

**HABITATS REGULATIONS ASSESSMENT: Test for Likely  
Significant Effects Report**

**Able Marine Energy Park Development Consent Order 2014**

**Proposed non-material change of re-siting mitigation habitat  
approved to be located at Mitigation Area A to the Halton  
Marshes Wet Grassland Scheme**

**2 March 2021**

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# 1. Introduction

## Project Background

- 1.1 This is a record of the Habitat Regulation Assessment ("HRA") that the Secretary of State for Transport ("the Secretary of State") has undertaken under the Conservation of Habitats and Species Regulations 2017 ("the Habitat Regulations") in respect of the non-material change ("the Change Application") to the Development Consent Order ("DCO") for the Able Marine Energy Park (AMEP) (Figure 1). For the purposes of these Regulations the Secretary of State is the competent authority.
- 1.2 On 29 October 2014, Able Humber Ports Limited ("the Applicant") was granted development consent for the construction and operation of a new quay and associated development ("the Development") at Killingholme in North Lincolnshire on the south bank of the Humber estuary (the Able Marine Energy Park Development Consent Order 2014 (S.I. 2014/2935) (the "AMEP DCO")). The Development constitutes a Nationally Significant Infrastructure Project ("NSIP") by virtue of it being associated with the construction or alteration of harbour facilities within the meanings of sections 14(1)(j) of the Planning Act 2008.
- 1.3 The AMEP DCO permits the development and operation of a marine energy park comprising a new quay together with facilities for the manufacture, assembly and storage of marine energy components, primarily offshore wind turbines.
- 1.4 The overall conclusion of the HRA for the consented project was confirmed in paragraph 51 of the AMEP decision letter (18 December 2013) by the Secretary of State which confirms that the project:

*'satisfies all legal and regulatory requirements, including the international obligations of the United Kingdom Government and that the project can proceed without putting the UK Government in breach of the Habitats Directive'*
- 1.5 The AMEP DCO also included approval of the siting of two ecological mitigation areas. These were identified in the application documents as Mitigation Areas A ("Area A") and B (see Figure 1). In addition, when granting the AMEP DCO, the Secretary of State required the Applicant to provide grassland at Halton Marshes as part of a package of compensation measures for black-tailed godwits. This is referred to as the 'Over-Compensation'.
- 1.6 Area A comprises a 16.7 ha core (undisturbed) area of wet grassland habitat surrounded by a 150m wide buffer strip (offering protection from disturbance for the core area). Area A is needed to provide wet grassland habitat for the use of feeding and roosting waders, and also breeding birds. Mitigation Area B comprises a plot of 0.7 ha, adjacent to the Chase Hill Wood local wildlife site, identified as mitigation to complement the local wildlife site for the use of great crested newts, including the provision of new ponds. Both areas were provided for within the Order Limits of the AMEP DCO.
- 1.7 In the AMEP DCO Decision letter dated 18 December 2013, the Secretary of State (at paragraph 37) left the details of the exact proposals for the Over-Compensation to be agreed by Natural England through their approval of a Compensation Environmental Management and Monitoring Plan. Following approval by Natural England, the Over-Compensation is to be provided at Halton Marshes. This site lies outside of the Order limits, but the land is owned by the Applicant.

- 1.8 Mitigation Area B is not affected by this application and has now been established.

