MMO notes that the Landscape and Ecological Mitigation Strategy (LEMS) submission currently included within the DCO, will also cover work to be undertaken below Mean High Water Springs (MHWS). For works below MHWS, submission of a LEMS must also be made to the MMO for approval. The Applicant has submitted the below wording of a condition for approval. The MMO agrees with this and notes that the Applicant has stated that submission of the document should be made 13 weeks prior to works being undertaken. While the MMO agrees with the condition wording, the MMO does not agree with the inclusion of a 13-week timeframe for response from ourselves being included within the DML.</p> <ul style="list-style-type: none"> —(1) The undertaker must submit a landscape and ecological mitigation strategy to the MMO for approval in accordance with the procedure in Part 4, following consultation with Boston Borough Council, the Environment Agency, the relevant statutory nature conservation body, Lincolnshire Wildlife Trust 	<p>The Applicant has included the wording as set out in the MMO's Deadline 7 Submission in the updated draft DCO (document reference 2.1(4)) submitted at Deadline 8 with the addition of a new sub-paragraph in paragraph (4), which has been added for clarity:</p> <p>“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.”</p> <p>The Applicant has responded to the MMO in its earlier submissions to the examination on the appropriateness of including a timeframe for a response from the MMO (please see row 28 of Table 1-4 within the Applicant's Comments on Relevant</p>

No.	Comment	The Applicant's Response
	<p>and the Royal Society for the Protection of Birds, at least 13 weeks prior to the commencement of any of licensed activity</p> <ul style="list-style-type: none"> ○ The MMO's approval of the landscape and ecological mitigation strategy is restricted to the parts of that strategy that relate to any licensable marine activities, with the remainder approved by the relevant planning authority under requirement 6 of Schedule 2 (requirements). ○ The landscape and ecological mitigation strategy submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline landscape and ecological landscape mitigation strategy. ○ The landscape and ecological mitigation strategy approved under subparagraph (1) must include details of— <ul style="list-style-type: none"> ▪ mitigation measures required to protect protected habitats and species, non-statutory designated sites and other habitats and species of principal importance during the construction of the authorised development; ▪ mitigation measures required to protect protected habitats and species, non-statutory designated sites and other habitats and species of principal importance during the operation of the authorised development; ▪ the results of the Defra biodiversity off-setting metric together with the off-setting value required, the nature of such off-setting and evidence that the off-setting value provides for the required biodiversity compensation, risk factors (including temporal lag) and long term management and monitoring; ▪ the site or sites on which the compensation off-setting required pursuant to (c) will be provided together with evidence demonstrating that the site or sites has/have been 	<p>Representations (document reference 9.2, REP1-035) and row 1.4.50 of Table 1-4 within the Applicant's Comments on Written Representations (document reference 9.22, REP2-006).</p>

No.	Comment	The Applicant's Response
	<p>chosen in accordance with the prioritisation set out in the outline landscape and ecological mitigation strategy;</p> <ul style="list-style-type: none"> ▪ certified copies of the completed legal agreements securing the site or sites identified in (d) to enable enactment of the biodiversity off-setting scheme and the biodiversity off-setting management and monitoring plan as approved in the landscape and ecological mitigation strategy; and ▪ any hard and soft landscaping to be incorporated within Work No. 4 including location, number, species, size of any planting and the management and maintenance regime for such landscaping. <ul style="list-style-type: none"> ○ The undertaker must not commence the licensed activities until the MMO has approved in writing the submitted landscape and ecological mitigation strategy. ○ Unless otherwise agreed by the MMO, the landscape and ecological mitigation strategy must be implemented as approved by the MMO. 	
2.5.	The MMO is aiming to submit further comments on the draft DCO at Deadline 8 on 15 March 2022.	Noted, the Applicant has liaised with the MMO regarding their proposed Deadline 8 comments and where the Applicant has agreed to their amendments these have been in the updated DCO.
Deadline 6 Submission – 9.12(1) Outline Marine Mammal Mitigation Protocol (Clean) – REP6-020		
3.2.	The MMO has reviewed the updated Outline Marine Mammal Mitigation Protocol (MMMP) and has no comments to make. The MMO thanks the Applicant for the inclusion of a condition stating the final MMMP will be submitted to the MMO for approval post-consent.	No further comment required.
Deadline 6 Submission – 9.27(1) Navigation Risk Assessment (Clean) – REP6-022		

No.	Comment	The Applicant's Response
3.3.	As detailed in Schedule 9 of the draft DCO, the DML, the MMO will provide further comments on the Navigation Risk Assessment (NRA) once submitted for approval pre-construction.	No further comment required.
3.4.	The MMO will wait for the submission of the NRA post-consent and will maintain a watching brief on any comments provided by the Port of Boston.	No further comment required.
Marine Management Organisation Deadline 6 submission – REP6-037		
3.5.	The MMO has been in discussions with the Applicant regarding our Deadline 6 submission via email. The points raised have been summarised below.	The Applicant is grateful of the MMO's engagement on the drafting of the DML.
3.6.	Regarding point 2.4, if all of the measures related to ornithological mitigation are included within the Outline Landscape and Ecological Mitigation Strategy (OLEMS) then the MMO is content for this to be submitted in place of a distinct ornithological mitigation and monitoring plan. However, if the OLEMS covers work below mean high water springs (MHWS) then the final OLEMS will need to be approved by the MMO and therefore there must be further submission of it through the DML.	The Applicant has advised the MMO that it has agreed to include a condition in the DML giving the MMO approval of the parts of the LEMS that relate to activities below MHWS. The Applicant can confirm that the condition set out in row 2.4 above has been agreed with the Applicant and it has been added as a new condition 18 to the DML contained in Schedule 9 to the draft DCO (document reference 2.1(4)) submitted at Deadline 8.
3.7	Regarding point 2.5, the MMO is satisfied that the construction windows for dredging and piling are secured through conditions on the DML.	Noted.
3.8	Regarding point 2.6, the MMO will confirm our position on limits of deviation in further deadlines. However, if plans are to undertake works as listed then we agree that limits of deviation may not be needed.	Noted.
3.9	The MMO requests that Condition 13(2)(c) of the DML is re-worded to state that the acceptable piling period is <i>'between 1st June and 30th September inclusive'</i> .	The Applicant has amended condition 13(2)(c) in the updated DCO (document reference 2.1(4)) submitted at Deadline 8 as follows: "provision that piling activities must only be undertaken between 1 June and 30 September and details on the timing of piling activities throughout those months;"
3.10	The text under Requirement 12 regarding construction hours should be added and secured within the DML.	The Applicant has amended condition 13(2)(d) in the updated DCO (document reference 2.1(4)) submitted at Deadline 8 as

No.	Comment	The Applicant's Response
		follows: "details of the anticipated spread of piling activity throughout a working day with piling permitted between the hours of 0800 to 2000 hours on Monday to Saturday (with the option of 0700 to 1900);".
3.11	Regarding Condition 12(2)(c)(iii), the MMO requests that this is reworded instead to "dredging will only be undertaken from 1st July to the 28th February inclusive".	The Applicant has amended condition 12(2)(c)(iii) in the updated DCO (document reference 2.1(4)) submitted at Deadline 8 as follows: "provision that dredging activities must only be undertaken from 1 July to 28 February inclusive and the details on the timing of dredging activities throughout those months;"
3.12	<p>The MMO is content in principle with the approach set out by the Applicant regarding submission of the Marine Mammal Mitigation Protocol (MMMP), but wanted to clarify a few points regarding piling:</p> <p>The Applicant stated <i>"This [soft start] procedure is only required where there has been no piling for the preceding 10 minutes (i.e. if piling continues at a new location within 10 minutes of a pile being installed, as is expected, then this softstart and ramp-up protocol would not be required)"</i>. It is unlikely to be the case, but the 'new location' should not be such that piling there will expose some areas (to noise) that were not previously exposed to significant noise.</p> <p>The MMO appreciates that a full soft start may not be possible, given the anticipated short duration of piling (and likely relatively low hammer energies). If soft start is proving difficult then it may be possible for BAEF to start with a slow strike rate before ramping up to full strike rate.</p>	<p>The piling at each new location would be adjacent to, or within very close proximity to, the previous pile location. Clarification on the distance within which a new pile must be installed (in order to not require full mitigation procedures before commencing) will be included in the final MMMP in the pre-construction phase.</p> <p>The potential for a slow strike rate (rather than a reduced hammer energy) as the soft-start will be confirmed once the pile design is finalised. If it is a possible option, this will be included within the final MMMP, to be agreed with the MMO. If this is not a possible option, this will also be confirmed.</p>
The Boston and Fosdyke Fishing Society Limited		
3.13.	The MMO has received comments directly from the fishing fleet within Boston. They wish to raise concerns regarding the shipping leaving the	Due to the tidal constraints within the Haven and the draught of large commercial vessels, the tidal window for commercial vessel

No.	Comment	The Applicant's Response
	<p>new proposed Wharf early in the tidal cycle. There is concern around the level of water within the river channel at this time, the width and depth of the river channel, and how this will impact the wake caused by large ships passing through. They are concerned about the danger this presents to smaller vessels trying to use the area, and the damage this may cause to the riverbanks and beds. With the lack of depth there is concern around the scouring effect to the riverbed, and the plumes of sediment reaching the shellfish beds at the river mouth. They would also like to know if BAEF are taking water from the river for the plant, and if so, how do they intend to flush the pipe work out. Will this involve the use of chemical cleaners being released back into the river?</p>	<p>movements will not be extended. This was also stated by the Port of Boston in their response to the ExA's third written questions (Q3.10.0.26; REP7-030). As such, the potential effects expressed by the Boston and Fosdyke Fishing Society (BFFS) are not considered to be of concern.</p> <p>The Facility will not require the extraction of water from the Haven for its processes. There will be no operational discharge to The Haven from the application site with surface water being discharged to the surface water drainage network at its current location. An Outline Surface and Foul Water Drainage Strategy (REP3-009, document reference 9.4(1)) was submitted to the Examination at Deadline 3 which contains outline details of the proposed surface water drainage system, pollution prevention measures and details of foul water disposal to sewer. The wharf will be graded to ensure that any potentially contaminated drainage on this area flows away from The Haven and into the sealed drainage system that will convey flows through via oil interceptors under the wharf deck, with individual recovery pumps to a water system for nodule formation within individual pelletising lines for water re-use.</p>
3.14.	<p>The MMO recommends the Applicant directly liaises with the fishing society to address these concerns.</p>	<p>The Applicant will ensure that BFFS are aware of our response above.</p>

2.2 Natural England

Table 2-2 Responses to outstanding points within Natural England’s Comments on Chapter 17 Marine and Coastal Ecology and Appendix 17.1 Habitats Regulations Assessment Update [REP5-006] (REP7-027)

No.	Comment	The Applicant’s Response
1	<p>Para No. 3.2.5.</p> <p>NE continues to request further clarification on the proposed Habitat Mitigation Area - in particular regarding the removal of the low-profile banks. We specifically require details of where the bank will be removed, the method, a calculation of the volume of material to be removed and where this will be disposed of. In addition, the location of the created 3 shallow pools and methods used.</p> <p>Also, regarding the placement of rocks from the Principal Application Area to the proposed Habitat Mitigation Area - to facilitate roosting of Redshank - will these function in the same way as the remaining banks (Old sea wall) that is presumably not being removed? This may restrict visibility of predators.</p> <p>Natural England suggest one additional mitigation option here: restricting access by Members of Public and dog walkers onto the Habitat Mitigation Area from the Coastal Path using fencing. This would minimise disturbance if this area is being used more regularly by roosting birds. Signage actively asking Members of public to keep dogs on the lead (and why this habitat is important) would be beneficial.</p>	<p>The Applicant has responded to all questions raised on the Habitat Mitigation Area within the responses sent through during the examination process. The updated OLEMS document (document reference 7.4, REP7-037) states that “The plans for the works would be developed to provide optimal benefits for biodiversity, in discussion with Natural England, the Environment Agency and the RSPB.” This is to ensure that any works are undertaken with the objective of improving the area for birds and other wildlife and to ensure that no works would be undertaken that would have an adverse effect.</p> <p>The habitat mitigation works are not expected to change the access by members of the public and dog walkers from the existing usage in this area and this is not considered to be an issue due to the width of the habitat in this area.</p>
2	<p>Para No. 3.3.1.</p> <p>For clarity it would be good to include the annual number of vessels here so it is comparable with the values given in the following sentence.</p>	<p>The Applicant notes there is no paragraph 3.3.1 within the Chapter 17 Marine and Coastal Ecology and Appendix 17.1 Habitats Regulations Assessment Update (document reference 9.59, REP5-006). The annual vessel numbers are discussed in detail in the report.</p>

