



Response to the Examining Authority's Rule 17 Questions

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

Submitted for Deadline 10

7 April 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

Question addressed to	ExA question	RSPB comments
Applicant, NE and RSPB	<p>In order to provide more certainty that the proposed in principle compensation measures are deliverable and can be secured please:</p> <p>i) provide a 'letter of comfort' from the landowners who have agreed in principle that their land may be used as compensatory sites; and</p> <p>ii) provide a plan that more clearly identifies the location of the proposed sites in relation to the application site and the European sites.</p> <p>NE and RSPB may wish to comment.</p>	<p><i>In order to provide more certainty that the proposed in principle compensation measures are deliverable and can be secured please:</i></p> <p><i>i) provide a 'letter of comfort' from the landowners who have agreed in principle that their land may be used as compensatory sites;</i></p> <p>We welcome the ExA's request for letter[s] of comfort but do want to suggest the Applicant having an option on the land would provide much more confidence that the measures proposed could be both secured and delivered.</p> <p><i>ii) provide a plan that more clearly identifies the location of the proposed sites in relation to the application site and the European sites.</i></p> <p>With respect to a plan of the site locations, whilst this would be helpful there is no time left for interested parties to provide our expert opinion on whether the locations could deliver the required compensation measures. Irrespective of clarification over the location of proposed compensation sites, is the failure of the Applicant to have set before the Examination a detailed plan for the compensation sites. This is an essential requirement to determine that the proposed locations can provide the necessary ecological functions in perpetuity. We set out the RSPB's position on the details needed to be addressed by the Applicant in our comments on the Applicant's 'Without Prejudice Derogation Case: Compensation Measures' document at deadline 4 (REP4-028) and comments on Schedule 11 of the DCO (REP7-032). This information is essential to ensure that all the key criteria for compensation measures (as set out in Table 12 of our Written Representations (REP1-060) and comments on the Applicant's 'Without Prejudice Derogation Case: compensation measures' document at deadline 4 (REP4-028)) can be met.</p> <p>To aid the Examination we have updated our position with respect to the compensation measures criteria is as follows:</p>

Question addressed to	ExA question	RSPB comments
		<p>Targeted: Whilst the locations (in <u>very</u> general terms and subject to our critical analysis under Location below) may enable habitat to be created that could be targeted at the ecological functions of The Haven that will be impacted by the Application (loss of roosting areas, loss of feeding, loss of areas for bathing and loafing) we continue to have serious doubts that the scale of impact for which compensation is being sought by the Applicant. This is because we remain seriously concerned that the Applicant has underestimated the scale of impacts due to failure to fully understand impacts along the whole of The Haven and out to the Port of Boston anchorage area (see comments on Extent below). This is in addition to our detailed position on features that could be impacted by the Application (identified in Appendix 1 to the Third Written Questions (REP8-029)).</p> <p>We therefore remain uncertain that the proposed compensation measures will be appropriately targeted to compensate for the full scale of impact(s) predicted and so provide the essential ecological functions for the habitats/species affected. Whilst the Applicant has set out some detail on the objectives for any compensation sites that may be secured in the future (REP8-005), we remain unconvinced that suitable success criteria have been set out, or that an appropriate timetable for successfully establishing functioning habitat in advance of the first harm occurring (as set out in e.g., our comments clause 3d of Schedule 11 of the DCO at Deadline 7 (REP7-032)). The draft DCO wording does not provide comfort in this respect (we refer to our comments on clause 5d in Schedule 11 submitted at Deadline 10).</p> <p>Effective: We continue to have serious doubts that the proposed compensation measures can be demonstrated to be effective from the limited detail that the Applicant has put before the Examination. We have seen no detailed plans for compensation measures, no detailed assessment of the baseline ecological conditions and any</p>