### **Relevant Projects to the Change Application**

- 1.9 In addition to AMEP DCO, a number of additional schemes relevant to the Change Application have been approved. This section provides a high-level summary of these schemes, their timelines and association with the AMEP DCO and current Change Application.
- 1.10 On the 8 May 2017, North Lincolnshire Council granted planning permission (PA/2016/649) for the development of 52 ha of core ecological habitat at Halton Marshes, known as the Halton Marshes Wet Grassland Scheme ("HMWGS") to provide a consolidated consent that brought various discrete parcels of ecological mitigation into a single block, namely:
- partial mitigation for the approved development of Abel Logistics Park ("ALP") (PA/2015/1264) ("the ALP Consent"). Mitigation for the ALP Consent includes 32 ha of core ecological habitat to mitigate for the loss of terrestrial fields that act as functionally linked land (FLL) that provide high tide feeding and roosting habitat for Humber Estuary SPA and Ramsar Site qualifying species (lapwing, golden plover, ruff and curlew). It provides an option for up to 20ha of the 32 ha to be located off site at a later date to ensure no likely significant effects from future stages of the ALP Consent, whilst the balance of 12ha has now been established at Halton Marshes, immediately adjacent to the ALP Consent boundary (Figure 4).
  - the area of Over-Compensation required as part of the AMEP DCO;
  - 20ha of core area for AMEP DCO mitigation (comprising the 16.7 ha of core area originally approved at Area A and 3.3 ha of additional core area which can be considered as habitat banking), and
  - a total of 38.2 ha of buffer, distributed on all sides of the core area at a width appropriate to distance the habitat from the different neighbouring land uses.
- 1.11 The HMWGS was subjected to an AA by the North Lincolnshire Council on 3 April 2017 (the 'HMWGS AA') and is included at Appendix C of the Change Application submitted to the Secretary of State. The HMWGS AA (paragraphs 9.2.2) concluded that:
- 'Overall, it is possible to ascertain that the proposal will not have an adverse effect on the integrity of the Humber Estuary SPA and Ramsar Site alone or in combination with other plans or projects.'*
- 1.12 The North Lincolnshire Council AA also concluded that the proposal's intended purpose of providing mitigation habitat for Humber Estuary SPA and Ramsar Site qualifying features that would be displaced by AMEP (in place of Area A), would not result in an adverse effect on integrity ("AEoI") on the Humber Estuary European Sites:
- '(t)aking into account Natural England advice and the recorded commuting distances for curlew, it is reasonable to conclude that the mitigation for loss of feeding, roosting and loafing habitat for curlew from Killingholme Marsh, that would have been provided by Area A, can effectively be delivered by the provision of 20 hectares of core habitat, along with appropriate buffers at HMWGS.'*
- 1.13 Construction of the habitats for the HMWGS has now been completed, and consequently the HMWGS has begun its transition to functionality. Terrestrial

Environmental Management and Monitoring Plans ("TEMMP") for the HMWGS have been approved pursuant to Condition 9 of PA/2016/649 and Condition 48 of PA/2015/1264, following advice from Natural England. These Plans, which replicate the requirements of the draft TEMMP included in Appendix F of the Change Application will continue to be implemented irrespective of the Change Application decision.

- 1.14 The design principles for HMWGS are set out in a report by JBA Consultants which is included at Appendix A of the Change Application. The HMWGS has been designed to provide all the functional requirements of Area A, providing suitable habitat for both qualifying features of the European sites and other species that are not features of the Humber Estuary SPA and Ramsar Site, including foraging habitats for bats and tussocky swards for nesting birds (Figures 2 and 3).
- 1.15 Referring to the functional requirements of Area A, the HMWGS specifically provides for the creation of suitable habitats for curlew, a qualifying feature of the Humber Estuary SPA and Ramsar Site. Curlew are the only part of the waterbird assemblage that are present in significant numbers on Killingholme Marshes and that would be displaced by the development of AMEP.