No.	Comment	The Applicant's Response
3	<p>Para No. 3.5.3.</p> <p>Natural England's comment on paragraph 3.2.5 with regards to the use of the rocks within the proposed Habitat Mitigation Area applies here too.</p>	<p>See response to comment number 1 above.</p>
4	<p>Para No. 3.5.4.</p> <p>Natural England's comment on paragraph 3.2.5 with regards to dogs accessing the proposed Habitat Mitigation Area applies here too.</p>	<p>See response to comment number 1 above.</p>
5	<p>Table 3.1.</p> <p>Natural England advises that the EA may require notification (Flood Permit) if works are undertaken along the banks of The Haven. Prior to the Boston embankment works, the saltmarsh along The Haven was cattle grazed in several places maintaining a short-sward with open bare patches. NE are uncertain whether grazing is still undertaken (due to the removal of the old fences). This may be something that could be looked into. The fences will have reduced the disturbance impact of dogs accessing the saltmarsh/ mudflats from the PROW/ LNR. But habitat management may still need to be provided over the lifetime of the project.</p>	<p>The Applicant has been in discussion with the Environment Agency with regard to the proposed works. Works in proximity to the banks of The Haven including the works within the Habitat Mitigation Area are covered within the Protective Provisions of the draft DCO (document reference 2.1(4)). Adaptive monitoring and management is proposed for the Habitat Mitigation Area (as discussed in the updated OLEMS (document reference 7.4(2), REP7-037)). Habitat management is proposed for the duration of the project.</p>
6	<p>Figure 3.1</p> <p>NE presume the locations of the two arable fields being put forward is not yet common knowledge and this information will be shared?</p>	<p>This is not yet common knowledge due to commercial sensitivities.</p>
7	<p>Para No. 4.2.1.</p> <p>The importance of Ruff (as per updated passage survey and subsequent docs) is not noted in this text.</p>	<p>It is acknowledged that ruff have been recorded within Areas A and B, this has been discussed in the various documents produced (see Figure 2-1 of document reference 9.59, REP5-006 for locations of survey Areas A and B). It is noted that Natural England have said that any mitigation provided for redshank would also benefit ruff (see Natural England's Deadline 5</p>

No.	Comment	The Applicant's Response
		Submission - Appendix B3 Natural England's Advice on Ornithology Documents Submitted at Deadline 3 and 4, REP5-013).
8	<p>Para No. 4.2.5.</p> <p>Natural England advises that while the criteria identified are typical, they are not exhaustive. For example, Functionally Linked Land (FLL) may act as a breeding ground supplying recruitment to an SPA; FLL may act as a population sink and consequently draw individuals out of an SPA; removal of individuals would be considered against a mortality impact of a 1% increase in background mortality levels rather than 1% exposure to pressure etc.</p> <p>While exposure of 1% of the population to pressure is often used as a threshold this should not be taken as a definitive, where populations are declining impacts affecting 1% of a population may have wider ecological implications than when the population is increasing and has more resilience.</p> <p>Natural England advises that this requires further assessment.</p>	<p>Although the SSSI is noted for breeding redshank the SPA is not. In addition, Areas A and B were surveyed during the breeding season and did not support SPA species during this period.</p> <p>As discussed in the Chapter 17 Marine and Coastal Ecology and HRA update (document reference 9.59, REP5-006), functionally linked land is defined (Law Insider 2022) as land outside the boundary of a National Network site (in this case The Wash SPA/Ramsar site) that provides habitat that is critical to supporting the mobile interest feature or features for which the site is listed (in this case the non-breeding redshank qualifying interest in particular). For practical purposes it is advised that functionally linked habitats for birds typically need to: • lie within reasonable flight distances (a species-specific parameter); • comprise suitable foraging / loafing / resting habitats; and • be large enough to realistically support 1% of a SPA / Ramsar population. The Applicant has used these criteria to assess the functional linkage of areas of The Haven as is fully detailed within the Chapter 17 Marine and Coastal Ecology and HRA update (document reference 9.59, REP5-006).</p> <p>If Natural England has undertaken any analysis that suggests that the areas are functionally linked the Applicant requests whether this could be shared.</p>
9	Para No. 4.2.6.	The Applicant recognises that the assessment of functional linkage is scaled. Paragraph 4.2.6 was just stating that the

No.	Comment	The Applicant's Response
	<p>Natural England advises that the consequence of impacts on Functional Linkage is not binary but is scaled and can run from <i>de minimis</i> through to impact on whole SPA population depending on circumstance and a range of factors. We advise that the consequences of this risk are considered in the Appropriate Assessment phase of an HRA for this project. The text here expresses confusion on this.</p>	<p>concept of functional linkage appeared to be applied in a binary way but was not endorsing this approach.</p> <p>As outlined above, the assessment for functional linkage is about whether the SPA species are likely to be using the habitats at the Proposed Application Site and if so in what numbers. This has been assessed using the survey data and other sources of data on redshank movements between roosting sites in The Wash. This has included assessing numbers of birds at the localised level and comparing to the wider SPA populations.</p>
10	<p>Para No. 4.2.7.</p> <p>While NE accepts that there is uncertainty over the strength of Functional Linkage, due to lack of information, the precautionary principle requires that in the absence of information an approach is taken which assumes connectivity as this is the more precautionary approach.</p> <p>We note that redshank are currently declining on the Wash which threatens achievement of their Conservation Objectives. Based on the most recent five year mean population (5087 indiv) and given annual mortality in the region of 26% (based on adult birds, but higher in first years), a 1% increase in background mortality would correspond to the loss of around 13 birds from the Wash system. Given the utilization of the development site (treated as Areas A and B) by 150+ birds on a regular basis and incomplete understanding of redshank utilization of the Haven, strength of connectivity, and consequences of loss of a portion of the population, we advise that a high level of precaution is warranted. Consequently, NE remain expectant of effective mitigation and where that is not possible compensation being delivered for impacts</p>	<p>The precautionary principle has been applied to areas where there was not sufficient information to inform the assessment, This is the case for the central area of The Haven which has been considered to be functionally linked due to low levels of information. The Applicant consider that sufficient evidence has been collected concerning the ornithology baseline for Areas A and B, having surveyed waterbirds through two winter and two breeding seasons. The central area of The Haven from downstream of the Principal Application Site to the mouth of The Haven has been surveyed during winter 2021/22, and a summary of ornithology baseline including this study area will be submitted at Deadline 8.</p> <p>The information provided in the adjacent comment seems to mix up the number of individuals of one species (redshank) with the total count of all bird species for Areas A and B. In addition, only Area A would be lost, Area B remains and supports the higher number of birds. The mean count of redshank in Areas A and B across all autumn/winter surveys and tides is 62. The mean across high tides is 76.</p>

No.	Comment	The Applicant's Response
	<p>in the Haven to ensure continued functionality being provided by functionally linked areas.</p>	<p>Adaptive monitoring and management is proposed for the Habitat Mitigation Area (as discussed in the updated OLEMS (document reference 7.4 (2), REP7-037)) to ensure that the redshank would continue to use the localised area.</p>
11	<p>Para No. 4.2.8.</p> <p>It should be noted that neither of the studies identified in this section reflects the situation in the Haven of an essentially linear habitat with consequently spatially limited resources. NE recognises that redshank are more territorial and have more restricted individual ranges than many other waders, however, in the absence of robust evidence on the ecology of redshank in proximity to the study site, there is high level of uncertainty in reading across the conclusions of these studies.</p>	<p>The initial Environmental Statement (ES) (document reference 6.2.17, APP-055) identifies The Haven as a narrow linear habitat with spatially limited resources. The area along The Haven has not been previously identified as sensitive for bird usage, even in the Natural England assessment undertaken for the coastal access path. Bird surveys have been undertaken in the proposed area of development for two years which have been used in the assessment process. This is generally considered to be acceptable for assessment purposes.</p>
12	<p>Para No. 4.2.9</p> <p>The study by Burton et al confirmed that redshank like to remain in limited ranges during the non-breeding period. The follow-up work after construction of the Cardiff Barrage, which resulted in the loss of foraging habitat, indicated that post-development the birds that had lost their foraging territories were not able to adapt by shifting territory, but were lost from the population. Please see: Burton, N.H.K., Rehfisch, M.M., Clark, N.A. & Dodd, S.G. 2006. Impacts of sudden winter habitat loss on the body condition and survival of redshank <i>Tringa totanus</i>. <i>Journal of Applied Ecology</i> 43: 464-473.</p>	<p>Noted by Applicant. This work was reviewed for the assessment process.</p>
13	<p>Para No. 4.2.11</p> <p>While informative because of the uncertainty identified at comment on paragraph 4.2.8 above, NE does not agree with the conclusion that the</p>	<p>The Applicant's conclusion on functionally linked land still stands.</p>

No.	Comment	The Applicant's Response
	functional linkage redshank, or the habitats they utilize, at the development site can be determined based on these studies.	
14	<p>Para No. 4.2.12</p> <p>The identified linkage between areas A and B suggests that they function as one roost area with birds moving between the two areas in response to environmental factors such as disturbance. While we agree this provides some reassurance that Area B will be adopted by birds from Area A, it also highlights the need at the current time for birds to have two areas they can utilize.</p>	<p>Area A is used by less birds than Area B which is also a larger area of habitat. The mitigation works proposed for Area B are expected to provide enough habitat for the numbers of birds that used both areas combined.</p>
15	<p>Para No. 4.2.15</p> <p>Because of the uncertainty identified at comments on paragraphs 4.2.8 and 4.2.11 above, NE does not agree with the conclusion that the redshank, or the habitats they utilize, at the development site can be considered to be not Functionally Linked. As identified some birds are likely to utilize both the SPA and Area A each winter, while the risk to the SPA is proportional to this level of use, the site is nonetheless functionally linked, and should be assessed as such.</p>	<p>The Applicant's conclusion on functionally linked land still stands.</p>
16	<p>Para No. 4.2.18</p> <p>Because of the uncertainty identified at comment on paragraphs 4.2.8 and 4.2.11 above, NE does not agree with the conclusion that the redshank, or the habitats they utilize, at the development site can be considered to be not Functionally Linked. As identified some birds are likely to utilize both the SPA and Area A each winter, while the risk to the SPA is proportional to this level of use, the site is nonetheless functionally linked, and should be assessed as such.</p>	<p>The Applicant's conclusion on functionally linked land still stands.</p>
17	<p>Para No. 4.6.3 and 4.6.4</p>	<p>The works will be maintained for the Habitat Mitigation Area following decommissioning of Work No. 4 (the wharf), unless the</p>

No.	Comment	The Applicant's Response
	<p>Natural England queries over what timeframe is this being secured? I.e. as a minimum for the duration of the life-time of the site occupation (and decommissioning phase)?</p> <p>What about the wharf? If that is left in-situ as currently expected? This land (as long as it is used by SPA/ Ramsar bird species) should be considered Functional Linked Land and should be included within the SPA network to retain the sites network coherence. And will need to be managed as such</p>	<p>intertidal habitat is reinstated to an acceptable condition to enable waterbirds to return to use this area for roosting.</p>
18	<p>Para No. 4.6.10</p> <p>NE comment on Table 3.1 applies here too.</p>	<p>See response to Comment 5 above.</p>
19	<p>Para No. 4.6.14</p> <p>NE comment on paragraph 4.6.3 applies here too.</p>	<p>See response above for 4.6.3 (Comment 17).</p>
20	<p>Para No. 4.7.1</p> <p>Natural England requests a map of the locations so we can see which side of The Haven it is on. Is the Applicant considering both sites or one/ or the other?</p>	<p>The exact location of the compensation sites are not shown as this is commercially sensitive information at this stage. The compensation sites are both on the same side of The Haven as the Proposed Application Site. Both sides of The Haven were considered in the area of search but the opposite (eastern) side was considered to be too busy with recreational usage. The Applicant is currently considering both sites which would be developed as a package to provide a network of sites for bird use.</p>
21	<p>Para No. 4.7.2</p> <p>Natural England has several queries in relation to this section of the HRA. For example: Which bank of the Haven does this paragraph refer to?</p>	<p>See response above for the bank of The Haven.</p> <p>There are no indications that predators are a problem along The Haven. The sites have been screened for potential for predators. The experience of the RSPB for the reserves and the need for predator (and recreational user) fencing would be requested for more detailed development of the sites.</p>

No.	Comment	The Applicant's Response
	<p>Regarding the creation of shallow lagoon with an island, presumably water depth will be deep enough to restrict predator access to the island? Or will there be predator fencing? Also, how will the water levels of the lagoon be maintained and where will the water be sourced? Will there be any impacts on RSPB water requirement?</p> <p>Natural England advises that Fencing may be necessary to restrict dog access from the coastal footpath to minimise disturbance.</p>	
22	<p>Para No. 4.8.1</p> <p>Natural England's comment on Table 3-1 is also relevant here regarding the possibility of grazing, Also, fencing to minimise access along channel itself.</p> <p>Natural England advises that some of the scrub within the Havenside LNR might be important for migrant birds - RSPB would be able to advise further. Further along the Haven there are records of Turtle Doves using scrub.</p>	<p>There are no indications that predators are a problem along The Haven. The sites have been screened for potential for predators. The experience of the RSPB for the reserves and the need for predator (and recreational user) fencing would be requested for more detailed development of the sites.</p> <p>Discussions with Boston Borough Council have been progressed to agree the most beneficial measures for Havenside Local Nature Reserve (LNR) in consideration of all species and habitats on the site. An agreed package of work for biodiversity net gain (BNG) is set out in the Section 106 agreement (document reference 9.89, submitted at Deadline 8).</p>
23	<p>Para No. 4.11.1</p> <p>Who is the applicant considering is part of the Ornithology Engagement Group?</p>	<p>The Applicant is considering that Natural England and the RSPB would be members of the OEG. The Applicant would welcome suggestions on additional representation from Natural England if they feel other parties would have additional skills and knowledge to contribute.</p>
24	<p>Para No. 5.1.2</p> <p>Natural England is pleased to see monitoring mentioned. However, we have further queries including but not exclusively For how long? Will this cover the proposed sites and what about the Habitat Mitigation Area?</p>	<p>Monitoring of all mitigation and/or compensation sites would be undertaken on an adaptive basis to ensure that the sites meet their required objectives and continue to function. It is expected that this would include the duration of the operation of the</p>