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		<p>limiting factors of any identified locations, and therefore no understanding of the management measures required; these will need to be determined in site-specific assessments and requirements of the compensation locations. It remains unclear how the Applicant has applied the best scientific knowledge alongside specific investigations for the location where the measures will be implemented to demonstrate that the locations would be ecologically effective. It is therefore not possible to determine whether the most effective option(s) with the greatest chance of success have been chosen by the Applicant. In summary, the lack of this critical information means that high levels of uncertainty surround the effectiveness of the proposed locations and measures, such that there cannot be a reasonable guarantee of success.</p> <p>Technical feasibility: Design must follow scientific criteria and evaluation, taking into account the specific requirements of the ecological features to be reinstated. We have seen no evaluation, based on site-specific evidence, that any of the proposed locations to deliver the compensation measure would indeed be technically feasible. As highlighted in our comments at Deadline 7 (comments on clause 3c of Schedule 11; REP7-032), the RSPB would not secure land until we had absolute confidence that we could not only create habitat, but that it could be maintained over the long-term, for example whether the volume of water needed to support the ecological functioning of the site was available. This closely relates to the feasibility of obtaining the necessary legal consents (see Long-term implementation). Without these any habitat creation potential may well prove to be practically unviable. We have seen no information from the Applicant setting out this detail and no confirmation that they have discussed this with the relevant regulators. For example, what evidence is there of discussions with the Internal Drainage Board to understand whether suitable water sources are available to the locations being explored by the Applicant. Our previous comment on this issue remains (as set out in REP7-032).</p>

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		<p>In respect of establishing whether a specific location is technically feasible, we also refer the Examining Authority to our detailed answer on this issue in our other Deadline 10 submission entitled “RSPB comments on the Fifth Report on outstanding submissions.” Specifically, the sub-section entitled “<i>Paragraphs 4.6.3-4.6.7: timeline to secure, develop and implement compensation</i>” on pages 6-8. This deals with the critical path of site assessment, design, consents, implementation and management to go through in order to deliver successful (compensation) habitat creation. It underlines why it is important to determine whether a site is viable as a compensation measure before DCO consent is granted.</p> <p><i>Illustrative example of the Able Marine Energy Park</i></p> <p>An illustrative example of the significant risks associated with not doing so is part of the compensation for the Able Marine Energy Park. The Able Marine Energy Park¹ was consented by the Secretary of State on 18 December 2013 and was approved on the basis that compensation measures would be secured, designed and delivered following consent of the DCO. Part of the proposed compensation for this scheme is an area of wet grassland known as the Cherry Cobb wet grassland and this was subject to a separate planning application.² At the time of the original DCO examination and the subsequent planning application, Natural England and the RSPB had concerns over whether the site would be functional with the current water budget and supply calculations.³</p>

¹ See <https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/able-marine-energy-park/>

² 13/30266/CONDET | Submission of details required by Condition 5 (Environment Management Plan), Condition 6 (Water Level Management Plan), Condition 7 (Pond Design) of planning permission <https://newplanningaccess.eastriding.gov.uk/newplanningaccess/applicationDetails.do?activeTab=documents&keyVal=MPPVEVBJOPH00>

³ RSPB comments on 12/30266/CONDNET

https://newplanningaccess.eastriding.gov.uk/newplanningaccess/files/E6DC8FFD1BA0F96237D4F7773B4AD654/pdf/13_30266_CONDET-RSPB-1088587.pdf

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		<p>After the proposal was consented, further work was carried out on the hydrological calculations.⁴ This showed that there would be a shortfall in freshwater supply to the site and the potential need to use either a desalination plant or use main supply potable water in dry periods to maintain the functionality of the compensation habitat. As a result, Natural England has expressed further concerns regarding water supply and appropriateness of the site design. At the time of writing there are still ongoing discussions about site redesign and water supply: this is over eight years after the initial consent was granted.</p> <p>We consider this aspect of the Able Energy Marine Park compensation provides a clear example of where deferring to the post-consent period the agreement of critical detail that goes to the ecological viability of a compensation measure is not appropriate when the decision maker must have confidence the compensation measure will work in practice.</p> <p>Extent: We remain seriously concerned that the Applicant has underestimated the scale of impacts due to failure to fully understand impacts along the whole of The Haven and out to the Port of Boston anchorage area. In the absence of this information, and that on the likely effectiveness of the locations selected, it cannot be clear at this stage whether the proposed extent of the compensation locations is sufficient to deliver the required ecological functions (both quantitative and qualitative aspects). We have seen no evidence that indirect impacts arising from the Application have been considered by the Applicant.</p> <p>The latest 'Without Prejudice Derogation Case: Compensation Measures' document (REP8-005) sets out estimated habitat losses that would need to be compensated.</p>

