

REPORT

Boston Alternative Energy Facility

Final Report on Outstanding Submissions

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HASKONINGDHV UK LTD.

Westpoint
Peterborough Business Park
Lynch Wood
Peterborough
PE2 6FZ
United Kingdom
Industry & Buildings
VAT registration number: 792428892

+44 1733 3344 55 **T**
info@uk.rhdhv.com **E**
royalhaskoningdhv.com **W**

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Author(s): Project Team

Drafted by: Project Team

Checked by: Abbie Garry

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Approved by: Paul Salmon

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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
DCO	Development Consent Order
DML	Deemed Marine Licence
EA	Environment Agency
ES	Environmental Statement
ExA	Examining Authority
ExQ3	Examining Authority's Third Written Questions
HMA	Habitat Mitigation Area
HRA	Habitats Regulations Assessment
LEMS	Landscape and Ecological Mitigation Strategy
LNR	Local Nature Reserve
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
OMMMP	Outline Marine Mammal Mitigation Protocol
RDF	Refuse Derived Fuel
RSPB	The Royal Society for the Protection of Birds
SAC	Special Area of Conservation
SoS	Secretary of State
SOCG	Statement of Common Ground
SPA	Special Protection Areas

Term	Definition
UKWIN	United Kingdom Without Incineration Network

1 Introduction

- 1.1.1 This 'Final 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 9.
- 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 9 and whether a response is considered required and if so where it is provided (see **Table 1-1**).

Table 1-1 Deadline 9 Submissions

Stakeholder	Document	Response Status
Eastern IFCA	Deadline 9 Submission – Accepted at the discretion of the Examining Authority – Comments on the Report on the Implications for European Sites (RIES)	No response required.
Environment Agency	Deadline 9 Submissions – Update on Environment Agency Position	The Applicant has provided a response below in Table 2-1 .
Marine Management Organisation (MMO)	Deadline 9 Submissions – Comments on the Report on the Implications for European Sites (RIES) and Comments to any information submitted at Deadline 8	The Applicant has provided a response below in Table 2-2 .
Natural England (NE)	Deadline 9 Submission - Cover Letter	The Applicant has provided a response below in Table 2-3 .
	Deadline 9 Submission - Appendix F6 – Comments on draft Development Consent Order (DCO) [REP8-003] and Schedule of Changes to draft DCO [REP8-016]	The Applicant has provided a response below in Table 2-4 .
	Deadline 9 Submission - Appendix J4 – Comments on Report on the Implications of European Sites (RIES) [PD-014]	The Applicant has provided a response below in Table 2-5 .
	Deadline 9 Submission - Appendix B7 – Comments on Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures [REP8-005]	The Applicant has provided a response below in Table 2-6 .
	Deadline 9 Submission - Appendix H8 – Risk and Issues Log Deadline 9	No response required.
	Deadline 9 Submission - Appendix E4 – Comments on Public Rights of Way – Outline Design Guide and Stopping Up Plan [REP8-007]	The Applicant has provided a response below in Table 2-7 .

Stakeholder	Document	Response Status
	Deadline 9 Submission - Appendix B8 – Comments on Outline Ornithology Compensation Implementation and Monitoring Plan [REP8-012] and Final Waterbird Survey Report Summary of Data [REP8-018]	The Applicant has provided a response below in Table 2-8 .
Port of Boston	Deadline 9 Submission - Port of Boston Statement in Respect of the Applicants Proposed 22.3.2022 Navigation Management Plan Template and the Associated Navigation Risk Assessment	No response required.
RSPB	Deadline 9 Submission - Comments on the Report on Implications for European Sites (RIES)	The Applicant has provided a response below in Table 2-9 .
Boston and Fosdyke Fishing Society / Roythornes	Deadline 9 Submission	The Applicant has provided a response below in Table 2-10 .
UKWIN	Deadline 9 Submission - United Kingdom Without Incineration Network (UKWIN) response to documents 9.86 and 9.90	The Applicant has provided a response below in Table 2-11 .

2 Responses to Unanswered Points

2.1 Environment Agency

Table 2-1 Deadline 9 Submission - Update on Environment Agency Position (REP9-055)

No.	Comment	The Applicant's Response
Protective Provisions and Side Legal Agreement (EA 1.3, EA 11.1, EA 11.4, EA 11.5 and EA 12.1)		
2.1	We have agreed final wording for the Protective Provisions set out in Schedule 8, Part 4 of the draft Development Consent Order. Subject to the agreed wording being submitted in the final DCO, we expect to be able to confirm our agreement by Deadline 10.	The Applicant included the agreed wording for the Protective Provisions in the draft Development Consent Order (document reference 2.1(5), REP9-004) submitted at Deadline 9.
2.2	We also remain in discussions with the applicant regarding a side legal agreement in relation to works affecting flood defences.	Discussions on the legal agreement are ongoing and significant progress has been made. The Applicant is working towards reaching agreement on the legal agreement shortly after the close of examination and will advise the Secretary of State once agreement has been reached.
2.3	Until both pieces of work are complete, we cannot approve the disapplication of the legislation as proposed in document ref REP8-003 (Draft Development Consent Order), Part 6, Article 40 (1) (d).	The Applicant notes this and once agreement is reached on the legal agreement, the Applicant requests the that the Environment Agency confirm to the Secretary of State its approval of the disapplication of the legislation in Article 40 of the draft DCO.
Flood Risk (EA 1.1)		
2.4	The applicant has informed us changes are to be made to document ref REP7-009 (Worst Case Assessment for Land Raising) to address the concerns raised in our Deadline 8 submission (REP8-019). Subject to the changes they have proposed being made, we expect to be able to agree to the findings of this report by Deadline 10.	The updated Worst Case Assessment for Land Raising (document reference 9.77(1) REP9-026) was submitted at Deadline 9. The EA have confirmed within the SoCG submitted at Deadline 10 (document reference 8.2(3)) that they are, <i>"satisfied with the evidence provided in REP9-026 (Worst Case Assessment for Land Raising) at Deadline 9."</i>
2.5	The applicant has also notified us of works that they may wish to undertake which will affect the Roman Bank sea defence. These include:	The Applicant notes the comment at 2.6 and agrees that the appropriate process for addressing matters associated with the detailed design of these works is through the Protective

No.	Comment	The Applicant's Response
	<ul style="list-style-type: none"> • Clearing of vegetation to improve the accessibility of the public • footpath along the line of the defence; • Construction of a footbridge along the line of the flood defence; • Installation of a conveyor line crossing the flood defence; • Construction of an access road crossing the flood defence; and • Construction of a drainage channel beneath the flood defence. 	<p>Provisions for the benefit of the EA which require the EA's approval of plans in advance of undertaking works near the Roman Bank. If through that process the EA requires amendments to the design of any of these works, the Applicant would consider at that time whether the amendments were of a nature that required amendments to any certified or approved documents via Requirement 23 of the DCO or if an application to change the DCO was required.</p> <p>Additionally, the Outline Surface Water and Foul Water Drainage Strategy (document reference 9.4(2)) has been updated at Deadline 10 to incorporate this and to ensure the final strategy takes account of such points.</p>
2.6	We have discussed these proposals with the applicant and it may be possible that the design of some these works will need amending to allow us to approve them at the detailed design stage in accordance with our Protective Provisions.	
2.7	We do not consider that this needs addressing at this stage, but we wished to make the ExA aware that some aspects of the scheme may need to be altered to ensure that the functionality of the flood defence is in not in any way compromised by the proposed works.	Noted, please see response above.
2.8	In relation to the proposed drainage channel, we have acknowledged that this will be acceptable subject to detailed design, as long as the trigger for operation of the penstock is changed to the issue of a flood alert. The applicant has agreed to this, and we understand that document ref REP3-009 (Outline Surface Water and Foul Drainage Strategy) will be amended to this effect.	The Outline Surface Water and Foul Water Drainage Strategy (document reference 9.4(2)) has been updated at Deadline 10 to incorporate the reference to 'flood alert'. An additional outline design for the drainage system in the vicinity of the Roman Bank also provided for the Environment Agency and Black Sluice Drainage Board's comfort.
Effect of Ship Wash (EA 1.2 and EA 2.3)		
2.9	We understand that the applicant is updating the evidence in document REP3-020 (Response to Environment Agency's Queries on Estuarine Processes) to address the increase in vessel speeds along the Haven.	The Response to Environment Agency's Queries on Estuarine Processes was updated at Deadline 9 (document reference 9.44(1), REP9-024). The EA have confirmed within the SoCG submitted at Deadline 10 (document reference 8.2(3)) that they

No.	Comment	The Applicant's Response
	Once we have this updated evidence, we will endeavour to review it and provide a response before Deadline 10.	are, "satisfied with the evidence provided in REP9-024 (Response to Environment Agency's queries on Estuarine Processes) at Deadline 9, and the proposal for erosion monitoring set out in the Outline Landscape and Ecological Mitigation Strategy (OLEMS) submitted at Deadline 7 (document reference 7.4(2), REP7-037)."
Habitat Mitigation (EA 3.1 and EA 7.1)		
2.10	We maintain our objection to the loss of habitat from the development until such a time as Natural England confirm that the proposed scheme of mitigation/compensation is suitable.	The Applicant notes the EA's objection. The direct loss of habitat at the Application Site is mitigated by the Habitat Mitigation Area which is detailed within Chapter 17 Marine and Coastal Ecology (document reference 6.2.17(1), REP9-011) and the Outline Landscape and Ecological Mitigation Strategy (OLEMS) (document reference 7.4(2), REP7-037).
Environmental Permit (EA 13.1)		
2.11	No further evidence has been provided to overcome our concerns regarding the likelihood of an Environmental Permit being granted for the development as proposed.	<p>The response from the Environment Agency (EA) is noted. The Applicant agreed with the EA during an Environmental Permit pre-application progress meeting (25 January 2022) and subsequently at the Statement of Common Ground Meeting (27 January 2022) that two aspects of the proposed development, the Energy from Waste and Carbon Capture plants, were in principle 'permissible'.</p> <p>However, the EA raised concerns regarding the permissibility of the proposed Lightweight Aggregates plant, which the Applicant has noted, including how they will be addressed. Addressing these comments is the current focus of permitting strategy. The Applicant's Responses to the Examining Authority's Third Written Questions (ExQ3) (document reference 9.75, REP7-007) summarises the Permit discussions between the Applicant and the EA.</p>

2.2 Marine Management Organisation (MMO)

Table 2-2 MMO Deadline 9 Submission - Comments on the Report on the Implications for European Sites (RIES) (REP9-056) and Comments to any information submitted at Deadline 8.

No.	Comment	The Applicant's Response
2. Comments on any information submitted by the Applicant or Interested Parties at Deadline 8		
Alternative Use Boston Projects Limited Deadline 8 Submission – 2.1 (4) Draft Development Consent Order (Clean)		
2.2	The MMO note that the requested change under Part 5 33(2) is not in the updated draft DCO submitted at Deadline 8. The MMO request that the phrase “in writing” is inserted after “approved” at line 2.	The Applicant apologises for this oversight. The Applicant has included this text in the updated draft DCO submitted at Deadline 10 (document reference 2.1(6)).

2.3 Natural England

Table 2-3 Natural England – Deadline 9 Cover Letter (REP9-057)

No.	Comment	The Applicant's Response
9.86 Without Prejudice 'In-Principle' Alternative Locations Case [REP8-015]		
3	<p>Natural England highlights that this is an alternative energy project of 80MW. However, there is likely to be alternative energy projects that provide a greater megawatt capacity for example the original Round 1 windfarms provide a minimum of 194MW with the largest Round 3 offshore windfarms projects set to provide 2,400MW. However, this has not been fully explored as part of the Derogations case.</p>	<p>Within the Without Prejudice HRA Derogation – Assessment of Alternative Solutions (document reference 9.28, REP2-011) alternative solutions have been considered which may reduce the potential harm on the national site network (and on Ramsar sites) whilst meeting the project objectives. Considering a greater megawatt capacity would not be a reasonable alternative solution as it is likely to lead to increased vessels movements. The assessment has however included options to reduce the number of vessel movements.</p> <p>Defra's Guidance (2021) 'Habitats regulations assessments: protecting a European site' provides in relation to the assessment of alternative solutions that "[e]xamples of alternatives that may not meet the original objective include a proposal that:</p> <ul style="list-style-type: none"> - offers nuclear instead of offshore wind energy - provides rail instead of road transportation". <p>The Applicant does not consider that an alternative project such as offshore wind would meet the original objectives of the proposal as set out in the Without Prejudice HRA Derogation – Assessment of Alternative Solutions (document reference 9.28, REP2-011). This is consistent with the recent approach of the Secretary of State in the decision letter for the East Anglia TWO Offshore Wind Farm Order 2022 where he confirmed in that case that "[i]n accordance with guidance published by DEFRA, the Secretary of State does not consider the development of</p>

No.	Comment	The Applicant's Response
		<p>alternative forms of energy generation to meet the objectives for the Proposed Development."</p> <p>In addition, for the Without Prejudice 'In-Principle' Alternative Locations Case (document reference 9.86, REP8-015) it is noted in the introduction to the assessment that this document was to assess the option of alternative location only and did not consider alternatives to the design, however acknowledging the design may need to be adapted for a new location.</p>

Table 2-4 Natural England's Deadline 9 Submission - Appendix F6 – Comments on draft Development Consent Order (DCO) [REP8-003] and Schedule of Changes to draft DCO [REP8-016] (REP9-061)

No.	Pg.	Section	Comment	The Applicant's Response
1	Page 3 Point 8	Schedule 2 Requirement 6	<p>Natural England notes the changes here and that a similar condition has been added to the Deemed Marine Licence (see also page 17 Point 39 of the schedule of changes). We assume this is due to the regulatory overlap within the intertidal area, although we understand the need for this, we do wish to highlight that duplication of this condition may lead to duplication of effort from those involved with the sign off. Our advice is that, wherever possible duplication of effort should be avoided and that the post consent sign off processes should be run collaboratively or at least in parallel, to avoid unnecessary repeated effort. Additionally, it should be noted that we have outstanding concerns with the content of the OLEMS as per our advice on REP5-017.</p>	<p>Noted. The Applicant added the condition to the Deemed Marine Licence (DML) at the request of the Marine Management Organisation (MMO) so it has approval over the parts of the Landscape and Ecological Mitigation Strategy (LEMS) that relate to activities below Mean High Water Spring (MHWS).</p>

No.	Pg.	Section	Comment	The Applicant's Response
2	Page 4 Point 10	Schedule 2 Requirement 22	Natural England notes the additional text at the end of this condition. However, as we are not in agreement with the draft OLEMS, we do not agree that the ongoing maintenance and aftercare should end.	The additional text is consistent with the approach set out in the OLEMS and NE does not appear to have raised any specific issues on this aspect of the OLEMS. Maintenance of the Habitat Mitigation Area (HMA) would only end if the habitat lost as a result of the construction of the wharf was restored to a suitable condition following decommissioning of the wharf. However, as the works in the HMA are below MHWS the Applicant has moved the text to Condition 27 of the DML and also amended it for consistency with the amendments to paragraph 11 of Schedule 11 made as a result of the ExA's request for further information (PD-015). Please refer to the Applicant's Response to the Rule 17 Letter (document reference 9.106) for further information.
4	Page 14- 15 Point 34	Schedule 9 Deemed Marine Licence Condition 13	Natural England notes the changes here and welcomes the addition of point (e) which prevents simultaneous piling.	Noted.
5	Page 17 Point 39	Schedule 9 Deemed Marine Licence	As noted in our comments above on Schedule 2 requirement 6, this condition is effectively a copy of requirement 6 with changes to note the MMO's role in the plans applies only to areas below Mean High Water Springs (MHWS). Please see our comments on requirement 6 regarding the potential duplication of effort.	Please see response to row 1 of this table.
6	Page 26 Point 52	Schedule 11 Interpretations	Natural England notes the new definition and that the timing of the compensation requirement will be linked to 'hot commissioning'. Please see our comments below on the timing.	Noted. The reasoning behind the use of hot commissioning of line 2 of Work No. 1A is set out in paragraph 4.8.7 of the Without Prejudice Habitats Regulations Assessment Derogation Case:

No.	Pg.	Section	Comment	The Applicant's Response
			As we have had no discussion on this definition and have had very limited time to consider the implications we cannot fully endorse or rebut the inclusion. The impact being compensated for is largely the disturbance caused by vessel movements bringing the material for combustion and the therefore seems some logic in the definition. However, at this moment we cannot confirm or deny if the definition above identifies the point at which the impact becomes such that it requires compensation. If possible we will advise further at deadline 10.	Compensation Measures (document reference 9.30(2), REP8-006). The Applicant considers that it has adopted a conservative view on this matter and this timeframe will ensure the compensation measures are effective when the potential Adverse Effect on Integrity (AEoI) arises.
7	Page 28 Point 58	Schedule 11 Para 2	Natural England notes the changes proposed here and considers that these changes are adequate to address the concerns raised in point 1 of our response to the ExA written questions on draft compensation schedule REP7-028.	Noted.
8	Pages 28-30 Points 59-62	Schedule 11 Paras 3-6	<p>Natural England notes that these changes are in response to our comments on previous conditions 3 and 4 in Appendix F4 of our response to the ExA written questions at Deadline 7. It is noted the new 3 and 4 are largely additional conditions or caused through splitting conditions and we have no comments on these.</p> <p>With regard to condition 5 and 6 our concerns are largely around the timing of the compensation condition which is largely covered in condition 5 (d) and 6.</p> <p>The proposals submitted by the applicant effectively produce two timing requirements, one linked to dredge works which is prior to works and the other linked to</p>	<p>The Applicant notes NE's agreement that a period of two years is sufficient. The Applicant does not recognise NE's point that they had originally advised a period of four years would be required. Please also see response to row 6 above.</p> <p>The Applicant considers that a dual timing requirement is necessary, rather than a "complication", as there are two different potential impacts that occur at different times:</p> <ul style="list-style-type: none"> - Habitat loss of functionally linked habitat as a result of the capital dredging and the construction of Work No. 4 (the wharf)

No.	Pg.	Section	Comment	The Applicant's Response
			<p>operation which is 2 years prior to 'hot operation'. Natural England had originally advised a period of 4 years would be required. However, subsequent to the review of the RIES and the updated compensation proposals we consider that a period of 2 years is sufficient. However, as detailed above in response to para 1 of the compensation schedule, we have concerns on the adequacy of the definition of 'hot operation' to identify the correct point at which to mark the end of the 2 year period.</p> <p>Further, we note the complication that has been added by including a dual timing requirement with the compensation for dredging being required simply prior to the impact. Given the compensation required for both is the same and will no doubt be completed as part of one works package, we consider that, for the avoidance of confusion, it would be best to use 2 years prior to operation or 'hot operation' alone. Given the timing this will also mean the compensation will have been in place a minimum of around 18 months prior to the dredging works and as the dredge works only form a small part of the impact Natural England considers this sufficient security for this aspect of the works.</p>	<ul style="list-style-type: none"> - Disturbance impacts from vessels that will occur on operation. <p>The works to the HMA are designed to address the first of those impacts and are required to be in place prior to any dredging or construction works on the intertidal habitat. These works will be undertaken as part of a separate works package and are only anticipated to take a week to complete and will be effective immediately. As per the indicative implementation programme in the Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (document reference 9.30(2), REP8-006) these are indicatively scheduled to occur in March/April 2023.</p> <p>The proposed offsite habitat creation measures are proposed to address disturbance impacts from vessels and are required to be in place for at least two years prior to the hot commissioning of line 2 of Work No. 1A. These works will occur as part of a separate works package to the works to the HMA and are indicatively scheduled to be constructed between April 2024 to February 2025.</p> <p>The comments on this item from NE are confused and reinforce the Applicant's view that there is not a clear and robust understanding at NE on this matter.</p>
9	Page 30 Point 63	Schedule 11 Para 8	Natural England notes the updates to the proposed condition and that they address the concerns we raised	Noted.

No.	Pg.	Section	Comment	The Applicant's Response
			in Point 4 of Appendix F4 our response to the ExA written questions on deadline 7 [REP7-028].	

Table 2-5 Natural England's Deadline 9 Submission - Appendix J4 – Comments on Report on the Implications of European Sites (RIES) [PD-014] (REP9-063)

No.	Pg.	Section	Comment	The Applicant's Response
1	2	1.1.3 and 1.1.5	Natural England notes that the RIES will not be updated beyond Deadline 6 and are concerned that the consultation on the RIES is considered sufficient in relation to consultation on the full HRA by Secretary of State.	It is noted in the RIES report that "It is not a standalone document and should be read in conjunction with the examination documents referred to". Section 1.1.5 also states that "Following consultation the responses will be considered by the ExA in making their recommendation to the SoS and made available to the SoS along with this report (the RIES report)." It has been assumed therefore, by the Applicant, that any new issues or information would be included in the recommendation to the Secretary of State (SoS) to ensure sufficient coverage, including information submitted after Deadline 6.
2	3	1.2.6	Natural England confirms that the Applicant has identified all of the relevant designated sites and features.	Noted by Applicant.
3	15	3.0.3, 3.0.4	Natural England queries why the Operation and Maintenance for Lincs and Race Bank Offshore windfarms hasn't been included. In terms of harbour seal, other windfarm licences will need to be taken into account. It is not clear of the impact pathway for Hunstanton beach.	NE confirmed in a meeting on the 8 February 2021 when asked if projects outside of The Wash, including offshore wind farms, should be included for cumulative assessment, that as long as vessels stuck to the existing navigational routes in the Wash, there wouldn't be a concern in the wider Wash area (see Appendix A of the Statement of Common Ground with NE (document reference 8.11(1)) for agreed meeting minutes). Therefore, the Applicant concluded that the

No.	Pg.	Section	Comment	The Applicant's Response
				<p>assessment of cumulative effects was appropriate as windfarms had not been included, other than Triton Knoll.</p> <p>Section 3.0.4 of the RIES states that there is only one potential for In-Combination Effect, which was the Viking Link Interconnector. Table A17-5 in the Environmental Statement - Appendix A17 (HRA) (document reference 6.4.18, APP-111) recognises that there is no potential pathway for in-combination effects relating to Hunstanton Beach Recharge.</p>
4	16	3.0.6	Natural England advises that although the loss of foraging and roost site at the development site occurs during the construction phase it is not temporary and is perpetuated into operation. Therefore, it should also feature at 3.0.8.	The measures in place to enhance the habitat for foraging and roosting due to loss of habitat during construction will be maintained for as long as the wharf structure is present as set out in the OLEMS (document reference 7.4 (2), REP7-037) in Appendix A, Paragraph A1.2.9.
5	16	3.0.8	See above.	See response above.
6	22	4.2.1	Natural England notes that there is no mention of the physical loss of the development site roost for which mitigation is being proposed at Site B. The habitat at the development is being physically lost (rather than as a consequence of disturbance). However, habitat loss is then identified in 4.2.2. We therefore advise that concerns remain in relation to wash/erosion impacts to supporting habitats.	<p>Wash and erosion impacts have been fully assessed in the Environmental Statement Chapter 16 – Estuarine Processes (document reference 6.2.16, APP-054) where such effects were considered to be negligible. Further information was subsequently provided in “Response to Environment Agency’s Queries on Estuarine Processes (document reference 9.44(1), REP9-024)”.</p> <p>Potential indirect impacts due to dredging have been taken into account in the calculation of habitat loss, as discussed in the OLEMS (document reference 7.4 (2),</p>

No.	Pg.	Section	Comment	The Applicant's Response
				REP7-037) in Appendix A, Paragraph A1.8.6 and A1.8.7. This issue has been responded to several times in previous responses.
7	22	4.2.5	Natural England advises Enhancement of Site B for habitat mitigation for changes to supporting habitat along the Haven is insufficient on it's own. Please see Deadline 8 and 9 responses on derogations.	The Applicant disagrees with this point and considers that the habitat enhancement measures would provide adequate habitat for the number of birds that use this area. The enhancement measures are provided at a distance to ensure that they provide habitat outside of the threshold distance for disturbance for redshank derived from the Waterbird Disturbance Mitigation Toolkit Informing Estuarine Planning and Construction Projects (IECS, 2013). The Applicant has responded to NE's Deadline 8 responses within document reference 9.99, REP9-033 and Deadline 9 responses within this document.
8	23	4.2.6 and 4.2.7	Natural England refers the ExA to our Deadline REP8- 025 response in relation to marine mammals. We remain concerned in relation to the lack of secured vessel speed restrictions. With the decline in the Harbour seal population, it is imperative that no further impacts occur which could further reduce the population.	The Applicant is confident that the vessels associated with the Facility would not impact on the harbour seal population and that the mitigation measures as set out in Outline Marine Mammal Mitigation Protocol (OMMMP) (document reference 9.12 (2), REP7-003) will be sufficient to address concern over the potential for effects on marine mammals.
9	24	4.2.11	Natural England advises that we are having difficulty in agreeing SoCG as issues are not resolved or at a place where we feel confident that an AEoI will be satisfactorily addressed.	The Applicant has proactively worked to alleviate concerns raised by the Interested Parties and reach agreement. Further detail on this is included within The Applicant's Comments on the Report on Implications for European Sites (document reference 9.93, REP9-027). A Statement of Common Ground with NE has been provided at Deadline 10 (document reference 8.11(1)).

No.	Pg.	Section	Comment	The Applicant's Response
10	25	4.2.16	Natural England advises that the HMA is compensation. Mitigation is something that reduces/minimises the severity of an action/impact. The mitigation hierarchy is to avoid, reduce, mitigate. What the Applicant is proposing at site B is in NE's view compensation to offset impacts and therefore incorrectly termed 'HMA'.	<p>The mitigation proposed as part of the project works is to re-use the existing rocks that provide roosting habitat and move them along the intertidal area out of Area A and into Area B which is adjacent. This reduces the level of impact. NE comments, as summarised in the RIES Report in paragraph 4.2.101, describe the measure as compensation but in the RIES Report paragraph 4.2.102 it states <i>"they also expressed concerns about the effectiveness of the proposed HMA for providing sufficient mitigation for effects on qualifying features of the European sites, and also about the assessment of effects arising from its construction and existence."</i></p> <p>Throughout the process both terms have been used interchangeably by NE respondents. The Applicant considers that the works represent mitigation as they are relocating existing artificial structures into the same overall roosting area to continue their use as roosting habitat and enhancing existing habitat in the roosting area.</p> <p>In addition, within NE's Appendix B5 – Comments on Without Prejudice HRA Derogation Case – Compensation Measures Document (REP8-023), in row 7 of the detailed comments, reference number 2.1.4, they have a comment relating to the compensation net gain works. Within the comment it states "No Net Gain has been proposed and the identified Site B works would be <u>mitigation not compensation.</u>" (NE's emphasis)</p>

No.	Pg.	Section	Comment	The Applicant's Response
11	29	4.2.38	Natural England remains concerned about the increased boat disturbance.	This potential impact has been addressed in detail throughout the process and has not been dismissed as discussed in Paragraph 4.2.38. The Applicant stands by its assessment that the increase in vessel disturbance due to the Facility would not constitute an AEoI.
12	30	4.2.42	Natural England advises that the NMP should be considered as part of the consenting phase to provide the Secretary of State with the necessary confidence that AEoI will be managed.	<p>It is the Applicant's, and the Port of Boston's (please refer to REP9-064), view that the ongoing development of an NRA and NMP for the BAEF post-consent is the most effective way to mitigate impacts on the safety of navigation, and consequently on ornithological interest, since it permits ongoing consultation with all interested parties, and the ability to respond to the detailed design, construction and operational proposals.</p> <p>It is noted that this is consistent with the approach adopted by the EA (and agreed with the Port of Boston) for the Boston Barrier Order 2017. The extensive consultation process to be followed post-consent with statutory bodies, including NE, has been set out in the NMP Template, a DCO certified document (document reference 9.80(1), REP8-011), and the final NMP will be approved by the MMO.</p> <p>In the Port of Boston's submission at Deadline 9 (REP9-064) they state, <i>"the Port's view is that the ongoing development of an NRA and NMP for the BAEF post-consent is the most effective way to mitigate impacts on the safety of navigation since it permits ongoing consultation with all interested</i></p>

No.	Pg.	Section	Comment	The Applicant's Response
				<p><i>parties, and the ability to respond to the detailed design, construction and operational proposals. We know that there has been strong lobbying from the BFFS that all navigational safety matters should be addressed during the consent process but based on the Port's recent experience with the Boston Barrier project that would not be possible, and potentially would be unsafe to do so".</i></p> <p>The Technical Note for Navigation Management and Ornithology (document reference 9.70, REP6-033) also discusses the NMP as a post-consent document and gives the justification for this. The document would be produced once a principal contractor is selected, which would allow for detailed planning of the NMP. The technical note sets out the explanation of the process to be followed and the topics covered to develop the NMP.</p>
13	44	4.2.108	<p>Natural England advises this statement applies to Site A (development site) but if dependence on Site B was increased the Status Quo level of disturbance will increase, potentially significantly, especially if there is no proximate alternate roost available.</p>	<p>In relation to the alignment of the England Coast Path, NE's assessment of this activity did not identify any sensitive areas for birds along The Haven (NE, 2018. Appraisal of possible environmental impacts of proposals for England Coast Path; and, Sutton Bridge to Skegness NE's Report to the SoS). The realignment of the footpath does not take people any closer to the roost sites than previously. It is not therefore expected that there would be any increase in disturbance due to footpath use than there is currently. Within Site B the roost sites are further from</p>

No.	Pg.	Section	Comment	The Applicant's Response
				the footpath, when compared with Site A, as the saltmarsh is wider in this area.
14	45	4.2.110	Natural England advises that unless very carefully managed, shallow lagoons are likely to provide less quality than intertidal mud as foraging habitat, even if of higher value than saltmarsh.	There is a commitment to ongoing management of the Habitat Mitigation Area to ensure it provides suitable roosting and foraging habitat.
15	60/61	4.2.197 Table 1	<p>Natural England does not agree with No AEoI for the Waterbird Assemblage as a whole, with regard to the loss of functional roost areas, and not just with reference to the specific component species identified.</p> <p>We are also concerned (especially since receivership of information post D6 and therefore outwith the scope of this document) on impacts on lapwing and golden plover from repeated disturbance impacting energy budgets (identified for Ramsar but also applicable to SPA).</p> <p>We advise that Turnstone should also be listed for the Ramsar and that a single list will suffice for the two sites; or one list should only be SPA and the other only Ramsar.</p>	<p>The Applicant notes NE's response.</p> <p>As summarised in the RIES report the Applicant has provided a justified assessment of the potential for disturbance to occur and does not expect that the increase of 1.6 vessels per day, along The Haven, would cause the loss of the roost site or an AEoI for the species assessed and the Waterbird Assemblage as a whole.</p>
16	64	5.0.19	Natural England highlights that this is an alternative energy project of 80MW. However, there is likely to be alternative energy projects that provide a greater megawatt capacity.	Noted by the Applicant, this is addressed in Table 2-3 above.
17	70	5.0.41	In previous similar applications with (renewable energy developments with significant uncertainty over the outcome of planning) the developers have agreed 'Heads of Terms' with landowners before granting of consent. i.e. agreed that if permission was granted they could undertake required works but if permission was not granted they would be under no obligation. Something similar for this project would significantly increase reassurance.	The Applicant has provided a letter of comfort in relation to plot 1, the site that is approximately 7.3 ha just over 1 km from The Haven but less than 1 km from both the first field and from RSPB Frampton Marsh reserve which is detailed in paragraph 4.7.3 of the Without Prejudice HRA derogation compensation case (document reference 9.30(2), REP8-006). This letter of comfort also relates to an additional 12 ha site, plot 1a, detailed in the Appendix to the Rule 17

No.	Pg.	Section	Comment	The Applicant's Response
				Response (document reference 9.106). In relation to plot 2, the site that is approximately 19 ha and adjacent to The Haven, which is detailed in paragraph 4.7.2 of REP8-006, discussions with that landowner are ongoing and a letter of comfort is not available at this time.
<p>Other relevant matters</p> <p>Although saltmarsh is not a SAC feature of concern at the site, Natural England do have some comments of concern.</p>				
N/A			<p>Natural England advises that the HMA should really be referred to as compensation not mitigation, as it is providing compensation for loss of Functionally Linked Land to The Wash SPA. Natural England have requested more information in the OLEMS regarding the proposed habitat mitigation works (as these in themselves could cause further damage/ loss to NERC Act 2006 priority saltmarsh i.e. the pools and scrapes creation), and that the reprofiling/ lowering of the old bank needs further clarification with volumes of sediment and methods required. The reprofiling/ lowering of the bank could also increase visual and noise disturbance to birds.</p>	<p>See response to Row 10 above in relation to compensation or mitigation.</p> <p>The Applicant has assessed the potential for the Principal Application Site to be functionally linked in detail in Section 4 of Chapter 17 Marine and Coastal Ecology and Appendix 17.1 HRA Update (document reference 9.59, REP5-006) where it was shown beyond reasonable scientific doubt that the Principal Application Site was not considered to be functionally linked land. Nevertheless, measures have been put in place to mitigate habitat loss in this area and disturbance impacts from construction and vessel movements.</p> <p>The Applicant has responded to the comments raised by NE previously and considers that pools within saltmarsh are a functional part of the saltmarsh habitat. The Applicant has agreed that any changes to the banks, and the other works within the saltmarsh, would be discussed and agreed fully with stakeholders (which includes NE and RSPB), as outlined in the OLEMS document (document</p>

No.	Pg.	Section	Comment	The Applicant's Response
				reference 7.4 (2), REP7-037) in Appendix A, Paragraph 1.2.5.
N/A			Natural England's preference would be some created saltmarsh or saltmarsh enhancement to replace what is being lost. But, the focus seems to all be on the foraging and roosting bird habitat and that does not necessarily need to be saltmarsh.	As discussed in the OLEMS (document reference 7.4 (2), REP7-037) in Appendix A, Paragraph A1.8.10, opportunities for intertidal habitat creation or restoration were initially sought to provide like-for-like habitat net gains or offset. However, no opportunities were identified. To create intertidal habitats presents a number of challenges and would involve major works to ensure flood protection to surrounding land. For such a small area of loss of intertidal habitat the works needed for this would be out of proportion to the habitat loss. Other opportunities have been identified to improve the condition of the existing areas of saltmarsh within The Haven and this involves clearance of debris from the saltmarsh. Debris has been identified as an issue in a number of reports, including the saltmarsh monitoring undertaken for the EA (as discussed above), the NE survey work undertaken in September 2021 and in the Havenside Local Nature Reserve Management Plan.