No.	Comment	The Applicant's Response
	Also, will it cover The Haven mouth with regards to the vessel movements/ disturbance?	proposed facility. Monitoring would also continue at the mouth of The Haven.
25	<p>Para No. 5.3.1</p> <p>Natural England notes that one of the conservation objectives for The Wash SPA <i>The distribution of the qualifying features within the site has not been fully assessed in the HRA. This therefore requires further consideration by the Applicant</i></p>	The distribution of the qualifying features has been considered in terms of where the birds are roosting and where they are currently disturbed. Data has been collected through the survey work and Wetland Bird Survey data to inform this assessment.
26	<p>Para No. 5.3.8</p> <p>Note advice: "With respect to human disturbance target, the Supplementary Conservation Advice (Natural England 2021) states: <i>"Disturbance should be judged as significant if an action (alone or in combination with other effects) impacts on waterbirds in such a way as to be likely to cause impacts on populations of species through</i></p> <ul style="list-style-type: none"> <li data-bbox="421 959 1099 1023">I. <i>changed local distribution on a continuing basis; and/or</i> <li data-bbox="421 1062 1099 1126">II. <i>changed local abundance on a sustained basis; and/or .."</i> <p>Which is of particular relevance to the risks posed by the increase in boat traffic. We advise that this requires further consideration in the HRA assessment</p>	This has been considered based on the existing levels of disturbance within the areas that could be affected by vessel usage and the predicted change to vessel numbers within the same areas as currently used by existing vessels. The potential for change to localised distribution and abundance has been considered in detail.
27	<p>Para No. 5.5.3</p> <p>Natural England advises that the Mouth Of The Haven (MOTH) Site supports on average around 1% of individual waterbirds on Wash SPA</p>	This is acknowledged and this is why the assessment has included this area.

No.	Comment	The Applicant's Response
	(but up to 3.5% on occasion) (as defined). Therefore, this is an important area	
28	<p>Para No. 5.5.5</p> <p>Natural England advises that the MOTH Site supports on average 35-46% (but up to 65% on occasion and 96% over time) of key species (as defined). Therefore, this is an important area</p>	This is acknowledged and this is why the assessment has included this area.
29	<p>Para No. 5.5.6</p> <p>'Local Area' Site supports consistently between 1 and 2% of individual waterbirds on Wash SPA (but up to 4.4% on occasion) (as defined).</p>	This is acknowledged and this is why the assessment has included this area.
30	<p>Para No. 5.5.7</p> <p>'Local Area' Site supports on average 51-60% (but up to 74% on occasion and 96% over time) of key species (as defined).</p>	This is acknowledged and this is why the assessment has included this area.
31	<p>Table 5.4</p> <p>Natural England advises that no project specific data as is standard best practice has been provided to support WeBS counts. In addition, no metadata has been presented on the WeBS data to determine the levels of disturbance on the days the counts were taken to help determine if the assigned level of importance are in fact accurate. Therefore, we advise that caution in the interpretation is warranted.</p>	<p>The WeBS counts provide detailed information for numbers of birds using the wider area around the mouth of The Haven. Specific information has also been gathered for more localised areas around the mouth of The Haven to support the assessment.</p> <p>Project-specific surveys have subsequently been completed over winter 2021/22 for areas of The Haven in vicinity of all WeBS Sectors included in earlier analysis. Data from project-specific surveys for all sections of The Haven will be presented and summarised including in the context of WeBS data at Deadline 8.</p>
32	<p>Figure 5.1</p> <p>We note the high level of importance of the MOTH area within the wider local area as illustrated by the graph.</p>	This is acknowledged and this is why the assessment has included this area.

No.	Comment	The Applicant's Response
33	<p>Para No. 5.5.9/Table 5.6</p> <p>Based on survey data vessel movements on average impact 1477 individuals/tide (min 156 indiv, max 6626 indiv) and 29% (min 13%, max 52%) of key species (as defined). Natural England considers this to be a significant level of disturbance and an adverse effect on integrity can't be excluded</p>	<p>This appears to be suggesting that the baseline level of disturbance is causing an adverse effect on integrity. If Natural England considers this to be the case, please could Natural England outline the management that is to be implemented in order to address this.</p> <p>The studies by the Applicant have shown that the birds using the areas around the mouth of The Haven use alternative roost sites following disturbance by the baseline level of vessels such that their levels of abundance and distribution are not seemingly affected as they continue to use the mouth of The Haven even with this occurring. It is expected that this would continue to be the case with the increase in vessels and that the increase would not constitute an adverse effect on integrity of the designated sites.</p>
34	<p>Para No. 5.5.11.</p> <p>It is not possible to conclude that the baseline disturbance is not having an impact on individuals affected as this is the baseline.</p> <p>From the survey documents is it clear that vessel disturbance is experienced by birds and that two responses are apparent (1) redistribution to alternate roosts (with in some instances in the Haven repeated displacement of individuals); or (2) temporary displacement which may be repeated if there are multiple boat passages.</p> <p>We advise that this will only be intensified by the proposals.</p>	<p>This has been assessed in the documents submitted to date.</p>
35	<p>Para No. 5.5.13</p>	<p>This has been assessed in the documents submitted to date.</p>

No.	Comment	The Applicant's Response
	<p>Natural England advises that while the number of individuals impacted, and diversity, will be the same the frequency will increase. Therefore, significance of the impacts with intensify and the ability for the birds to recover from the disturbance diminish.</p>	
36	<p>Para No. 5.5.14</p> <p>Natural England advises that Birds will be impacted on allhigh tides.</p>	<p>This has been assessed in the documents submitted to date.</p>
37	<p>Para No. 5.5.17</p> <p>Natural England disagree that numbers of birds impacted is not significant. The disturbance study shows that the presence of large vessels routinely displaces birds to alternate roosts. While the baseline situation where birds are already impacted such that they are displaced on c75% of tides this will increase such that they can be expected to be displaced on 100% of tides from the MOTH roost. This can be expected to alter distribution for the life of the development which should be considered as permanent. Even if birds adopt other pre-existing roosts on the SPA there will still be a net loss of one roost site from the assemblage roost network.</p> <p>While work to map out and quantify the importance of the roost network around the Wash is ongoing any individual roost that routinely supports over 1% of the SPA assemblage and higher percentages of individual species is likely to be considered significant.</p>	<p>The number of birds that were disturbed in significant numbers (i.e. 1% of the SPA population, or greater) were assessed in terms of whether this was likely to have an adverse effect on integrity of the SPA.</p>
38	<p>Para No. 5.5.19</p> <p>Natural England disagrees with the conclusion that there is no likely risk, however, NE agree that any measures to mitigate and lower risk such the SPA is not exposed to pressures are to be welcomed.</p>	<p>Noted by the Applicant.</p>
39	<p>Para No. 5.5.20</p>	<p>The compensation outcomes provide habitat for birds to offset the losses. The habitats created also provide additional net gains for</p>

No.	Comment	The Applicant's Response
	<p>This measure is welcomed, however, outcomes that are required because of SPA requirements are legally separate from net gain requirements.</p>	<p>biodiversity which have been included in the biodiversity net gain options. They can also include additional measures that would provide additional gains for some species, such as potential nesting or breeding areas for species that do not require compensation.</p>
40	<p>Para No. 6.2.7</p> <p>We note and welcome the commitment to ensure that the Lighting strategy will be designed to minimise impacts on birds at the development site.</p>	<p>Noted by the Applicant.</p>
41	<p>Table 7.1 response to NE</p> <p>While the 'baseline' situation is that birds are regularly displaced this does not mean that regular displacement should be considered consistent with achieving site Conservation Objectives. Under the baseline conditions birds are able to utilize the roost at the MOTH on 25% of tides, this will no longer be possible. And may be disturbed more than once per high tide</p>	<p>The studies by the Applicant have shown that the birds using the main roost on the revetments at the mouth of The Haven are often able to use alternative roost sites within the same site such as remaining mudflats (especially on neap high tides) following disturbance by the current (baseline) level of vessels (and do not exhibit flight response to vessels at these roost sites) such that their levels of abundance and distribution are not affected. This aspect of roosting behaviour at the mouth of The Haven would continue to be the case under an increase in vessels, as it relates primarily to spring-neap cycle rather than frequency of vessel navigation of The Haven mouth.</p>
42	<p>Table 7.1 response to RSPB paragraph 2.53</p> <p>We note that continuing work on roost site concerns will not be complete until March 2022, leaving limited time to give due consideration to the findings.</p>	<p>There are additional survey results due in March 2022. These results are not expected to change the outcomes of any of the assessments due to the precautionary approach taken to any assessments associated with the areas for the surveys (central part of The Haven).</p> <p>The additional project-specific surveys have been completed over winter 2021/22 for areas of The Haven in vicinity of all WeBS Sectors included in earlier analysis. Data from project-specific surveys for all sections of The Haven has been presented and</p>

No.	Comment	The Applicant's Response
		summarised including in the context of WeBS data at Deadline 8 (document reference 9.91).
43	<p>Para No. 7.2.20</p> <p>gNatural England advises that because of repeated disturbance Golden plover may be at energetic risk because of the proposal. NE notes the recognition that this may be a matter that requires compensation in relation to the development. Natural England welcomes the clarification provided on this area of risk.</p> <p>Compensating energetic impacts by enhancement of foraging requirement requires different management approaches than roost compensation and should be considered as part of the Without Prejudice Compensation package.</p>	<p>The additional assessment of energy usage was provided within the Chapter 17 Marine and Coastal Ecology and Appendix 17.1 HRA Update (document reference 9.59, REP5-006). The Applicant stands by this assessment, which concluded that overall, the energetic demands of disturbance responses to project-related activities are not considered to apply at sufficient severity, or to a sufficient number of individuals, to impact survival or subsequent breeding success of The Wash SPA waterbird populations.</p>
44	<p>Para No. 7.2.20</p> <p>Based on a significance threshold of a 1% increase in background mortality Natural England advises that, given the current populations for lapwing and golden plover on the Wash, increases in mortality above 38 birds (lapwing) and 41 birds (golden plover) would be of concern.</p> <p>If increases in energetic requirements directly translated into effective mortality (i.e. mortality on site or displaced from the SPA such that they are effectively lost from the population) of individuals exposed to risk at the Mouth of Haven 'Local Area' then anticipated impact would be in the order of 30 birds (lapwing) and 48 birds (golden plover) per annum. (local pop based on Table 5.1 in Chapter 17 and Appendix 17.1 Habitats Regulations Ornithology Addendum; Wash population based on WeBS online; annual mortality based on BTO Bird Facts pages).</p>	<p>It is noted that lapwing and ringed plover are not qualifying species for the SPA other than as part of the waterbird assemblage. For the Ramsar site, they are noted as species/populations identified subsequent to designation for possible future consideration. The assessment of energetics for these two species is provided in Chapter 17 Marine and Coastal Ecology and Appendix 17.1 HRA Update (document reference 9.59, REP5-006). The Applicant stands by this assessment which concluded that overall, the energetic demands of disturbance responses to project-related activities are not considered to apply at sufficient severity, or to a sufficient number of individuals, to impact survival or subsequent breeding success of The Wash SPA waterbird populations.</p>

No.	Comment	The Applicant's Response
	For lapwing impact is below threshold, but for golden plover impact is above. While this comparison is highly precautionary (an impact in energy intake requirements is not likely to directly translated into increased mortality; but is likely to be linked to seeking and adoption of alternate feeding resources if they are available in these species) the potential for site loss of golden plover and lapwing coupled with the fact that both these species are in decline on the Wash is of concern.	
45	<p>Para No. 7.3.3</p> <p>Because of the above. NE considers that risk of AEol to Golden Plover cannot be ruled out, at present.</p> <p>Natural England notes that Golden Plover do not feature in the 9.71 Change in Bird Behaviour report although they are described in Appendix 17.1 to the Chapter 17 Ornithology Addendum as responding to 5 of 9 disturbance events by returning to their initial roost and on 4 of 9 occasions abandoning it. Natural England requests clarification of the observed responses to vessel movement shown by golden plover and consideration of implications of added energetic requirements if these cannot be compensated for.</p>	<p>The assessment of energetics for these two species (amongst others) is provided in Chapter 17 Marine and Coastal Ecology and Appendix 17.1 HRA Update (document reference 9.59, REP5-006). The Applicant stands by this assessment, which concluded that overall, the energetic demands of disturbance responses to project-related activities are not considered to apply at sufficient severity, or to a sufficient number of individuals, to impact survival or subsequent breeding success of The Wash SPA waterbird populations.</p>