⁴ Hydrological calculation explanation note

https://newplanningaccess.eastriding.gov.uk/newplanningaccess/files/C3DA50DD06CB2BAC755D80307F6980A0/pdf/21_30100_CONDET-HYDROLOGICAL_CALCS_EXPLANATORY_NOTE-3968871.pdf

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		<p>For the wharf site this is estimated as 1.2ha. However, the estimated area affected at the Application is based on the “<i>Area of wharf construction as in Application</i>”. This does not account for the indirect impact of construction and operation activities that have the potential to affect waterbird use of the area around the Application site. We recommend a buffer be applied to calculate the additional area affected and this be added to the Applicant’s calculations for the amount of habitat needed to be delivered to compensate for lost foraging. For example, using the indicative wharf location from the Application documents and buffering by 250m (the distance that the Applicant has considered, as set out in REP7-037), direct and indirect impacts could potentially cover a 10.3ha area (see Appendix 1 that illustrates this point). This is nearly nine times greater than the area used by the Applicant to base the scale of its compensation measures on. We do not provide this as a definitive area that should be provided, but to illustrate that the extent of habitat required to account for lost roosting and functioning is likely to be greater than currently set out by the Applicant.</p> <p>In addition, no evidence regarding night-time impacts from vessel movements along The Haven have been considered in the Applicant’s compensation calculations (as set out in our Written Representations (REP1-060) and comments on the Ornithology Addendum (REP4-026) and comments on the RIES (paragraph 4.2.176; REP9-65)). We disagree with the Applicant’s view that simply assuming observation of disturbance effects during the day are comparable to impacts at night; bird use of the area may be different at night, and birds may be more sensitive to night-time disturbance.</p> <p>Our concerns are heightened by the lack of detail to demonstrate the effectiveness of the proposed locations to deliver the necessary ecological functions. An appropriate ratio of compensation land compared to the Application’s impacts need to be used <u>where they make ecological sense</u> and will help secure a successful outcome by providing more of something. Simply multiplying capacity to address</p>

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		<p>uncertainty is not appropriate, as it risks giving a false level of confidence. We have not seen this point addressed in the Applicant’s compensation measures.</p> <p>Location: We welcome the request for more detail on the location of the proposed compensation sites, but this must be accompanied by the information summarised here and described in more detail in our various submissions to the Examination. The challenging technical ecological requirements that need to be met in respect of wetland habitat compensation measures (because of the associated risk of failure if they are not) cannot be overcome by simple location plans and assurances. Detailed technical and expert scrutiny is required. Such sites must be located in areas where option(s) will be most effective in maintaining the overall coherence of the National Site Network. Compensation measures should be as close to the area of impact as possible, while minimising the external pressures that may reduce the likelihood of success. Compensation measures proposed to benefit one SPA/SAC/Ramsar site feature must not result in damage to the integrity of any other SPA/SAC/Ramsar site and their features, or the integrity of any underpinning SSSI.</p> <p>We have the following specific comments on the suitability of the compensation locations described by the Applicant in REP8-005. Using the RSPB’s knowledge of the local area we have attempted to work out where the locations are and whether their location (and on a related issue, size) is suitable for the stated purposes.</p> <p>We take as a key parameter, paragraph 3.5.5 of REP8-005 which states “For compensation of the mouth of The Haven vessel disturbance, compensation roost sites should be close to the existing mouth of The Haven roost site, preferably within 1km and ideally within 500m”. The RSPB agrees that this should be the primary area of search for compensation measures for those birds using the mouth of the Haven roosting site. The greater the distance from the mouth of the Haven roost sites, the less likely it or any (otherwise suitable) site would be used.</p>