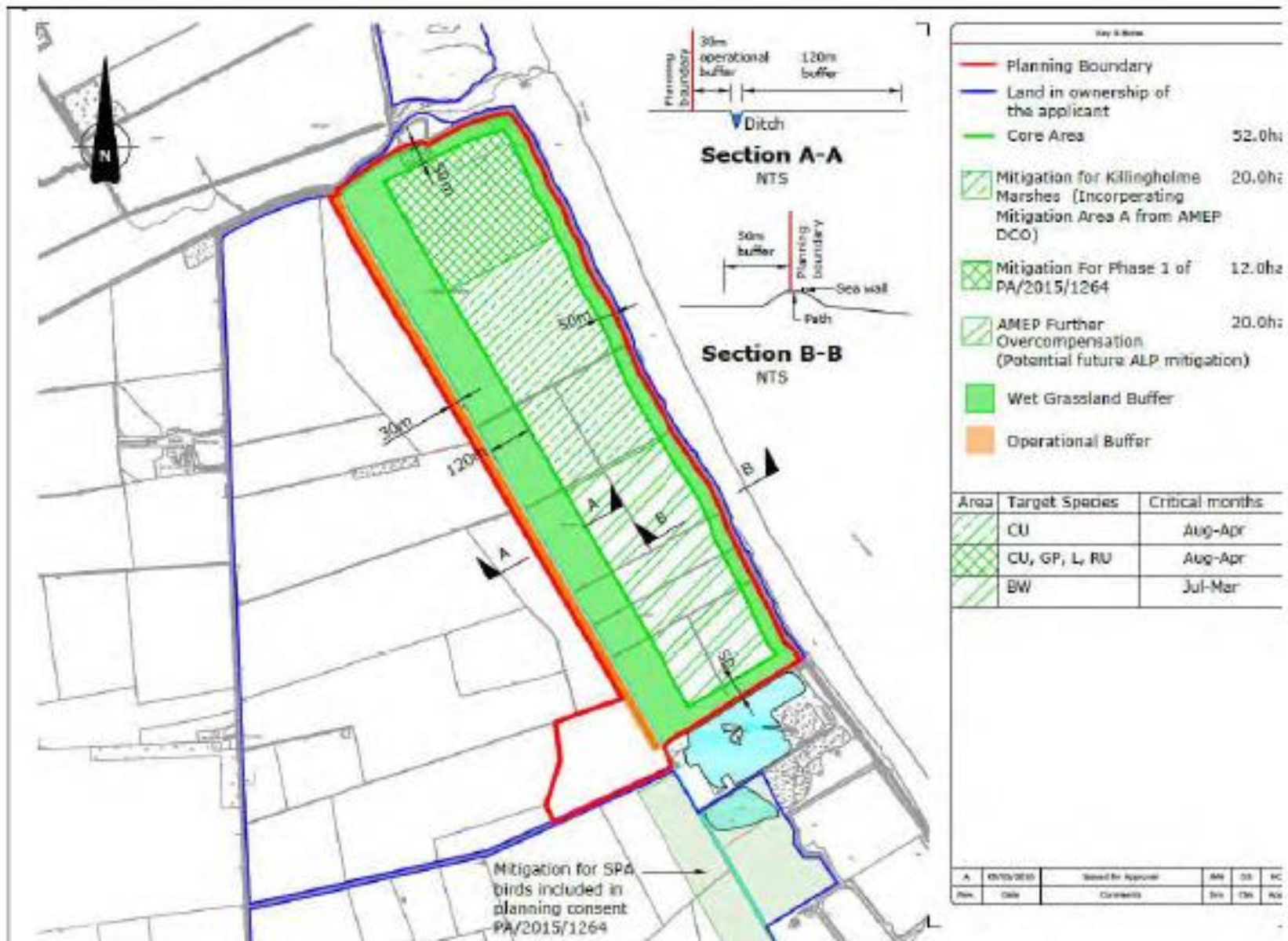


Figure 2. HMWGS: habitat management layout



Figure 3. Aerial view of completed HMWGS

## **Application for Non-Material Change**

- 1.16 The principal purpose of the Change Application is to remove Area A from the DCO Order limits and re-site Area A to the HMWGS in order to co-locate the following three areas of ecological mitigation that the applicant is under an obligation to provide under the AMEP DCO and planning permission PA/2015/1264:
- A core area of 16.7ha to replicate that in Area A, as part of the AMEP DCO;
  - The area of Over Compensation, as part of the AMEP DCO; and
  - 12 ha of the 32 ha of wetland required by the ALP Consent.
- 1.17 On 29 April 2019, the Department for Transport (DfT) wrote to the Applicant in regard to the Application. In the letter, it is stated that the Secretary of State:
- 'considers it necessary to undertake a Habitats Regulations Assessment ("HRA") to assess the materiality of the changes being sought in the Application', noting that 'the need for an Appropriate Assessment as part of the HRA is not necessarily of itself determinative of whether a change should be considered material.'*
- 1.18 Consequently, the Secretary of State requested that the Applicant:
- 'provides further information, which could be in the form of an updated shadow HRA/report, to assist the Secretary of State in undertaking the HRA. This HRA will then inform the Secretary of State's decision on the materiality of the change being applied for, which will include the possible effects on designated European Sites of moving Mitigation Area A to a new site outside the Order limits.'*
- 1.19 On 17 May 2019, the Applicant submitted the requested shadow HRA ("the 2019 sHRA") to the Secretary of State.
- 1.20 On 28 October 2020, the Secretary of State wrote to the Applicant setting out that he considered the change sought in the application to be material subject to consideration of further submissions by the Applicant which included further information to demonstrate that the proposed change gives rise to no materially new or materially different likely significant effects, compared to those assessed as part of the AMEP DCO.
- 1.21 On 12 November 2020, the Applicant submitted further information which included a proposal to re-define the Order Limits so that the Development of Area A is not permitted by the AMEP DCO and confirmation that the Applicant had withdrawn planning application PA/2017/2141 which related to a proposal for vehicle storage on Area A. Also included was a revised sHRA ("the Revised sHRA"), in response to the Secretary of State's comments on the 2019 sHRA. The Revised sHRA re-assessed whether the Change Application would adversely affect European Sites and their qualifying features in order to provide the Secretary of State with sufficient information to enable him to make an assessment of the implications for such sites and features, if required, in accordance with his duties under the Habitats Regulations.