Table 2-6 Natural England's Deadline 9 Submission - Appendix B7 – Comments on Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures [REP8-005] (REP9-058)

No.	Paragraph No/Section	Comment	The Applicant's Response
Summary			
N/A		We advise that the identified sites are unlikely to support all impacted species but should be sufficient to mitigate development site impacts and would potentially compensate for a substantial part of the impacts	The identified sites are not for mitigation. There has been an issue with NE's interchangeable use of the wording for mitigation and compensation throughout

No.	Paragraph No/Section	Comment	The Applicant's Response
		<p>at the Mouth of the Haven. Critical to a positive derogation case will be (a) securing the sites and (b) refining site plans and (c) establishing appropriate governance. If options for creating an alternative roost close to the impact site (best option for the SPA looking at this in a birds-only manner) are not going to be considered further, then we advise that the proposed compensation location/s provide a suitable option.</p>	<p>which has led to considerable confusion in understanding their views. The Habitat Mitigation Area is considered by the Applicant to be mitigation but the identified sites in the Without Prejudice HRA Derogation Case are proposed for compensation should it be needed. If not needed, then it is proposed that the sites would provide additional net gain for the project. It is considered that the habitats to be created on the compensation sites would provide roosting and foraging areas for the species that could be affected, as identified in the compensation measures document (document reference 9.30(2), REP8-005). It is recognised by the Applicant that there is a need for further studies and work to secure the sites, refine the plans and establish governance and this would be commenced if the DCO is granted.</p>
N/A		<p>Natural England queries if there are other options for oystercatcher and turnstone which are unlikely to be supported by the proposals? However, we would expect utilization of the sites by additional species, as legally, the compensation site become part of the SPA at a feature level this could be acceptable.</p>	<p>This query is not fully understood but it is noted that NE find the proposals potentially acceptable.</p>
Detailed Comments			
1	3.2.5	<p>NE recognises that the measures proposed at Site B are appropriate to support redshank and enhance the value of this area. However, because Site B is subject to disturbance by vessels and will no longer be able to function in conjunction with the Site A, NE is of the view that there is no certainty these measures alone will be able mitigate the loss of Site A. It should be noted also that as foraging habitat, while better</p>	<p>The loss of foraging area is minor compared with what is available along both sides of The Haven. Again, the use of mitigation and compensation by NE is confusing. NE is now saying that the measures will constitute partial mitigation.</p>

No.	Paragraph No/Section	Comment	The Applicant's Response
		<p>than saltmarsh, saltmarsh lagoons are likely to be less good foraging habitat than intertidal sediments.</p> <p>While the proposed measures will lessen the impact of the loss of Site A they are unlikely to fully mitigate it. Consequently, NE is of the view the proposed measures at Site B will constitute a partial mitigation for the impacts at the development site with regards redshank.</p> <p>To act as HRA compliant compensation in the long term it will be necessary to have an effective and enforceable management arrangement to ensure the habitat is maintained.</p> <p>The actual number of roosting rocks is not increased (therefore no increased capacity), but they are simply moved from the wharf construction area to the Habitat Mitigation Area.</p> <p>We are still awaiting further clarification on the detail around the proposed works particularly the removal of low-profile banks - as per our comments on 15/03/22.</p>	<p>The Applicant agrees that the works are mitigation but considers that the works would fully mitigate the proposed impact due to loss of both roosting and foraging habitat and increased disturbance. The proposed mitigation works are such that they are set at a distance which considers disturbance thresholds discussed with the Waterbird Disturbance Mitigation Toolkit (IECS 2013) and should therefore provide suitable habitat.</p> <p>As discussed in row 4 of Table 2-5 above, the works would be maintained.</p> <p>There is not a requirement to increase the number of rocks in order to support the same number of birds.</p> <p>With regard to the proposed works on the banks a response was provided for the Second Report on Outstanding Submissions for Deadline 6 (document reference 9.68, REP6-032) in Table 2-6 comment on Plate A1-3, which confirmed that “the outline plans for the HMA would be developed in discussion with NE, RSPB and the EA. The proposals for the gradient of the bank were designed to improve the sighting for the birds roosting in this area. If this is not considered to be the case, then it is not essential to undertake this work. This can be discussed and agreed prior to any works taking place as part of the detailed development of the measures. Likewise with the flattening or removal of the old bank.” It is concerning</p>

No.	Paragraph No/Section	Comment	The Applicant's Response
			that this, and other responses, appear to have not been seen by NE as they are repeatedly raised.
2	3.2.6	<p>The text here notes that the habitat mitigation site is providing mitigation for loss of roosting and foraging habitat for waders (particularly Redshank) through construction at the wharf. But it also implies it is also part of compensation for AEOI?</p> <p>The 'HMA' at Area B will provide mitigation for impacts at the Development Site which are in an area functionally linked to the SPA. If these fail to provide the required level of Mitigation then residual impacts will need to be Compensated for.</p>	<p>The Habitat Mitigation Area (HMA) is not expected to be compensation for any impacts. The Applicant agrees that the HMA will provide mitigation for impacts at the development site but not that this area is functionally linked to the designated sites.</p> <p>However, should it be determined that there is an AEol and that the Proposed Application Site is functionally connected land, then the HMA would provide compensation and no further compensation is considered to be necessary for roosting and foraging habitat loss at this site.</p>
3	Table 3.1	NE queries if map images of the two missing locations i.e., between the Habitat Mitigation Area to the SPA boundary & SPA boundary to HMP North Sea Camp could be added for consistency?	A figure showing two plots of land that have been secured in-principle by the Applicant for compensation (if required) are provided in Appendix A of the Applicant's Response to the Rule 17 letter (document reference 9.106). An additional plot of land cannot be identified at this juncture due to commercial considerations.
4	3.4	Natural England draws the ExA attention to the fact that it is Vessel Transit that is of concern with proposed mitigation Area B and this is not discussed.	Agreed and vessel transit is discussed within various documents including the Environmental Statement Chapter 17 Marine and Coastal Ecology (document reference 6.2.17, APP-055), ES Appendix 17.1 HRA (document reference 6.4.18, APP-111), Chapter 17 Marine and Coastal Ecology and Appendix 17.1 HRA update (document reference 9.59, REP5-006) Section 7 and also in Section 3.3 of the Without

No.	Paragraph No/Section	Comment	The Applicant's Response
			Prejudice HRA Derogation Case: Compensation Measures (document reference 9.30(2), REP8-006). Should compensation be required for any birds that are disturbed during the operational phase this is expected to be provided within the network of existing compensation sites put forward.
5	3.4.4	Natural England advises that the Waterbird Assemblage is a Site Feature in its own right and need considering as such either here or as a separate paragraph.	The waterbird assemblage has been recognised as a feature in its own right and was assessed within the Chapter 17 Marine and Coastal Ecology and Appendix 17.1 HRA Ornithology Addendum (document reference 9.13, REP1-026) and Chapter 17 Marine and Coastal Ecology and Appendix 17.1 HRA Update (document reference 9.59, REP5-006). However, Paragraph 3.4.4 of the Without Prejudice HRA Derogation Case: Compensation Measures (document reference 9.30(2), REP8-006) is discussing the species that were considered to be most at risk of repeated disturbance and not whether the waterbird assemblage as a whole was at risk, as this is assessed in the documents above. Paragraph 3.4.4 does include species that are not a feature of the Special Protection Area (SPA) in their own right but do occur as part of the SPA waterbird assemblage.
6	3.5.1	Natural England requests further clarity on what is being considered as Biodiversity Net Gain (BNG) is needed. Mitigation measures, Compensation and BNG need to be clearly identified in terms of location and purpose, especially where it be used to provide multiple purposes.	The specific BNG measures are discussed within the OLEMS document including the locations and purpose of the measures (document reference 7.4 (2), REP7-037).

No.	Paragraph No/Section	Comment	The Applicant's Response
		<p>In addition, we query what BNG is being proposed if compensation addressing AEOI is required?</p>	<p>In addition, as discussed in paragraph 4.7.5 of the Without Prejudice HRA Derogation Case: Compensation Measures (document reference 9.30(2), REP8-006), the compensation habitats are also capable of supporting breeding and low-tide foraging in a range of species, which would constitute net-gain for waterbirds. The table referred to in this paragraph lists the species that would be supported by the created habitats, including those for which the habitat would provide a net gain.</p> <p>The Applicant wishes to note that BNG measures do not form part of the compensation measures and are being undertaken by the Applicant as good practice as there is not a statutory requirement for such as part of this project.</p>
7	3.5.3	<p>Natural England notes that the Applicant has had discussions with the local landowners, but there is no letter of comfort provided to demonstrate that they are amiable to compensation being delivered on their land. Therefore, there remains a risk that suitable compensation locations will not be secured.</p>	<p>Please see the Applicant's response in Table 2-5 row 17.</p> <p>Additionally, the drafting of Schedule 11 of the DCO ensures that suitable compensation locations will be secured as they are required to be secured in order for the Secretary of State to approve the Ornithology Compensation Implementation and Monitoring Plan.</p>
8	3.5.5	<p>Natural England notes that the points here combine measures to accommodate both foraging and roosting impacts. As the two behaviours have different habitat requirements it would be helpful to differentiate the two. Different species also have different specific requirements – though there is broad overlap.</p>	<p>Although the habitat requirements are different the habitats are closely linked, but the differences are acknowledged within the compensation requirements for each site.</p>

No.	Paragraph No/Section	Comment	The Applicant's Response
9	3.5.6	<p>Natural England advises that Waterbird Assemblage should be identified as a feature at risk, not just the component species.</p> <p>The recent updated HRA submissions and NE's response to them have clarified that the matters to be compensated include both roosting (in particular in reference to distribution) for all identified species, and for lapwing and golden plover overall energetic balance which could be potentially addressed through either provision of disturbance free roosts or enhanced feeding.</p>	<p>The compensation requirement addresses the species within the waterbird assemblage that have shown sensitivities to disturbance. The waterbird assemblage as a whole has also been assessed as a feature at risk within the Chapter 17 Marine and Coastal Ecology and Appendix 17.1 HRA update (document reference 9.59, REP5-006). This is agreed if compensation is required and is addressed through the without prejudice compensation measures proposed.</p>
10	3.5.7	<p>See our previous comment on the Deadline 8 [REP8-025] point 5 which refutes this as our position.</p>	<p>NE stated within a meeting on the 15th November 2021 that it would not be possible to allow compensation within the designated sites if they affected any of the Special Area of Conservation habitats, which includes intertidal and subtidal sediment areas. It is therefore not feasible to create compensation habitat within the designated site.</p>
11	3.5.7	<p>Natural England requests that a map showing these proposed sites in relation to The Wash SPA and The Haven etc. are included.</p>	<p>See the response to question 3 in this table above.</p>
12	4.6.7	<p>Experience suggests that T&CPA1990 interpretation varies between local authorities and some require Planning for schemes analogous to that required for this project. Natural England advises that the description underrepresents the amount of surface water that would likely be needed for the site to be effective.</p>	<p>Paragraph 4.6.8 however, recognises this and acknowledges that the Applicant would engage with the Local Planning Authority.</p>
13	4.7.2	<p>From the description the site is well positioned to support the role of Site B in mitigating the loss of Site A and thereby ensuring that no AEoI arises from the loss of functionally linked habitat. This is based on the assumption that management of the site can be secured that provides both foraging (larger area of lower quality than that lost) and a</p>	<p>The sites identified for compensation options can provide foraging and roosting habitat. It is stressed that there are very few, if any areas around The Wash that provide disturbance-free roosting areas and that this is not a realistic requirement. Disturbance comes in many forms and includes recreational disturbance</p>

No.	Paragraph No/Section	Comment	The Applicant's Response
		<p>disturbance-free roost area. At present Natural England advises that this is not assured.</p>	<p>from walkers and dogs, vessels (both commercial and recreational), aircraft and predators. To find a site with none of these parameters affecting it is not considered to be feasible.</p> <p>The Applicant clarifies that the Table 4-1 in the Without Prejudice Derogation Case (document reference 9.30 (2), REP8-006) features ditches and walls as measures to limit intrusion and disturbance from walkers, dogs etc.</p>
14	4.7.2	<p>From the description we believe this site is positioned such that it is likely to be able to support some of the features for which NE considers that it is not possible to conclude No AEoI at the MOTH site.</p> <p>Based on the description provided, the site lies approximately 4.8km from the affected roost area identified as Area E in Fig 5.1 in 'Final Waterbird Survey Report Summary of Data' submitted at D8. Making it more distant from the site of impact than the other potential alternate roost areas. Natural England advises that it is therefore unlikely to be adopted by displaced individuals, but (as land that should be legally recognised as part of the SPA if secured as compensation) is likely to increase the carrying capacity of The Wash SPA.</p> <p>Whilst NE defers to RSPB who have local knowledge of bird densities, likelihood of appropriate management being securable and species likely to adopt the site; we consider that with appropriate management it is likely that the site could support lapwing, golden plover, redshank, black-tailed godwit. It is NE's view that it is unlikely to be utilised by significant numbers of oystercatcher (due to distance from the SPA) and turnstone (due to distance from the SPA and habitat requirements) or</p>	<p>The compensation is required if the birds leave the roost entirely. If this were the case, and it is stressed that this is not expected to occur as the birds using this area have habituated to disturbance over many years, another site, even one 4.8 km from the original site, could provide alternative habitat, given that there are additional sites, forming an overall network, in between at the RSPB reserves. The Applicant is also aware that there are closer alternative roosts that the birds use when disturbed, and are likely to continue to use with the additional 1.6 vessels per day transiting through The Haven. The RSPB has highlighted oystercatchers flying from the mouth of The Haven to Freiston Shore's saline lagoon during project-specific surveys as covering a direct distance of 3 km.</p> <p>The Applicant also highlights that, elsewhere, NE maintains that the proposed Application Site is functionally connected to the SPA and this is approximately 3 km from the boundary of the SPA</p>

No.	Paragraph No/Section	Comment	The Applicant's Response
		<p>brent geese (due to presence of alternative areas of functionally linked land closer to the SPA).</p>	<p>and approximately 6.5 km from the main roosting area.</p> <p>Oystercatcher and turnstone have both been recorded as far up Haven as the Principal Application Site, and have been recorded at roost both at the Principal Application Site and adjacent to one of the in-principle compensation sites. Dark-bellied brent geese have likewise been recorded close to the in-principle application sites. Sites along The Haven are demonstrably discoverable by oystercatcher, turnstone and dark-bellied brent geese, and it follows that the same is true for sites adjacent to The Haven, and sites in close network (<1 km) with such sites.</p> <p>While numbers of oystercatcher, turnstone and dark-bellied brent geese recorded on The Haven are highlighted to be low compared to those recorded at the mouth of The Haven, the mudflats along The Haven are narrow and are typical of the tidal reaches of a narrow river. The design of the compensation sites, on the other hand, is geared towards providing islands in a large isolated waterbody (i.e. geography of sufficient appearance and scale to encourage roosting on a scale seen on the main Wash embayment) as was successfully the case with the saline lagoon at Freiston Shore which has recorded 3700 oystercatcher, 192 turnstone and 3500 turnstone. The Applicant in summary maintains that the compensation sites would be capable of supporting the species outlined in Table</p>

No.	Paragraph No/Section	Comment	The Applicant's Response
			4-1 of the Without Prejudice Derogation Case (document reference 9.30(2), REP8-006).
15	4.7.3	From the description provided, NE concurs that this area is more likely to be suited to golden plover and lapwing. It should be noted that both these species are less requiring of presence of surface water than some other SPA species, but a high water table in the soil is advantageous. Most critical is the availability of invertebrate-rich short swards or bare ground and the potential to restore invertebrate-rich soils should be investigated.	Noted by the Applicant and this will be incorporated into the plans for the compensation/net gain sites.
16	4.7.4	Natural England queries if the same level of site management will be provided in the compensation area to that of the RSPB reserves?	The Applicant notes that the RSPB reserves are managing large numbers of visitors which would not be the case for the compensation/net gain sites so it is highly unlikely that the same level of management would be required.
17	Table 4.1 'Lagoon'	Natural England advises that for roosting, open water has to be shallower than the leg length of the wader species trying to roost. Therefore, we advise that there is a requirement to provide areas of shallow water at both times of high and low water. In the absence of appropriate shallow water multiple roosting islands will be needed, with a suggested increase to min 40% of parcel area.	This is noted by the Applicant and will be taken into consideration in the detailed design of the sites. It is noted that the site is not intertidal however.
18	Table 4.1 'Gravel island' & 'Earth Island'	Natural England advises that it is unlikely to provide substantive foraging habitat except on margins. More smaller islands preferable to one larger one for both island types and to increase total area.	This is noted by the Applicant and will be taken into consideration in the detailed design of the sites.
19	Table 4.1 'Wooden frames'	Natural England advises that wooden frames are unlikely to be significantly used by redshank and common sandpiper if shallow water and islands are available.	This is noted by the Applicant and will be taken into consideration in the detailed design of the sites.

