



**The RSPB's comments on the Addendum to  
the Without Prejudice Habitats Regulations  
Assessment Derogation Case**

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

**Submitted  
15 May 2023**

**Planning Act 2008 (as amended)**

**In the matter of:**

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

**Planning Inspectorate Ref: EN010095  
Registration Identification Ref: 20028367**

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## 1. Introduction

1.1. The RSPB has been approached by the Applicant to offer comments on the following questions posed by the Examining Authority:

- *Is there any feedback from RSPB regarding the last submission from the Applicant on ornithological matters from 10<sup>th</sup> January. [Boston Alternative Energy Facility \(BAEF\) | National Infrastructure Planning \(planninginspectorate.gov.uk\)](https://planninginspectorate.gov.uk/boston-alternative-energy-facility-baef-national-infrastructure-planning)*
- *It would be useful to know if any of the information provided within the submission documents assists in alleviating any concerns RSPB have at all.*
- *Regarding paragraph 5 of the SoS's 15<sup>th</sup> May letter, whether you would be able to discuss potential wording you have set out in para 3.3 of [EN010095-001410-RSPB-updated-summary-of-position-and-key-concerns-March-2023.pdf \(planninginspectorate.gov.uk\)](https://planninginspectorate.gov.uk/en010095-001410-rspb-updated-summary-of-position-and-key-concerns-march-2023.pdf). Para 5, "The Applicant is invited to respond to Natural England and the RSPB's comments, specifically: • The RSPB's suggested amendments (Section 3) to the DCO. • The Applicant is invited to suggest alternative amendments it considers may provide the assurance which Natural England consider necessary."*

1.2. The following sets out the RSPB's position regarding the above queries.

## 2. The RSPB's comments on the proposed compensation sites

- 2.1. The RSPB welcomes the additional information submitted by the Applicant on potential compensation sites. As set out in our recent comments of 10 March 2023, we support the development of a compensation package with multiple sites. This provides greater confidence that a suitable scale of compensation could be delivered. However, there must be sufficient certainty that the proposed compensation package will meet all the necessary ecological requirements of the features of The Wash SPA/Ramsar that will be impacted.
- 2.2. When considering the merits of the different compensation sites and their potential effectiveness, our position reflects the following points set out in our Written Representation (para 7.87, p.70; REP1-060):
- 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 for birds to be able to get back out feeding as soon as the mudflats re-emerge is critical.
  - 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.<sup>1</sup>
  - 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.
- 2.3. We have reviewed the proposed compensation sites and provide our comments below on the merits of each location.

### Corporation Point

- 2.4. The Applicant has identified a 20.3ha site adjacent the north bank of The Haven as a possible compensation site. A 2-5ha main scrape is considered possible to create at this location. Our detailed comments on Corporation Point are set out in Table 1.

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<sup>1</sup> [Natural England's Relevant Representation and Written Representations](#) (RR-021)

**Table 1: Response to the Applicant’s assessment of the Corporation Point compensation site against the criteria set out in Table 12 of the RSPB’s Written Representation**

Criteria	Applicant’s comments	RSPB response <b>Green</b> – Suitable <b>Amber</b> – Potentially suitable but outstanding concerns <b>Red</b> – Not suitable
Securing land	...the reader is directed to <b>Appendix C</b> which provides letters from the current landowners of the proposed compensation sites ... Should the Secretary of State determine compensation is required, the Applicant would seek to enter into appropriate legal agreements with the relevant land owners.	We have previously commented on the level of certainty needed to confirm that any identified land for compensatory measures has been suitably secured. We remain concerned that no formal agreements have been secured with landowners. We set out our position on this in our submissions at Deadline 7 (REP7-031 and REP7-032).
Technical Feasibility	A substantial (2 - 5 hectares (ha)) main scrape or lagoon...Is...achievable at Corporation Point, based on a) the overall area and openness of the site and b) the presence of over 100 x 100 m area of lower lying land in the east corner of the land parcel...	We accept that the site could deliver a suitable scale of habitat for waterbirds. However, it remains unclear what volume of water will be required to both create and then maintain the site. This information is needed to determine whether sufficient water can be secured to deliver the proposed habitats and ecological benefits. Simply using LiDAR and identifying ephemeral wet features will not deliver the quality of habitat needed to support the ecological requirements of the waterbirds features requiring compensation. This is too simplistic in its approach.  At Freiston Shore, securing a sustainable water supply is a challenge; we simply cannot secure the volume of water we need to maintain the site. We are in the process of developing new habitat at Freiston Shore which includes a reservoir to provide a more sustainable supply of

