



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

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

**Submitted for Deadline 8  
15 March 2022**

**Planning Act 2008 (as amended)**

**In the matter of:**

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

**Planning Inspectorate Ref: EN010095**

**Registration Identification Ref: 20028367**

The following table sets out key questions responded to by the Applicant where we consider additional comments would be helpful. Where appropriate we have provided our original comments on questions for completeness. Notably, we have elaborated on our response to Q3.3.1.31 to provide further detail setting out why the area around the Application site is functionally linked land to The Wash SPA and Ramsar.

Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
<b>1.0 General and Cross-topic questions</b>					
Q3.1.0.4	The Applicant	Please respond to the RSPB's comments regarding funding [REP6-041].		Please refer to the Applicant's response to RSPB's comments in the Third Report on Outstanding Submissions in Table 2-2 (document reference 9.78).	We note the Applicant's response in Table 2-2 (REP7-010). We will respond to the Applicant's comments at D9 following submission of the updated Compensation Measures document at Deadline 8, as appropriate.
<b>3.1 Biodiversity, Ecology and Natural Environment (including Habitats Regulations Assessment (HRA))</b>					
Q3.3.1.24	Applicant	Does the Applicant expect to make any further progress with the compensation proposals and intend to submit any further updates to the derogation package prior to the close of the Examination?		The Applicant is continuing to refine the in-principle derogation package and an updated version will be submitted at Deadline 8. Specifically, it will include information to show what 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 bounds of commercial confidentiality) and a timeline for implementation of the compensation measures will	The RSPB notes that additional information will be submitted by the Applicant on their proposed compensation measures at Deadline 8. We remain concerned by the lack of detail being made available by the Applicant, as set out in our response to Q.3.3.1.32 (REP7-031). We will review additional information submitted by the Applicant, but continue to have concerns that insufficient time remains within the Examination to address the data gaps and the significant level of outstanding detail needed to meet the Habitats Regulations tests.

Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
				<p>be provided. The Applicant reserves the right to update any of the submitted in-principle derogation documents and cannot rule out other updates before the end of the examination.</p>	
Q3.3.1.25	Applicant	<p>Please could the Applicant provide an updated version of the HRA screening and integrity matrices to reflect the latest position, including a tracked changes version, and tracked changes versions of the HRA matrices submitted at D3 and D5.</p>		<p>The HRA Screening and Integrity Matrices submitted at Deadline 5 (document reference 9.42(1), REP5-003) include track changes. These changes are restricted to Tables A17-1-1-1, A17-1-2-1, A17-1-2-2 and A171.2.3. The Deadline 5 submission updates the equivalent document from Deadline 3 (document reference 9.42, REP3-018) which did not contain tracked changes. The Applicant maintains its position as set out in the Deadline 5 submission (document reference 9.42(1), REP5-003) regarding these matrices and no additional submissions are therefore required.</p>	<p>The RSPB continues to disagree with the Applicant's conclusions and do not consider the screening matrices accurately reflect outstanding concerns regarding, in particular, features of The Wash SPA and Ramsar. This is based on our comments on the Ornithology Addendum (REP4-026).</p> <p>We continue to review the matrices and will provide more detailed comments as appropriate at a future submission. However, we do not agree with the conclusions that have been made. Clear evidence of disturbance from the baseline work that has been undertaken and increase in vessel movements will increase the level of disturbance to features of The Wash SPA and Ramsar. This impact of additional disturbance on the ability to restore</p>

Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
					features, has not been adequately considered.
Q3.3.1.27	Applicant	Can the Applicant confirm when in March the final winter bird surveys will be completed and whether the reports will be submitted to the Examination in sufficient time to allow IPs to review and comment on them prior to the close of the Examination.		The Applicant confirms that final winter bird surveys are scheduled for the first week of March to enable time to analyse and report, and that data inclusive of the March survey visits will be analysed and submitted to Examination by Deadline 9 at the latest. The Applicant will strive to submit the information at Deadline 8 in order to give IPs sufficient time to comment, if possible	We note the Applicant's response. We will review the additional information.  It remains a serious concern that so much additional data and information that should have been addressed prior to Examination are being provided at such a late stage of the Examination.
Q3.3.1.29	The Applicant	<b>HRA process</b>  Where adverse effects cannot be ruled out, the HRA Regulations provide for the possibility of a derogation which allows plans or projects to be approved provided three tests are met:  1. There are no feasible alternative solutions to the plan or project which are less damaging;	We have noted the ExA's question and the reference to the position of the Norfolk Boreas ExA. We consider the current Application is in a similar position to that described by the Norfolk Boreas ExA i.e. there are not sufficiently detailed proposals for compensation in front of the examination.  We will await the Applicant's response to Q3.3.1.29 before responding more fully.	The Applicant is confident that the information provided to date satisfies the derogation tests. Notwithstanding the Applicant's position that there will be no Adverse Effect on Integrity (AEOI) of any designated site (see document reference 6.4.18, APP-111), the Applicant has provided a Without Prejudice Habitats Regulations Assessment Derogation Case: Assessment of Alternative Solutions (document reference 9.28, REP2-011) which sets out that there are no feasible	Reg 68 of the Habitat Regulations requires that:  <i>"the appropriate authority <u>must secure</u> that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected"</i>  This is not the same as an implication that high level ideas with no substance behind them "can" be secured: this essentially amounts to a request to accept "jam tomorrow". To meet the Regulation 68

Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
		<p>2. There are imperative reasons of overriding public interest (IROPI) for the plan or project to proceed; and</p> <p>3. Compensatory measures are secured to ensure that the overall coherence of the national site network is maintained.</p> <p>I would draw the attention of the Applicant to the recent Decision Letter in respect of the Norfolk Boreas Offshore Windfarm dated 10 December 2021; in particular paragraph 5.13 which states the following: <i>"...the ExA could not recommend compensatory measures for the Secretary of State to consider because it did not have sufficiently detailed proposals for compensation. It therefore recommended that the Secretary of State should seek further information from the Applicant regarding alternative solutions or</i></p>		<p>alternative solutions which are technically possible, with the exception of the option to use larger operational vessels for RDF with a minimum 3,300 tonne capacity (paragraph 10.1.3, document reference 9.28, REP2-011). However, it is the Applicant's view that this alternative solution is unlikely to change the view expressed by Natural England (NE), the Royal Society for the Protection of Birds (RSPB) and the Lincolnshire Wildlife Trust (LWT), that this alternative solution would (in their opinion) be less damaging to the Wash SPA and Ramsar site and The Wash and North Norfolk Coast SAC as there would continue to be daily vessel movements and the need for a wharf at the Facility (see paragraph 10.1.3- 10.1.4 (document reference 9.28, REP2-011).</p> <p>In the event that the Secretary of State (SoS) disagrees with the Applicant and determines that</p>	<p>requirement requires tangible, targeted compensation measures to be identified that will meet the ecological requirements of the impacted species. There are no such measures in front of the examination.</p> <p>The applicant's approach therefore does not meet this test. The compensation should be based on the reasonable worst-case scenario. NE and the RSPB have set that out in our submissions to date. Compensation requirements should work from that.</p> <p>The Applicant has chosen not to take this approach.</p> <p>It is not acceptable to consent on the basis described by the Applicant. It creates very high amounts of uncertainty on:</p> <ul style="list-style-type: none"> <li>• The level/magnitude of AEOI to be compensated.</li> <li>• Whether the necessary compensatory measures to address the AEOI have been</li> </ul>

Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
		<p><i>compensatory measures. The Secretary of State notes that the development consent process for nationally significant infrastructure projects is not designed for consultation on complex issues, such as HRA, to take place after the conclusion of the examination. .... he wishes to make it clear that, in order to maintain the efficient functioning of the development consenting regime, he may not always request post-examination representations on such matters, indeed it should be assumed that he will not do so, and he may therefore make decisions on such evidence as is in front of him following his receipt of the ExA's Report."</i></p> <p>The ExA notes that the information contained in REP6-025 contains limited detail on the proposed compensation package,</p>		<p>there may be AEOL, and where there is no alternative solution, the scheme could proceed on the basis that the Applicant has demonstrated there are imperative reasons of overriding public interest (IROPI) which are set out in the Without Prejudice Habitats Regulations Assessment Derogation Case: Imperative Reasons of Overriding Public Interest (IROPI) Case (document reference 9.29, REP2-012). Paragraph 2.2.2 (document reference 9.29, REP2-012) sets out the premise of the IROPI argument in respect of the proposed development which includes for example, an urgent need for electrical energy, an urgent need for waste management and the need for lower carbon transportation which is key for maintaining public safety and human health. These (and other imperative reasons) are explained in more detail in Sections 3-7 of REP2-012 (document reference 9.29). It is</p>	<p>identified and secured.</p> <p>As it stands, there are no viable and ecologically targeted compensation measures on the table from the applicant upon which either the Examining Authority or Secretary of State can have confidence, as set out in our Deadline 4 submission on the Applicant's Compensation Measures (REP4-028).</p> <p>We alert the Examining Authority to historic compensation packages where the location and design of the compensation was provided in advance of the end of inquiries with relevant landowner agreements in place. Examples include: Bathside Bay Container Terminal, Port of Bristol Deep Sea Container Terminal. Both examples include detailed legal agreements setting out the compensation objectives and associated monitoring requirements in advance.</p> <p>With respect to confirming that our reserves could not be used for compensation measures, we set this out clearly in our Relevant</p>

Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
		<p>identifies a reduced number of compensation site options to that in the previous version of the document [REP2-013], and does not include a figure that depicts the location of the newly identified compensation site options. Please can the Applicant set out how the information provided to date satisfies the derogation tests and identify the location of the additional options. In so doing, to provide clear references from the Examination Library as to which documents address these matters.</p> <p>Natural England, the RSPB, The Lincolnshire Wildlife Trust and any other IPs are invited to comment.</p>		<p>the Applicant's view that the proposed development has long term benefits which are imperative and overriding, and that there is a public interest in it proceeding despite the effects alleged by NE (and other Interested Parties) on the conservation objectives of The Wash SPA and Ramsar and The Wash and North Norfolk Coast SAC (notwithstanding the Applicant's Stage 2 no AEOL conclusion) (paragraph 2.2.3 of document reference 9.29, REP2-012).</p> <p>The Applicant has submitted a Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures, the most recent version at Deadline 6 (document reference 9.30(1), REP6-025), which sets out the compensatory measures and how they are secured to ensure that the overall coherence of the national site network is maintained. It is noted that the Examining Authority</p>	<p>Representations submitted on 18 June 2021:</p> <p><i>"Reliance on the RSPB's reserves at Freiston Shore and Frampton Marsh to deliver compensation For clarity, the RSPB confirms that high-level, in principle conversations took place with the Applicant in October 2020 regarding options that might be appropriate to consider as compensation (see para 17.3.2 (p.30) of Chapter 17 Marine and Coastal Ecology of the ES). These discussions included an update on work that the RSPB is looking to undertake at our Freiston Shore and Frampton Marsh reserves. However, no agreements were made regarding what measures the Applicant could take forward as compensation, as the discussions were only in principle to consider the type of measures that might be appropriate in the general location. No further discussion has taken place with the Applicant on in principle compensation and consequently the Applicant has not, to the best of our knowledge, explored the viability of any potential</i></p>

Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
				<p>(ExA) considers the updated Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (document reference 9.30(1), REP6-025) 'contains limited detail on the proposed compensation package, identifies a reduced number of compensation site options to that in the previous version of the document and does not include a figure that depicts the location of the newly identified compensation site options'. The Applicant seeks to address each of these points in turn, including explaining how the compensatory measures would be secured.</p> <p>The Applicant is confident that the level of detail provided for the compensatory measures to date is sufficient to enable the ExA and, in turn, the SoS to have confidence that the measures can be delivered and are secured. It is important to remember that compensation measures have been proposed entirely without</p>	<p><i>options. At this time, the RSPB is unable to enter into further in principle discussions with respect to compensation, as we still do not consider impacts are fully understood. This is necessary to determine the type, scale and location of compensation that might be required to address any residual adverse effects on site integrity."</i> (RR-024)</p> <p>We will respond further on this issue, as appropriate, at Deadline 9 following submission of the Applicant's updated Compensation Measures document at Deadline 8.</p>



Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
				<p>prejudice to the Applicant's position that there is no risk of AEOI. The degree of detail which can be provided at this stage should be commensurate with the level of agreement on whether AEOI arises and, if it does, agreement on the nature and scale of the compensation to be provided. This is because these aspects will need to be reflected in land or commercial agreements and applications for permissions or consents (if any) required to deliver the compensation measures. In any event, this level of detail is not reasonably required by the SoS in order to conclude that the compensation measures proposed are deliverable and can be secured and thus the derogation test met. The Applicant has continued to progress the compensation proposals as far as possible, to give the ExA and Interested Parties confidence that compensatory measures could be delivered and secured in the</p>	

Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
				<p>event they are required by the SoS. However, to provide the ExA and Interested Parties with further comfort, the Applicant proposes to submit further information in the form of an updated Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures at Deadline 8. This will provide further detail as noted above in the Applicant's response to question 3.3.1.24.</p> <p>The reduction in the number of sites noted in the updated Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (document reference 9.30(1), REP6-025) is partially due to the nature of the shortlisting process. As set out in paragraph 1.3.2 the Applicant had been in discussions with the RSPB regarding potential for opportunities for habitat gain within the RSPB reserves near the mouth of The Haven (Freiston Shore reserve and Frampton</p>	

Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
				<p>Marshes reserve) prior to the start of the examination. However, the RSPB informed the Applicant shortly before the examination commenced that those opportunities no longer existed. The Applicant has also been in contact with Her Majesty's Prison North Sea Camp, Boston about potential opportunities. However, as set out in paragraphs 1.3.5- 1.3.6 it has been determined that there is insufficient space available to create suitable habitat. It is anticipated that the compensation sites listed in Table 3-1 would be suitable, particularly given the previous successes within the RSPB Reserves, of converting agricultural land in the local area to bird habitat. The Applicant will provide further justification in support of this position at Deadline 8. If further survey work (completed after the AEOI decision is made) determined those sites were not suitable or that further sites were required, the Applicant would</p>	

Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
				<p>undertake further site selection in accordance with the process set out in section 4 of the updated Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (document reference 9.30(1), REP6-025).</p> <p>The ExA has requested the Applicant '<i>identify the location of the additional options</i>'. Due to the commercially sensitive nature of the ongoing negotiations with landowners of the proposed sites, the Applicant does not consider that it is appropriate at this point, to provide a plan or figure which explicitly identifies these sites. Instead, the Applicant will provide the ExA with a Figure at Deadline 8 which illustrates the search areas which the Applicant has used to identify these prospective sites. This, when considered in combination with the details of the shortlisted sites provided in Section 3.5 of the updated Without Prejudice Habitats Regulations Assessment</p>	

Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
				<p>Derogation Case: Compensation Measures (document reference 9.30(1), REP6-025), which includes details of the prospective sites size (in hectares) and approximate distance from a set point (i.e. the mouth of The Haven), should provide the ExA and Interested Parties with a fairly clear indication of the site locations. Furthermore, the Applicant anticipates, subject to the progression of commercial negotiations, to be able to provide a figure identifying the exact site locations at a later Examination deadline. The Applicant notes that on the Norfolk Vanguard and Norfolk Boreas DCO applications, the identification of the specific sites for compensatory measures was not required for the SoS to make its decision to grant those DCOs. The Applicant considers that the level of detail it has provided in the without prejudice compensation case is reasonable</p>	

Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
				<p>and comparable to the level of detail provided by applicants in other DCO examinations who presented a without prejudice HRA derogation case.</p> <p>The derogation test requires the necessary compensatory measures can be secured. The draft Development Consent Order (DCO) (document reference 2.1(3), REP6-002) secures the compensation measures (habitat creation) (if required) via the without prejudice draft Schedule 11 (<i>Ornithology Compensation Measures</i>) to the draft DCO, which provides the mechanisms to ensure the compensation measures will be delivered. This includes the approval of an Ornithology Compensation Implementation and Monitoring Plan (OCIMP), by the SoS, which must include, amongst other details, details of location(s) where compensation measures will be delivered and the suitability of the site(s) to deliver</p>	

Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
				<p>the measures (including why the location is appropriate ecologically and likely to support successful compensation); and 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>	
Q3.3.1.30	The Applicant	<p>It is unclear whether the Applicant considers that the proposed biodiversity net gain works to the Havenside Local Nature Reserve (LNR) would additionally enable the LNR to function effectively as a compensation site. Please can the Applicant confirm its position.</p>		<p>It is not intended that the works on the Havenside LNR would act as compensation unless compensation is required for loss of saltmarsh outside of the SPA, at the Proposed Application Site. If there is a need to compensate for the loss of saltmarsh then the debris removal from saltmarsh along The Haven would allow areas of saltmarsh that are currently affected by debris to be reinstated. There is currently a high level of debris on the saltmarshes along The Haven and clearance of this would benefit the habitat. Otherwise, this aspect of the work proposed would remain as Biodiversity Net Gain (BNG).</p>	<p>The RSPB does not agree that debris removal would constitute saltmarsh compensation, as it is not replacing the extent of habitat that will be lost due to the construction and operation of the facility to ensure the overall coherence if the habitat, especially its supporting function for features of The Wash SPA and Ramsar site are maintained. This replacement habitat must be considered within the Applicant's compensation measures calculations. This measure's benefit as a Biodiversity Net Gain option also needs to be fully justified.</p>

Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
Q3.3.1.31	NE and the RSPB	Please could NE and the RSPB respond to the Applicant's view that the application site ('Area A') and adjacent area ('Area B') are not functionally linked to the SPA and Ramsar site, notwithstanding that it has been assumed for the purposes of the derogation case that they are functionally linked.	<p>The RSPB continues to review the submissions made by the Applicant. In summary, we do not agree with the Applicant that the area adjacent the Application site is not functionally linked to The Wash SPA and Ramsar site.</p> <p>In our Written Representations (Section 6, pp.46-48; REP1-060) we identified the gaps in survey coverage and highlighted that all areas of The Haven could be used by features of The Wash SPA and Ramsar site. The Applicant's own surveys have identified that species which are features of The Wash SPA and Ramsar occur along The Haven and can occur in significant numbers; redshanks and ruffs are most notable, but the full importance of The Haven for waterbirds has not been assessed by the Applicant. We set out more detail on our concerns about the Applicant's approach to assessing the importance of</p>		<p>The RSPB's position is that the land adjacent the Application is functionally linked to The Wash SPA and Ramsar. Our Deadline 7 comments (REP7-030) remain.</p> <p>Having reviewed Section 4 of the updated HRA (REP5-006) we have additional comments that set out why the Applicants conclusions regarding the connection between the Application site and The Wash SPA are fundamentally flawed.</p> <p>The Applicant has suggested that given the boundary of The Wash SPA and Ramsar site lies c.3km from the Application site that redshanks will not move along The Haven such distances and therefore cannot be considered to be using The Wash SPA. This is based on two published studies Burton (2000)<sup>1</sup> and Rehfishch <i>et al.</i> (1996).</p> <p>Paragraph 4.2.9 focuses on the use of colour-ringed redshanks to assess</p>

<sup>1</sup> Mark M. Rehfishch, Nigel A. Clark, Rowena H. W. Langston and Jeremy J. D. Greenwood (1996) A Guide to the Provision of Refuges for Waders: An Analysis of 30 Years of Ringing Data from the Wash, England. *Journal of Applied Ecology* Vol. 33, No. 4 (Aug., 1996), pp. 673-687



Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
			<p>The Haven to draw conclusions regarding the impact of vessel disturbance in our comments on the Ornithology Addendum (in particular, Section 2, REP4-026). As we stated in paragraph 2.59 of our comments on the Ornithology Addendum (p.19) the Applicant's approach (emphasis added) "<i>...to the HRA fails to appreciate that the test of Likely Significant Effect must consider, on a precautionary basis, whether the project is likely to have a significant effect on the SPA, either alone or in combination with other plans or projects.</i>" We have highlighted the need for this precautionary approach to be applied to the Application in both our Written Representations (REP1-060) and comments on the Ornithology Addendum (REP4-026) and this is especially the case when data deficiencies exist to draw conclusions (see Appendix 1 below). It is the applicant's responsibility to prove "beyond reasonable scientific doubt" that</p>		<p>movements of non-breeding birds between Cardiff Bay and Rhymney, as set out in the Burton (2000) paper cited by the Applicant. Having reviewed the paper, and based on the RSPB's Conservation Science team's experience of working at Cardiff Bay and Rhymney, it is likely that the majority of the colour ring sightings will have come from periods closer to high tide when the birds are close enough for rings to be read. This will be when available habitat is constrained and birds are forced together rather than being able to range more widely. The better data to focus on would be the radio-tracking data from the Burton (2000) study, which focused on the period around low tide and provides a more representative view of the movement of redshanks in the study area.</p> <p>Whilst the Burton (2000) study did show that birds largely remained within Cardiff Bay and the Rhymney Estuary (which are about 4km apart) it is important to note that these sites were searched on 7.4 and 4.1</p>

Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
			<p>there will be no adverse effect on the integrity of the qualifying features of the SPA/Ramsar site (or in this case no functional link to the SPA/Ramsar site). The concerns raised by the RSPB are based on legitimate scientific interpretation.</p> <p>We will provide greater detail at Deadline 8 (15 March 2022) on the Applicant's updated Habitats Regulations Assessment.</p>		<p>days per month respectively. The study states that sites further away were only searched twice per month. This difference in survey effort is likely to have affected the results. Furthermore, it is clear from this study that birds regularly moved between the two sites that were 4km apart from each other. This has not been reported by the Applicant.</p> <p>Additional unpublished data has been collected by Dr Lucy Wright<sup>2</sup> from the same study area on the Severn (Rhymey Estuary to the Usk) from 27 GPS tagged redshanks that were tracked for between 14-42 days per individual during the winter of 2015-2016. The birds locations were recorded every 90 minutes. This tracking work found that birds had a much larger home range than was found in the earlier studies of the same area, with multiple birds regularly travelling from the Rhymey Estuary to Goldcliff Lagoons, northeast of the Usk; a distance of around 15 km. These</p>