No.	Paragraph No/Section	Comment	The Applicant's Response
20	Table 4.1 'Wet grassland'	Natural England advises that wet grassland is unlikely to be significantly utilized by grey plover, knot, common sandpiper, shelduck, mallard, teal.	However, these species have not been shown to be affected, or significantly affected by vessel disturbance.
21	Table 4.1 Arable	While management benefiting species like turtle dove, meadow pipit, skylark, and yellow wagtail would be welcomed, these are not SPA species so this would be outside the compensation framework.	This is acknowledged and was intended to provide net gains but it is recognised that this is not required for compensation sites.
22	Table 4.1	Natural England advises that the addition of an anti-predator fence would be advantageous for many species. Measures to reduce disturbance from users of the adjoining footpath e.g. screening and promotion of scrub in places may be appropriate.	This is noted by the Applicant and will be taken into consideration in the detailed design of the sites.
23	Table 4.1 7.5 ha site	Natural England advises that given the site's separation from The Wash and Haven, the potential species list looks ambitious with regards regular usage. However, without precise information on site location, there remains uncertainty.	The key site for the majority of the species listed is the site closer to The Haven. They key species for the site that is subject to this comment, that occurs further from The Haven (approximately 1km), is for lapwing and golden plover.
24	4.8.1	Natural England concurs with the view that two years should be allowed between site establishment and its need to provide compensation. Sites undergoing this type of restoration take time to establish and often require follow-up work after initial site establishment.	Noted by the Applicant.
25	4.8.3	Natural England advises that annual maintenance will be required to maintain habitat suitability as Mitigation as well as initial establishment works described. Works in the Habitat Mitigation Area should be scheduled to avoid the nesting bird season and the migratory/ winter period. This in effect means works should be undertaken in August.	The plan was to undertake the works avoiding the overwintering period for waterbirds. As the works are intertidal and away from the potential areas for breeding birds this was considered adequate to avoid risk to breeding birds. The work would be undertaken outside the nesting bird periods as far as possible but there is no known nesting bird activity in the saltmarsh areas (following surveys undertaken during the nesting period). As with the terrestrial works, there could be agreed mitigation that if works are needed during the nesting bird season (March –

No.	Paragraph No/Section	Comment	The Applicant's Response
			<p>August inclusive), a suitably qualified ecologist will check the area for nesting birds a maximum of 48 hours prior to the commencement of the works. Should there be nesting birds within an area that is expected to cause disturbance from the works then an alternative approach will be taken (works approach route to be relocated if possible or works to be postponed until young birds have fledged).</p>
26	4.8.7	<p>In the opening paragraph (1.2.7) the number of vessels expected during construction phase is quoted at 89. Here it notes 260 vessels per year.</p> <p>Natural England draws the ExA to these inconsistencies in project parameters which are adding uncertainty in fully understanding the scale and significance of the project.</p>	<p>The correct figure is 89 vessels during the construction phase as stated in paragraph 1.2.7. This number has been consistent all through the process. The 5 vessels in a week, (which has erroneously led to the 260 figure) is a maximum peak number expected during construction.</p>
27	4.9.1	<p>Natural England advises that to be HRA compliant monitoring and maintenance need to be overseen by a governance group that is empowered to ensure that the site is accountable, on behalf of the competent authority, and can ensure the site is delivering its compensatory requirements and can remedy any failings.</p>	<p>The OEG will provide an extremely valuable role in helping achieve the objectives of the OCIMP, helping inform the delivery of the compensation and ongoing adaptive management. 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. Additionally, Paragraph 8 of Schedule 11 provides for annual reporting including the provision of proposals to address ineffectiveness of any measures.</p>

No.	Paragraph No/Section	Comment	The Applicant's Response
28	4.10.1	Natural England welcomes the establishment of an expert group to oversee planning, site establishment and ongoing maintenance. However, with regard to 4.9.1, the role of the OEG would need to be more than advisory – it needs to be able to ensure compliance with Statutory requirements.	Please see response above.
29	5	Natural England broadly concurs with this section save for the lack of appropriate governance as identified in lines related to 4.9.1 and 4.10.1 above.	See response above, the governance would be confirmed through the approval of the terms of reference for OEG and approval of the OCIMP by the Secretary of State.
30	5.1.4	Natural England advises that for the reasons set out at 4.7.2, the sites described are unlikely to prove satisfactory for all impacted species.	Please see response to 4.7.2. The Applicant considers that the created sites would provide suitable habitat for the species that are sensitive to vessel disturbance in significant numbers.

Table 2-7 Natural England's Deadline 9 Submission - Appendix E4 – Comments on Public Rights of Way – Outline Design Guide and Stopping Up Plan [REP8-007] (REP9-060)

No.	Comment	The Applicant's Response
Natural England's Comments on Public Rights of Way – Outline Design Guide and Stopping Up Plan [REP8-007]		
1	Natural England previously commented on the Applicants' proposals to stop of Public Rights of Way in our submission at Deadline 5 [REP5-015]. This newly submitted document does not offer any further information into the diversion of the proposed route of the England Coastal Path.	The Applicant maintains its position on this matter from Issue Specific Hearing 2 as set out in the Written Summary of the Applicant's Oral Case at Issue Specific Hearing 2 (ISH2) on Environmental Matters (Part 1) (document reference 9.47, REP3-023).
2	As we stated in our previous response [REP5-015], Natural England acknowledges that the enhancements proposed to the Public Right of Way along the route of the Roman Bank would make significant improvements to the existing path and improve the public's enjoyment. We therefore accept that this route suggested by the Applicant is an appropriate replacement to the existing Public Right of Way.	This point is noted and welcomed by the Applicant.

No.	Comment	The Applicant's Response
3	<p>Natural England advises that the route replacement proposed for the England Coast Path would reduce coastal access for future users of the path. We therefore maintain our suggested alternative route which directly follows the coast.</p>	<p>The England Coast Path (ECP) in the area around the Facility is not currently designated therefore any changes proposed due to the Facility will affect the future designation of the ECP.</p> <p>The proposed route increases the distance of this section of the proposed route from approximately 950m to approximately 1100m and moves users away from the low water mark by a maximum of 350m. This proposed change is not considered to significantly affect access to the coast by any reasonable measure. The Applicant has reviewed NE's alternative route and presented reasons why it is not suitable in the Applicant's Oral Case at Issue Specific Hearing 2 (ISH2) on Environmental Matters (Part 1) (document reference 9.47, REP3-023)</p>
4	<p>Whilst we acknowledge that stretches of the footpath BOST/14/4 are visually poor and unattractive; the northern stretch of the route is on top of the seawall and therefore has views of the sea. As a Public Right of Way, it should be maintained by the local authority and when it becomes a National Trail this maintenance expectation and quality of route increases. Therefore, once this stretch of path falls within in the England Coastal Path designation it could be enhanced.</p>	<p>The definition of 'sea' is not clear here from NE. If they mean The Haven (i.e. an estuary enclosed on three sides by land with access to the sea at it's mouth) then the Applicant agrees. Views of The Wash/North Sea are not possible from this location.</p> <p>Lincolnshire County Council (LCC) are the highways authority with responsibility for footpaths in this area. They, along with NE and Boston Borough Council were consulted in the development of the Outline Public Right of Way Design Guide and Stopping Up Plan (document reference 9.41, REP3-017). LCC confirm in the Statement of Common Ground with the Applicant submitted at deadline 9 (REP9-049) that all matters associated with Public Rights of Way are agreed.</p>
5	<p>With respect to paragraph 1.3.3, we advise this to be incorrect. The idea of a Variation Report is that Natural England investigate what options are available on the ground and then publish the proposals. The Applicant cannot assume where the England Coast Path alignment will be placed.</p>	<p>Noted. However, there are limited options in the area for the England Coast Path (unless NE want to take the route further from the coast) and the improvements proposed for the Public Right of Way will be implemented whether the England Coast Path is aligned here or not and therefore the point is moot.</p>

Table 2-8 Natural England’s Deadline 9 Submission - Appendix B8 – Comments on Outline Ornithology Compensation Implementation and Monitoring Plan [REP8-012] and Final Waterbird Survey Report Summary of Data [REP8-018] (REP9-059)

No.	Comment	The Applicant’s Response
1. Outline Ornithology Compensation Implementation and Monitoring Plan [REP8- 012]		
N/A	Natural England’s Comments are substantively the same as what was submitted at Deadline 8 [REP8-021]. The document has not significantly changed apart from the addition of section 1.1.2 & 1.1.3.	Noted.
N/A	<p>We note that this document constitutes an outline of what a plan will contain. Whilst we advise that the scope is reasonable, there are some improvements which should be made:</p> <ul style="list-style-type: none"> • It will be necessary to state how the Ornithology Engagement Group (OEG) will be constituted, its membership and how it will have governance powers such that it can ensure suitable management is secured. Without this the OEG and Ornithology Compensation Implementation and Monitoring Plan cannot be relied upon to secure HRA requirements. • It is important to identify initial monitoring post-establishment including both bird numbers and the development of the physical attributes of the site(s) to ensure delivery of Statutory requirements. As part of this a success criteria will need to be agreed. 	<p>The points the first bullet point would be covered by the terms of reference for the OEG approved under paragraph 2 of Schedule 11 of the draft DCO. The points in the second bullet point would be set out OCIMP approved under paragraph 3 of Schedule 11 of the draft DCO.</p>
2. Final Waterbird Survey Report Summary of Data [REP8-018]		
N/A	<p>Similarly, Natural England’s comments remain the same as those submitted at Deadline 8 [REP8-024]. NE advise there are some improvements to be made:</p> <ul style="list-style-type: none"> • The study should be for at least two years, anything less is only a partial study. • Natural England acknowledges that this only a partial report in such that it provides data but we advise that it will require more detailed analysis and assessment of the outcomes. 	<p>The Applicant acknowledges that the survey period for the intervening section of The Haven itself covers a short time period (winter season as-priority), but considers that the clear similarities ecologically between this section and the Principal Application Site mean that this section can be considered alongside the longer-term data for the Principal Application Site - for instance when carrying out any subsequent</p>

No.	Comment	The Applicant's Response
	<ul style="list-style-type: none"> We welcome the provision of this information and the suggestion that the intermediate stretches of The Wash are less utilized is reassuring. Although, sector by sector, the intermediate areas are less well utilized than the MOTH or development site, it should be remembered that the sector-by-sector totals need to be added together to clarify total number of birds at risk. So, although some individual sectors do not exceed 1%, the newly surveyed ones are additive on already surveyed sites. This is of particular relevance for redshank and ruff. 	<p>analysis to inform ornithological steering of net gain or compensation should consent be given. The without prejudice compensation works would also provide sufficient area for any birds that may be displaced by the additional vessels, although it is noted that the birds using this area must be acclimatised to large vessels transiting this area on a frequent basis already given the narrow nature of The Haven in this area.</p> <p>The Applicant welcomes agreement from NE regarding its conclusion that the intermediate sections of The Haven are less utilised. The Applicant highlights that NE's suggested additive approach to determining numbers of birds present across Haven sections, entails adding together of peak counts, or at least counts gathered on different dates. Both methods are likely to carry inaccuracies and in particular the former risks overestimating numbers and would be overly precautionary.</p>
2.1.2	While the additional information welcome, we advise that this remains a single season survey and therefore it is only indicative.	The Applicant acknowledges that the intervening section of The Haven has been covered by surveys for one (winter) season. However, the wider survey data (that covers two seasons for overwintering, spring passage and breeding periods) demonstrates that this is the peak season for waterbirds and that the broad Haven area carries very few waterbirds in the bird breeding season, therefore the survey season has covered the peak and therefore critical period for understanding waterbird use of this section of The Haven.

No.	Comment	The Applicant's Response
4.1.2	NE advises that while sector C totals are presented as low, these numbers are additional to those recorded in other sectors and [these] should be factored into considerations of disturbance impact.	<p>The Applicant directs the reader to the response two rows above regarding additive approach to data.</p> <p>The Applicant appreciates the context of the data, and the requirement from an Assessment perspective to consider the entire area of potential impact and its typical and peak bird assemblage composition/size. When this is conducted for sections A-D (inner Haven), the features highlighted as potentially occurring within The Haven in greater than 1% of their The Wash SPA WeBS five-year peak count are not different to those highlighted when considering individual Haven sections.</p>
4.1.4	Again, impacts are additional to those already reported and the impact in sector C.	The Applicant directs the reader to the response in row above.
5.1.1 & Figure 5.1	Natural England agrees that the presence of roost site adjacent to the proposed compensatory site suggests increased likelihood that the potential compensation site will be adopted rapidly once available.	Noted by the Applicant.