		<p>water through the year. We have seen no evidence presented by the Applicant of design options for Corporation Point that looks both at water supply and long-term sustainability of the site. These are essential pieces of information to determine technical feasibility of the proposed site. If a reservoir will be required, this would have additional planning and consenting requirements not set out by the Applicant.</p> <p>In addition, there needs to be clarity on whether the lagoon would be saline or freshwater. A saline lagoon would require water to be transferred from The Haven into Corporation Point. This would have additional planning and consenting requirements not set out by the Applicant.</p> <p>Any wetting of the site will also need to achieve appropriate water levels to achieve the desired ecological requirements. It remains unclear if the Applicant has assessed these and determined if any bunding around the site will be required to avoid flooding adjacent fields.</p> <p>It is also unclear what volume of material will be created by the lagoon excavation. This material will need to be deposited somewhere. The Applicant has not identified if all the arisings would be used on site. If they were kept on site and land raising took place, there is no information set out to show the impact this would have on the scale of habitat that could be created.</p> <p>Whilst we accept the site could be suitable as a compensation site, more details are needed to provide confidence that the technical requirements of the site can be achieved.</p>
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Extent	<p>RSPB have previously commented...that the site is, <i>"a good size to enable habitat to be created."</i> The Applicant agrees and, furthermore, the Applicant highlights that following improvement works to the entirety of the site its total area would comfortably exceed 15 ha...</p>	<p>The RSPB accepts that Corporation Point could deliver a suitable scale of habitat for waterbirds using the upper and middle reaches of The Haven, provided that it can be demonstrated that all requirements for the creation and maintenance of wetland habitat will be in place. This necessarily includes confidence that all planning and consenting requirements can be met.</p> <p>The overall extent may be reduced should a reservoir be needed to maintain the habitats. This has not been considered in the Applicant's additional information.</p>
Location	<p>The location of this site, in particular in conjunction with the location of sites at Wyberton Roads, presents multiple available sites along The Haven in close proximity to each other and to other supporting sites ...This pair of sites in particular would present a significant refuge area for waterbirds of The Haven...</p>	<p>The RSPB welcomes the addition of this site in the Applicant's compensation package. We accept the site has potential to deliver for a range of features of The Wash SPA, notably, foraging and roosting redshanks and other waders, as well as suitable habitat for brent geese.</p> <p>Whilst the site could benefit waterbirds using the central section of The Haven it will not address the impacts on birds roosting at the mouth of The Haven which is c.4km from the Corporation Point site. The majority of birds at the mouth of The Haven prefer to relocate as close to optimal foraging areas as possible (see para 2.2 above). Our experience and the ornithological data presented within the Applicant's submissions demonstrates that birds move c.1km to alternative roost sites. Additional compensation measures will be required to address impacts to waterbirds at the mouth of The Haven.</p>

2.5. In summary: the site has potential and could deliver suitable wetland habitats for a range of features of The Wash SPA/Ramsar, but more

information is needed to ensure that a suitable water supply (saline or freshwater) can be secured to not just create but also maintain the site. There also needs to be confidence that all necessary planning and consenting requirements would be met.

### Wyberton Roads (North)

- 2.6. The Applicant has identified a 19ha site adjacent the south bank of The Haven as a possible compensation site. This is directly south-west of the proposed Corporation Point compensation site. Our detailed comments on Wyberton Roads (North) are set out below in Table 2.