Table 2-3 Responses to outstanding points within Deadline 7 Submission - Appendix F4 – Natural England’s Comments on Schedule 11 of Draft Development Consent Order (DCO) [REP6-003] (REP7-028)

No.	Pg.	Section	Comment	The Applicant's Response
1	93	Schedule 11 condition 2	Natural England has some concerns regarding this condition. It requires the Applicant to submit the membership of the Ornithology Engagement Group (OEG), terms of references for the group, dispute mechanism and timetables for the group. However, it does not secure the need to consult the members	The Applicant has considered Natural England’s comments and has amended paragraph 3 to align with the wording in the Boreas and Vanguard DCOs. To address Natural England’s concerns

No.	Pg.	Section	Comment	The Applicant's Response
			<p>of the group on their membership or the contents of these key documents. It is noted that these conditions are similar to those used on the recent Boreas and Vanguard Offshore Wind Farm DCOs. However, we would note the Boreas DCO also has the following condition; "3. Following consultation with the KSG, the KIMP must be submitted to and approved by the Secretary of State, in consultation with the local planning authority or authorities for the land containing the artificial nest sites, and the relevant statutory nature conservation body. The KSG must be consulted further as required during the approval process."</p> <p>The Vanguard DCO has similar requirement. Our preference would be for some changes to the Boreas wording to ensure that the Secretary of State (SoS) gets not just the draft documents but a copy of the OEG members comments on those documents to allow the SoS to make a fully informed decision on the sign off of condition 2.</p>	<p>the Applicant has amended paragraph 2 as follows:</p> <p>The authorised development may not be commenced until a plan for the work of the OEG has been submitted to and approved by the Secretary of State, following consultation with the members of the OEG. Such plan must include—</p> <ul style="list-style-type: none"> (a) terms of reference of the OEG; (b) details of the membership of the OEG; (c) details of the schedule of meetings, timetable for preparation of the OCIMP and reporting and review periods; and (d) the dispute resolution mechanism; and (e) minutes from all consultations with the OEG and copies of any written consultation responses from the OEG. <p>These amendments are included in the without prejudice draft Schedule 11 to the draft DCO submitted at Deadline 8 (document reference 2.1(4)).</p>
2	93	Schedule 11 Condition 3 and 4	<p>Natural England notes the condition links to the Ornithological compensation plan and advises that we will provide comments on the draft plan at Deadline 8, which may include further comment on this schedule. However, condition 3 (d) and condition 4 are contradictory. Condition 3 (d) requires compensation to be in place prior to impact, and Condition 4 requires the plan to be implemented prior to operation. The wording for 4 is very similar to those used in recent DCO</p>	<p>There are two different timeframes for the measures that could be required, one of which would be needed for the construction phase and therefore would be in place prior to construction and other measures that would be needed prior to operation. This is why there are two phases for the measures to be in place. For the Habitat Mitigation Area the benefit of the measures will</p>

No.	Pg.	Section	Comment	The Applicant's Response
			<p>compensation schedules for the ornithological impact of offshore wind farms. This is inappropriate for BAEF, however, as the impact offshore wind farms are compensating for in these schedules occurs during operation. The impact of BAEF occurs both during construction and operation of the works. Furthermore, it should be noted that the requirements on the offshore wind farms require 4 full breeding seasons for the compensatory works to become effective. Given some of the proposed compensatory measures involve creation/enhancement of supporting habitat it is likely to take a similar period to be effective. Natural England will provide further comments on the period required to ensure the compensatory measures are effective in our response to the draft compensation plans.</p> <p>It should be noted that in the Hornsea 3, Boreas and Vanguard determinations the SoS has consistently determined that compensation must be in place prior to impact. Natural England supports securing that compensation will be in place and functioning prior to impact.</p>	<p>occur immediately, however it will not be possible to determine if the measures are functioning effectively until the activities occur and potentially displace the birds from the original site. In this respect the potential for the habitat to be effective will be determined based on the similarity to the habitat that has previously been used for roosting and foraging in the local area. This is also true to some extent for the wider sites that may not be fully used until the operational capacity of the Facility is reached.</p> <p>The updated Without Prejudice HRA Derogation Case: Compensation Document (document reference 9.30 (2)) submitted at Deadline 8 outlines a timeline for the implementation of the proposed compensation works to ensure the wetland compensations sites will be landscaped/engineered at least two years before the potential AEOI due to disturbance caused by vessels occur and before the Facility enters the operational phase.</p> <p>The Applicant has amended paragraph 6 (previously 4) to align with the wording of paragraph 5(d) (previously 3(d)) and to require the compensation measures for the disturbance by the increased number of vessels to be in place at least two years prior to hot commissioning of line 2 of Work. No 1A, which will provide sufficient time for the compensation measures to be</p>

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				<p>effective and functional by the time any potential AEOI due to disturbance by vessels occurs. It now reads:</p> <p>“The undertaker must implement the measures as set out in the OCIMP approved by the Secretary of State, unless otherwise agreed in writing by the Secretary of State in consultation with the relevant statutory nature conservation body. and <u>[, For habitat loss as a result of the construction of Work No. 4, the relevant measures must be in place prior to any dredging or construction works on the intertidal habitat] For the compensation for disturbance by the increased number of vessels] no part of the authorised development may begin operation until the implementation of the [relevant] measures set out in the OCIMP must be place at least two years prior to the hot commissioning of line 2 of Work No. 1A.”</u></p> <p>The following definition as also been added:</p> <p>“hot commissioning of line 2 of Work No. 1A” means the first date on which waste is combusted to produce steam for more than 8 hours continuously in the second waste processing line of Work No. 1A during the commissioning phase of that line;</p>

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3	94	Schedule 11 condition 10	Natural England questions the purpose of this condition. If the requirements of the compensation plan are in conflict with requirements elsewhere in the DCO and the requirements of the DCO prevail, there appears to be a risk that the compensatory measures would not be in place or could be in some way diminished. Or is the condition intended to infer that any discrepancy between the compensation plan and the Compensation schedule would be resolved in favour of the wording of the schedule? Also, we note the condition refers to the waterbird compensation plan, which we assume is a drafting error and should be ornithology compensation plan as per condition 1.	The paragraph is designed to address any discrepancy between the compensation plan and the wording of the Schedule, with the wording of the Schedule taking precedence. This paragraph was included as the Schedule has been included on a without prejudice basis and may be subject to amendments by the Secretary of State depending on their determination of an AEOI. This could result in some minor discrepancies with the wording in the compensation plan.
4	N/A	N/A	Natural England notes that the drafting has not included the following condition which has been used in recent compensation schedules, the example below is from the Boreas DCO. This wording secures that the monitoring and reporting proposed under condition 3 (g) will be submitted annually. The wording at 3 (g) only requires submitting a plan to do so and does not require the applicant to provide details on the success of measures, or secure that any approved proposals to address the inadequacies of the compensation must be undertake, see quoted text in bold below. <i>"7. Results from the monitoring scheme must be submitted at least annually to the Secretary of State and the relevant statutory nature conservation body. This must include details of any finding that the measures have been ineffective in securing an increase in the number of adult kittiwakes available to recruit to the FFC and, in such case, proposals to address this. Any proposals to address effectiveness</i>	The Applicant has added a new paragraph to the Schedule in the updated version of the draft DCO (document reference 2.1(4)) submitted at Deadline 8 to explicitly provide for the annual reporting, it reads as follows: Results from the monitoring scheme must be submitted at least annually to the Secretary of State and the relevant statutory nature conservation body and made publicly available. This must include details of any finding that the measures have been ineffective in creating a suitable roosting site(s) to support any birds that have been displaced through [the habitat loss as a result of the construction of Work No. 4 or] disturbance by the increased numbers of vessels using The Haven as a result of the authorised development and, in such case, proposals to

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			<p><i>must thereafter be implemented by the undertaker as approved in writing by the Secretary of State in consultation with the relevant statutory nature conservation body."</i></p> <p>While we would support the inclusion of a similar provision, we would note that we have concerns that appropriate measures taken to address failing compensation may need time to ensure compensation prior to impact. Consideration should be given into this in any amendments to condition 4 and within any new conditions securing the adaptations. Provision of an Adaptive Management Plan may also be needed to ensure that the compensation remains fit for purpose over the lifetime of the project.</p>	<p>address this. Any proposals to address effectiveness must thereafter be implemented by the undertaker as approved in writing by the Secretary of State in consultation with the relevant statutory nature conservation body.</p> <p>Adaptive management is already provided for, paragraph 5(f) requires the OCIMP to include details of the factors used to trigger alternative compensation measures and/or adaptive management measures and paragraph 5(g) requires the OCIMP to include details of any adaptive management measures. The creation of the habitats will aim to achieve similar habitats as have successfully been created on the RSPB reserves as much as possible to ensure their success. An implementation programme for the proposed compensation sites is provided as Figure 4-3 within Without Prejudice HRA Derogation Case – Compensation Measures (document reference 9.30(2)) submitted at deadline 8. This shows that two years has been allowed between the end of the construction for the compensation sites and potential adverse bird disturbance occurring, following advice from RSPB on such establishment timescales.</p> <p>The adaptive management related to the compensation measures would be included within the OCIMP as outlined in the Outline OCIMP</p>

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				submitted at Deadline 7 (document reference 9.81, REP7-013).

2.3 RSPB

Table 2-4 Responses to outstanding points within RSPB’s Deadline 7 Submission - The RSPB’s comments on the Applicant’s response to the Examining Authority’s commentary of the draft Development Consent Order (DCO) and Critique of draft DCO Schedule 11 (REP7-032)

No.	Comment	The Applicant’s Response
2. The RSPB’s concerns with the draft Development Consent Order submitted at Deadline 5 (25 January 2022)		
2.1	We note the definition within Schedule 2, paragraph 1 of the “habitat mitigation area” as follows “the area shown on Figure 17.9 of the environmental statement” and the reference to this habitat mitigation area within the decommission requirements (Sch 2, requirement 23) but question why Schedule 2, requirement 6 makes no reference to it.	Please see the Applicant’s response to this point at row 3.1 of Table 2-13 of the Second Report on Outstanding Submissions (document reference 9.68, REP6-032).
2.2	We refer you to our concerns with the current mitigation proposals (see paras 7.27 to 7.30 in our Written Representations (REP1-060), and para 2.1 to 2.13 above) and crucially what is not included or, in our view possible to mitigate. Although some of the details are set out within the Landscape and Ecological Mitigation Strategy requirements (Schedule 2, requirement 6), including our ability to be consulted on the Strategy before it is finalised, what is not before the Examination is the requisite details required for the Examining Authority to be certain ecologically, legally and financially as to the viability of mitigation and compensation.	Please see the Applicant’s response to this point at row 3.2 of Table 2-13 of the Second Report on Outstanding Submissions (document reference 9.68, REP6-032).
2.3	We welcome the Examining Authority’s commentary on the DCO (11th January 2022) and will review the Applicant’s responses, especially (Qu 3) on how any compensation measures proposed will be secured in the DCO if the Secretary of State determines that there is an adverse effect on integrity.	Please see the Applicant’s response to this point at row 3.3 of Table 2-13 of the Second Report on Outstanding Submissions (document reference 9.68, REP6-032).
2.4	We are very concerned that details are being left for later determination once the Examination process is concluded. It is important that sufficient information and certainty is provided now so that the Examining Authority can take into account measures proposed and have certainty that they will mitigate and/or compensation all potential effects on the protected sites and their species.	Please see the Applicant’s response to this point at row 3.4 of Table 2-13 of the Second Report on Outstanding Submissions (document reference 9.68, REP6-032).