2.4 Royal Society for the Protection of Birds (RSPB)

Table 2-9 Comments on the Report on Implications for European Sites (RIES) from the RSPB (REP9-065)

No.	Report Wording	Comment	The Applicant's Response
1.2.1	Applicant's screening Assessment concluded that was potential for likely significant effects (LSEs) on three European sites and therefore information to inform an appropriate assessment was provided in the HRAR,	We agree with the sites that have been identified for consideration due to LSEs; namely The Wash Special Protection Area (SPA), The Wash Ramsar site and The Wash & North Norfolk Special Area of Conservation (SAC).	Noted by the Applicant
1.2.1	The Applicant concluded that there would not be an adverse effect on the integrity (AEol) of any of the European sites and did not take the HRA any further at that stage.	The RSPB position is that it is not possible to conclude no AEol beyond reasonable scientific doubt and has been our position throughout discussions with the Applicant. This was the reason the Applicant was strongly encouraged to explore a range of compensation measures well in advance of the Examination. The need for a detailed derogation case was made by the RSPB and Natural England at meetings in February 2021 following the withdrawing of the original DCO application. This would have given the Applicant eight months prior to the start of the Examination to have progressed work to identify compensation measures. These concerns were raised further at the Preliminary Meetings in October 2021.	As outlined by the Applicant in their responses (including response to Q3.3.1.27 within the Comments on ExA's Third Written Questions (document reference 9.75, REP7-007) 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 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 then had to seek and develop other opportunities to provide compensatory/net gain habitat in a relatively short space of time.
European Sites Considered			

No.	Report Wording	Comment	The Applicant's Response
Table 2.1	The Wash SPA	<p>We note that golden plover is not listed as a feature in its own right. As we highlighted in our submissions to date, the 2001 SPA Review Site Account for The Wash states clearly in Section 2 (Qualifying species):</p> <p>“This site qualifies under Article 4.1 of the Directive (79/409/EEC) by supporting populations of European importance of the following species listed on Annex I of the Directive:</p> <p>During the breeding season;</p> <p>Common Tern <i>Sterna hirundo</i>, 152 pairs representing at least 1.2% of the breeding population in Great Britain (Count, as at 1993)</p> <p>Little Tern <i>Sterna albifrons</i>, 33 pairs representing at least 1.4% of the breeding population in Great Britain (5 year mean, 1992–1996) Marsh Harrier <i>Circus aeruginosus</i>, 15 pairs representing at least 9.4% of the breeding population in Great Britain (Count as at 1995)</p> <p>Over winter;</p> <p>Avocet <i>Recurvirostra avosetta</i>, 110 individuals representing at least 8.7% of the wintering population in Great Britain (5 year peak mean 1991/2–1995/6)</p> <p>Bar-tailed Godwit <i>Limosa lapponica</i>, 11,250 individuals representing at least 21.2% of the wintering population in Great Britain (5 year peak mean 1991/2–1995/6)</p> <p>Golden Plover <i>Pluvialis apricaria</i>, 11,037 individuals representing at least 4.4% of the wintering population in Great Britain (5 year peak mean 1991/2–1995/6)</p> <p>Whooper Swan <i>Cygnus cygnus</i>, 68 individuals representing at least 1.2% of the wintering population in Great Britain (5 year peak mean 1991/2– 1995/6)”</p>	<p>Golden plover has been assessed in its own right within the assessment process. In terms of its sensitivity to disturbance it is one of the two key species that is repeatedly disturbed and returns to the site. Therefore, an assessment of its energy usage was undertaken for this species, in its own right, in Section 7.2 of the Chapter 17 Marine and Coastal Ecology and Appendix 17.1 HRA update (document reference 9.59, REP5-006).</p>

No.	Report Wording	Comment	The Applicant's Response
		<p>(Text taken from p.216 of https://data.jncc.gov.uk/data/3634580a-cabc-4218-872f-8660a1760ad8/uk-spa-vol3-web.pdf.)</p> <p>The text within the 2001 SPA Review states that (emphasis added) "All migratory and Annex I waterbirds within an assemblage are qualifying species" (para 4.3.1, p.10 of the UK SPA Review 2001 Rationale document at https://data.jncc.gov.uk/data/3634580a-cabc-4218-872f-8660a1760ad8/uk-spa-vol1-web.pdf). Golden plover are Annex 1 species and therefore must be considered as a qualifying species.</p> <p>Our detailed comments on the status of golden plover have been set out in paragraphs 3.49 to 3.52 (pp.29-31) of our comments on the Applicant's Ornithology Addendum (REP4-026). This has not been captured within the RIES.</p>	
The Wash SPA and Ramsar site – Disturbance effects on bird species - general			
4.2.38	NE disagreed with the Applicant's characterisation of the period of disturbance being limited to 1-3.5 hours around high tide as minimising risk, and conversely considered that this period is when alternate sites will be most limited and therefore the most critical for roosting birds. They also considered that increased	The RSPB agrees fully with Natural England's position.	The RIES Report then acknowledges that the Applicant has responded to this position.

No.	Report Wording	Comment	The Applicant's Response
	<p>disturbance by a minimum of 20-25% due to a move to daily boat traffic, including an increase of 34% of days in the key winter period, was not insignificant and therefore should not be dismissed. NE and the RSPB [RR- 024] also raised concerns that the effects of pilot boat movements had not been fully considered in the assessment.</p>		
4.2.40	<p>NE considered [RR-021] that the Applicant's assumption that when redshank, oystercatcher, black-tailed godwit and shelduck leave the roost they are no longer disturbed was unsupported as there had been no monitoring of receiver roosts to understand disturbance risks and it could not be assumed that birds are able to occupy nearby alternate roosts or that they are not subject to additional energy depletion as a consequence of relocation. NE also considered that the characterisation by the Applicant of the anticipated increase in energy expenditure (from movement as a result of disturbance) as trivial for lapwing, golden plover and black-tailed godwit was an unsupported conclusion without supporting evidence that birds are</p>	<p>The RSPB agrees fully with Natural England's position.</p>	<p>The RIES Report then acknowledges that the Applicant has responded to this position.</p>

No.	Report Wording	Comment	The Applicant's Response
	<p>easily able to compensate for the additional energy needed. The RSPB also raised concerns about the potential effects of energy depletion [RR-024].</p>		
4.2.46	<p>The Applicant noted that the central part of The Haven (ie, between the application site and the MOTH) was not covered by WeBS counts and acknowledged that there was therefore a data gap in relation to its usage by waterbirds [REP2-006].</p> <p>However, it considered that the lack of WeBS coverage and lack of inclusion within the SPA designation reflected low ornithological importance. As it had not been identified as an area for which there were potential concerns about bird disturbance bird surveys had not been commissioned. The Applicant also noted that it is narrow, does not have extensive areas of saltmarsh, is not recognised by any designations for its bird interest and has a footpath extending along the stretch which has the potential for causing disturbance, particularly to roosting birds.</p>	<p>We responded on the Applicant's position that there was no need to survey the central section of The Haven was unfounded in our comments on the Applicant's response to our Written Representation (Paragraph 2.10, pp.6-8; REP4-025). The RIES does not capture the RSPB's comments on the Applicant's reasons for not conducting ornithological surveys along the central part of The Haven.</p> <p>In the summary of our position, we highlighted in section 2b (p.4; REP5-018) the species for which additional data needed to be collected to understand the full importance of The Haven and how they used the different areas. We have since further clarified this in Appendix 1 of our response to Third Written Questions (REP7-031), especially those species for which there was data deficiency. This is important given the presence of features of The Wash SPA and Ramsar site at the mouth of The Haven and in the area adjacent the Application site and the clear ability for features of The Wash SPA and Ramsar to move along the entire length of The Haven.</p>	<p>The information on potential sensitivity of the areas along The Haven also derived from a review of NE's sensitive features report for their assessment of potential for disturbance as a result of the England Coast Path. The report that discusses the section that includes The Haven (NE, 2018. Appraisal of Possible Environmental Impacts of Proposals for England Coast Path: The Wash: Sutton Bridge to Gibraltar Point) describes the known high tide roosts that were identified in their assessment (derived through review of data and consultation with various stakeholders, including RSPB). This does not include any specific roosting areas along The Haven beyond the RSPB reserves from The Wash, other than a mention of arable fields that may be important for roosting and foraging, particularly by Brent Geese, Lapwing and Golden Plover. This information was used by NE to draw a screening conclusion of no Likely</p>

No.	Report Wording	Comment	The Applicant's Response
		<p>We set out in our response on the Applicant's comments on our Written Representations (Paragraph 2.10, p.6; REP4-025) why the Applicant's position that the central part of The Haven was not of ornithological interest were unfounded. The SPA and Ramsar boundaries would have been set on the available information at the time of designation. This knowledge has since developed, and species abundance and distribution have changed over time. WeBS sectors will have been aligned to the SPA and Ramsar boundaries as a pragmatic approach to providing coverage for long-term monitoring of waterbird trends over time and in a way that would provide reasonable certainty that enough volunteer WeBS counters could be secured for sectors to be surveyed. WeBS has been established in order to achieve the long-term monitoring of species trends within The Wash. It is useful in assessing the ornithological importance of sites, but will not on their own provide the level of information needed to inform the Habitats Regulations Assessment without being supplemented by appropriate site- specific data collected for the purposes of assessing the DCO Application.</p> <p>This is borne out when looking at the Final Waterbird Survey Report (Tables 4-2 & 4-3; REP8-018) where surveys by the Applicant have recorded black- tailed godwits, redshanks, golden plovers, and lapwings in numbers greater than recorded in WeBS sectors alone.</p>	<p>Significant Effect of the proposals on any designated site.</p>

No.	Report Wording	Comment	The Applicant's Response
		<p>Critically, the Applicant stated that “During the initial development of the survey there was no information to indicate that there were any additional areas of importance for birds.” The fact that no information was available for areas functionally linked to The Wash SPA and Ramsar site within the central section of The Haven should have triggered the need for survey work as a high priority to ensure there would be no evidence gaps in their assessments, but the Applicant chose not to collect this information. This had been highlighted to the Applicant as far back as August 2019 when we responded to their Preliminary Environmental Information Report:</p> <p><i>“Irrespective of the age of the data, if no bird data is currently held for the area of intertidal habitat that will be directly impacted by the development the RSPB expects additional data to be collected in advance of a DCO application to ensure any decisions are based on up-to-date and appropriate evidence” (as set out in paragraph 7.84 of our Written Representations, p.70; REP1-060).</i></p> <p>The Applicant's data have only served to justify the concern that ornithological surveys are essential to understand waterbird use along the whole of The Haven and that the current evidence base is insufficient to conclude that there would not be an adverse effect on integrity of The Wash SPA and Ramsar site beyond reasonable scientific doubt.</p>	

No.	Report Wording	Comment	The Applicant's Response
4.2.47	<p>In response to ISH2 Item 5 a) (as set out in REP3-023) the Applicant confirmed that there were three locations where birds using The Haven could be disturbed by vessels at high tide: the MOTH, the application site and the central part of the channel. It considered that the greatest potential for vessel disturbance was at the MOTH, which lies within the SPA and Ramsar site boundary, followed by the application site, and then the central channel. It considered that there was a lack of evidence to demonstrate that the central part of The Haven had more than negligible value to waterbirds but recognised that there were data gaps and had undertaken an initial survey of non-breeding birds there.</p>	<p>The Applicant's response further supports the need for the central section of The Haven to have been surveyed. The Applicant maintains that "there was a lack of evidence to demonstrate that the central part of The Haven had more than negligible value to waterbirds". This is the same position they held regarding the area around the Application site which meant they commissioned no ornithological surveys for the Preliminary Environmental Information Report. Following commissioning of ornithological surveys at the Application site, significant numbers of redshanks and ruffs, as well as the presence of other features of The Wash SPA and Ramsar, have been observed. This highlights the importance of undertaking surveys along all areas of The Haven. The absence of evidence is not an excuse to do nothing, rather it reflects the need to ensure that a suitable evidence base has been collected upon which robust conclusions regarding impacts to The Wash SPA and Ramsar can be made. This is in line with the evidence needed to meet the tests of the Habitats Regulations. The issue of the evidence gap has been noted in our various submissions, notably our Written Representations (REP1-060) and comments on the Ornithology Addendum (REP4-026).</p>	<p>The Applicant notes the RSPB's response. Please also see responses to 4.2.46 and Table 28 above with regard to the central section of The Haven.</p>
4.2.48	<p>The Applicant considered that it had demonstrated through its surveys that under baseline conditions a moderate number of birds roosting at the MOTH (mostly qualifying interests of the SPA and Ramsar site) and the application site (mostly redshank and SPA assemblage waterbirds such as ruff and gull species) were regularly disturbed by</p>	<p>We note that the Applicant in their Written Summary of the Applicant's Oral Case for Issue Specific Hearing 2 (p.16; REP3-023), that "...the magnitude of the existing vessel disturbance that occurs at the MOTH was not fully appreciated by anyone..." Given that the surveys</p>	<p>The Applicant stresses that, while no new evidence was provided regarding bird and vessel use of the anchorage since the RSPB raised issue with this coverage gap (for the reasons outlined at Deadline 6 (document reference 9.68, REP6-032 pp 52 2.14-2.15)), evidence of vessel and bird use of the open waters of The Wash close to the anchorage was indeed provided within project-specific 'Changes In Waterbird Behaviour' surveys at the mouth of The Haven. The vantage point during these surveys allowed observation of birds and vessels around the anchorage insofar as any other land-based protocol would have permitted. The expected increase in vessel numbers that could potentially use the designated anchorage zone is known as this will be the increase in vessels transiting The Haven as a result of the proposed Facility. However, it is not expected that BAEF vessels will need to use the anchorage area as often as the commercial vessels using the Port of</p>

No.	Report Wording	Comment	The Applicant's Response
	<p>cargo vessels and pilot vessels transiting The Haven. It stated that these birds exhibited small-scale behavioural responses, either moving to an alternative roost location up to a few hundred metres away or returning to the original location a minute or so after a vessel had passed.</p>	<p>at the mouth of The Haven observed significant baseline levels of vessel disturbance on waterbirds, this further highlights the need to understand the full impact of disturbance along the length of The Haven, as stated in our Written Representations (Section 7e, pp.64-77; REP1-060) and comments on the Ornithology Addendum (e.g. paragraph 2.23, p.13; REP4-026).</p> <p>We have also identified that the Applicant's position ignores the vessel activity out to the Port of Boston anchorage area. The RIES records our comment at paragraph 4.2.45, but not mentioned again with respect to features of The Wash SPA and Ramsar site. It remains unclear how many vessels use the anchorage, what increase in use would be expected from the Application, and what impact could arise from the increased vessel movements on features of The Wash SPA and Ramsar. The Applicant has submitted no additional evidence to consider impacts to SPA features known to use that area of The Wash, namely, common scoter, eider, goldeneye and red-throated diver (a feature of the waterbird assemblage). This significant issue therefore remains outstanding.</p>	<p>Boston however, as it is understood that BAEF vessels (which may comprise a more predictable 'liner' service) could be managed such that arrival times would routinely match the tidal window (by adjustments of transit speed from the port of departure or adjustments of departure time from that port).</p>
4.2.50	<p>The Applicant addressed NE's and the RSPB's concerns about energy usage by birds disturbed by vessel movements in Section 7 of its D5 HRA Update [REP5-006]. Section 7.2 provides estimates of worst case energy budget expenditure arising</p>	<p>Having reviewed the Applicant's evidence, we note that the approach adopted to assessing the effect of disturbance by the Applicant is mechanistic and does not account for the full ecological impact that disturbance can have on waterbirds. The issue has not been satisfactorily addressed and remains unresolved. We have provided comments on this issue in our cover</p>	<p>The Applicant considers that the assessment was suitable for the requirements to determine the additional energetic requirement per disturbance activity.</p>

No.	Report Wording	Comment	The Applicant's Response
	<p>from the Proposed Development for redshank, black- tailed godwit, dark-bellied brent goose, lapwing and golden plover at high tides. Based on research by Collop et al. (2016), redshank were predicted to expend an additional 0.186% of their daily energy requirement as a result of displacement from vessel disturbance at the MOTH, and 2.19 to 2.46% at the application site. Black-tailed godwit, dark-bellied brent goose, lapwing and golden plover were expected to expend an additional 0.29%, 0.077%, 1.77% and 1.78%, respectively, as a result of displacement at the MOTH. It was determined that the Proposed Development would place energetic demands of less than an additional 1% of daily energy requirements (but on an additional 25% of tides) on species prone to one-off displacement (redshank, black-tailed godwit and dark-bellied brent goose at the MOTH); and energetic demands of an additional 1-2% of daily energy requirements on species prone to repeat displacement (redshank at the application site and lapwing and</p>	<p>letter submitted at D8 (REP8-028). This remains an outstanding issue.</p>	

No.	Report Wording	Comment	The Applicant's Response
	<p>golden plover at the MOTH). It was concluded that the energetic demands of responses to disturbance arising from the Proposed Development would not be sufficiently severe or apply to a sufficient number of individuals to impact survival or subsequent breeding success of the SPA waterbird populations.</p>		
The Wash SPA and Ramsar site – Disturbance to birds at the MOTH			
4.2.52	<p>NE stated [RR-021] that they had significant concerns about the feeding/roosting area at the MOTH. They considered that disturbance to roosts at the MOTH could affect 24 of the SPA species including eight at greater than 1% of site population. This included over 20% of the SPA population of golden plover and black-tailed godwit and 7.5% of the lapwing SPA population. They also noted that significant numbers of the SPA/Ramsar waterbird assemblage use this area at low tide, including up to 28% of the black-tailed godwit SPA population. NE highlighted that risk pathways arising from repeated boat movements would be likely to result in changes to bird use</p>	<p>The RSPB agrees with Natural England's position. However, it is possible that impacts from vessels wake is greater along The Haven for foraging and roosting birds than in the approaches to the mouth of The Haven. This issue has become even more significant following confirmation that vessel speeds along The Haven cannot be regulated to the proposed 6 knots and can be approximately 12 knots (as set out in our cover note at Deadline 8; REP8-028). The increased speeds could have implications for the Applicant's Habitats Regulations Assessment with respect to direct impacts on waterbirds and indirect impacts due to erosion impacts of intertidal mudflat and coastal saltmarsh. This remains an outstanding issue.</p>	<p>The Applicant stresses that wave wash was observed during project-specific surveys to account for only a small minority of causes of vessel-based disturbance to birds (accounting for 10.6% of individual birds demonstrating a walk or flight response across all surveys at all locations [Application site and mouth of The Haven MOTH], 2,200 individuals out of 20,831).</p> <p>The proportion of responsive individuals observed responding to wave wash rather than visual presence, was lower at the Principal Application Site (6.1%, 56 of 910 individuals), where the Haven was narrow, than at the MOTH (10.8%, 2144 of 19,921 individuals). (The Applicant does acknowledge that a</p>