<sup>2</sup> Background and experience for Dr Lucy Wright is provided in Appendix 1

Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
					<p>additional data clearly highlight that redshanks can easily travel the c.3km distance from the Application site to The Wash SPA and Ramsar at Hobhole. Given the mouth of The Haven near the Cut End Bird Hide is only c.7km from the Application site, redshanks would be expected to be able to utilise the whole length of The Haven up to the Application sites.</p> <p>In paragraph 4.2.10 (p.23 of the HRA update; REP5-006) the applicants interpretation of the data in Rehfishch (1996) is misleading. This paper looks at the movements of birds between high-tide roost sites (where they were caught for ringing) and NOT the daily movements of birds through the tidal cycle (i.e. between high-tide roosts and mid/low tide feeding areas). Redshanks are known to be site-faithful to high tide roosts and so it is unsurprising that the paper found that they did not move far between roost sites; however this is absolutely not representative of the birds' daily movements through the tidal cycle.</p>

Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
					<p>The applicant also misrepresents the sample sizes on which the metrics they quote are based. They state that the paper is based on 11,729 ringed redshanks (9,604 + 2,125) which is true, but they then quote the mean within-winter movement distance from this paper without mentioning that this was based on a sample size of only 24 re-trapped adults and a single (1) juvenile bird.</p> <p>Furthermore, the applicant then states that the paper shows that redshanks rarely moved between sections of the Wash. This is true, but this does NOT provide evidence that The Wash and the Application Site are not functionally linked, since each of the sections of the Wash used in Rehfishch <i>et al.</i> (1996) are far larger than the distance between the Application Site and the SPA. Indeed, the abstract for the paper clearly states that:</p> <p><i>"This analysis does not take into account either [sic] movements</i></p>

Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
					<p><i>between feeding sites nor between roosting and feeding sites."</i></p> <p>The conclusion that Redshank confine their day-to-day activities to within a small localised area set out in paragraph 4.2.11 of the HRA update is therefore flawed, for the reasons set out above.</p> <p>In addition, the study quoted in section 4.2.9 of the HRA update (Burton, 2000) shows that redshanks regularly moved between sites that were 4 km apart from each other, yet in paragraph 4.2.15 (p.24; REP5-006) it is claimed that because the Application Site is between 3.0 and 3.6 km from the Wash SPA, the published data suggest that it is likely that the great majority of redshanks that regularly use the area do not make use of the SPA. This does not appear to be a logical conclusion based on a detailed review of the Burton (2000) study. Irrespective of the Rehfishch <i>et al.</i> 1996 paper only considering roost sites, they still recommend "<i>Placing refuges...3.5, 5.5 and 9.5 km apart for</i></p>

Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
					<p><i>redshanks put the refuges within reach of 90, 75 and 50% of the respective populations of these species during their normal roost movements."</i> These distances further support the ability of redshanks to use The Wash SPA along The Haven.</p> <p>The RSPB also fundamentally disagrees with the application of blanket conditions to identifying functionally linked land, especially the need for there to be a percentage of the SPA population being supported by the functionally linked land. Any supporting habitat beyond the boundary of a SPA which is connected with or 'functionally linked' to the life and reproduction of a population for which a site has been designated or classified should be taken into account in a Habitats Regulations Assessment. That assessment will need to determine how critical the area(s) may be to the population of the qualifying species and whether the area is necessary to maintain or restore the favourable conservation status of the species. Where necessary,</p>

Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
					<p>suitable mitigation must be provided if potential for effects on the integrity of a site are identified.</p> <p>We are continuing to review the HRA update and aim to provide our full comments at Deadline 9 where appropriate.</p>
Q3.3.1.33	The Applicant	<p>In order to provide sufficient confidence in the effectiveness of the proposed compensation measures please could the Applicant provide an outline version of the Ornithology compensation implementation and monitoring plan to the Examination.</p>		<p>An outline plan for the proposed compensation measures is provided in Section 5 of the updated Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures submitted at Deadline 6 (document reference 9.30(1), REP6-025). This included monitoring studies, and adaptive management (should it be needed), that would be implemented as part of the compensation package. The Applicant feels that the information provided is commensurate with the details of the proposed compensation (if such is required) where further details will be detailed once sites are absolutely agreed and secured and more firm details can</p>	<p>We have provided comments on the need for such detail to be provided in our Deadline 7 comments on the draft Schedule 11 (REP7-031).</p>

Question number	Question addressed to	ExA question	RSPB response	Applicant's response	RSPB comments
				<p>then be provided in compliance with Section 5 of REP6-025. However, to provide comfort to the ExA and IPs, the Applicant has prepared an Outline Ornithology Compensation Implementation and Monitoring Plan (document reference 9.81). The Outline Plan is based on that submitted following the Secretary of State's minded to approve letter on the Hornsea Three Offshore Wind Farm Order 2020. The Applicant notes that the submission of an outline compensation implementation and monitoring plan was not required in order to make a determination on either The Norfolk Boreas Offshore Wind Farm Order 2021 or The Norfolk Vanguard Offshore Wind Farm Order 2022.</p>	