**Table 2: Response to the Applicant’s assessment of the Wyberton Roads (North) compensation site against the criteria set out in Table 12 of the RSPB’s Written Representation**

Criteria	Applicant’s comments	RSPB response <b>Green</b> – Suitable <b>Amber</b> – Potentially suitable but outstanding concerns <b>Red</b> – Not suitable
Securing land	...the reader is directed to <b>Appendix C</b> which provides letters from the current landowners of the proposed compensation sites ... Should the Secretary of State determine compensation is required, the Applicant would seek to enter into appropriate legal agreements with the relevant land owners.	We have previously commented on the level of certainty needed to confirm that any identified land for compensatory measures has been suitably secured. We remain concerned that no formal agreements have been secured with landowners. We set out our position on this in our submissions at Deadline 7 (REP7-031 and REP7-032).
Technical Feasibility	A number of options or levels of potential intervention are cited within <b>Appendix A</b> , based on the findings of a desk study using the LiDAR data as shown in <b>Figure 2-3</b> , ...“at a basic level, further examination could be undertaken of the interaction between the back ditch and the main valley of the site. In	We welcome the additional information on this site. We agree that the site has potential to support waterbirds using the upper and middle reaches of The Haven. The site appears to have potential for wetland habitats, however, we are concerned by the lack of detail around water availability.  The hydrological information provided is helpful to understand the Applicant’s thinking, but limited in detail and



	<p><i>particular, at Point "A" (shown in Figure A2.1a), there appears to be some separation of the back ditch, with the potential for diverting the northern length of the back ditch such that this section of ditch feeds into the "site valley" feeding water into the low-lying area behind the main flood embankment. The southern section of the back ditch would continue to flow to the south. Such works might be quite minor, merely encouraging accumulation of water within the site area.</i></p> <p><i>2.1.16 "The above works could be further enhanced by excavation along the line of the main site valley...such that the area of permanent areas of open water was encouraged, potentially forming a series of ponds, interspersed with areas of slightly higher ground (using excavated material) with no increased flood risk to the adjacent land. Within the overall site area there is potential for around 8 ha of freshwater habitat areas.</i></p>	<p>simplistic in its assumptions. Our experience of wetland creation is that simply having a ditch connection is not a guarantee that there will be sufficient water available for wetland creation and maintenance. There is no indication that conversations with the Internal Drainage Board have confirmed certainty of supply. There is also a need to understand water demand in the area, especially to assess how diverting any water from the drainage ditch could affect existing habitat at the end of the drainage network, such as at Frampton Marsh. Hydrological assessments must be undertaken to determine whether any water storage may be needed to support maintenance of the habitat in the future. This is particularly important when set against recent drought conditions and the predicted water deficits set out by Water Resources East in their draft Regional Water Strategy<sup>2</sup>. The Applicant must be able to demonstrate that suitable infrastructure will be in place to manage water supply not just now but also in the longer term. This may require a water storage reservoir to be constructed, as we have at Frampton Marsh. Construction of a reservoir will use land and impact on the overall level of compensatory habitat that could be created. There would also be additional planning and consenting requirements that need to be demonstrated that they could be met.</p> <p>Whilst we accept the site could be suitable as a compensation site, there remains significant detail not provided by the Applicant to provide confidence that the technical requirements of the site can be achieved.</p>
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<sup>2</sup> <https://wre.org.uk/wp-content/uploads/2022/11/WRE-draft-Regional-Water-Resources-Plan-1.pdf>