No.	Comment	The Applicant's Response
3. RSPB comments on the Applicant's Responses to the Examining Authority's Commentary on the Draft Development Consent Order (REP5-005)		
2.2.2 and 2.2.3	<p>We welcome this clarity from the ExA regarding the timeline for determining the DCO application. We note, however, that additional ornithological surveys are being completed by the Applicant up to March 2022. We again repeat our concern that important additional information will be submitted at a very late stage to the Examination which will leave very limited time for interested parties to review and comment and help ensure the ExA has a full range of views on the implications of the additional information in respect of the impacts of the development on the various protected sites. We welcome the delivery of Biodiversity Net Gain measures, but we continue to have concerns that such measures are being conflated with compensation measures, as we have set out in our comments on the Applicant's draft in-principle compensation measures (REP4-028).</p>	<p>There are additional survey results due in March 2022, the results of which will be shared at Deadline 8. These results are not expected to change the outcomes of any of the assessments due to the precautionary approach taken to any assessments associated with the areas for the surveys (central part of The Haven).</p> <p>The compensation outcomes provide habitat for birds to offset the losses. The habitats created also provide additional net gains for biodiversity which have been included in the biodiversity net gain options. They can also include additional measures that would provide additional gains for some species, such as potential nesting or breeding areas for species that do not require compensation.</p>
2.3.2 and 2.3.3	<p>Whilst the establishment of an Ornithology Engagement Group (OEG) would be essential, it is of serious concern that Appendix 1 focusses on the OEG that would apparently develop the detail regarding delivery and implementation of any required compensation measures post-determination. As we set out below in our comments on the draft Schedule 11, substantial work is needed now to ascertain any predicted adverse effects, identify and agree appropriate compensation measures that would meet the complex ecological requirements of the affected species and then demonstrate that such measures have been secured and are deliverable. All of this must be established as part of the DCO determination process and not after the fact. Our position on such an approach has been detailed in our Written Representation (REP1-060).</p>	<p>It is the Applicant's position the detailed development of the compensation measures post-consent is appropriate and consistent with the approach taken on other DCOs where there has been a without prejudice habitats derogation case. The drafting of Schedule 11 secures the compensation measures and the development cannot commence construction/operation (depending on the impact) unless the compensation measures are implemented. The Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measure (document reference 9.30(2)) has been updated at Deadline 8 to set out further details on the benefits the potential compensation sites would provide including an overview of the features to be included and the number and species of birds the compensation sites could support, along with locational information (within the</p>

No.	Comment	The Applicant's Response
		<p>bounds of commercial confidentiality) and a timeline for implementation of the compensation measures has been provided as Figure 4-3 of this document.</p>
2.3.4	<p>Whilst the proposed approach has been adopted for recent Offshore Wind Farm decisions, there are substantial differences with the Boston Alternative Energy Facility DCO application. The need for a derogation case was established at an early stage of discussions with the Applicant, with the RSPB's high-level comments on this provided 19 June 2020. The position of all environmental bodies has not changed. The Applicant actively chose to submit the DCO Application in the full knowledge that current DCO determination had established the need for a full derogation case to be provided as part of the application. We set this position out in our Written Representation (REP1-060). As was discussed with the Applicant at our first meeting in September 2019 and follow up communications in October 2019, there was a need to:</p> <ul style="list-style-type: none"> • Establish the baseline understanding of waterbird use along the navigation channel to determine species affected. • Review the ecological requirements of the species affected to inform measures that could mitigate or compensate for adverse effects. • Where compensation is needed, appropriate land will be required to create habitat(s) at a suitable scale to compensate for lost roosting, foraging etc. Suitable sites will need to have appropriate water supply and management, and ensure disturbance could be effectively managed. <p>The Applicant has had at least 12-18 months to seek to develop a comprehensive package of compensation options targeted to the needs of the impacted species that would address the above points. However, the Applicant chose to enter the Examination without any of this detail having been secured. This should not now be used as an excuse to defer</p>	<p>Please see 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) and to points 2.3.2 and 2.3.3 above.</p> <p>Following assessment of the baseline situation and the expected increase in vessel numbers over the baseline situation it was concluded that there would not be a need for compensation sites. However, potential compensation sites were sought for the without prejudice derogation case.</p> <p>The updated Without Prejudice HRA Derogation Case: Compensation Document (document reference 9.30(2)) submitted at Deadline 8, sets out the Applicant's without prejudice compensation package which includes the development of a network of two key sites to provide habitat for birds that may be displaced from existing areas. This includes the scale of the sites and the habitats to be created together with a proposed time plan (Figure 4-3) to ensure that sites are in place, and provides an effective habitat, prior to the impacts occurring.</p>

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	substantial levels of necessary detail on the nature, scale, design and delivery of compensation measures to post-determination. Without such information it is not possible to have confidence that ecologically appropriate compensation has been identified and secured that will ensure the coherence of the National Site Network is protected.	
4. Critique of draft Schedule 11 – Ornithology Compensation Measures (REP6-002 (clean version) & REP6-003 (tracked changes))		
1	<p>Draft DCO wording: Ornithology Compensation Measures—(1) In this Schedule—</p> <p>RSPB Comments: The impact of the DCO facility will cause increased disturbance and also result in the loss of habitat. Collectively, these will result in:</p> <ul style="list-style-type: none"> • Loss of roosting habitat • Loss of foraging habitat • Displacement from areas of The Haven for roosting, foraging, bathing and loafing. <p>All of these factors need to be appropriately addressed within the DCO wording. The present draft wording fails to reflect the breadth of adverse effects on integrity.</p>	<p>With regard to habitat loss as a result of the construction of the wharf, as set out in previous responses the Applicant does not consider that this habitat is functionally linked to the protected sites and even if the Secretary of State did decide that there was a functional link the Applicant does not consider that the habitat loss would have an AEOI to necessitate compensation. Notwithstanding the Applicant's position on these matters the Applicant has amended the definition of OCIMP as set out below to refer to habitat loss in square brackets in the event the Secretary of State determines there is an AEOI and classes the HMA as compensation.</p> <p>“OCIMP” means the ornithology compensation implementation and monitoring plan for the delivery of measures to compensate for <u>[roosting and foraging habitat loss as a result of the construction of Work No 4 and]</u> the predicted disturbance to <u>[roosting, bathing and loafing waterbirds from The Wash SPA [(and functionally linked habitat)]</u> as a result of the authorised development;</p> <p>With regard to displacement from areas of The Haven for roosting, foraging, bathing and loafing. The Applicant has added roosting, bathing and loafing to the above but does not consider there would</p>

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		<p>be any significant impact on foraging habitat as a result of disturbance as the birds will still be able to forage on the adjacent mudflats at and around low water as no large vessels associated with the BAEF move through at this time.</p>
1	<p>Draft DCO wording: "OCIMP" means the ornithology compensation implementation and monitoring plan for the delivery of measures to compensate for the predicted disturbance to waterbirds from The Wash SPA [(and functionally linked habitat)] as a result of the authorised development.;</p> <p>RSPB Comments: This should also reference the habitat loss to ensure all impacts of the development are captured.</p>	<p>Please see response above.</p>
1	<p>Draft DCO wording: "OEG" means the Ornithology Engagement Group;</p> <p>RSPB Comments: To ensure the purpose of the OEG is clearly defined, we request the following text be added at the end:</p> <p>"...which will oversee the implementation, management and monitoring of the compensation measures in perpetuity".</p>	<p>The Applicant does not propose to make the requested amendment. The role of the OEG will be to inform the delivery of the compensation measures and the ongoing monitoring and adaptive management measures. The plan for the work of the OEG submitted under paragraph 2 of Schedule 11 must include the terms of reference for the OEG and the Applicant considers that this is the appropriate place to set out the specific terms of reference for the OEG following consultation with the members.</p>
1	<p>Draft DCO wording: "ornithology compensation plan" means the document "Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures" certified by the Secretary of State as the ornithology compensation plan for the purposes of this Order under article 47 (certification of documents, etc.); and</p> <p>RSPB Comments: The draft Ornithology Compensation Plan (as submitted at Deadline 2) was not fit for purpose for the reasons set out in the RSPB's comments at Deadline 4 (REP4-028). We do not consider the updated Ornithology Compensation Plan submitted at Deadline 6</p>	<p>The drafting of Schedule 11 is based on that of the windfarm DCOs who also defined to their derogation compensation cases as "compensation plans". The Applicant on reflection considers it would be more appropriate to use the following definition instead: "compensation measures document" means the document "Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures" certified by the Secretary of State as the compensation measures document for the purposes of this Order under article 47 (certification of documents, etc.);". Further details for the compensation sites, in terms of the habitat</p>

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	<p>(REP6-026) to be fit for purpose either and we will provide more detailed comments on this in future submissions.</p> <p>Critical to development of an adequate Ornithology Compensation Plan that can form the basis for Schedule 11 is acknowledgement and agreement by the Applicant of the adverse effects on integrity on The Wash SPA and Ramsar site. This includes a proper understanding of the different waterbird species affected, the ecological functions that any compensation would need to replace and habitat measures that address those ecological functions in full. Given the diversity of waterbird species predicted to be affected by this scheme, this will require careful consideration of how best to meet their complex needs. Any Ornithology Compensation Plan should set these out in full so that there is a proper audit trail for the OEG to refer to. It is important to remember that this document will form the basis for developing the OCIMP which in turn will govern the implementation and oversight of the compensation measures for many decades and so must be clearly set out so that those not involved at this current stage understand the rationale underpinning the compensation measures.</p> <p>It is likely to require the provision of different habitat types, possibly at multiple locations. Each potential compensation site will require detailed ecological assessment to determine if it is capable of providing the ecological functions required.</p> <p>Without acceptance of this, it is not possible for the Ornithology Compensation Plan's scope to be properly established in terms of the type, nature and principles of compensation measures required to ensure the coherence of the National Site Network have been secured and can be properly implemented by the Applicant.</p>	<p>requirements and timings for habitat creation (at multiple locations), have been provided in the updated Without Prejudice HRA Derogation Case: Compensation Document (document reference 9.30(2)) t submitted at Deadline 8. The detail of the compensation measures will be developed post-consent and set out in the OCIMP which is the key document in Schedule 11. The Applicant considers this is an appropriate approach for the reasons set out in 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) and to points 2.3.2 and 2.3.3 above.</p> <p>Please also see response to paragraph 3 below.</p>

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	<p>It is evident from the comments of the RSPB, Natural England and the Lincolnshire Wildlife Trust that the nature conservation bodies do not consider the OCP is currently fit for purpose.</p> <p>An “In Principle” compensation plan does not mean an “outline” compensation plan. It must contain sufficient detail to satisfy both the Examining Authority and the Secretary of State that the resulting compensation measures have been secured legally financially and will be effective ecologically and will, if implemented properly, protect the coherence of the National Site Network in respect of the SPA/Ramsar features affected.</p> <p>Therefore, significant revisions will be required to the OCP before it can form the basis of a certified document and any consent.</p> <p>The work described at section 4 of the draft OCP (Deadline 6; REP6-026) provides a starting point for such revisions. However, we note that this work would need to be completed and agreed with Interested Parties as adequate before the end of examination in order for the OCP to be considered fit for purpose.</p>	
1	<p>Draft DCO wording: “The Wash SPA” means the site designated as The Wash Special Protection Area</p> <p>RSPB Comment: This should refer also to The Wash Ramsar site which is designated for similar reasons and which should be treated in the same way as SPAs and SACs in respect of the Habitats Regulations. We have identified the need for this in our Written Representations (REP1-059) and comments on the Ornithology Addendum (REP4-026). This is especially important to ensure that the appropriate consideration is given to species such as golden plover and ruff which are specifically referenced in the Ramsar citation (as set out in paragraph 3.50 of our</p>	<p>The draft DCO wording has been amended to include The Wash Ramsar Site. The Ramsar Site and the species referenced have been fully considered in the assessments undertaken.</p>

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	<p>Written Representations (p.30)). We also note Natural England's position with respect to The Wash Ramsar site in their response to the second Written Questions at Deadline 5 (REP5-012), which supports the importance of ensuring The Wash Ramsar site is considered both during Examination and post-Examination.</p>	
2	<p>Draft DCO wording: The authorised development may not be commenced until a plan for the work of the OEG has been submitted to and approved by the Secretary of State. Such plan must include:</p> <ul style="list-style-type: none"> (a) terms of reference of the OEG; (b) details of the membership of the OEG; (c) details of the schedule of meetings, timetable for preparation of the OCIMP and reporting and review periods; and (d) the dispute resolution mechanism. <p>RSPB Comment: We welcome the detail set out defining the role of the OEG. We request that key members of the group be named for clarity within the Schedule as part of the definitions. This should include the RSPB, Natural England and the Lincolnshire Wildlife Trust.</p>	<p>The Applicant has added to the definition that Natural England and the RSPB, as a minimum, would be members of the OEG. However, the Applicant would welcome suggestions on additional representation from RSPB if they feel other parties would have additional skills and knowledge to contribute. However, the Applicant considers it is more appropriate to set out the full membership of the OEG in the plan of work once it has had an opportunity to discuss membership requirements with each respective body post-consent.</p>
3	<p>Draft DCO Wording: Following consultation with the OEG, the OCIMP must be submitted to the Secretary of State for approval (in consultation with the relevant statutory nature conservation body). The OCIMP must be based on the principles for ornithological compensation set out in the ornithology compensation plan and include:</p> <p>RSPB Comments: This clause states the OCIMP must be based on the principles set out in the OCP. However, the draft OCP contains no explicit reference to "principles" for ornithological compensation. Therefore, there is inherent ambiguity in the clause as currently worded.</p>	<p>The Applicant acknowledges this inconsistency. The drafting of Schedule 11 is based on that included in the windfarm DCOs which also refer to principles in their respective "compensation plans", however those "compensation plans" do not have specific principles either. The Applicant considers the following wording is more appropriate and has amended the draft DCO at Deadline 8 accordingly:</p> <p><u>"The OCIMP must include measures to compensate for [the roosting and foraging habitat loss as a result of the construction of Work No. 4 and] the predicted disturbance to roosting, bathing and loafing waterbirds from The Wash SPA and Ramsar Site [(and</u></p>