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	<p>behaviours in this area and usage of this area at high tide.</p> <p>They considered that the data suggested that this results from visual/noise disturbance from the boats rather than from their wake.</p>		<p>greater proportion of individuals responding to wave wash at the Principal Application Site, did so in response to cargo vessel wave wash (27 individuals of 56 at the Principal Application Site, 7 individuals of 2144 at the MOTH).)</p> <p>Even among responses elicited by the pilot boats, which caused most of the wave-wash-based disturbance across locations and visits, visual presence was reported to be the more prevalent cause of a disturbance response (3,160 individuals observed to respond to visual of pilot boat compared to 2,124 individuals responding to wave wash). Overall, there is limited evidence that cargo vessel wave wash is a more significant issue within The Haven where it is narrower, and visual presence is indicated to be the dominant cause of flight responses.</p> <p>The Response to Environment Agency's queries on Estuarine Processes (document reference 9.44(1), REP9-024) submitted at Deadline 9 includes an assessment on erosion without a vessel speed limit which concludes "The conclusion is that the increase in</p>

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			erosion created by doubling the ship wash events on the opposite bank would be negligible.". This assessment has been agreed with the Environment Agency in the SoCG submitted at Deadline 10 (document reference 8.2(3)).
4.2.56	NE stated at D2 [REP2-045] that it was agreed that the risk at the MOTH was to roosting birds subject to disturbance by increased vessel traffic, and that this could result in species being displaced from roosts to alternative sites and individuals of some species being subject to repeated disturbance because they do not relocate. They noted that Appendix A1 Table 2 of the Ornithology Addendum indicated that, of the SPA waterfowl assemblage, some 29,395 birds of at least 22 species are at risk of exposure to disturbance, with 20,208 birds of 22 species in the most sensitive area. Disturbance at high tide would increase from approximately 75-80% to 100% for those species that relocate in response to large vessel disturbance events, and for those species that return to the roosts and are subject	<p>The RSPB agrees with Natural England's position.</p> <p>We also have concerns that at lower tidal states some additional waterbird foraging and bathing activity could be affected by vessel disturbance.</p> <p>This remains an outstanding issue with the Applicant.</p>	At lower tidal states there would not be any disturbance from commercial vessels as their draft is too large to transit The Haven.

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	<p>to repeated disturbance the number of events per annum would rise from the current baseline of 840 to approximately 1160. NE noted that the majority of disturbed individuals abandon the roosts in response to vessel passage and do not return for the rest of the high tide period.</p> <p>They considered therefore that the site's conservation objectives could be affected in respect of birds' individual fitness as a consequence of increased energy expenditure, and in relation to the distribution objective as a consequence of the loss (as a result of disturbance events occurring on 100% of tides) of a significant roost (at the MOTH).</p>		
4.2.59	<p>NE also advised that the titles within Table 5-1 (Screening of SPA qualifying species for further assessment) suggested that the calculated % level of disturbance was based on the number of birds recorded as being displaced during the surveys as a proportion of WeBS counts. NE considered that this approach was incorrect (unless the surveys reliably matched local</p>	<p>This is a really important point and we support fully Natural England's position.</p> <p>As for paragraph 4.2.46 above, we note that for some SPA features the Applicant's counts are actually greater than the WeBS counts, for example, black-tailed godwits, redshanks, golden plovers and lapwings (Tables 4-2 & 4-3 of the Final Waterbird Survey Report; REP8-018). This reflects the fact that WeBS counts are undertaken on a monthly basis and over a long-term period, which</p>	<p>The assessment identified how many birds were subject to disturbance at each vessel movement that was monitored. The comparison was undertaken to determine if these activities were disturbing significant populations not whether they were disturbing all of the birds present at any one time.</p>

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	<p>WeBS populations) and that the analysis needed to look at the number of birds disturbed as a proportion of those recorded in the bird surveys and then consider how this proportion of the population compared to WeBS counts from the survey area. NE sought clarification and stated that any changes may result in a change to the species to be taken forward for appropriate assessment. They also noted that a number of species not taken forward had a high percentage disturbance response and considered that impacts on these species should be considered further.</p>	<p>allows an adequate assessment of the trends in bird numbers over time. However, WeBS data alone does not provide the full picture. The fact that the Applicant's surveys have recorded species in numbers greater than previously recorded, also demonstrates the need to ensure site-specific surveys of a suitable duration and focus are undertaken in support of the DCO Application.</p> <p>It is also important that the cumulative impact of vessel disturbance along the whole of The Haven is assessed. The combined number of birds affected along the length of The Haven must be considered to provide an accurate reflection of how significantly SPA features are impacted. This impact will be from vessel movements in-combination with disturbance from other activities that also cause disturbance such as dog-walking, jet skis, aircraft etc. We set out our position on the need to consider impacts along the length of The Haven out to the Port of Boston anchorage area in our Written Representations (REP1-060), comments on the Ornithology Addendum (REP4-026) and our comments on the Third Written Questions (REP8-029). Whilst we recognise that our concerns about recreational activities have been noted within the RIES, this remains an outstanding issue.</p>	<p>Cumulative impacts consider other proposed projects and plans and not the baseline situation. It is understood to be the task of the Statutory Nature Conservation Body to undertake assessments of the baseline conditions and identify any issues that require management.</p>
4.2.63	<p>The Applicant provided an assessment of effects on the SPA/Ramsar site bird assemblage based on the WeBS counts and the Applicant's high tide baseline</p>	<p>See comment on paragraph 4.2.59 above.</p> <p>The Applicant has asserted that there are alternative roost sites and that they would be able to accommodate any displaced birds. The Applicant has</p>	<p>The Applicant maintains its positions outlined in the row above, and its position from Deadline 5 regarding energetics of disturbance, repeat disturbance, and the use and quality of</p>

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	<p>observation sessions (November 2019 – March 2021) in its D5 HRA Update [REP5- 006]. It anticipated that 1% of the 5-year mean peak assemblage count were likely to be disturbed on approximately 12.5% of high tides, up from approximately 9% under baseline conditions. The Applicant concluded that the potential additional vessel disturbance resulting from the Proposed Development would not compromise the conservation objectives for the assemblage. This was based on the premise that the assemblage birds that use the MOTH during the high tide period, when they would potentially be at risk from vessel disturbance, formed only a small proportion of the assemblage, and that disturbed birds relocate to a nearby alternative location (within 1km) or 'quickly' (within approximately two minutes) return to the original roost site once the vessel has passed. Notwithstanding, the provision of one or more artificial roost sites in the vicinity of the MOTH as part of the proposed BNG measures was highlighted as a</p>	<p>not addressed the concerns identified by Natural England in paragraph 4.2.40 of the RIES. The RSPB also raised similar concerns in our Written Representations (REP1-060) and comments on the ornithology Addendum (REP4-026).</p> <p>This remains an outstanding issue that has not been addressed by the Final Waterbird Survey Report (REP8-018).</p>	<p>alternative sites close to the MOTH by waterbirds (document reference 9.59, REP5-006), which it considers already addresses the concerns identified by NE in paragraph 4.2.40 of the RIES.</p>

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	measure that would benefit the waterbird assemblage.		
4.2.65	<p>The results are set out in Section 4 of the survey report. Table 2 presents the peak count for all species where a behaviour change was observed. 21 bird species changed their behaviour due to the presence of boats or boat wash. Based on the latest available WeBS data six species were observed to be disturbed at levels over 1% of The Wash 5-year average; dark-bellied brent goose (8.49%), ruff (65.22%) lesser black backed gull (8.21%), common sandpiper (8.11%), oystercatcher (4.03%), lapwing (3.70%) and great crested grebe (1.16%). Changes in behaviour were seen to be caused by boat presence for 99.88% of the total birds across all the surveys (stated as three rather than five surveys) with disturbance from boat wash disturbing 0.12% (100% of which was from pilot boats). Large cargo ships, pilot boats and small fishing vessels were responsible for disturbance of 52.90%, 47.04% and 0.06%, respectively of all birds. 100% of the</p>	<p>These results further highlight the importance of The Haven for features of The Wash SPA and Ramsar. The more survey work that is completed the more species are identified to be affected by disturbance from vessels in significant numbers.</p> <p>The additional surveys demonstrate ongoing disturbance impacts and further justifies the importance of having agreed and suitably detailed plans to demonstrate that the criteria for designing compensatory measures will be met (as set out in Table 12 of our Written Representations (REP1-060) and paragraph 4.3 of our comments on the in-principle compensation measures (REP4-028)). It is essential that measures will be targeted, effective, technically feasible, of suitable extent, appropriately located, have sufficient time to be developed, and have legal and financial security for their long-term implementation. The RIES does not highlight the compensation measures criteria, which would be helpful.</p> <p>The latest Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures document (REP8-005) does not address the RSPB's concerns, as significant detail needed to demonstrate the compensation measures criteria will be met is being left until post-consent. This is not acceptable as it gives no confidence that the integrity</p>	<p>The Applicant acknowledges the importance of The Haven for features of The Wash SPA and has done so since the original HRA (document reference 6.4.18, APP-111) and HRA addendum (document reference 9.13, REP1-026), and considers that more recent survey coverage has not affected the feature species and assemblage originally identified for Likely Significant Effect and Appropriate Assessment.</p> <p>The Applicant also maintains its position at Deadline 8 that the Without Prejudice Derogation Case (document reference 9.30(2), REP8-006) provides the most detail possible at this stage regarding how in-principle compensation measures criteria will be met.</p>

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	birds present were disturbed by the large cargo ships. The report recommended that the main focus on mitigation should be for disturbance to wading birds, dark-bellied brent goose and ruff.	of the National Sites Network will be maintained. This remains an outstanding issue.	
The Wash SPA and Ramsar site – Disturbance to birds at the application site			
4.2.69	The Applicant responded within REP1-035 that the buffer zones for works to avoid and minimise disturbance to species were taken from Cutts et al (2008), which provides peer reviewed data on disturbance distances for waders, but that site-specific surveys were also used to provide site-specific information on actual disturbance levels.	<p>It remains unclear if 250m would be appropriate. Impacts from vessel movements have generated displacement out to at least 800m. More certainty is needed that the 250m buffer would work and be enforceable.</p> <p>There has been no response from the Applicant that demonstrates works could be stopped and restarted if numbers of birds present exceeded any thresholds that might be set. We raised this concern in our Written Representations (para 7.49, pp.59-60; REP1-060) and Summary of comments on Issue Specific Hearing 2: Environmental Matters (paragraph 3.9, p.4; REP3-035). The RIES does not highlight our concern regarding the enforceability of such a mitigation measure. We have not seen a direct response on this issue by the Applicant to confirm how such a measure would affect construction activities and be enforceable. This information is essential to determine whether such an approach would be practical and effective. This remains an outstanding issue.</p>	The Applicant has responded to this comment several times but in detail in the update to the OLEMS (document reference 7.4(2), REP7-037) which details in paragraph A1.4.2 the actions to occur should numbers of birds being disturbed exceed the thresholds. It also includes for extending this zone of 250m (which was recommended for similar monitoring undertaken by the Environment Agency as an appropriate distance and is also the distance given for redshank in the Waterbird Disturbance Mitigation Toolkit (IECS 2013)) if birds are observed to be disturbed beyond this distance. This section also discusses the action of stopping noisy activities should there be 1% or more of the current 5-year peak mean number of any target species showing such signs of disturbance. This measure would be enforceable through

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			<p>implementation of the final LEMS under Requirement 6 of the draft DCO.</p> <p>It is concerning that RSPB have not considered the responses that have been provided to their previous questions and comments.</p>
4.2.72	<p>The RSPB commented [REP3-033] that it was unclear whether the activities proposed by the Applicant would be of a similar nature to the GI works undertaken by the EA and requested more detail on the similarities and differences between the works, such as the scale and duration of the works and the equipment required.</p>	<p>We have seen only more information about noise levels. This is not the same as addressing our query about the nature and scale of the proposed works and whether they are similar to the Environment Agency's ground investigation works. This query has not been addressed by the Applicant and remains an outstanding issue.</p>	<p>The proposed monitoring is planned as adaptive so that it can take account of any requirements to extend the area or thresholds for monitoring and management. It is difficult to compare different activities as noise levels will vary considerably depending on the season, the ground conditions, the activities and the bird sensitivities. This is why an adaptive approach is taken.</p> <p>Geotechnical investigations are noisy activities (up to 98dBA for trial trenches) and as such it was considered to be a similar comparison as the construction works are predicted to result in a noise level of up to 110dBA (taken from estimates of other piling activities) at source from piling (expected to be the noisiest activity). Piling would only be undertaken outside of the key periods when birds are present.</p>
4.2.86	<p>It was considered apparent that there were alternative roost sites</p>	<p>The Applicant has asserted that there are alternative roost sites and that they would be able to</p>	<p>The Applicant maintains its position from Deadline 5 regarding energetics of</p>

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	<p>available to some of the assemblage species, (ie bar-tailed godwit, cormorant, curlew, herring gull, lesser black-backed gull, ruff and shelduck), which relocated 200-400m away from the application site, within Sections A and B (where disturbance had been recorded). Roosting cormorant and shelduck that were disturbed by vessels moved 500m or more to a new roost site. In a significant proportion of instances gull species and ruff returned to their original location after having taken flight, so there was a likelihood of repeat disturbance within a tide. It was considered that the flight distances to alternative locations were short and would not have a significant effect on the birds' energy usage.</p>	<p>accommodate any displaced birds. The Applicant has not addressed the concerns identified by Natural England in paragraph 4.2.40 of the RIES. The RSPB also raised similar concerns in our comments on the Ornithology Addendum (Sections 2l, 2n, and 3, and the Appendix Table; REP4-026). We particularly highlight paragraph 2.53 of our comments on the Ornithology Addendum which highlights that roost site availability will vary with the height of the tide. The smaller, neap tides may allow more areas for roosting and even leave some areas for foraging, whereas the higher, Spring tides may leave very few roost sites available and mean that space becomes limited to accommodate all birds. This highlights the importance of understanding the behaviour of birds across all tidal states and throughout the year in order to fully understand the ecological effect of disturbance and displacement from vessel movements alone and in combination with wider activities.</p> <p>We also highlighted in our Written Representations (paragraph 7.87 of Written Representations, p.70; REP1-060) the need to consider the impact of displacement against a wider set of criteria than has been considered by the Applicant:</p> <ul style="list-style-type: none"> The additional distance birds will need to move to return to their preferred feeding location. This will likely be as close to the roost site as possible, especially in winter when the ability 	<p>disturbance, repeat disturbance, and the use and quality of alternative sites close to the MOTH by waterbirds (document reference 9.59, REP5-006), which it considers already addresses the concerns identified by NE in paragraph 4.2.40 of the RIES. The Applicant acknowledges the spring-neap tide variation in roost site availability within the same document.</p> <p>In response to bullet points raised from RSPB's Written Representations, the Applicant highlights that regarding the first two points, the need for birds to return to their foraging location is appreciated but the distances involved in returning from vessel disturbance are typically less than 1km according to project-specific survey data and as such are fully manageable by birds' existing energy budgets. Regarding the point relating to capacity, the number of birds using the alternative roost sites is not expected to increase. With respect to the points relating to receiver roosts and the need for multiple alternative sites, the Applicant is aware that this situation is what the birds are currently adjusted to, in that they already use different roost sites depending on the environmental</p>

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		<p>for birds to be able to get back out feeding as soon as the mudflats re-emerge is critical.</p> <ul style="list-style-type: none"> • The impact that the displacement away from preferred foraging areas could have overall fitness through the winter and for the breeding season. We highlight the importance of this for redshank and Natural England have highlighted the importance of this for black-tailed godwit in their Relevant Representation/Written Representation. • The ability of additional roost sites to accommodate displaced birds without adding pressure to birds already using it. • The needs of birds to use different roost sites in different conditions (for example at different times of the day/night, in different seasons, or in different weather conditions) such that a range of roost sites are needed for birds to survive the whole winter and allow resilience to changing conditions. • The season when disturbance occurs. Impacts during the winter will be more severe than during the summer. <p>We highlighted the significant impact this could have on the fitness of features of The Wash SPA and Ramsar. This is still an outstanding issue that has not been addressed by the limited reporting on roosts in the Final Waterbird Survey Report (REP8-018). It is not clear that this has been fully reflected in the RIES.</p>	<p>conditions and this is not expected to change. Regarding seasonal variation in impact, the Applicant has acknowledged winter as the critical period due to peak abundance of many species combined with greatest thermo-neutral energy requirement and potential for estuarine food depletion (Alves et al. 2013, (Alves, J. A., Gunnarsson, T. G., Hayhow, D. B., Appleton, G. F., Potts, P. M., Sutherland, W. J., & Gill, J. A. (2013). Costs, benefits, and fitness consequences of different migratory strategies. Ecology, 94(1), 11-17.)).</p> <p>With regard to the vessel impact on waterbirds and associated modelling, the Applicant maintains its position at Deadline 5 and considers the modelling of energetics of disturbance from vessels under projected vessel traffic conditions (section 7, document reference 9.59, REP5-006) to constitute modelling relevant to the concerns expressed during Examination.</p>