Extent	<p>Revised site boundaries record this site as <b>17.6 ha</b> in area. The Applicant highlights that following improvement works to the entirety of the site its total area would comfortably exceed 15 ha.</p>	<p>The RSPB accepts that this site could deliver a suitable scale of habitat for waterbirds using the upper and middle reaches of The Haven if it can be demonstrated that all requirements for the creation and maintenance of wetland habitat will be in place.</p> <p>The overall habitat extent may be reduced should a reservoir be needed to maintain the habitats. This has not been considered in the Applicant's additional information.</p>
Location	<p>The site has been remarked by RSPB (in document REP10-046) to be unsuitably located to provide compensation for adverse impacts at the mouth of the Haven. This was cited primarily due to its distance from the key rock revetments roost site at the mouth of the Haven (approximately 5 km). The Applicant maintains that this site is of value to compensate impacts on The Wash SPA 'in principle', as it would provide a valuable site within a network of sites that would accommodate a diversity of habitat for the bird species that could be disturbed. It is also located immediately adjacent to The Haven but not within the intertidal area so is less likely to be subject to disturbance, and is located on the southern side of The Haven so less likely to be disturbed by people. This area of The Haven has also been cited by RSPB to be functionally linked to the SPA ; this site lies 1.3 km from the Principal Application Site, 1.3 km from foraging and roosting</p>	<p>The RSPB welcomes the addition of this site in the Applicant's compensation package. We accept the site has potential to deliver for a range of features of The Wash SPA/Ramsar, notably, foraging and roosting for redshanks and other waders, as well as suitable habitat for brent geese.</p> <p>Whilst the site could benefit waterbirds using the central section of The Haven it will not address the impacts on birds roosting at the mouth of The Haven which is c.4km from the Wyberton Roads (North) site. The majority of birds at the mouth of The Haven prefer to relocate as close to optimal foraging areas as possible (see para 2.2 above). Our experience and the ornithological data presented within the Applicant's submissions demonstrates that birds move c.1km to alternative roost sites. Additional compensation measures will be required to address impacts to waterbirds at the mouth of The Haven.</p>

	habitat at Frampton Marsh and 1.2 km from the boundary of The Wash SPA at Hobhole Drain.	
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2.7. In summary: the site has potential and could deliver suitable wetland habitats for a range of features of The Wash SPA/Ramsar, but more information is needed to ensure that a suitable water supply (saline or freshwater) can be secured to not just create but also maintain the site.

### Wyberton Roads (South)

2.8. The Applicant has agreed a bigger area than originally proposed with the landowner. This site now comprises 15ha of land c.1km south-west of The Haven. The site is less than 1km to the north-west of RSPB Frampton Marsh. Our detailed comments on Wyberton Roads (South) are set out in Table 3.

**Table 3: Response to the Applicant’s assessment of the Wyberton Roads (South) compensation site against the criteria set out in Table 12 of the RSPB’s Written Representation**

Criteria	Applicant’s comments	RSPB response <b>Green</b> – Suitable <b>Amber</b> – Potentially suitable but outstanding concerns <b>Red</b> – Not suitable
Securing land	...the reader is directed to <b>Appendix C</b> which provides letters from the current landowners of the proposed compensation sites ... Should the Secretary of State determine compensation is required, the Applicant would seek to enter into appropriate legal agreements with the relevant land owners.	We have previously commented on the level of certainty needed to confirm that any identified land for compensatory measures has been suitably secured. We remain concerned that no formal agreements have been secured with landowners. We set out our position on this in our submissions at Deadline 7 (REP7-031 and REP7-032).
Technical Feasibility	This site would now provide approximately 15 ha of continuous open habitat with potential for improvement for waterbirds. Plans	The RSPB agrees with the Applicant’s assessment that dry grassland habitat could be created that would benefit lapwings and