## Appendix 1: Background and experience of Dr Lucy Wright

### Background and Experience

- 1.1 I am a Principal Conservation Scientist at the RSPB Centre for Conservation Science where I lead the team that provides scientific advice on casework (i.e. where proposed developments might affect birds or their habitats). I am a member of British Ecological Society, British Ornithologists' Union, British Trust for Ornithology (BTO) and International Wader Study Group. I hold a BSc (Hons) (first class) in Ecology, Conservation and Environment, a Masters of Research (MRes) in Ecology and Environmental Management, both from the University of York, and a PhD in Environmental Sciences from the University of East Anglia.
- 1.2 My research has focussed on understanding the impacts of man-made developments and activities on birds, as well as understanding bird responses to habitat change and other changes to their ecosystems. I previously spent 9 years working in the Wetland and Marine Research Team at the BTO, where my research focussed mainly on waterbirds and seabirds, including many of the wintering and breeding bird species that occur within the Application site and surrounding areas.
- 1.3 I have published a combined total of over 40 peer-reviewed papers and research reports on bird ecology and assessing the impacts of developments (a list of my publications is given in Appendix 1). I have also contributed to national guidance on bird survey and modelling methodologies for impact assessment (e.g. Wright *et al.* 2012, Maclean *et al.* 2009). I have provided scientific advice to the UK Government and their agencies in relation to the designation of marine and coastal protected area networks including Special Protection Areas (e.g. Cook *et al.* 2015, Ross-Smith *et al.* 2012).
- 1.4 I have led high-profile impact assessment work related to proposed developments affecting wintering and migratory bird species in coastal Special Protection Areas. For example, I was the lead author of the biodiversity assessment for the UK Government's Strategic Environmental Assessment of tidal power options on the Severn Estuary (Wright & Clark 2010), and I led a review of the likely impacts on birds of proposed airport development in the Thames Estuary (Wright *et al.* 2014). I coordinated the Strategic Ornithological Support Services group that provided advice on ornithological issues to the UK offshore wind industry and helped to develop national guidance on addressing these issues. I have worked on a number of other impact assessments in relation to proposed development effects on coastal and marine birds and potential mitigation/compensation measures (e.g. Wright *et al.* 2010, Burton *et al.* 2013, 2014, 2015).
- 1.5 I am the Chair of the BTO's Ringing Committee, which oversees the scientific strategy for bird ringing, and the activities of around 3,000 licensed bird ringers and trainees, across Britain and Ireland. I am one of around 35 people in Britain and Ireland licensed to use cannon nets to catch waders (shorebirds) for scientific study; gaining such a license is a complex and specialist process, requiring significant expertise and a detailed understanding of wader behaviour gained through many hundreds of hours of field observation. I am one of the leading members of one of the world's longest-running and most active wader study groups, the Wash Wader Ringing Group, and a member of its Scientific Committee. Through this role I have provided training and advice on the study of wading birds to scientists from around the world. I am also a Board Member, Trustee and Director of the British Trust for Ornithology, and a Council Member and Trustee of the British Ornithologists' Union and Chair of their Awards

Nominations Committee. For five years (2016-2021) I was an Associate Editor of the BTO's scientific journal *Bird Study*.

- 1.6 I sit on several scientific advisory panels and steering groups for particular projects, mostly relating to improving methodologies for the ornithological parts of Environmental Impact Assessment (EIA). For example, I sit on The Crown Estate's Expert Working Group in relation to plan-level Habitats Regulations Assessment for new offshore wind leasing rounds.

## 2. Dr Lucy Wright publication list

The following is a list of publications authored or co-authored by Dr Lucy Wright, given to support the outline of her experience. Publications are listed in reverse chronological order

Bowgen, K.M., **Wright, L.J.**, Calbrade, N.A., Coker, D., Dodd, S.G., Hainsworth, I., Howells, R.J., Hughes, D.S., Jenks, P., Murphy, M.D., Sanderson, W.G., Taylor, R.C. & Burton, N.H.K. 2022. Resilient protected area network enables species adaptation that mitigates the impact of a crash in food supply. *Marine Ecology Progress Series* **681**: 211-225. [REDACTED]

Cook, A.S.C.P., Burton, N.H.K., Dodd, S.G., Foster, S., Pell, R.J., Ward, R.M., **Wright, L.J.** & Robinson, R.A. 2021. Temperature and density influence survival in a rapidly declining migratory shorebird. *Biological Conservation* **260**: 109198. [REDACTED]

O'Hanlon, N.J., Wischniewski, S., Butler, A., Ewing, D., Gunn, C., Jones, E.L., Newell, M., Newman, K., Quintin, M., Searle, K., Walker, R., Humphreys, E.M., **Wright, L.J.**, Daunt, F. & Robinson, R.A. 2021. Feasibility study of large-scale deployment of colour-ringing on Black-legged Kittiwake populations to improve the realism of demographic models assessing the population impacts of offshore wind farms. JNCC Report No. 684, JNCC, Peterborough. [REDACTED]

Gauld, J., Bennun, L., Cook, A., Jobson, B., Oppel, S., Allinson, T.S.M., Franco, A., Gregory, R., Green, R., Humphreys, L., McCluskie, A., Petrovan, S., Silva, J.P., Thaxter, C., Wischniewski, S. & **Wright, L.J.** 2019. The fourth grand challenge in the science of wind energy: minimising biodiversity impacts. *Science* **366**, Issue 6464: eaau2027. Doi: 10.1126/science.aau2027 (e-letter response).

Wischniewski, S., Fox, D.S., McCluskie, A. & **Wright, L.J.** 2018. *Seabird tracking at the Flamborough & Filey Coast: Assessing the impacts of offshore wind turbines. Pilot study 2017*. RSPB Centre for Conservation Science Report, RSPB, Sandy.