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	<p>It is necessary to ensure that there is continuity between the Habitat Regulations Assessment conclusions, DCO Schedule 11 and the OCP. Therefore there needs to be a section in the OCP where the compensation requirements and principles are clearly laid out. We are reviewing potential principles to aid the ExA and will provide some suggestions at Deadline 9 (24 March 2022).</p>	<p><u>functionally linked habitat</u>), <u>must be based on the criteria set out in paragraph 3.5.4 of the</u> the principles for ornithological compensation set out in the ornithology compensation plan <u>compensation measures document ornithology compensation plan</u>, must contain the relevant matters set out in paragraph 4.11.4 of the compensation measures document and <u>must include in particular</u>"</p>
3(a)	<p>Draft DCO wording: details of location(s) where compensation measures will be delivered and the suitability of the site(s) to deliver the measures (including why the location is appropriate ecologically and likely to support successful compensation);</p> <p>RSPB Comments: For the reasons set out above and in our detailed submissions (see our Written Representations; REP1-060), it is the RSPB's considered view that this detail is required before the end of the examination, as it is critical to a determination as to whether the proposed compensation measure(s) will be capable of providing the ecological functions of the different waterbird species affected.</p> <p>Details on suitability of possible locations include:</p> <ul style="list-style-type: none"> - Size and design of site - water supply and water level management - vegetation management - disturbance impacts and mitigation (from pedestrians and dogs in particular) - etc <p>In practical terms, there are a significant number of ecological variables that need to be evaluated for any specific site to determine whether or</p>	<p>Please refer to Applicant's response to Q3.3.1.29 and Q3.3.1.35 in the Applicant's Responses to the Examining Authority's Third Written Questions (document reference 9.75, REP7-007). The submission of detailed site locations and plans are secured by Schedule 11. The Applicant considers that these are matters which are best considered following consent determination since it will not be until then that the final impact magnitude has been determined by the SoS.</p>

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	<p>not the proposed habitat creation and management will succeed. This is central to why the RSPB has been consistent in its request for detailed compensation proposals.</p> <p>The Applicant's further information provided in the updated compensation measures document (REP6-026) does not add the level of detail outlined above and arguably underlines the need for more detailed site locations and plans to be provided prior to the end of the Examination.</p>	
3(b)	<p>Draft DCO wording: details of designs of the compensation measures and how risks from avian or mammalian predation and unauthorised human access will be mitigated;</p> <p>RSPB Comments: For the reasons set out above (see comments on the definition of the Ornithology Compensation Plan) it is the RSPB's considered view that this critical information should be submitted to the examination for careful scrutiny by Interested Parties. It is central to being able to advise the Examining Authority and the Secretary of State as to whether any proposed compensation measures are capable of being implemented with a reasonable guarantee of success.</p> <p>By way of contrast, the RSPB is an experienced land manager and would not take on management of land without a detailed understanding of the land and the key ecological and other factors that will determine whether the land can be managed successfully to meet specified ecological objectives.</p> <p>Therefore, we consider the Applicant's approach is high risk. In essence it proposes taking on land it has not fully identified and/or secured, and</p>	<p>Please refer to the Applicant's response to Q3.3.1.35 in the Applicant's Responses to the Examining Authority's Third Written Questions (document reference 9.75, REP7-007). Schedule 11 secures as part of the OCIMP the submission of (a) details of location(s) where compensation measures will be delivered and the suitability of the site(s) to deliver the measures (including why the location is appropriate ecologically and likely to support successful compensation) and (b) details of landowner agreements demonstrating how the land will be bought or leased and assurances that the land management will deliver the ecology objectives of the OCIMP.</p> <p>The Applicant does not propose to "take on" land that it has not fully identified or secured. The Applicant has shortlisted two sites and proposes to agree to option agreements over those sites. It will then, following the SoS's determination of an AEOI, undertake feasibility studies and environmental appraisal to determine the works needed to create the habitats. If those sites are not suitable it will short list other sites. The Schedule ensures that the compensation measures are implemented prior to the impact occurring and the SoS has the power to not approve the OCIMP</p>

No.	Comment	The Applicant's Response
	<p>to do so in the absence of a clear implementation and management plan based on a detailed understanding of the site's physical and ecological characteristics such that it would have a reasonable guarantee of successfully meeting the ecological requirements of the target SPA/Ramsar waterbird species. This also links to the comments we have made on the time needed to develop the site and ensure it is functioning prior to construction commencing and damage would occur (see comments on 3(d) below).</p> <p>In this context it becomes even more critical as the Secretary of State is being asked to approve a scheme that would result in damage to internationally important nature conservation interests on the basis of little or no information as to whether such damage is capable of being compensated for successfully and, if so, when by.</p>	<p>if it did not consider that the detailed measures set out in that document would be successful.</p>
3(d)	<p>Draft DCO Wording: an implementation timetable for delivery of the compensation measures that ensures all compensation measures are in place prior to the impact occurring (e.g. [for dredging and construction impacts to the habitat within Work No. 4 the measures will be in place prior to any dredging or construction works on the intertidal habitat and] for the compensation for disturbance at the mouth of The Haven the measures will be in place prior to operation of the authorised development);</p> <p>RSPB Comments: This is wholly inadequate and is highly likely to exacerbate the adverse effect on integrity of the scheme on SPA/Ramsar waterbirds by delaying the availability of fully functioning compensation habitat that meets their ecological requirements i.e. it will create an unnecessary and, critically, avoidable time lag.</p>	<p>Please see the Applicant's response to Natural England at row 2 of Table 23 above.</p> <p>The Applicant has updated the Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (document reference 9.30(2)) to set out further details on the timeline for implementing the measures, in particular the need for the compensation wetland sites to in landscaped/engineered at least two years before the negative impacts caused by vessels occur and before the Facility enters the operational phase.</p> <p>The Applicant has amended Applicant has amended paragraph 5(d) (previously 3(d)) to require the measures compensating for vessel disturbance to be in place for at least two years prior to the</p>

No.	Comment	The Applicant's Response
	<p>It is an established principle and practice that compensation measures should be implemented and ecologically functioning in advance of damage occurring in order to meet the legal obligation to protect the coherence of the National Site Network. The current drafting deliberately precludes this.</p> <p>The amount of time in advance such compensation provision should be made corresponds to the nature of the ecological requirements to be met for the different species impacted and the timescale over which the proposed compensation sites will take to develop to a point whereby they meet those ecological requirements. This is the reason why there is an urgent need for the Applicant to reach agreement on these issues and for interested parties to have critically evaluated any proposed compensation locations to determine if they are fit for purpose. The baseline conditions of each compensation site will determine the time it will take for the requisite quality habitat to develop in advance of damage. This requires detailed knowledge and assessment of each proposed compensation location.</p> <p>Each project's impacts are unique and therefore each needs to consider the ecological requirements of the species or habitats it will adversely affect before determining the length of time needed to implement compensation measures to ensure the overall coherence of the National Site Network is protected. As a guide, our experience is that freshwater lagoons may be functioning within 1-3 years of creation, saline lagoons within 2-4 years, and wet grassland potentially within 5-7 years. However, this will be dependent on a range of factors such as existing habitat use, nutrient loads, water availability and water control etc. These timings are provided as a guide only. It is likely that additional adjustments would be required and fully functioning habitat could take</p>	<p>hot commissioning of line 2 of Work No. 1A, which will provide sufficient time for the compensation measures to be effective and functional by the time any potential AEOI due to disturbance by vessels occurs. It now reads as follows:</p> <p><u>"an implementation timetable for delivery of the compensation measures that ensures all compensation measures are in place prior to the impact occurring (e.g. [for habitat loss as a result of the construction of Work No. 4, for dredging and construction impacts to the habitat within Work No. 4 the measures will be immediate in their benefits and in place prior to any dredging or construction works on the intertidal habitat and] for the compensation for disturbance by the increased number of vessels at the mouth of The Haven, the measures will be in place for at least two years prior to the hot commissioning of line 2 of Work No. 1A (operation of the authorised development);</u></p> <p>The following definition as also been added:</p> <p>"hot commissioning of line 2 of Work No. 1A" means the first date on which waste is combusted to produce steam for more than 8 hours continuously in the second waste processing line of Work No. 1A during the commissioning phase of that line;</p>

No.	Comment	The Applicant's Response
	<p>as long as 10-15 years to achieve their desired outcomes. This has to be fully factored into any delivery timetable in respect to the construction and operation of the scheme.</p> <p>We note that the Secretary of State for BEIS addressed the issue of time lag in his decisions regarding Hornsea Three and Norfolk Boreas offshore wind farms, albeit in the specific circumstances of those cases.</p>	
3(e)	<p>Draft DCO wording: details of the proposed ongoing monitoring and reporting on the effectiveness of the measures, including: survey methods; success criteria; adaptive management measures; timescales for the monitoring and monitoring reports to be delivered; and details of the factors used to trigger alternative compensation measures and/or adaptive management measures;</p> <p>RSPB Comments: We support this in principle. However we consider it necessary for agreement on these issues to be reached prior to any consent i.e. before the end of the examination.</p> <p>Given the difficult history of this application in respect of the carrying out of relevant survey work, the RSPB strongly recommends that a draft monitoring and reporting plan is submitted before the end of the examination in sufficient time for interested parties to comment and, ideally, reach agreement.</p> <p>However, it is reliant on proper knowledge of the proposed compensation measures and locations to ensure the various requirements are appropriately targeted.</p>	<p>The Applicant considers that the determination of monitoring and reporting measures and adaptive management measures post-consent is appropriate and consistent with the approach accepted by the SoS on the recent windfarm DCOs.</p> <p>Converting arable/grassland land to waterbird habitat is not a new phenomenon and has been undertaken with great success at many locations including RSPB Reserves. The development of the site would learn from the ideas that have been used successfully in the past.</p>

No.	Comment	The Applicant's Response
	<p>The identification of appropriate adaptive management measures will be dictated by the nature of each compensation location, its objectives and associated ecological design in order to know what is within the bounds of practical measures which can be taken to address any likely problems.</p> <p>In the absence of this critical information (see comments above and in our other written submissions), a commitment to the future identification of “adaptive management” becomes a promise of “jam tomorrow” as there is no ecological foundation upon which it can be based and by which interested parties and the Secretary of State can judge whether any adaptive management will be feasible in practice and in situ.</p>	
3(f)	<p>Draft DCO wording: details of any adaptive management measures;</p> <p>RSPB Comment: “See 3(e) above.”</p>	See response above.
3(g)	<p>Draft DCO wording: provision for annual reporting to the Secretary of State, to include details of the use of each site by waterbirds (split into species accounts) to identify barriers to success and target the adaptive management measures. This would include the number of birds using the site; evidence of birds roosting, foraging and bathing around high tide periods and any evidence of continued disturbance from vessels.</p> <p>RSPB Comments: The RSPB suggests the following amendment to the wording to ensure that the annual reports are made publicly available. At end add:</p> <p>“...Reports to have been reviewed and agreed by the OEG and to be made available for public scrutiny.”</p>	<p>While involvement in annual reporting by the OEG may be appropriate in the early years following submission of the OCIMP, it may not be necessary for the entire lifetime of the development. The Applicant considers that this would be more appropriately set out in the plan for the work of the OEG submitted under paragraph 2. The Applicant is content to make the reports public and will add to new paragraph 8: “Results from the monitoring scheme must be submitted at least annually to the Secretary of State and the relevant statutory nature conservation body <u>and made publicly available.</u>”</p>

No.	Comment	The Applicant's Response
	<p>This is on the basis that the compensation measures are to ensure the overall coherence of the National Sites Network and therefore the monitoring of success of such measures should be made available to the public as Natural England does with all its protected sites monitoring.</p>	
3(h)	<p>Draft DCO Wording: details of the compensation site(s) maintenance schedule; and</p> <p>RSPB Comment: We recommend this be amended to ensure it is appropriately targeted at the development of a management plan for the compensation site(s). The following text should be added:</p> <p>“details of the management and maintenance prescriptions and schedule appropriate to the suite of habitats to be created at each compensation location.”</p> <p>This should comprehensively set out the management plan (to cover 5+ years at a time) for each compensation location required and be reviewed annually and for as long as the compensation is required. The management plan should clearly state what the objectives are, how they are going to be met, with any specific management needed, and what monitoring is required to inform management etc. The resource requirements, including an indication of staffing resources, needed to deliver the management plan will be essential to ensure it will be effectively delivered.</p>	<p>The Applicant agrees to make the requested amendment (subject to some minor changes) and has included the following in the updated draft DCO submitted at Deadline 8:</p> <p>“details of the management and maintenance prescriptions and a maintenance schedule appropriate to the habitats to be created at each compensation location”</p>
3(i)	<p>Draft DCO Wording: minutes from all consultations with the OEG</p> <p>RSPB Comments: We suggest rephrasing this, given that any consultation responses from members of the OEG will be in writing. Our suggested wording is:</p>	<p>The Applicant agrees to make the requested amendment (subject to a minor change) and has included the following in the updated draft DCO submitted at Deadline 8:</p> <p>“minutes from all consultations with the OEG and copies of any written consultation responses from the OEG on matters relating to the development of the OCIMP”.</p>