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		<p>We understand there are two locations:</p> <ul style="list-style-type: none"> • A primary location (19ha) whose location is described as “approximately 1.2km from the boundary of The Wash SPA and 1.3km from the proposed Application Site. In this way it is a little over the target range of 1km”. It is stated “In this way it is a little over the target range of 1km but could due to its size could attract and provide a suitable site for many of the waterbird species using both the Proposed Application Site and The Haven both outside and within the SPA” (paragraph 4.7.2, REP8-005); • A secondary location (7.3ha) “further from The Haven is closer to the RSPB reserve at Frampton Marsh” with “drainage ditches surrounding the site which indicate that the site is likely to be naturally a wetter area”. It is stated it “could provide suitable habitat in particular for lapwing and golden plover” (paragraph 4.7.3, REP8-005). <p>Taking the primary (19ha) location first. Based on the Applicant’s description of the site and that it is both 1.2km from the boundary of The Wash SPA and 1.3km from the proposed Application Site, the RSPB has worked out that this refers to a site that is just under 5km (4.8km straight line) from the Witham Mouth (or 5.2km if you follow the channel). It is basically incorrect to describe it as “a little over the target range of 1km” when considering its role as compensation for impacts on the roost at the mouth of The Haven. It is multiple times further than we have suggested is a viable option and between 5-10 times further than the main distance parameter cited by the Applicant i.e. preferably within 1km and ideally within 500m. It is therefore a completely unsuitable location to provide compensation for the adverse impacts on birds using the roost site at the mouth of the Haven.</p> <p>The second (7.3ha) site is described as potentially providing suitable habitat for 3,000 golden plover and 1,100 lapwing as identified in EN010095 paragraph 3.5.7. The presence of drainage ditches was stated as indicating this is a wetter area. We have two key points to make regarding this location:</p>

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		<ul style="list-style-type: none"> • The 7.3ha size of the site is unlikely to be large enough to support 3,000 golden plover and 1,100 lapwing. This number of birds would not normally be concentrated in such a small area of grassland. Based on the RSPB’s knowledge of the species’ ecology combined with our experience of their habitat preferences in the local area, a site at least two, probably three times the size would be required to support these target numbers; • We are concerned that the Applicant considers the presence of drainage ditches indicates wetness. The presence of these drainage ditches, which are part of the Black Sluice Internal Drainage Board network, provides quite the opposite indication of field wetness – they are an integral part of a system designed to drain the land. We consider this a fundamental misunderstanding of the drainage function of the area, both in theory and practice and it raises significant concern that there is a broad lack of understanding of what is required in respect to the compensatory habitat design and location. <p>Timing: We have set out our detailed concerns about the Applicant’s proposed timeline for delivering compensation measures in our detailed comments on the latest ‘Without Prejudice Derogation Case: Compensation Measures’ document (REP8-005) submitted at Deadline 10, specifically on paragraph 1.2.3. Compensation measures must provide continuity in the ecological processes essential to maintain the structure and functions that contribute to the National Site Network for the affected species/habitats.</p> <p>This is why compensation measures should be fully functional (that is, secured, designed and created and ecologically functional) before any damage occurs. This will ensure the overall coherence of the National Site Network is protected. It is the RSPB’s experience of delivering wetland habitats, including locally along The Haven, that suitable time must be provided to allow site-specific surveys to be undertaken. This will be necessary to determine the ecological interest and development of the proposed sites, as well as other issues such as hydrology, archaeology, flood risk</p>