	<p>for use of this area to provide the maximum quality habitat for waterbirds based on the requirements for lapwing and golden plover are:</p> <ul style="list-style-type: none"> <li>• Improvement of the area as a dry grassland roosting and foraging site;</li> <li>• The dry areas would be re-seeded with regional wild flora and grasses and the sward height maintained low for roosting waterbirds; Part-buried nest boxes for shelduck would be added in banks and edges; and</li> <li>• Improvement of the site as a wildlife refuge would also likely include measures to reduce vehicular and pedestrian disturbance to the site such as a blinds-style fence along the north-east side of the land parcel.</li> </ul> <p>2.1.24 This land improvement plan would require maintenance of low vegetation height, mixed flowering varieties to encourage insects to the site and provide habitat suitable for foraging and roosting of lapwing and golden plover and potentially breeding habitat for shelduck and lapwing.</p>	<p>golden plovers. We agree that the site offers the opportunity to deliver wider biodiversity benefits. The provision of shelduck nest boxes is a proven approach to improve breeding success.</p> <p>We support the proposed measures to restrict disturbance to the site to give greater confidence that the site would be effective. In order to provide further comfort a predator-proof fence could make a significant difference, as we have at Frampton Marsh, although this would provide the most benefit to breeding birds.</p> <p>The proposed site would compliment the habitats at Frampton Marsh and support the RSPB and partners vision for the area to enhance the area for wildlife and the local community.</p> <p>Whilst this site has high potential to deliver the measures proposed by the Applicant, it should be noted that the proposed fields overlap with a potential cable corridor for the proposed grid connection of the Outer Dowsing Offshore Wind Farm (see map in Appendix 1 and the online cable route maps<sup>3</sup>). It remains unclear if the Applicants of BAEF and Outer Dowsing have had any communication to address this issue.</p>
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<sup>3</sup> [REDACTED]

Extent	<p>The site has been remarked by RSPB...to be of insufficient size for the target numbers of 3000 golden plover and 1100 lapwing, with recommendation that the area required would be at least two to three times the 7.3 ha quoted area to support these target numbers...the continuous area now available at the site is <b>14.8 ha</b> (i.e. <b>x2 times the original area</b>) as a result of the field to the west now being offered by the landowner.</p>	<p>The RSPB accepts that this could deliver a suitable scale of habitat for lapwings and golden plovers given the increase in size and in conjunction with other compensation sites. However, it needs to be confirmed what impact the proposed Outer Dowsing cable route could have on the habitat extent.</p>
Location	<p>The site's proximity to The Haven and The Wash SPA and Ramsar are unchanged by the expanded footprint but the extent is now more favourable for waterbird habitat creation. The RSPB also questioned or sought clarity at Deadline 10 (REP10-046) on Applicant remarks that the presence of drainage ditches indicated the site is likely to be naturally a wetter area. This remark was simply a statement that presence of (intensive) drainage infrastructure indicates that the land was formerly wetter than at present in order to warrant the drainage (and that isolation of the land from drainage could be a route to wetting this land parcel again).</p>	<p>The RSPB accepts that this site would be for dry grassland. This would be acceptable for lapwings and golden plovers. It could also benefit curlews. We are supportive of nest boxes for shelducks which can be an effective measure to boost their breeding success. A wider suite of biodiversity benefits could also be provided. On its own though it would be insufficient to meet the full range of compensation requirements of the proposed development given the lack of wetland habitats that could be created. It will, therefore, be essential that this site be delivered alongside other locations to ensure that the full suite of features are compensated.</p>

2.9. In summary: we agree that the site has potential and could deliver suitable dry grassland habitats for lapwings and golden plovers, as well provide additional biodiversity enhancements.

## Scrane End

2.10. The Applicant has identified a c.14.5ha site adjacent the north bank of The Haven as a possible compensation site. This site adjoins the north-west boundary of RSPB Freiston Shore. Our detailed comments on the proposed Scrane End compensation site are set out in Table 4.

**Table 4: Response to the Applicant’s assessment of the Scrane End compensation site against the criteria set out in Table 12 of the RSPB’s Written Representation**

Criteria	Applicant’s comments	RSPB response <b>Green</b> – Suitable <b>Amber</b> – Potentially suitable but outstanding concerns <b>Red</b> – Not suitable
Securing land	...the reader is directed to <b>Appendix C</b> which provides letters from the current landowners of the proposed compensation sites ... Should the Secretary of State determine compensation is required, the Applicant would seek to enter into appropriate legal agreements with the relevant land owners.	We have previously commented on the level of certainty needed to confirm that any identified land for compensatory measures has been suitably secured. We remain concerned that no formal agreements have been secured with landowners. We set out our position on this in our submissions at Deadline 7 (REP7-031 and REP7-032).
Technical Feasibility	In consultation regarding compensation and BNG for waterbird species, the RSPB indicated that, when the field is suitably located (close to the foreshore), improvement of agricultural fields for brent geese is relatively simple as a foraging resource can be created through re-sowing with winter wheat. The land at Scrane End is already in intensive agricultural use (see Appendix B) and is in close proximity to The Wash foreshore. The additional larger field now part of the land parcel is of sufficient size to allow geese to	The RSPB has serious concerns about the suitability of the Scrane End site to deliver effective compensation for brent geese. As we discussed with the Applicant in 2022, brent geese are known to not move to the second field inland of The Wash. This means we have no confidence that any land north-west of the road connecting Freiston Shore and HMP North Sea Camp would support brent geese.  The site is also quite linear. Brent geese are prone to disturbance and prefer foraging 100m from the edge of fields. At its widest, the field is only c.250m. Whilst screening to limit disturbance impacts could be