## **Documents Referred to in this HRA Report**

- 1.22 This HRA report has taken account of and should be read in conjunction with the application documents listed in Annex 1 and consultation responses to the Secretary of State's requests for comments of 19 September 2018 and 20



November 2020 that can be found on the Planning Inspectorate's Nationally Significant Infrastructure Project site<sup>1</sup>. Responses from Natural England dated 8 December 2020 and 21 December 2020 are presented in Annex 2.

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<sup>1</sup> <https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/able-marine-energy-park/?ipcsection=docs&stage=7&filter1=Non-Material+Change>.

## **2. Habitats Regulations Assessment**

- 2.1 Council Directives 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora ("the Habitats Directive") and 2009/147/EC on the conservation of wild birds ("the Birds Directive") provide for the designation of sites for the protection of certain species and habitats. The sites designated under these Directives are collectively termed European sites and form part of a network of protected sites across Europe, known as the Natura 2000 network. In the UK the Habitats Regulations transpose these Directives into national law and apply up to the 12 nautical mile limit of territorial waters.
- 2.2 The Conservation of Habitats and Species Regulations 2017 (as amended) are one of the pieces of domestic law that transposed the land and marine aspects of the Habitats Directive and certain elements of the Wild Birds Directive. The changes are made by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. SACs and Special Protection Areas (SPAs) in the UK no longer form part of the EU's Natura 2000 ecological network. The 2019 Regulations have created a national site network on land and at sea, including both the inshore and offshore marine areas in the UK. The national site network includes existing SACs and SPAs, new SACs and SPAs designated under these Regulations.
- 2.3 Any references to Natura 2000 in the 2017 Regulations and in guidance now refers to the new national site network.
- 2.4 The UK Government is also a signatory to the Convention on Wetlands of International Importance 1972 ("the Ramsar Convention"). The Ramsar Convention provides for the listing of wetlands of international importance. UK Government policy is to give sites listed under this convention ("Ramsar Sites") the same protection as European sites and the new national site network.
- 2.5 For the purposes of this HRA Report, in line with the Habitats Regulations and relevant Government policy, the term "European sites" and new national site network includes Special Areas of Conservation ("SAC"), candidate SACs ("cSAC"), possible SACs ("pSAC"), Special Protection Areas ("SPA"), potential SPAs ("pSPA"), Sites of Community Importance ("SCI"), listed and proposed Ramsar Sites and sites identified or required as compensatory measures for adverse effects on any of these sites.
- 2.6 Amongst other things, the Habitats Regulations define the process for the assessment of the implications of plans or projects on European sites. This process is termed the HRA.
- 2.7 HRA can involve up to four stages, as detailed in Box 1.

## Box 1 Stages of Habitats Regulations Assessment

### Stage 1 – Screening:

This stage identifies the likely impacts upon a European Site of a project or Plan, either alone or 'in combination' with other projects or plans, and considers whether these impacts are likely to be significant.

### Stage 2 – Appropriate Assessment:

Where there are likely significant impacts, this stage considers the impacts of the Plan or project on the integrity of the relevant European Sites, either alone or 'in combination' with other projects or plans, with respect to the sites' structure and function and their conservation objectives. Where there are adverse impacts, it also includes an assessment of the potential mitigation for those impacts.

### Stage 3 – Assessment of Alternative Solutions:

Where adverse impacts [on the integrity of the site] are predicted, this stage examines [whether or not there are] alternative ways of achieving the objectives of the project or Plan that avoid adverse impacts on the integrity of European Sites.

### Stage 4 – Assessment Where No Alternative Solutions Exist and Where Adverse Impacts Remain:

This stage assesses compensatory measures where it is deemed that the project or Plan should proceed for imperative reasons of overriding public interest (IROPI).