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		<p>etc. None of this information is before the Examination. Our experience is also that planning permission will be required (as has been the case for works at both RSPB Frampton Marsh and RSPB Freiston Shore, and confirmed by Boston Borough Council (REP7-021)). An Environmental Permit (addressing things such as flood risk) may also be required. All of this amounts to a considerable lead in time to ensure that necessary compensation measures are in place and fully functioning prior to harm occurring and which the Applicant has consistently underestimated. The first harm will occur during construction both at the Application site and with the increase in vessel movements along The Haven. It is for these reasons that clause 5d in Schedule 11 of the draft DCO/DML is therefore not acceptable.</p> <p>Long-term implementation: We consider the legal security of the proposed compensation sites remains uncertain. This relates to several key aspects including security of land tenure, securing of relevant legal consents and financial security. We take each in turn.</p> <p><i>Security of land tenure:</i> Whilst a ‘letter of comfort’ may signify an intent to lease land to the Applicant this is not the same as a signed agreement that can be set before the Examination, including to check that the terms of the lease are compatible with meeting specified compensation objectives. Even if such letters were possible to submit, we do not consider that this provides the certainty required in order to satisfy the tests of the Habitats Regulations. We have also commented on why we do not consider that 30-year leases are appropriate with respect to the delivery of compensation measures. These measures are designed to maintain the integrity of the National Site Network with the expectation that they would be designated as part of the NSN. Such sites must therefore be provided and maintained in perpetuity; a 30-year lease is simply not acceptable.</p> <p><i>Securing of relevant legal consents:</i> as we have set out under “Effective”, to carry out successful habitat compensation to meet specific objectives, it is critical to</p>

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		<p>identify those elements requiring legal consents. In this case, in order to assess whether any of the compensation measures can be ecologically effective and capable of long-term implementation, it is vital to understand whether the necessary licences and consents have been obtained. In this context, given the nature of the type of habitats involved, this would include: Environment Agency (EA) Abstraction License, supported by the local Internal Drainage Board (IDB), along with any EA Impoundment License(s), an EA Environmental Permit, planning permission from the local planning authority and a Habitats Regulations Assessment from Natural England.</p> <p><i>Financial security:</i> We also query whether the Applicant has secured financial guarantees that are required to fund implementation, monitoring and any necessary remediation measures. Without detailed and costed plans for the creation and long-term management of the compensation measures, we are not clear how the Applicant can have a proper basis for costing the compensation measures and therefore putting the necessary financial guarantees in place. This relates in particular to fencing and other site management requirements needed to maintain the compensation sites in the long-term given the uncertainty of site location and the ability to consider the full requirements needed to effectively deliver and maintain the necessary ecological functions in the long term. These guarantees must be secured via an appropriate mechanism and in place prior to consent being granted.</p> <p>We therefore do not consider the Applicant has provided adequate detail in its derogation case to demonstrate that the compensation measures criteria will be met. We also do not consider this meets the requirements of either the Defra or EC guidance on the same issue.</p>

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		<p>We note the CIEEM 'Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine Version', which states in paragraph 6.9 (p.44)⁵:</p> <p><i>"The delivery of compensation measures, including biodiversity offsets, is likely to involve access to land, or land purchase, outside a scheme footprint and a commitment to long-term management through legal agreements. They therefore require early consideration in project design. The principles of offsetting should be agreed with the competent authority at an early stage, particularly where this is not clearly set out in a policy or biodiversity offsetting strategy."</i></p> <p>Given the advice provided to the Applicant by interested parties prior to and after submission of the DCO Application and the best practice advice set out by the CIEEM, we reiterate that the Applicant has had ample time to develop a detailed package of compensation measures and should not be allowed to benefit from its active decision not to develop a full derogation case until the Examination had commenced (see our detailed comments on this point in our comments on the RIES submitted at Deadline 9 (REP9-065).</p>
NE	It is noted that NE consider that the two compensation sites identified by the Applicant have the potential to compensate effects on some but not all of the impacted features at the application site and at the mouth of The Haven [REP9-058]. Please	<p>The RSPB's position on features that could be impacted by the Application have been identified in our comments on Appendix 1 to the Third Written Questions (REP8-029).</p> <p>We continue to have serious concerns that species occurring between the mouth of The Haven out to the Port of Boston anchorage area have not been surveyed and impacts of both current vessel movements and potential future increases in vessel movements have not been assessed. Given that The Wash is the most important</p>