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		<p>In our Written Representations (paragraphs 7.59 and 7.107; REP1-060), we also queried about the time between vessel movements, what frequency will they occur and how will large vessels overlap with smaller vessels.</p> <p>Clearly along The Haven small and large vessels have an impact and it remains unclear how this in-combination impact has been accurately assessed to understand the full duration of disturbance along the whole of The Haven prior to, and after, high tide. It is the additional disturbance, in combination with existing disturbance, that must be assessed and no vessel modelling has been undertaken to consider this issue in detail. It is not clear that this has issue been fully reflected in the RIES. This also remains an outstanding issue.</p>	
4.2.95	<p>The Applicant responded [REP6-032] that at the application site ringed plover, lapwing, cormorant, mallard, black-headed gull, herring gull, lesser black-backed gull and great black-backed gull, which formed part of the SPA non-breeding waterbird assemblage, had been considered in the (shadow) appropriate assessment. Dunlin, turnstone, oystercatcher, black-tailed godwit, curlew, grey plover and shelduck (SPA features) had not been included as counts had</p>	<p>Although small numbers of features may have been recorded it remains important that such species are still included in the assessments. This is important to ensure a full assessment of the waterbird assemblage. For species such as shelducks and turnstones this is even more important as they are SPA features which have restoration targets; declines being due to site-specific issues, as reported in our Written Representations (Sections 4d and 4e, pp.39-43; REP1-060). It is not clear that the RIES references the Supplementary Advice on Conservation Objectives that define specific targets for each of the features of The Wash SPA and Ramsar.</p>	<p>The Applicant maintains its position that the species and assemblage features identified for Likely Significant Effect and Appropriate Assessment were suitable, and that the approach was robust and supported by the range of species subsequently reported to be most prevalent when the survey area was expanded to include the intervening section of The Haven.</p>

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	<p>recorded them infrequently and in small numbers.</p>	<p>We again reiterate that any assessments must undertake a cumulative assessment of impacts along the entirety of The Haven in order for the full impact of vessel disturbance, alone and in combination with other activities, to be accurately assessed. We refer to our detailed comments on paragraphs 4.2.46, 4.2.47, 4.2.48 and 4.2.59 of the RIES above.</p>	
<p>The Wash SPA and Ramsar site – Disturbance to birds along The Haven</p>			
<p>4.2.99</p>	<p>The Applicant addressed the concerns about impacts on birds using The Haven between the application site and the MOTH, ‘the central part’ of The Haven, at D5 [REP5-006]. It explained that as data for this stretch of The Haven was not available it was undertaking Winter 2021/2022 counts of SPA and assemblage waterbirds. It stated that in the absence of information on whether SPA populations would be impacted it had assumed that this stretch of The Haven qualified as SPA functionally linked land. It concluded that the proposed biodiversity BNG/compensation measures would provide alternative habitat for any birds that were displaced by any additional disturbance. It confirmed that the</p>	<p>Whilst the Applicant has responded to the RSPB’s comments about the lack of surveys along the central part of The Haven this does not mean that they have been “addressed”, for the reasons outlined in response to paragraphs 4.2.46, 4.2.47, 4.2.48 and 4.2.59 of the RIES above. The additional information does not adequately address the outstanding concerns regarding gaps in survey coverage. This remains an outstanding issue.</p>	<p>The Applicant acknowledges that the survey period for the intervening section of The Haven itself covers a single (winter) season (as-priority as this is the season when peak numbers would occur), but considers that the clear similarities ecologically between this section and the Principal Application Site mean that this section can be considered alongside the longer-term data for the Principal Application Site for understanding the variation and composition of the bird assemblage within The Haven.</p>

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	<p>winter bird abundance and distribution surveys were being undertaken from December 2021 to March 2022 and the data would be made available during late March 2022. It acknowledged in REP5-008 that there was a lack of data for this area and highlighted that it was not included in the WeBS counts.</p>		
Habitat mitigation area			
4.2.107	<p>The Applicant agreed [REP1-035] that ongoing maintenance would be necessary and explained that it would be detailed further in the updated OLEMS to be submitted at D2. It stated that there would be no change in the footpath adjacent to the HMA and it would not be any closer to the works area than previously, when the area has been used as a roosting site. Therefore, it was not expected that there would be any additional disturbance.</p>	<p>The Applicant has not undertaken any survey effort to assess the level of disturbance at different times of day and year to determine if there would be significant impacts that would need to be managed. This remains an outstanding issue.</p>	<p>NE assessed the potential for disturbance to SPA/Ramsar site birds through use of the footpath in their report on potential for Likely Significant Effect due to the England Coast Path (NE, 2018. Appraisal of Possible Environmental Impacts of Proposals for England Coast Path: The Wash: Sutton Bridge to Gibraltar Point). The report concludes no Likely Significant Effect of the proposals on any designated site. The baseline situation for the footpath and any disturbance is therefore not considered to be significant. The proposed Facility is not likely to change the use of the footpath.</p>
4.2.111	<p>The Applicant also stated that recent analysis of the Ornithology Addendum had raised questions</p>	<p>The RSPB has addressed this in our comments on response to Q3.3.1.31 in the Third Written Questions (pp.16-23; REP8-029). We highlighted a number of</p>	<p>The Applicant maintains its position at Deadline 5 and that the analysis in</p>

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	<p>about whether the redshank at the application site were all part of the SPA assemblage and that although there was likely to be some mixing of populations the extent was unknown. It agreed that the distance between The Wash SPA boundary and the application site, combined with individual redshanks' winter site fidelity once a successful daily and seasonal strategy has been established, meant that redshanks present at the application site during high tide roosting could include individuals which foraged within the SPA, and conversely that redshanks foraging at the application site when mudflats are exposed could include individuals which roosted within the SPA. The Applicant stated that on this basis it had assumed in the HRA and the Ornithology Addendum that redshanks present at the application site have connectivity with the SPA.</p>	<p>inaccuracies in the Applicant's presentation of the two studies it used in support of its position that the Application site is not functionally linked to The Wash SPA and Ramsar site. Both studies clearly demonstrate that redshanks can readily move along The Haven from the Application site to the mouth of The Haven. We also disagreed with the Applicant's suggested conditions for determine whether a site is functionally linked land, as they do not apply the Habitats Regulations approach correctly.</p>	<p>question, which underlies this position, is robust.</p>
Worst case scenarios and in combination effects			
4.2.173	<p>The Applicant responded [REP6-032] that its use of decimalised values enabled a more accurate estimation of average daily rates of disturbance. The arrival of vessels</p>	<p>The RSPB also disagrees with the averaging of vessel movements along The Haven. We set out our position in our comments on the Ornithology Addendum (Section 2m, pp.16-17; REP4-026). Overall we consider the approach overly simplistic and fails to</p>	<p>The assessment is based on the proposed increase in vessel numbers which is 1.6 per tide. The baseline usage of the site varies considerably over the years and also on a daily basis.</p>

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	<p>associated with the Proposed Development at the Port Of Boston would be at evenly spaced intervals, as occurred with commercial vessels currently. The assessment was based on a worst case scenario of 5 vessels (total)/high tide on 100% of high tides, although that was considered to be unrealistic and it was anticipated that vessels would actually continue to utilise 75-80% of high tides as currently. The assessment had assumed a worst case of 100% usage of high tides at night by vessels associated with the Proposed Development.</p>	<p>consider the full scale of impact. Any assessment must be based on the worst-case scenario of 5 vessels per tide.</p> <p>As mentioned for paragraph 4.2.86 of the RIES above, in our Written Representations (paragraphs 7.59 and 7.107; REP1-060), we also queried about the time between vessel movements, what frequency will they occur and how will large vessels overlap with smaller vessels. Clearly along The Haven small and large vessels have an impact and it remains unclear how this in-combination impact has been accurately assessed to understand the full duration of disturbance along the whole of The Haven prior to, and after, high tide. It is the additional disturbance, in combination with existing disturbance, that must be assessed and no vessel modelling has been undertaken to consider this issue in detail. It is not clear that this has issue been fully reflected in the RIES and remains an outstanding issue.</p>	<p>The Port of Boston have provided confidence in their ability to manage vessels navigating The Haven and state in their deadline 7 submission (REP7-030) that, <i>“Overall, the Port is content that the BAEF will not cause any significant impact on other river users (including Port of Boston vessels, fishing vessels and others), and that where practicable measures for mitigating impact will be introduced or reinforced.”</i></p> <p>The port has a wide range of tools available to it in order to manage vessels, interactions with each other and to minimise disturbance to all vessels. Significant changes to timing or duration of disturbance from fishing vessels is not predicted with a high degree of confidence. Even further confidence can be applied to this matter through the provision in the Navigation Management Plan Template (document reference 9.80(1), REP8-011) that states the purpose of the NMP (in part) is to ‘take due regard to risk to birds’. This is secured by condition 14(3)(e) at Schedule 9 (Deemed Marine Licence) to the DCO, which states that, <i>“The</i></p>

No.	Report Wording	Comment	The Applicant's Response
			<p><i>navigation management plan must include details of... measures for managing disturbance to designated bird species developed in accordance with the process in the Navigation Management Planning Process: Risk to Birds".</i></p>
4.2.176	<p>The Applicant acknowledged that night-time observations on baseline vessel disturbance were desirable but pointed to the practical difficulties of observing birds during the hours of darkness [REP2-006]. It confirmed that the assessment assumed that night-time disturbance was similar to that during the daytime.</p>	<p>Whilst there may be challenges to night-time assessment, technology and the ability to survey sites at night has become easier. The key factors are:</p> <ul style="list-style-type: none"> • can specific species be identified, and • whether disturbance can be assessed. <p>Both of these are possible.</p> <p>Whilst it may prove more difficult to assess all species observed, key species are identifiable at night and infra-red surveys are becoming a more regular part of development surveys in locations where species such as golden plovers and lapwings and other waders that can forage at night occur.</p> <p>Tagging of birds using GPS transmitters also allows an assessment of the use of different areas by birds during the day and night (e.g. paragraph 2.33 of our comments on the Ornithology Addendum, pp.14-15; REP4-026).</p> <p>We have already highlighted a number of species that could forage at night, including redshanks and black-tailed godwits (Section 2i of our comments on the</p>	<p>Worst case scenarios were used for the assessment. Visual disturbance is less likely to occur at night but was considered to be the same as during the day to include this worst-case assessment.</p>

No.	Report Wording	Comment	The Applicant's Response
		<p>Ornithology Addendum, pp.14-15; REP4-026). A number of ecological consultancies also actively promote the fact that nocturnal surveys close to estuaries and the coast may be required. Academic surveys also have considered nocturnal activity of waders (e.g. Lourenco et al. 20081 and Burton & Armitage 20052, as outlined in our comments on the Ornithology Addendum; REP4-026).</p> <p>This all highlights that securing evidence to determine bird use at night of The Haven would be possible.</p> <p>Assuming that day-time disturbance is the same as night-time disturbance risks underestimating impacts, as birds may be more sensitive to disturbance at night (e.g. paragraph 2.32 of our comments on the Ornithology Addendum; REP4-026). This remains an outstanding issue.</p> <p>The RIES does not identify that we responded to this point.</p>	
4.2.197	Table 4.1 below identifies the features of the SPA, Ramsar site and SAC for which, at the time of writing of this RIES, IPs did not agree with the Applicant's conclusion of no AEol.	We refer to Appendix 1 of our response to third written questions (REP8- 029) that sets out the species of concern for each section of The Haven.	Noted also by the Applicant.
Compensation Measures			
5.0.22	It is stated that, given the limited time period available to investigate	Discussions regarding mitigation and compensation measures took place through 2020 and 2021. No	It is noted that the Applicant had expected that compensation/net gain measures

No.	Report Wording	Comment	The Applicant's Response
	<p>compensatory measures, the options discussed had only been developed in outline but consultation had been progressed with relevant land owners/managers to ensure that the options were capable of implementation. Initial consultation had been held with the following organisations with a positive initial response received: North Sea Camp Prison, Boston; local landowner/farmers; and Boston Borough Council (for sites within the Havenside Local Nature Reserve (LNR)). Other options had been identified and would be put forward and discussed with the relevant stakeholders.</p>	<p>details had been developed by the time the Applicant submitted its initial DCO Application in December 2021.</p> <p>Following the withdrawal of the initial DCO application, meetings with stakeholders including the RSPB and Natural England on the 8 and 26 February 2021 included discussions on the need for the Applicant to prepare a derogation case. This was noted to be in line with the requirements for Offshore Wind Farm cases that were currently being considered by the Secretary of State. No apparent work was progressed by the Applicant following those meetings. The Applicant then chose to resubmit its Application (without compensation proposals) in March 2021.</p> <p>It was confirmed in the RSPB's Relevant Representations in June 2021 that our reserves would not be available for use by the Applicant to deliver mitigation or compensation measures. Again, no further action was taken by the Applicant.</p>	<p>would be available via the RSPB reserves and that this was withdrawn in June 2021. The Applicant would like to therefore point out that this has not meant that "the Applicant has had over 12 months since its resubmitted application to develop a detailed and comprehensive package of compensation measures for discussion with interested parties". The Applicant has been searching for and discussing alternative options with landowners since June 2021 and has provided the selected sites discussed in the Compensation Measures document. The Applicant considers that the level of information provided to the Examination on the without prejudice compensation measures is comparable to that provided on other recently approved DCOs with without prejudice derogation cases (for example the Vanguard and East Anglia One North and East Anglia Two windfarm DCOs) and the drafting of Schedule 11, which would secure the measures, is also comparable to those DCOs.</p>
5.0.41	<p>The Applicant stated [REP6-032] that the level of detail that could be provided on the compensation options was limited by the amount of information and survey that could be undertaken on sites before they were secured, which could only occur post-decision if the Proposed Development was granted consent. They explained that landowners had been approached in relation to two sites and had given in principle agreement for long-term leases of</p>	<p>The Applicant has therefore had ample warning and time to develop a suitably detailed package of compensation measures yet they have actively chosen not to address this until the Examination had started. Consequently the Applicant is seeking to address the detail of their Compensation Measures post-consent. We have set out in our comments on the DCO commentary and the DCO Schedule 11 (REP7-032) why this approach is not compatible with the Habitats</p>	

No.	Report Wording	Comment	The Applicant's Response
	<p>agricultural fields. They also stated that the proposed works to the Havenside LNR related more to BNG than compensation measures.</p>	<p>Regulations. We also refer back to our comments on paragraph 4.2.65 of the RIES above regarding the need to ensure that Compensation Measures will be targeted, effective, technically feasible, of suitable extent, appropriately located, have sufficient time to be developed, and have legal and financial security for their long-term implementation.</p> <p>We see no reason why the Applicant should be allowed to benefit from its failure to develop a detailed package of compensation measures to be submitted with its application as was clearly being signalled by the Secretary of State BEIS and was advised by various stakeholders prior to March 2021 (see 1.2.1 above) when it chose to resubmit its application against that advice.</p> <p>Notwithstanding this position, the Applicant has had over 12 months since its resubmitted application to develop a detailed and comprehensive package of compensation measures for discussion with interested parties but has failed to do so. We do not consider the current outline proposals acceptable or in any way adequate.</p> <p>It is the RSPB's conclusion that there is not an adequate package of compensation measures in front of the Examining Authority that would meet the ecological requirements of the impacted SPA/Ramsar species such that the coherence of the National Site Network for those species would be protected.</p>	

2.5 Roythornes on behalf of Boston and Fosdyke Fishing Society

Table 2-10 Roythornes on behalf of Boston and Fosdyke Fishing Society Deadline 9 Submission (REP9-066)