Scragg, E.S., Burrell, E., Hilton, G.M., Clark, N.A., Dodd, S.G., Hearn, R., Burton, N.H.K. & **Wright, L.J.** 2016. *Waterbird tracking work on the Severn Estuary in 2015/16 in relation to the proposed Tidal Lagoon Cardiff*. Combined Ecology Research Report No. TLP10/05.08.2016. (Confidential peer-reviewed report)

Ross-Smith, V.H., Thaxter, C.B., Masden, E.A., Shamoun-Baranes, J., Burton, N.H.K., **Wright, L.J.**, Rehfish, M.M. & Johnston, A. 2016. A Bayesian analytical approach to modelling the flight heights of breeding Lesser Black-backed Gulls and Great Skuas from GPS tracking data. *Journal of Applied Ecology* **53**: 1676-1685 [REDACTED]

Pearce-Higgins, J.W., **Wright, L.J.**, Grant, M.C. & Douglas, D.J.T. 2016. The role of habitat change in driving black grouse *Tetrao tetrix* population declines across Scotland. *Bird Study* **63**: 66-72 [REDACTED].

**Wright, L.J.**, Burton, N.H.K., Ross, K.E. & Atkinson, P.W. 2015. Scope of survey and modelling work for coastal birds to inform the Environmental Impact Assessment for the proposed Cardiff tidal lagoon: Combined Ecology Research Report No. TLPL08/10.08.2015.

Burton, N.H.K., Ross, K.E., **Wright, L.J.** & Clark, N.A. 2015. *A summary review of the survey and modelling methodology required to inform Environmental Impact Assessment and Habitats Regulations Assessment in relation to proposed tidal power lagoons on the Severn Estuary*. Combined Ecology Research Report No. TLPL06/25.2.2015. Combined Ecology, Thetford.

**Wright, L.J.**, Newson, S.E. & Noble, D.G. 2014. The value of a random sampling design for annual monitoring of national populations of larger British terrestrial mammals. *European Journal of Wildlife Research* **60**: 213-221. [REDACTED].

Johnston, A., Cook, A.S.C.P., **Wright, L.J.**, Humphreys, E.M. & Burton, N.H.K. 2014. Modelling flight heights of marine birds to more accurately assess collision risk with offshore wind turbines. *Journal of Applied Ecology* **51**: 31-41 [REDACTED].

Macleod, I.M.D., Inger, R., Benson, D., Booth, C.G., Embling, C.B., Grecian, W.J., Heymans, J.J., Plummer, K.E., Shackshaft, M., Sparling, C.E., Wilson, B., **Wright, L.J.**, Bradbury, G., Christen, N., Godley, B.J., Jackson, A.C., McCluskie, A., Nicholls-Lee, R. & Bearhop, S. 2014. Resolving issues with environmental impact assessment of marine renewable energy installations. *Frontiers in Marine Science* **1**: 75. [REDACTED]

**Wright, L.J.**, Mendez, V. & Burton, N.H.K. 2014. *Review of knowledge regarding the effect of major estuarine developments on bird populations with reference to proposals for an airport in the Thames Estuary*. BTO Research Report No. 657. BTO, Thetford. [REDACTED].

Cook, A.S.C.P., Still, D.A., Humphreys, E.M. & **Wright, L.J.** 2015. *Review of evidence for identified seabird aggregations*. JNCC Report. JNCC, Peterborough. [REDACTED]

Burton, N.H.K., Thaxter, C.B., Cook, A.S.C.P., Austin, G.E., Humphreys, E.M., Johnston, A., Still, D.A. & **Wright, L.J.** 2014. *Ornithology technical report for the proposed Dogger Bank Teesside A and B offshore wind farm projects*. BTO Research Report No. 643. BTO, Thetford. [REDACTED].

Burton, N.H.K., Austin, G.E., Cook, A.S.C.P., Humphreys, E.M., Johnston, A., Morrison, C.A., Thaxter, C.B. & **Wright, L.J.** 2013. *Ornithology technical report for the proposed Dogger Bank Creyke Beck offshore wind farm projects*. BTO Research Report No. 630. BTO, Thetford. [REDACTED]

Cook, A.S.C.P., Thaxter, C.B., **Wright, L.J.**, Moran, N.J., Burton, N.H.K., Andrews, J., Barker, S. & Cooke, F. 2012. *Analysis of sea-watching data from Holme Bird Observatory, Norfolk*. BTO Research Report No. 629. BTO, Thetford. [REDACTED]

Cook, A.S.C.P., Johnston, A., **Wright, L.J.** & Burton, N.H.K. 2012. *A review of flight heights and avoidance rates of birds in relation to offshore wind farms*. Strategic Ornithological Support Services project SOSS-02. BTO Research Report No. 618. BTO, Thetford. [REDACTED]

**Wright, L.J.**, Ross-Smith, V.H., Austin, G.E., Massimino, D., Dadam, D., Cook, A.S.C.P., Calbrade, N.A. & Burton, N.H.K. 2012. *Assessing the risk of offshore wind farm development to migratory birds designated as features of UK Special Protection Areas (and other Annex 1 species)*. Strategic Ornithological Support Services project SOSS-05. BTO Research Report No. 592. BTO, Thetford. [REDACTED]

Ross-Smith, V.H., **Wright, L.J.**, Morrison, C.A., Calbrade, N.A., Burton, N.H.K., Fossette, S., Hays, G.C., Pierce, G.J., Learmonth, J.A., Macleod, C.D., Pita, C.B., Santos, M.B., Thomsen, I., Breen, P., Posen, P., Righton, D., Ellis, J.R., Hyder, K. & McCully, S.R. 2012. *MB0114: Contribution of Marine Protected Areas to protecting highly mobile species in English waters*. Defra, London. [REDACTED]

Smart, S.M., Pearce-Higgins, J.P., **Wright, L.J.**, Comber, A.J., Howard, D.C., Maskell, L.C. & Jones, M.L.M. 2012. *Exploring the Future: Phase 1 - scoping current and future use of spatial Decision Support Tools (sDST) for integrated planning for land-use, biodiversity and ecosystem services across England*. Defra, London. [REDACTED]

Cook, A.S.C.P., **Wright, L.J.**, Moran, N.J., Burton, N.H.K., Andrews, J., Barker, S. & Cooke, F. 2011. *Analysis of seawatching data from Holme Bird Observatory, Norfolk. Preliminary Report March 2011.* BTO/Norfolk Ornithologists Association Report. BTO, Thetford.