	<p>forage at distance from human activity and residences. Measures such as addition of screening or fences would be added at appropriate boundaries of the larger field to prevent public access and further reduce potential for visual and noise disturbance from human activity in the surrounding area. Preventing disturbance from pedestrians and dog-walkers will be higher priority than disturbance from road traffic to the east which carries lower potential to disturb brent geese.</p>	<p>achieved, this would also have the effect of making the field feel less open and make the site even less attractive to foraging geese.</p> <p>Whilst brent geese will forage on winter wheat, we are not aware that they do so within the immediate area of Freiston Shore. The provision of saltmarsh and grassland would appear a preferred foraging resource. Considerable work has been undertaken to look at alternative foraging areas for brent geese, with grassland being the typical habitat that is created.</p> <p>Technically we do not consider this site would be appropriate for compensating impacts on brent geese.</p>
Extent	<p>The combined land parcel is approximately <b>15 ha</b>, comprising the earlier surveyed 1.2 ha field to the north-west, and the approximately 14 ha added field closer to The Wash.</p>	<p>Whilst the overall extent may support wider biodiversity benefits, the linear nature of the field, presence of buildings close to sections of the site and the preference to retain as agricultural rather than reversion to grassland limits the sites suitability.</p>
Location	<p>the land parcel is a nearest distance of 600 m from The Wash foreshore</p> <p>and immediately adjacent to land at Freiston Shore RSPB reserve.</p>	<p>The RSPB welcomes the addition of this site in the Applicant's compensation package. However, brent geese are notorious for not travelling inland more than the first field from the edge of The Wash. The proximity of the site to Freiston Shore means we are aware of the Scrane End site and the behaviour of brent geese. We are not aware that brent geese use winter wheat fields in the area.</p>

2.11. In summary, whilst we welcome additional sites being included in the Applicant's compensation package, we have serious concerns about the

effectiveness of the proposed Scrane End field for brent geese. The site is too linear and narrow. The site might be suitable as part of the Applicant's enhancement measures, but not as part of the compensation measures.

### Alternative roost sites at the mouth of The Haven

2.12. The Applicant has identified three locations where rock groynes could be constructed to provide alternative roost sites for birds displaced by vessels, especially turnstones and oystercatchers. These would cover 0.35ha; the same area as the current rock groyne at the mouth of The Haven.

2.13. We do not consider the construction of rock groynes within The Wash to be appropriate compensation measures. The current Defra guidance<sup>4</sup> states, with respect to 'Test 3 (derogation): Secure compensation measures' (emphasis added):

*"...The compensatory measures themselves **must not have a negative effect on the national network of European sites as a whole**, despite the negative effects of the proposal on an individual European site.*

*Compensatory measures can include creating or restoring the same or very similar habitat **on areas of little or no conservation value**:*

- *within the same site - if it exists*
- *at a suitable location outside the site*

*If the area providing compensatory measures is not within the European site, it should become designated as part of the European site. Until that happens, it's protected by government planning policy."*