⁵ CIEEM (2018) Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine version 1.1. Chartered Institute of Ecology and Environmental Management, Winchester

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	<p>confirm the features for which the proposed compensation is unsuitable and that an adverse effect on integrity (AEoI) cannot be ruled out.</p>	<p>wetland for birds in the UK and second largest estuary, it is disappointing that more effort has not been made to address such a significant data gap. This is especially required when set against the conservation objectives for The Wash, supplementary conservation targets to reduce disturbance levels, and the need to ensure restoration targets for features of The Wash SPA (notably, dark-bellied brent geese, shelducks, oystercatchers, turnstones and redshanks).</p> <p>Nothing presented by the Applicant has addressed this significant and serious evidence gap. Without this information it would seem impossible for the Examining Authority or the Secretary of State to be able to safely conclude that there would not be an adverse effect on integrity of The Wash SPA and Ramsar site beyond reasonable scientific doubt for those species occurring between the mouth of The Haven out to the Port of Boston anchorage area. This is in addition to the other adverse effects on site integrity already identified by the RSPB.</p>
NE	<p>It is unclear from differing comments in documents submitted at Deadline 9 whether NE consider the Habitat Mitigation Area to comprise a mitigation or compensation measure [REP9-063 and REP9-058]. Please confirm the position.</p>	<p>To confirm, the RSPB considers the 'Habitat Mitigation Area' could deliver suitable habitat to address the lost roosting at the wharf site. However, there remain significant uncertainties about its ability to be effective as mitigation given its location close to the Application site and the influence of vessel traffic on the site. There are also no measures proposed to address any recreational pressures that have the potential to affect the sites effectiveness. It will also not address the full loss of foraging habitat. Consequently, we consider the replacement roost and foraging habitat must be considered as compensation and delivered at a location where there can be more certainty that effective roosting and foraging for waterbirds, notably redshanks and ruffs, will be delivered.</p> <p>We also note that paragraph 6.10 (p.44) of the CIEEM 'Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and</p>

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		<p>Marine Version⁶ provides a useful summary of what constitutes mitigation and what constitutes compensation:</p> <p><i>“The distinction between mitigation and compensation can be difficult to determine. Where ecological equivalence can be delivered within the project site this is sometimes incorrectly considered mitigation rather than compensation. However, the correct distinction between mitigation and compensation is that mitigation avoids or reduces the occurrence of negative impacts and effects and compensation addresses effects which are residual, after avoidance and mitigation have been considered. Measures to address impacts and effects that will occur should therefore be referred to as compensation whether the compensation is located within or outside of the project site.”</i></p> <p>Based on the above definition set out in the best practice guidance, we consider this supports our position that the proposed ‘Habitat Mitigation Area’ should best be considered compensation. This would require commensurate changes to the draft DCO/DML and contents of the draft Ornithology Compensation Plan.</p>
NE and RSPB	<p>Golden plover The RSPB consider that golden plover should be listed as a feature of The Wash Special Protection Area (SPA) in its own right according to the 2001 SPA Review Site Account for The</p>	<p>We have submitted our full position on the status of golden plover as a feature of The Wash SPA in various submissions.</p> <p>We note that the 2001 SPA Review Executive Summary⁷ concludes with the following bullet points:</p>

⁶ CIEEM (2018) Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine version 1.1. Chartered Institute of Ecology and Environmental Management, Winchester [REDACTED]

⁷ The UK SPA network: its scope and content Volume 1: Rationale for the selection of sites <https://data.jncc.gov.uk/data/3634580a-cabc-4218-872f-8660a1760ad8/uk-spa-vol1-web.pdf>