No.	Comment	The Applicant's Response
	<p>"minutes from all meeting with the OEG and copies of any written consultation responses from the OEG on matters relating to the development of the OCIMP."</p>	
4	<p>Draft DCO Wording: The undertaker must implement the measures as set out in the OCIMP approved by the Secretary of State, unless otherwise agreed in writing by the Secretary of State in consultation with the relevant statutory nature conservation body and no part of the authorised development may begin operation until the implementation of the measures set out in the OCIMP.</p> <p>RSPB Comments: See the RSPB's comment under 3(d) above in relation to the timing of delivery of fully functioning compensation in order to protect the coherence of the National Site Network.</p> <p>We therefore propose an amendment to the draft wording set out here:</p> <p>"The undertaker must implement the measures as set out in the OCIMP approved by the Secretary of State, unless otherwise agreed in writing by the Secretary of State in consultation with the relevant statutory nature conservation body.</p> <p><u>Construction and no part of the authorised development may not begin until the OEG has agreed that the measures set out in the OCIMP to compensate for the adverse effects on The Wash SPA/Ramsar site arising from the loss of roosting and foraging habitat at the Applicationsite have been implemented and are fully functional.</u></p> <p><u>Operation of the authorised development may not begin until the OEG has agreed that the measures set out in the OCIMP to compensate for the adverse effects on The Wash SPA/Ramsar site arising from displacement from areas of The Haven for roosting, foraging, bathing</u></p>	<p>Please see the Applicant's response to Natural England at row 2 of Table 2-3 of this document which sets out the Applicant's proposed amendments to this paragraph.</p>

No.	Comment	The Applicant's Response
	<p>and loafing until the implementation of the measures set out in the OCIMP have been implemented and are functioning fully functional.</p>	
5	<p>Draft DCO Wording: The undertaker must notify the Secretary of State of completion of implementation of the measures set out in the OCIMP.</p> <p>RSPB Comments: No comment.</p>	Noted
6	<p>Draft DCO Wording: Unless otherwise agreed in writing by the Secretary of State or unless the measures set out in the OCIMP have already been delivered, the undertaker must not commence construction of Work No.1 until it has first—</p> <p>(a) provided a reasonable estimate of the cost of delivery of the compensation measures; and</p> <p>(b) put in place either—</p> <p>(i) a guarantee in respect of the reasonable estimate of costs associated with the delivery of the compensation measures; or</p> <p>(ii) an alternative form of security for that purpose,</p> <p>that has been approved by the Secretary of State.</p> <p>RSPB Comments: See the RSPB's comment under 3(h) above in relation to the evidence needed to demonstrate that effective delivery of fully functioning compensation in order to protect the coherence of the National Site Network will be secured.</p>	Please see the Applicant's responses to the other rows. The inclusion of this paragraph is consistent with the windfarm DCOs.
7	<p>Draft DCO Wording: The compensation measures delivered under this Part must not be decommissioned without the written approval of the Secretary of State, in consultation with the relevant statutory nature conservation body.</p>	<p>It is agreed that where compensation sites are offsetting the permanent loss of habitat that they need to remain in perpetuity and as such are more likely to become part of the designated site. However as these sites (with the exception of the HMA) are for disturbance impacts, the Applicant is of the view that the measures can be secured and contribute to the overall coherence</p>

No.	Comment	The Applicant's Response
	<p>RSPB Comments: Given that any compensation measures are to maintain the integrity of The Wash SPA/Ramsar, any habitat created should be developed to a standard that enables it to become a formal component of those sites and the National Site Network to ensure compliance with regulation 68, Conservation of Habitats and Species Regulations 2017 (as amended), which requires that compensation be secured to ensure the overall coherence of the national Sites Network. We therefore do not agree that compensation measures can be “decommissioned” after a defined period of time, rather, such measures should be maintained in perpetuity.</p>	<p>of the national site network without it becoming a formal component of those sites (as occurs in functionally connected habitat areas). The Applicant considers that it is appropriate to maintain the compensation sites for operational impacts up to the point the Facility is decommissioned as those impacts would cease to occur once the Facility is no longer operational. In any case the compensation measures could not be decommissioned without the written approval of the Secretary of State.</p>
8	<p>Draft DCO Wording: [Unless otherwise agreed in writing by the Secretary of State, the compensation measures in place for habitat affected by the construction and operation of Work No 4 must be maintained following the decommissioning of Work No. 4, unless the intertidal habitat is reinstated to an acceptable condition to enable waterbirds to return to use this area for roosting.]</p> <p>RSPB Comments: See the RSPB’s comment under 7 above given the need to demonstrate that compensation measures are secured in perpetuity in order to protect the coherence of the National Site Network.</p>	<p>The Applicant has included this paragraph to ensure the HMA is maintained in following decommissioning and it could only cease to be maintained if the intertidal habitat lost as a result of the wharf is reinstated to a condition to enable waterbirds return to roosting there.</p>
9	<p>Draft DCO Wording: The OCIMP approved under this Schedule includes any amendments that may subsequently be agreed in writing by the Secretary of State, in consultation with the relevant statutory nature conservation body. Any amendments to or variations of the approved OCIMP must be in accordance with the principles set out in the ornithology compensation plan and may only be approved where it has been demonstrated to the satisfaction of the Secretary of State that it is unlikely to give rise to any new or materially different environmental effects from those considered in the ornithology compensation plan.</p>	<p>The Applicant does not agree to this amendment as it was not considered necessary in any of the recent windfarm DCOs. The statutory nature conservation body is already a consultee and the Applicant considers this is sufficient.</p>

No.	Comment	The Applicant's Response
	<p>RSPB Comments: We consider that any proposed changes should not only be following consultation with members of the OEG, but also with their agreement to ensure changes made following the Examination and decision-making process at least have the members of the OEG actively involved and able to say 'no' if proposals are not acceptable. This will also enable the OEG to provide assurance to the Secretary of State regarding the merits of any changes and are based on the best available evidence and will be ecologically appropriate.</p> <p>Therefore we suggest the following amendment: "Any amendments to or variations of the approved OCIMP must be in accordance with the principles set out in the ornithology compensation plan and <u>following consultation with and the agreement of the OEG</u> and may only be approved where it has been demonstrated to the satisfaction of the Secretary of State that it is unlikely to give rise to any new or materially different environmental effects from those considered in the ornithology compensation plan."</p>	
10	<p>Draft DCO wording: In the event of any conflict or inconsistency between the terms of the waterbird compensation plan and the provisions of this Order, the provisions of this Order prevails.</p> <p>RSPB Comments: No comment.</p>	Noted

2.4 Boston and Fosdyke Fishing Society (BFFS)

Table 2-5 Responses to outstanding points within BFFS’s Deadline 7 Submission (REP7-034)

No.	Comment	The Applicant’s Response
1	<p>We note that the Examiner has requested written responses to the Third Written Questions by 1 March 2022. This approach has been in substitution of the previously proposed hearings that were to be conducted in the week commencing 28 February 2022.</p> <p>Our clients continue to have grave concerns with the proposed scheme being promoted by the Applicant. These concerns primarily relate to the navigational safety impacts of vessels sailing to and from the proposed facility and also relate to our client’s livelihoods being put in jeopardy from the proposed scheme due to its impacts. We do not believe that the applicants have demonstrated that there is sufficient or adequately effective mitigation that can be secured to protect against these significantly adverse impacts.</p> <p>Despite continued efforts, there has been no meaningful dialogue with the applicant in relation to these safety issues. As highlighted by the Port of Boston’s Harbour Master in correspondence with ourselves (please see attached for reference), some areas of the draft Navigational Risk Assessment (“NRA”) produced by the applicant’s consultants, Anatec, are “incomplete, incorrect or may not yet fully reflect BFFS concerns”. Due to some of the conclusions drawn in the NRA, and in order to address the incomplete and incorrect nature of some areas of the NRA, our clients have had to commission, at their own expense, an entire audit of Anatec’s NRA by an independent body. They have accordingly instructed marine experts, Marico, who are currently undertaking this work. We understand that the Harbour Master, in correspondence with Marko, re-iterated his view that the NRA contained inaccurate and unclear comments.</p>	<p>The Applicant considers that it has provided sufficient evidence to the Examination in relation to navigational safety including:</p> <ul style="list-style-type: none"> • The Navigation Risk Assessment (NRA) (document reference 9.27(1), REP6-022) specifically targeted at fishing vessels, which will be updated to include all vessels as set out in; • The Navigation Management Plan (NMP) template (document reference 9.80(1)) which sets out the procedures for ensuring the navigation within The Haven is both safe and efficient. This is referred to in Condition 14 of the DML submitted at Deadline 8 (document reference 2.1(4)) to ensure that the process of consulting on and updating the NRA and NMP in future is secured legally; and • A Pilotage Statement (document reference 9.73, REP6-036) prepared by the Port of Boston (PoB) and agreed by the Applicant which states how the increase in commercial shipping will be safely managed by the Port. <p>Regarding the quote made by the PoB in correspondence that certain areas of the NRA produced in support of the Application (REP6-22) were “incomplete, incorrect or may not yet fully reflect BFFS concerns”. The Applicant seeks to provide the context behind this quote based on the PoB input into the examination process to date and also the ongoing liaison between the Applicant and the PoB.</p>

No.	Comment	The Applicant's Response
	<p>As you will appreciate, Marico were instructed relatively recently as it was previously indicated by the applicant that they would be able to resolve our clients' concerns but such resolution has not been forthcoming. The Report from Marico is commissioned as an independent audit and was expected on 21 February 2022. However, the volume of work that Marico have had to undertake in establishing a baseline for the review on this complex piece of work, as well as having to take account of revised versions of the NRA submitted by the applicant, has increased the work required. In addition, the lead consultant at Marico leading on the Report has also been taken unexpectedly ill. We are therefore advised that the document is unlikely to be issued before 24/25 February 2022. While we will, of course, do our utmost to review the document and respond to the Third Written Questions by 1 March 2022, we wish to highlight that our full responses may be slightly delayed. As I am sure you will appreciate, the issue of navigational safety is of paramount importance to our clients, and we will need to consider Marico's conclusions carefully in order to provide meaningful responses to the Third Written Questions. We trust this will be acceptable but if you have any further queries or concerns please do not hesitate to contact us.</p>	<p>With reference to the comment that the NRA is "incomplete", the Applicant's understanding based on recent discussion with PoB is that this wording was in relation to the focus of the current NRA which was scoped to consider fishing vessel interactions with the BAEF vessels as opposed to all users of the river. The Applicant have committed to working closely with the PoB post consent to ensure a comprehensive Navigation Management Plan (template provided at document reference 9.80(1)) covers all users of the river.</p> <p>The PoB have verbally indicated that they are content with this approach and this is set out in the NMP Template submitted at Deadline 8 (document reference 9.80(1)). It is noted that, other than fishing vessel operators, there have been no concerns to date from other users of the river and PoB stated within the correspondence with BFFS that the combined BAEF traffic numbers with the existing commercial traffic "<i>does not cause the Harbour Authority a safety of navigation concern</i>".</p> <p>In reference to the comment that the NRA contains "<i>incorrect</i>" information, PoB provided the Applicant with minor factual clarifications they would like to see made to the NRA (email dated 1st February 2022), which in summary were:</p> <ul style="list-style-type: none"> • How PoB approach "safe speed" on the river; • The PoB's approach to when BAEF vessels will be turned in the swing hole, and details as to why the swing hole has not been used in recent years; • Number of days when cockle fishing occurs;

No.	Comment	The Applicant's Response
		<ul style="list-style-type: none"> • Additional information as to how vessels currently pass on the river; • PoB intentions on the dredging of the swing hole; and • When Port Control is manned. <p>Minor textual amendments were made on this basis to the NRA which was then resubmitted at Deadline 6 (document reference 9.27(1), REP6-022). It is noted that at an overarching level, the PoB's stance to date has aligned with the NRA findings that any impacts on users of the river can be effectively and safely managed. This is evidenced by their Pilotage Statement submitted at Deadline 6 (document reference 9.73, REP6-036), where they stated that in relation to the additional vessel movements and turns associated with the Facility, PoB is "<i>confident this can be managed in a safe and efficient manner with little adverse effect on the fishing fleet or other river traffic</i>". The Pilotage Statement also states that,</p> <p><i>"it is recognised that there will be likely some impact on the fishing vessels and other commercial cargo traffic due to the re-introduction of vessel turning in the river, but this was the case in the recent past and the Port sees no obstacle to the safe and efficient manoeuvring of the increased shipping numbers. Furthermore, the development of the Navigation Risk Assessment and Navigation Management Plan (post consent) provide a structured process that can be expected to improve opportunities to mitigate against any significant adverse impact on the movement of commercial cargo ships, fishing vessels and other marine traffic."</i></p>

No.	Comment	The Applicant's Response
		<p>With reference to the comment that the NRA “<i>may not yet fully reflect BFFS concerns</i>”, the Applicant would note that correspondence from Roythornes on behalf of BFFS (email dated 2nd September 2021) and a meeting with BFFS (29th September 2021) were both used to capture relevant concerns and were subsequently addressed within the NRA. No navigational safety issues have been identified as part of the NRA process, and it is noted that in the PoB correspondence attached to the BFFS response submitted at Deadline 7 (REP7-034), PoB stated that the BFFS response “<i>does not clearly state the extent or reasons why safety cannot be maintained</i>”.</p> <p>In conclusion, the NRA as it stands is considered to sufficiently address the specific concerns raised to date in relation to impacts on fishing users of the river, and the conclusions align with PoB’s stance on the safe implementation of the BAEF development.</p> <p>Having not received Marico’s report until 8th March 2022 the Applicant is still reviewing this document and will provide a substantive response at deadline 9.</p>

2.5 UKWIN

Table 2-6 Responses to outstanding points within Deadline 7 Submission - Comments on submissions received at Deadlines 5 and 6 (REP7-035)