2.14. The proposed areas identified for the rock groynes are within The Wash SPA/Ramsar and The Wash & North Norfolk Coast SAC. They would be deposited on areas of intertidal habitat that are protected in their own right, or as supporting features of the SPA/Ramsar or SAC. Based on Wetland Bird Survey data we know that large numbers of birds use the intertidal habitat at the mouth of The Haven, with mudflat in the area being some of the last to be covered at high tide. Consequently, the area is of high conservation value. Any placement of rock would therefore result in the loss of existing foraging habitat and have a potential displacement effect. The suggested impact of 0.35ha of The Wash SPA/Ramsar fails to consider the wider impacts associated with such a measure. The scale of impact of this proposed measure is therefore underestimated and not accurately reflected in the Applicant's 'Addendum

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<sup>4</sup> <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>



to Without Prejudice Habitats Regulations Assessment Derogations Case Compensation Measures for The Wash SPA report’. For example, the Applicant has failed to consider that:

- The placement of rocks would have an impact on the intertidal processes. No information has been presented to assess erosion impacts from scouring. Where the rocks protect areas from being overtopped this will allow saltmarsh to develop and impact on the potential extent of mudflat. The potential changes in habitat arising from such changes have not been considered by the Applicant.
- The Welland navigation channel may be impacted by the placement of additional rocks, as a higher rock groyne would prevent water overtopping the rocks, as currently occurs on high tides. No assessment of the impact of constraining the flow of water at high tide in the Welland channel has been considered.

2.15. Consequently, we do not consider that the Applicant has presented any evidence to demonstrate that their proposed alternative high tide roosts are either appropriate or in line with Defra guidance.

2.16. Consequently, if these measures were to be taken forward, they would themselves require compensation for the impact that they create. This makes for the unsustainable situation that we highlighted in our 10 May 2023 response.

2.17. Notwithstanding our position that compensation measures will themselves require compensating, we provide detailed comments on the proposed alternative roost sites below in Table 5.

**Table 5: Response to the Applicant’s assessment of the proposed alternative high tide roost sites at the mouth of The Haven**

<b>Location</b>	<b>RSPB response and suitability</b>  <b>Green</b> – Suitable <b>Amber</b> – Potentially suitable but outstanding concerns <b>Red</b> – Not suitable
Compensation Site A	We are aware that there is already a rock groyne in place in this area. It is overtopped at high tide. The Applicant has provided no baseline data to inform the existing ecological importance of this location. There is also no detail on the anticipated height that the rock groyne would need to be extend above high tide levels and support the predicted number of birds displaced. The Applicant would also be required to assess the effect that a more substantial rock groyne in this area would have on water flow and surrounding sediments. For example, would water be displaced and result in erosion of intertidal habitat, would a more protected area behind the rock groyne increase transition to

	<p>saltmarsh and therefore reduce mudflat foraging area, would there be impacts on the Welland navigation channel? All of these issues need to be addressed in order to determine that this approach would be appropriate.</p> <p>Based on the lack of information to support this proposal and the direction provided by the current Defra guidance, we do not consider this an appropriate site for considering as an alternative high tide roost.</p>
Compensation Site B	<p>This site is located in an area already used by roosting oystercatchers at high tide. Given the fact that this is already used as a high tide roost, we question the benefit that would be derived of adding rocks to this location. No assessment is provided to understand the current ecological importance of the site or understand the impact of adding rocks to this location.</p> <p>For the reasons above, this site is not appropriate for consideration as an alternative high tide roost.</p>
Compensation Site C	<p>This is located within the RSPB's Freiston Shore reserve (see Appendix 1). <b>The Applicant has not discussed this option with the RSPB.</b> If the Applicant had approached us we would have refused permission. We are disappointed that a proposal has therefore been submitted for public scrutiny without having first consulted the landowner and site manager.</p> <p>The location is also in an area heavily used by black-tailed godwits and other waders. These birds would be displaced away from the foraging area. Any rock placed in this area would therefore impact on an area of The Wash SPA/Ramsar that provides optimum feeding conditions and would therefore need to be compensated due to displacement of foraging and roosting waders. The position of the rocks high up the intertidal area will also result in habitat that is the last to disappear at high tide being lost to foraging waterbirds. This location demonstrates precisely why we do not consider compensation measures being sited with The Wash SPA/Ramsar to be acceptable.</p> <p>For the reasons above, this site is not appropriate for considering an alternative high tide roost.</p>

2.18. Having reviewed the available area, there do appear to be fields between Cut End Car Park and HMP North Sea that could be used to create a suitable high tide roost area. These would be outside of the designated site, but close enough (within c.1km from the mouth of The Haven) that they would have a good chance of effectively support displaced

waterbirds. It is not clear what discussions the Applicant has been having with landowners closer to the mouth of The Haven to secure suitable compensation land.