No.	Comment	The Applicant's Response
1	<p>We write further to previous correspondence in relation to the above matter and on behalf of The Boston Fosdyke Fishing Society (“BFFS”). We understand that today is the deadline for submitting an agreed Statement of Common Ground (“SoCG”) between the promoters of the Boston Alternative Energy Facility (“BAEF”) and our clients. We write to make the Examiner aware that such agreement has not been possible.</p>	<p>The final SoCG between the Applicant and BFFS has been submitted at Deadline 10 (document reference 8.9(1)). This SoCG has not been agreed with the BFFS as they have not signed-off the final copy. Despite the best efforts by the Applicant to address the BFFS’s concerns, the SoCG is ‘Not Agreed’ in its entirety. The Applicant last wrote to BFFS’s legal representatives offering them the opportunity to submit a joint statement of common ground on 4 April 2022 and this was declined by BFFS on 5 April 2022.</p>
2	<p>We wish to make clear that correspondence with the BAEF consultant and legal team is seen by BFFS as little more than token attempts to try and get the BFFS to agree to a position that they are not prepared to accept. As the Examiner is aware, we have submitted a Report commissioned by specialist marine consultants, Marico, and this was forwarded under cover of our letter dated 8th March 2022. This Report has clearly identified numerous errors and omissions within the Applicant’s NRA and while we have been informed that Anatec are going to address some of the concerns we have raised, we are not aware of any real progress in this respect.</p>	<p>The Applicant rejects the notion that it has only made “token attempts” to agree a position with BFFS. The Examining Authority will note the NRA (document reference 9.27(1), REP6-022) provided by the Applicant in response to BFFS concerns, initially at Deadline 2 (document reference 9.27, REP2-010). The Applicant has spent significant time and energy in seeking to reach an agreement with and address the concerns of BFFS, however BFFS continue to fail to acknowledge the evidence before the examination.</p> <p>As set out in the Navigation Summary submitted at Deadline 9 (document reference 9.97, REP9-031) the review undertaken by Marico Marine has not identified deficiencies within the draft NRA that would undermine the conclusions made, nor has the review commented on any items that are not already acknowledged within the draft NRA itself, or that the Applicant has already</p>

No.	Comment	The Applicant's Response
		identified itself and sought to clarify and certify within the NMP template (document reference 9.80(1), REP8-011).
3	<p>We would simply like to re-iterate that at present we consider the Applicant's proposals to be based on flawed and inaccurate data and therefore the whole assessment methodology and the underlying assumptions made are considered to be challengeable. The Applicant also continues to insist that matters can be postponed to post-consent, which is entirely unacceptable to BFFS as has been highlighted in previous correspondence and most recently in our letter dated 8th March 2022. We would clarify that Counsel's advice has been sought in this respect and that the representations made on behalf of BFFS are believed to be robust and legally sound.</p>	<p>It is the Applicant's, and the Port of Boston's (please refer to REP9-064), view that the ongoing development of a Navigation Risk Assessment (NRA) and Navigation Management Plan (NMP) for the Facility post-consent is the most effective way to mitigate impacts on the safety of navigation since it permits ongoing consultation with all interested parties, and the ability to respond to the detailed design, construction and operational proposals. It is noted that this is consistent with the approach adopted by the Environment Agency (and agreed with the Port of Boston) for the Boston Barrier Order 2017.</p> <p>The Applicant notes that the "Counsel's advice" referred to by BFFS's representatives has not been disclosed to the Examination. The Applicant strongly disagrees that the representations of BFFS are robust and legally sound. The Applicant and the statutory harbour authority have both refuted the representations of BFFS (see for example the summary set out in document reference 9.97, REP9-031).</p>
4	<p>We would also like to re-iterate a request for the Examiner to consider hearing the BFFS case in person. BFFS feel that they are being essentially browbeaten to agree to the scheme, which they cannot consent to given the above factors and the severity of their objections.</p>	<p>As acknowledged in the SoCG despite the best efforts of the Applicant to address the BFFS's concerns the final SOCG is 'not agreed'. The Navigation Summary (document reference 9.97, REP9-031) sets out the Applicant's position and the considerable effort made to address the BFFS's concerns. This work has been undertaken in close consultation with the Port of Boston, as Statutory Harbour Authority. The Applicant would refer the Examiner to this statement in the Port of Boston's</p>

No.	Comment	The Applicant's Response
		<p>Deadline 9 submission (REP9-064), <i>"The Port has given much consideration to the concerns expressed by BFFS, particularly with regard to the impact of increased vessel numbers, but has concluded that there is little likelihood of any significant adverse impact on their activities."</i></p> <p>BFFS's concerns have been and will continue to be listened to. Their concerns may be incorporated into the further development of the final NRA and NMP, post-consent. The extensive consultation process to be followed post-consent has been set out in the NMP Template, a DCO certified document (document reference 9.80(1), REP8-011), and the final NMP will be approved by the MMO.</p>
5	<p>Recent discussions with BAEF representatives indicate that BAEF are now taking the stance that they cannot do anymore to alleviate the fishermen's concerns but will be providing the Examiner with further versions of their NRA, still asking for the Navigation Management Plan ("NMP") to be something that is finalised post consent. They have also suggested that the Port of Boston will be the relevant authority to ensure that the fishermen are not prejudiced. However, BFFS have no confidence in this as there is no current enforceable mechanism that has been put forward to ensure that their position will be protected. In fact, BFFS maintain their objections, including those on human rights grounds and are still of the opinion that their way of life and livelihood is in serious jeopardy due to this scheme. The mitigation proposed continues to be inadequate and there has been no real meaningful attempt to negotiate a position with BFFS. The Port appear to have a pecuniary interest so they cannot be the appropriate body without any further checks and balances to ensure that the BFFS members have comfort that they can continue to operate their business and way of life and also that the scheme proposed does not cause unacceptable safety impact.</p>	<p>See response to Row 4 above.</p> <p>The Port of Boston are the Statutory Harbour Authority of the river. Any perceived "pecuniary interest" is wholly irrelevant to the Port's responsibilities and undertaking. The Applicant strongly disagrees with the assertion that the Statutory Harbour Authority is not the "appropriate body" here. The Applicant respectfully requests that the Examining Authority remind BFFS that their personal disputes with the Port of Boston are not material planning considerations relevant to the DCO.</p> <p>As set out in the application documents (see in particular Environmental Statement - Chapter 20 - Socio-Economics (document reference 6.2.20, APP-058) at para 20.7.11), "it is not anticipated that the Facility would have any effect in relation to employment within the agricultural or fishery sectors".</p>

2.6 UKWIN

Table 2-11 Deadline 9 Submission - United Kingdom Without Incineration Network (UKWIN) response to documents 9.86 and 9.90 (REP9-067)

Issue/Paragraph number	Applicant's Initial Comment	UKWIN's Comment	The Applicant's Response
Comments on the Applicant's without prejudice 'in-principle' alternative locations case (document reference 9.86, REP8-015)			
Area of search (Step 1 of the Applicant's methodology)	Consider only areas 'readily accessible by sea'.	Considering only areas 'readily accessible by sea' is an overly narrow approach to identifying potentially suitable alternative locations for the proposed incineration capacity. Some or all of the proposed capacity could be located in land. UKWIN notes the Applicant's (paragraph 3.1.1) claim that: "...Within England, the highest levels of waste inputs to landfill and potentially combustible waste inputs to landfill originate from the East of England and the South East". UKWIN would therefore expect the Applicant to have at least considered building two incinerators with half the capacity proposed for Boston – one in the East of England and one in the South East, at the most suitable locations within each of these regions, not limited by accessibility to the sea.	As noted within the Introduction of the Applicant's Without Prejudice 'In-Principle' Alternative Locations Case (document reference 9.86, REP8-015) it was assumed for this assessment that the objectives relating to use of a navigable waterway for transportation of refuse derived fuel (RDF) (objectives 6 and 7 of Table 5-1 (document reference 9.28, REP2-011)). These objectives are in line with National Policy Statements and considered key to the project. In addition, it is noted in the introduction to the Alternative Locations assessment that this document was to assess the option of alternative location only and did not consider alternatives to the design (including two smaller facilities), however acknowledging the design may need to be adapted for a new location.
Basis for scoping out locations (Step 3 of the Applicant's methodology)	Unallocated sites are routinely scoped out, without the need to provide a detailed explanation.	The scoping out of virtually all unallocated does not accord with real world practice. Waste Authorities are free to support residual waste treatment facilities on land that is not allocated for employment purposes wherever such sites are	The Applicant has considered both local plan allocations and relevant policies within the waste plans in order to confirm if potential waste development could be accepted on unallocated sites. In general,

Issue/Paragraph number	Applicant's Initial Comment	UKWIN's Comment	The Applicant's Response
		<p>consistent with the relevant waste strategies / plans when these strategies and plans are considered as a whole.</p> <p>The Boston Applicant's assessment often makes vague claims that the Boston proposal would be contrary to policies in local plans without clearly explaining the basis for such conclusions. Many of the policies cited by the Applicant allow for developments outside of allocated sites when the need and benefit have been demonstrated.</p> <p>If the Applicant's position is that the proposed 1.2 million tonnes of capacity would fail to meet a requirement to demonstrate need / benefit, then it is curious why they are also arguing that there are imperative reasons to allow that same capacity to go ahead in Boston, given the environmental constraints associated with the Port of Boston site. For example, in several instances the Applicant states that: "development proposals within the Green Belt need to demonstrate very special circumstances which presents a significant risk in planning terms". It would be useful to receive an explanation from the Applicant as to why they are not confident that they would be able to demonstrate 'very special circumstances' for this capacity given that they are making an IROPI case for Boston.</p> <p>It is also unclear from this assessment whether any of the conclusions regarding unacceptability related to the scale of the development, and</p>	<p>waste local plans set out policies with respect to proposals for waste developments on non-allocated sites. The Applicant has reviewed the option sites in light of these policies. The Applicant provides robust reasoning for each of the long listed sites as to why they have been scoped out.</p> <p>In the rows of Table 3-3 (document reference 9.86, REP8-015) which reference the constraints associated with development in the Green Belt, additional reasoning is also provided as to why the sites would not be suitable in the context of the waste local plans considered.</p> <p>However, with respect to Green Belt, Paragraph 137 of the National Planning Policy Framework (2021) states 'the government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.' and is there identified as a potential constraint to development.</p> <p>The statements relating to the constraints associated with potential for development</p>

Issue/Paragraph number	Applicant's Initial Comment	UKWIN's Comment	The Applicant's Response
		therefore whether or not the capacity could be located at any of these locations if it were to be split in two.	within the Green Belt are included to further strengthen the point however is not the sole reason for scoping these options out.
Consistency of the shortlist options assessment (Step 4 of the Applicant's methodology)	The potential impact for disturbance to protected species is grounds for scoping out sites.	It is unclear the extent to which the Applicant has assessed its ability to mitigate and compensate for any such adverse impacts with respect to sites other than the Port of Boston. If the Applicant's position is that the mere potential for harm to biodiversity provides grounds for the site to be scoped out, then it is curious indeed that the Applicant is making an IROPI case to allow for such harm to take place around the Port of Boston.	The Applicant has considered whether development at the option locations would result in a lesser effect on the national site network (and/or Ramsar sites) compared to the development of the Facility. If it considered that the option locations would have the same or greater effect on the national site network (and/or Ramsar sites), then this would not be a viable alternative option. It is worth noting that the Applicant considers that the Facility has no Adverse Effect on Integrity (AEoI) on The Wash SPA and Ramsar site and The Wash and North Norfolk Coast Special Area of Conservation (SAC) and has provided this assessment on a without prejudice basis.
Comments on Section 2.5 of the Applicant's Fourth Report on Outstanding Submissions (document reference 9.90, REP8-017)			
Comments on National Policy Statements			
1-15		We note that the Applicant has not responded to UKWIN's comments on the National Policy Statements.	All points on the NPS had already been addressed by the Applicant at previous submissions in response to UKWIN's comments and the Applicant had nothing further to add to this.

Issue/Paragraph number	Applicant's Initial Comment	UKWIN's Comment	The Applicant's Response
Comments on The Applicant's Need Assessments / Isochrone assumptions / waste plans			
16-18	<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>	<p>The Applicant has completely misunderstood the methodology applied by UKWIN for calculating the impact of improvements in C&I recycling rates on the amount of residual waste that would be available as potential feedstock for the Boston plant. As clearly set out in REP8-030 pages 2-4, UKWIN's approach was to assume an equivalent level of improvement for the respective proportion of the residual C&I waste, i.e. equivalent to the improvement in household recycling assumed by the Applicant. In line with this approach, '100%' does not assume increasing C&I recycling by 100%, but rather that C&I would achieve a 1:1 equivalent of the level of improvement anticipated by the Applicant for household waste, prorated to the equivalent starting amount of C&I waste. Similarly, a 33% improvement would assume a 3:1 equivalence, meaning that for every 3 tonnes of improved household recycling 1 additional tonne of formerly residual waste is assumed to be recycled for the equivalent amount of residual C&I waste.</p> <p>The Applicant proposes, but has not modelled, C&I recycling increasing from 50/55% to 65%. To understand what the Applicant is now arguing, UKWIN has carried out modelling of the Applicant's new approach based on the figures provided by the Applicant in their Addendum to</p>	<p>The Applicant has presented their data based on Defra published waste statistics and modelled changes in recycling rates from existing published recycling rates.</p> <p>The Applicant recognises that some additional incineration capacity would reduce the potential overall fuel available for the proposed facility. The Applicant notes that UKWIN sets out its methodology to derive the 2,392kt in REP6-042, however it is unclear from where the second additional 2,153kt reduction is derived.</p>

Issue/Paragraph number	Applicant's Initial Comment	UKWIN's Comment	The Applicant's Response
		<p>Fuel Availability and Waste Hierarchy Assessment (Document 9.5 / REP1-018) as follows:</p> <p>[See Figures 1 and 2 in UKWIN's Deadline 9 Response]</p> <p>These figures indicate that - in the Applicant's proposed catchment - increasing recycling rates from 50-55% to 65% would result in a reduction in available waste of between 1.2 and 1.7 million tonnes per annum.</p> <p>This does not alter the conclusion of the assessment UKWIN set out in Figure 2 of REP6-042 which can therefore be updated (as Figure 3) as follows:</p> <p>[See Figure 3 in UKWIN's Deadline 9 Response]</p> <p>This means that, even using the Applicant's assumed level of C&I recycling improvement, the amount of residual waste available (between a maximum of 35,000 and 481,000 tonnes) is significantly less than the proposed 1.2 million tonne Boston RDF capacity (which would require 1,600,000 tonnes of waste per annum).</p> <p>Within the context of anticipated future residual waste, it is also worth noting that in addition to the current recycling targets, the UK Government is currently proposing to introduce waste reduction targets for England.</p>	

Issue/Paragraph number	Applicant's Initial Comment	UKWIN's Comment	The Applicant's Response
		<p>On the 16th of March 2022 the Government proposed a target of halving English residual waste per capita by 2042 based on 2019 levels. 2042 is well within the anticipated operational lifetime of the proposed Boston facility. The Government makes clear on pages 28–30 of their 'Consultation on Environmental Targets' document that reducing the incineration of waste is desirable, stating: "Tackling residual waste reduces the environmental impacts of treatment, including air, soil, and water pollution, and unnecessary energy use. It is more sustainable to prevent waste completely and, where waste is unavoidable, to recycle it...The proposed target can drive both waste minimisation and recycling of unavoidable waste..."</p>	
<p>Comments on Greenhouse Gas emissions and Climate Change impacts – UKWIN calculation of carbon intensity of exported electricity & Comments on Greenhouse Gas emissions and Climate Change impacts – weight of carbon benefits or disbenefits</p>			

Issue/Paragraph number	Applicant's Initial Comment	UKWIN's Comment	The Applicant's Response
19-27	...The Facility's potential electricity export per annum would be...some 0.2% of total UK 2020 demand...	It is notable that the Applicant is downplaying the contribution that the facility would make to UK electricity generation. The obvious conclusion to draw is that there would be no significant impact on UK energy generation capacity were this application to be refused.	<p>National Policy Statement (NPS) EN-1 states, at paragraph 2.1.2, that "<i>Producing the energy the UK requires and getting it to where it is needed necessitates a significant amount of infrastructure, both large and small scale. The energy NPSs consider the large-scale infrastructure that play a vital role in ensuring we have the secure energy supplies we need.</i>"</p> <p>The Facility has met the threshold needed to be considered a nationally significant infrastructure project and as such the NPSs are relevant to its consent. The Applicant notes that NPS EN-1 makes clear that there is a need for energy infrastructure of various scales. As the diversification of energy supply within the UK also strengthens the resilience of the energy market.</p>