**Wright, L.J.**, Banks, A.N. & Rehfisch, M.M. 2010. The status of introduced non-native waterbirds in Eurasia and Africa in 2007. *BOU Proceedings – The Impacts of Non-native Species.* [REDACTED].

Burton, N.H.K., Thaxter, C.B., Cook, A.S.C.P., Austin, G.E., **Wright, L.J.** & Clark, N.A. 2010. Evaluating the potential impacts of tidal power schemes on estuarine waterbirds. *BOU Proceedings – Climate Change and Birds.* [REDACTED].

**Wright, L.J.** & Clark, N.A. 2010. *Severn Tidal Power - SEA theme paper: Biodiversity effects and interrelationships.* BTO (PB/BV Consortium) Paper to DECC. [REDACTED].

**Wright, L.J.**, Atkinson, P.W., Burton, N.H.K. & Clark, N.A. 2010. *Severn Tidal Power – A strategic level review of the issues surrounding potential habitat creation mitigation / compensation measures for SPA waterbirds affected by tidal power development on the Severn Estuary.* BTO (PB/BV Consortium) Paper to DECC. [REDACTED].

Clark, J.A., Robinson, R.A., du Feu, C., **Wright, L.J.**, Conway, G.J., Blackburn, J.R., Leech, D.I., Barber, L.J., de Palacio, D., Griffin, B.M., Moss, D. & Schäfer, S. 2010. Bird ringing in Britain and Ireland in 2009. *Ringling & Migration* **25**: 88-127 [REDACTED].

Risely, K., Baillie, S.R., Eaton, M.A., Joys, A.C., Musgrove, A.J., Noble, D.G., Renwick, A.R. & **Wright, L.J.** 2010. *The Breeding Bird Survey 2009.* BTO Research Report No. 559. BTO, Thetford. [REDACTED].

Austin, G.E., Cook, A.S.C.P., Maclean, I.M.D., Mitchell, P.I., Rehfisch, M.M. & **Wright, L.J.** 2010. *Healthy & Biologically Diverse Seas Evidence Group Technical Report Series: Evaluation and gap analysis of current and potential indicators for seabirds and waterbirds.* JNCC, Peterborough. [REDACTED].

**Wright, L.J.**, Hoblyn, R.A., Green, R.E., Bowden, C.G.R., Mallord, J.W., Sutherland, W.J. & Dolman, P.M. 2009. Importance of climatic and environmental change in the demography of a multi-brooded passerine, the woodlark *Lullula arborea*. *Journal of Animal Ecology* **78**: 1191-1202. [REDACTED].

Maclean, I.M.D., **Wright, L.J.**, Showler, D.A. & Rehfisch, M.M. 2009. *A review of assessment methodologies for offshore windfarms.* BTO Report Commissioned by COWRIE Ltd. [REDACTED].

**Wright, L.J.**, Austin, G.E., Maclean, I.M.D. & Burton, N.H.K. 2008. *Waterbird populations on the Greater Thames Estuary: Numbers and trends by count sector.* BTO Research Report No. 512. BTO, Thetford. [REDACTED].

Noble, D., Joys, A., **Wright, L.J.** & Everard, M. 2008. *Development of wild bird indicators for freshwater wetlands and waterways: documentation of recommended and alternative approaches.* BTO Research Report No. 506. BTO, Thetford.

Austin, G.E., Calbrade, N.A., Rehfisch, M.M. & **Wright, L.J.** 2008. *Humber Estuary SPA waterbird populations: Trend analyses by count sector.* BTO Research Report No. 497. BTO, Thetford. [REDACTED].

Banks, A.N., **Wright, L.J.**, Maclean, I.M.D. & Rehfisch, M.M. 2008. *Review of the status of introduced non-native waterbird species in the area of the African-Eurasian Waterbird Agreement: 2007 update.* BTO Research Report No. 489. BTO, Thetford. [REDACTED].

**Wright, L.J.**, Hoblyn, R.A., Sutherland, W.J. & Dolman, P.M. 2007. Reproductive success of woodlarks *Lullula arborea* in traditional and recently colonised habitats. *Bird Study* **54**: 315-323. [REDACTED].

Langston, R.H.W., Wotton, S.R., Conway, G.J., **Wright, L.J.**, Mallord, J.W., Currie, F.A., Drewitt, A.L., Grice, P.V., Hoccom, D.G. & Symes, N. 2007. Nightjar *Caprimulgus europaeus* and woodlark *Lullula arborea* – recovering species in Britain? *Ibis* **149 (Suppl. 2)**: 250-260 [REDACTED].

**Wright, L.J.** 2006. Demography and productivity of woodlarks *Lullula arborea* in Breckland. PhD Thesis, University of East [REDACTED].

Robinson, J.A., Aldridge, N.S., **Wright, L.** & Culzac, L.G. 2003. Invertebrate food supply and breeding success of mallards *Anas platyrhynchos* at flooded gravel quarries in southern Britain. *Ardea* **91**: 3-9. [REDACTED]

Jarrett, N., Mason, V., **Wright, L.** & Levassor, V. 2003. Using egg density and egg mass techniques for incubation stage assessment to predict hatch dates of greater flamingo *Phoenicopterus ruber roseus* eggs. *Wildfowl* **54**: 131-142. [REDACTED]