2.19. In summary: we do not consider the proposed alternative roost sites to be appropriate based on Defra guidance, current use of the areas by roosting and foraging waterbirds, a failure to consult the RSPB about use of land that we own and manage, the lack of detail regarding the rock structures and the failure to collate baseline data to support the proposals. Alternative land outside The Wash SPA/Ramsar should be secured close to the mouth of The Haven to compensate for impacts to waterbirds using this area.

### Summary of the RSPB’s position on the Applicant’s proposed compensation measures

2.20. Whilst it is a positive step that multiple sites are being proposed for delivery of compensatory habitat and the RSPB welcomes the additional detail provided by the Applicant, we consider there still remains significant outstanding issues with all proposed sites.

2.21. Table 6 below summarises our position on both the compensation fields and alternative high tide roosts.

**Table 6: Summary of the RSPB’s position regarding the Applicant’s proposed compensation sites.**

<b>Compensation site</b>	<b>Suitability:</b> <b>Green</b> – Possibly suitable <b>Amber</b> – Potentially suitable but outstanding concerns <b>Red</b> – Not suitable
Corporation Point	Suitable location for features of The Wash SPA/Ramsar using the upper and middle reaches of The Haven. More detail needed to confirm suitable water supply to develop and maintain wetland. More certainty needed that all planning and consenting requirements can be met.
Wyberton Roads (North)	Suitable location for features of The Wash SPA/Ramsar using the upper and middle reaches of The Haven. More detail needed to confirm suitable water supply to develop and maintain wetland. More certainty needed that all planning and consenting requirements can be met.
Wyberton Roads (South)	Suitable location for dry grassland habitat. Need to understand implications of impact of other development pressures and potential impact on ability to deliver habitat extent. More

	certainty needed that all planning and consenting requirements can be met.
Scrane End	Not suitable as a compensation measure due to location and proposed habitat.
Alternative Roost A	Not suitable as compensation measures due to location with The Wash SPA/Ramsar. Also, lack of supporting information regarding ecological importance of the area, design of rock groynes and impact on intertidal processes.
Alternative Roost B	
Alternative Roost C	

2.22. Whilst there has clearly been additional work undertaken to address the concerns of interested parties, the RSPB's position remains that the Applicant's compensation measures remain inadequate to address the adverse effect on integrity of The Wash SPA/Ramsar that would result from the proposed development.

### 3. Comments on alternative DCO wording

- 3.1. With respect to changes to the DCO wording, the Applicant in an email dated 11<sup>th</sup> May 2023 has simply referred us to the suggested amendment by Natural England in their deadline 9 submission (REP9-058, point 24), namely:

*"The DCO states that (d) an implementation timetable for delivery of the compensation measures that ensures **all compensation measures are in place prior to the impact occurring** ([for habitat loss as a result of the construction of Work No. 4, the measures will be in place prior to any dredging or construction works on the intertidal habitat and] for the compensation for disturbance by the increased number of vessels, **the measures will be in place for at least two years prior to the hot commissioning of line 2 of Work No. 1A**);"*

- 3.2. This does not address the wider concerns we had with the wording of Schedule 11 of the DCO to ensure the role of the Ornithological Expert Group was clearly defined in all stages of the decision making.
- 3.3. Consequently, the RSPB's comments on the proposed DCO wording remain as set out in our response of 10 March 2023.

# Appendix 1: Map of the area between Boston and the edge of The Wash showing the proposed compensation sites for the Boston Alternative Energy Facility in relation to known sensitive sites and developments