No.	Applicant's Initial Response	UKWIN's Comment	The Applicant's Response
Comments on The Applicant's Need Assessments / Isochrone assumptions / waste plans			
16-18	The Applicant has presented the most up to date waste data on those wastes being deposited in landfill in the UK. Detailed data on recycling rates for C&I wastes are not available, as noted in the previous response REP4-020...	The Applicant has not responded to UKWIN's point that while it might not be possible to provide a single precise figure for how much C&I recycling rates would improve, it would be possible for the Applicant to model a number of potential improved C&I recycling scenarios to show the impact of increased C&I recycling on the availability of feedstock. In the event that the Applicant does provide a revised assessment to take account of future improvement of C&I recycling rates, we ask that, in line with our previous submissions, this revised assessment also take account of: (a) the impact of the missing existing incineration capacity (i.e. the more than 1 million tonnes of capacity that has come online since 2019), and the capacity which entered construction from 2021 and was therefore not included in the Tolvik report on 2020 EfW statistics; (b) the fact that any additional RDF incineration capacity, including the Boston facility itself, would require more than 1 tonne of raw residual waste for each tonne of RDF feedstock (due to dewatering); and (c) anticipated increases in residual waste being used to produce SRF for cement kilns.	<p>The Applicant has requested in 'The Applicant's Response to United Kingdom Without Incineration Network (UKWIN) Deadline 6 Submission' (document reference 9.79, REP7-011) that UKWIN confirms its assumptions on the starting point for C&I recycling rates for its increases of 100%, 50% and 33% that were used in its outline modelling. The Applicant assumes that UKWIN considers the UK to not recycle any C&I waste if it then considers a scenario of increasing the rate by 100%.</p> <p>If data was available, the most likely starting point for C&I recycling would be an existing rate of 50 or 55% as large quantities of materials are already recovered. The step change to meet the 65% CEP target may lead to a further 10% of material being diverted from landfill.</p>

No.	Applicant's Initial Response	UKWIN's Comment	The Applicant's Response
	<p>The Applicant has used a 2-hour travel time in the Addendum to Fuel Availability and Waste Hierarchy Assessment (document reference 9.5, REP1-018) to define the waste catchment area that wastes could potentially be transferred to the indicative port locations and then transferred to the proposed Facility...the catchment areas allow the quantity of wastes within the areas to be defined. This provides a practicable method of defining a catchment in recognition that RDF is being transferred to port locations throughout the UK and is currently...exported overseas.</p>	<p>The Applicant has not provided evidence to demonstrate that all 12 of the ports they cite are currently being used to export RDF overseas, nor that suitable ships from those ports regularly travel to Boston. As such, the Applicant's assumptions cannot be considered practicable, and could reasonably be described as 'speculative' and therefore the Applicant's assessments that are based on those unsupported assumptions should be afforded little or no weight in the planning balance. For the reasons set out in REP6-042, it is plausible that instead of being evenly distributed between all dozen ports, that a large proportion of any feedstock for the proposed Boston facility could come from a very limited number of ports, and thus be associated with a much more significant adverse impact on local incineration and recycling facilities. As UKWIN notes in REP6-042, the dozen ports listed by the Applicant already have significant incineration capacity within a 2-hour isochrone, including for example nearly 5 million tonnes of existing incineration capacity for Ridham and for Sheerness.</p>	<p>The Applicant has provided an indicative list of ports in Chapter 5 Project Description of the ES (document reference 6.2.5, APP-043). Refuse Derived Fuel (RDF) and baled recyclables are exported from ports throughout the UK.</p> <p>The availability of residual waste of compatible composition that will be diverted from landfill has been set out in the Addendum to Fuel Availability and Waste Hierarchy Assessment (document reference 9.5, REP1-018). Notwithstanding specific future contracts the Facility operator enters in to, the largest proportion of RDF will be sourced from those regions with the largest quantities of residual waste currently disposed to landfill.</p> <p>UKWIN is correct that there will be a large incineration capacity in the vicinity of Ridham and Sheerness as the largest quantity of UK wastes are produced in the South East and from London and additional capacity is needed to divert the wastes from landfill as provided by the proposed Facility.</p>
<p>Comments on Greenhouse Gas emissions and Climate Change impacts – UKWIN calculation of carbon intensity of exported electricity</p>			

No.	Applicant's Initial Response	UKWIN's Comment	The Applicant's Response
19-23	<p>The Applicant has no further comments but notes that UKWIN used the upper end of the range of carbon and fossil carbon contents presented in 'Climate Change – Further Greenhouse Gas Emissions Analysis and Consideration of Waste Composition Scenarios' (document reference 9.6, REP1-019). As stated in The Applicant's Response to UKWIN submitted at Deadline 5 (document reference 9.64, REP5-009), the range of fossil carbon contents from 40 – 60% were considered to provide an indication of potential waste compositions that could be processed at the Facility, due to uncertainties in future Government policy and individual behaviours. Therefore, the adoption of the 60% fossil carbon content only presents the upper end of potential emissions from the Facility.</p>	<p>Based on the Applicant's further comments we have re-approached our assessment and it appears that our calculations require upward amendment.</p> <p>The initial assessment made by UKWIN was based on the assumption that the 609,649 tonnes per annum figure for CO2 in document 6.2.21 of the Applicant's Environmental Statement (APP-059) was the Applicant's assumed level of total CO2 emissions as it was labelled 'Total CO2 Emissions from Thermal Treatment Process with CO2 Recovery'.</p> <p>However, on researching the figure further for the purpose of carrying out the sensitivity analysis which the Applicant calls for, it appears from page 4 of Document 9.6 (REP1-019) that, despite the Applicant's label, this figure was not in fact the total CO2 emissions but actually only the assumed fossil CO2 emissions. As such, the process we previously carried out to convert total CO2 into fossil CO2 was redundant for that calculation, as the figure was already the Applicant's assumed level of fossil CO2.</p> <p>This means that our revised estimate of the fossil carbon intensity of the electricity to be exported, based on the Applicant's central scenario, is 953 grams of fossil CO2 per kWh of exported electricity (i.e. 609,649 tonnes of fossil CO2 divided by 640,000 MWh of exported electricity). This figure takes account of the Applicant's 80,000 tpa of claimed benefits from</p>	<p>Total UK electricity demand in 2020 was 330.01 TWh. The total quantity of electricity exported by UK EfW plants in 2020 was 7.762 TWh, some 2.4% of that total 2020 demand. It should also be noted that UK electricity demand in 2020 was depressed as a result of the pandemic. The Facility's potential electricity export per annum would be of the order 640,000 MWh (0.64 TWh), which would be some 0.2% of total UK 2020 demand. Even taking into account the top-of-range carbon intensity figures developed by UKWIN, it is difficult to appreciate how the Boston Facility could hamper the UK's decarbonisation drive in a significant manner. As set out in paragraph 2.1.2 of the Overarching Policy Statement for Energy (EN-1), <i>"To produce enough energy required for the UK and ensure it can be transported to where it is needed, a significant amount of infrastructure is needed at both local and national scale."</i></p> <p>The Applicant would also draw attention to paragraph 21.6.18 of the ES (document reference 6.2.21 Chapter 21 Climate change, APP-059), where it is stated, "Gross GHG emissions arising from operation of the Facility are predicted to contribute approximately 0.06% per year to the 6th UK Carbon Budget (or 0.3% over</p>

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		<p>CO2 recovery. 953gCO2/kWh fossil carbon intensity is significantly higher in fossil carbon intensity terms than UKWIN's previous estimate, but more accurately reflects the assumptions adopted by the Applicant.</p> <p>For sense checking, this revised estimate of 953gCO2/kWh fossil carbon intensity can be compared with operator-reported performance of incinerators operating in England as set out on page 81 of UKWIN's GHG Good Practice Guidance, and reproduced overleaf (see UKWIN response (REP7-035)).</p> <p>This indicates that the Boston plant could be on the upper end of fossil carbon intensity for incineration plants, even after the proposed CO2 recovery plant is taken into account. For sensitivity analysis, the fossil carbon intensity can also be calculated based on the other fossil CO2 figures provided by the Applicant in Table 1 of the Applicant's Further GHG Emissions Analysis and Consideration of Waste Composition Scenarios (Document 9.6 / REP1-019) based on the formula: (Fossil CO2 ÷ MWh exported) × 1,000 (to convert tonnes into grams and MWh into kWh). The figures provided by the Applicant are as follows: (see UKWIN response (REP7-035)).</p> <p>For the purpose of this analysis we subtract 80,000 tonnes of CO2 from these figures to take</p>	<p>the five year period). As such, the Facility is not considered to have a significant effect on the UK meeting its Carbon Budgets that are implemented up to 2032".</p>

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		<p>account of the Applicant's claims of CO2 removal set out in APP-059. (See UKWIN response (REP7-035)).</p> <p>This indicates that even in the 'best case' of Scenario 1 (which UKWIN has previously shown to be unrealistically optimistic), which is based on 20% carbon content of the RDF feedstock, the plant proposed for Boston would have a higher carbon intensity than CCGT gas which is around 357gCO2/kWh. However, as noted by UKWIN on pages 15-16 of REP6-042, other applicants for RDF facilities are anticipating a total carbon content of 35% by weight, which is higher than the highest figures used by the Boston Applicant (which was 30% as per the Applicant's Scenarios 4-6). If this 35% carbon content assumption were applied to 1,200,000 tonnes of RDF feedstock then this would mean the Boston facility would emit 1,540,000 tonnes of CO2 (1,200,000 x 0.35 x 44/12). It is therefore possible to estimate the fossil carbon intensity of electricity exported based on this level of CO2 emissions applied to each of the Applicant's different assumed levels of fossil carbon percentages taking into account the claimed 80,000 tpa CO2 removal.</p> <p>As previously noted we expect the actual fossil fraction to be far higher than 40%. However, this analysis indicates that even at 40% fossil</p>	

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		<p>carbon content then, if one accepts the Applicant's claimed MWh export figure, the electricity exported by the plant could have a fossil carbon intensity that is more than double the intensity of CCGT gas (or that it would be just under twice the carbon intensity of CCGT for 40% fossil carbon based on the Applicant's Scenario 4). The evidence set out above shows that UKWIN's claim that the Boston plant would have a high fossil carbon intensity holds true for a wide range of feedstock scenarios and counters the Applicant's suggestion that our previous estimate of 572 g CO₂ was unrealistically high. Indeed, the revised evidence set out above indicates that UKWIN's previous estimate was significantly below what could be anticipated for the Boston plant based on the Applicant's evidence regarding the adverse carbon impacts of their proposed facility. The Applicant has therefore failed to disprove UKWIN's case that, based on the Applicant's own assumptions, the Boston facility would hamper the UK's efforts to decarbonise the electricity supply.</p>	
<p>Comments on Greenhouse Gas emissions and Climate Change impacts – weight of carbon benefits or disbenefits</p>			
24-27	<p>The Applicant maintains that the processing of waste at the Facility will result in lower levels of greenhouse gas emissions compared to existing waste treatment pathways, including landfill and</p>	<p>As set out above, the Applicant's carbon assessments have not claimed that the processing of waste at the Boston Facility would necessarily result in lower levels of GHG release when compared with landfill, but</p>	

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	<p>export to Europe. In addition, the Facility will have the added benefit of providing a continuous and reliable source of 80MWe electricity to the UK grid.</p>	<p>rather those assessments claimed that the Boston Facility would result in GHG levels that could be lower or similar to landfill. Additionally, the Applicant has not offered any rebuttal of substance to UKWIN's evidence that if account is taken of the impacts of biogenic carbon sequestration in landfill and/or the progressive decarbonisation of the electricity supply, and/or a more realistic RDF composition, then the processing of waste at the Boston Facility would result in worse climate impacts than sending the same waste to landfill. With respect to comparing the Boston proposal with exporting the RDF to Europe, the Applicant's claim that the plant "will result in lower levels of greenhouse gas emissions compared to...export to Europe" is similarly undermined by their own evidence. The Applicant's climate change assessment (APP-059) does not directly compare processing of waste at the Boston facility with exporting the same RDF to Europe. The only scenario offered by the Applicant that includes a consideration of the climate impacts of exporting RDF to Europe (Table 21-23 on page 37 of APP-059) was based on only 50% of the RDF being exported to Europe, as set out on page 15 of that document. Had a rate of 100% RDF export been included in the Table (instead of or as well as 50%) then, using the Applicant's methodology, the climate impact of</p>	

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		<p>RDF export would range between 311,436 and 731,436 tonnes of CO₂e per annum (i.e. double the stated range of 150,000 – 360,000 tonnes of fossil CO₂e emission from the incinerator plus double the stated 5,718 tonnes of CO₂e from marine vessel movements). The centre of this range is 521,436 tonnes of CO₂e from exporting 100% of the RDF to Europe, which compares favourably to the Applicant's claimed level of CO₂ impacts from Boston, which the Applicant puts at 623,996 tonnes of CO₂e. One reason exporting RDF to Europe can have lower emissions is because European incinerators are typically connected to extensive (existing) district heating schemes and the lower temperatures in those countries mean that there is a higher year-round heat demand. As such, it is unsurprising that the Boston plant performs worse than European CHP incinerators.</p>	