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	<p>Wash [REP9-065]. It is not listed as a qualifying feature in the Conservation Objectives document, last updated in February 2019, on NE's website. Please would NE confirm the position. RSPB may wish to comment.</p>	<ul style="list-style-type: none"> • <i>“The carefully selected SPA network is of large size, contains a wide variety of habitats and includes sites spread throughout the UK. The network is logically and scientifically derived, collectively robust, and will make an enduring contribution to the conservation of Britain’s birds.</i> • <i>The SPA network presented here provides for the site-based requirements of Birds Directive Annex I and migratory species that regularly occur in the UK. It will enable the UK to meet fully its obligations under the Directive to conserve its internationally important bird fauna.”</i> <p>These points collectively highlight the importance of the additional information collated by the 2001 SPA Review and that the information presented in the review would “...enable the UK to meet fully its obligations under the [EC Birds] Directive.” There have been three reviews of the UK’s terrestrial Special Protection Area (SPA) network undertaken at roughly decadal intervals. The reviews were intended to ensure that sites which were the most important for the rare or threatened birds on Annex I of the Birds Directive, as well as migratory birds, were identified and then protected. The two most recent reviews were carried out in 2001 and 2016.</p> <p>As stated above, the 2001 SPA Review identified and recommended necessary changes to the UK SPA network, including to lists of qualifying features. In the context of this question, that included adding golden plover to The Wash SPA in its own right. The UK SPA Review 2016⁸ Phase 1 (published in 2016) takes as its starting point that the recommendations of the 2001 UK SPA Review will be implemented and goes on to audit the state of the UK SPA network from that baseline (see para 7, page xiii in the Executive Summary).</p> <p>For this reason, the information contained within the 2001 SPA Review justifies the consideration of golden plover as a feature of The Wash SPA in its own right.</p>

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Applicant and NE	<p>Draft Development Consent Order (dDCO) Schedule 11 REP9-033 states that dDCO Sch 11 paragraph 11 provides that <i>“Unless otherwise agreed in writing by the Secretary of State, the compensation measures in place for habitat loss as a result of the construction 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.”</i> How would it be determined that the intertidal habitat had been sufficiently restored and who would be involved in the decision? NE may wish to comment.</p>	<p>We reiterate that any habitat that is created as compensation must be secured in perpetuity (as set out in our comments on Schedule 11; REP7-032).</p> <p>The challenge is comparing the system 30 years in the future with the current baseline conditions. It would need to be shown that, following decommissioning of Work No. 4, the habitat that is restored has the same ecological value and could support the same level of ecological interest as is currently supported.</p> <p>However, it is expected that the presence of the wharf and associated infrastructure will have altered the surrounding area considerably and removal of any of the wharf structures will need to assess the impact this would have on the estuary and its ecological interest. This applies both to the ability to “reinstate” any functioning intertidal habitat under the footprint of Work No. 4 and determine its ecological quality, as well as related changes to habitats along The Haven that have occurred as a result of the long-term presence of Work No. 4 and associated activities.</p> <p>Critically, such a change will happen over many years and even decades given the nature of the intertidal habitats that would need to be reinstated and, arguably, they may never reach the condition that they were before construction occurred. This is a challenging route for the Applicant to be taking and it would be far simpler to ensure that the “mitigation” and compensation sites are maintained in perpetuity.</p>
	<p>Applicant’s Deadline 9 submissions</p>	
NE, RSPB and LWT	<p>The Applicant made a number of submissions at Deadline 9, for example the Final Waterbird Survey Report [REP9-032] and the</p>	<p>The RSPB has reviewed these documents and our comments are provided in separate submissions to our response to the Rule 17 request for additional information at Deadline 10.</p>

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	<p>Fifth Report on Outstanding Submissions [REP9-033]. Please comment on these submissions identifying specific points of agreement, as well as specific points of disagreement. In the case of points of disagreement it would assist the Examining Authority if you would state clearly your position.</p>	

Appendix 1: Example showing the potentially greater area of habitat needing to be compensated due to the effect of indirect impacts arising from construction and operation of the facility.