- 2.8 Stages 1 and 2 are covered by Regulation 63 and Stages 3 and 4 are covered by Regulation 64 and 68.
- 2.9 With respect to Stage 2, the integrity of a European Site relates to the site's conservation objectives and has been defined in guidance as "*the coherent sum of the site's ecological structure, function and ecological processes, across its whole area, which enables it to sustain the habitats, complex of habitats and/or populations of species for which the site is designated*"<sup>2</sup>. An adverse effect on integrity, therefore, is likely to be one which prevents the site from making the same contribution to favourable conservation status for the relevant feature as it did at the time of designation. The HRA screening process uses the threshold of LSE to determine whether effects on European sites should be the subject of further assessment. The Habitats Regulations do not define the term LSE. However, in the Waddenzee case (Case C-127/02)<sup>3</sup> the European Court of Justice found that an LSE should be presumed and an AA carried out if it cannot be excluded on the basis of objective information that the plan or project will not have significant effects on the conservation objectives of the site concerned, whether alone or in-combination with any other project. The Advocate General's opinion of the Sweetman case (Case C-258/11)<sup>4</sup> further clarifies the position by noting that for a conclusion of an LSE to be made "*there is no need to **establish** such an effect...it is merely necessary to determine that there **may** be such an effect*" (original emphasis).

<sup>2</sup> Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC, at section 4.6.3 (Updated Version, November 2018)

<sup>3</sup> Judgment of the Court (Grand Chamber) of 7 September 2004. Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij. Reference for a preliminary ruling: Raad van State - Netherlands. Case C-127/02

<sup>4</sup> Judgment of the Court (Third Chamber), 11 April 2013 Peter Sweetman and Others v An Bord Pleanála. Request for a preliminary ruling from the Supreme Court (Ireland) Case C-258/11

- 2.10 For the reasons highlighted above the assessment process follows the precautionary principle throughout and the word 'likely' is regarded as a description of a risk (or possibility) rather than in a legal sense an expression of probability.
- 2.11 Screening can be used to screen-out European sites and elements of works from further assessment, if it is possible to determine that significant effects are unlikely (e.g., if sites or interest features are clearly not vulnerable (exposed and / or sensitive) to the outcomes of the proposal due to the absence of any reasonable impact pathways).
- 2.12 The screening process has two potential conclusions, namely that the proposed development, alone or in combination with other developments, could result in:
- No LSE on any of the qualifying features of the site; or
  - LSE identified, or cannot be ruled out, on one or more of the qualifying features of the site.
- 2.13 Only the second of these outcomes will trigger an AA. If one or more LSE are identified, or cannot be ruled out, it is then necessary to proceed to Stage 2 and produce an AA.
- 2.14 On 12 April 2018, the Court of Justice of the European Union (CJEU) issued a judgment on Case C323/17 (People over Wind, Peter Sweetman v Coillte Teoranta)<sup>5</sup> which stated (at paragraph 41):
- "Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects [mitigation] of the plan or project on that site."*
- 2.15 This means that any mitigation relating to protected sites under the Habitat Regulations 2017 Regulation 63 (1) will no longer be considered at the screening stage but taken forward and considered at the appropriate assessment stage to inform a decision on whether no adverse effects on site integrity can be demonstrated.
- 2.16 The assessment provided within this HRA takes into account the CJEU ruling on 'People over Wind' and the the precautionary principle has been applied as per Waddenzee case.
- 2.17 The Change Application is not connected with or necessary to the management of any European sites. Accordingly, the Secretary of State as the competent authority has undertaken an assessment in line with the requirements of the Habitats Regulations. This HRA Report is the record of the assessment of likely significant effects to determine whether an appropriate assessment is required.
- 2.18 In this case, the Secretary of State is deciding whether to consent the removal of an area of ecological mitigation from the AMEP DCO Order limits for which consent was granted under the AMEP DCO. An alternative site, the HMWGS, designed to mitigate for the effects of the Development on habitats

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<sup>5</sup> Judgment of the Court (Seventh Chamber) of 12 April 2018 People Over Wind and Peter Sweetman v Coillte Teoranta Request for a preliminary ruling from the High Court (Ireland) Case C-323/17

and species has already been constructed under planning permission reference PA/2016/649, as issued by North Lincolnshire Council.

### **3. Likely Significant Effects Test**

- 3.1 The purpose of this test is to identify any LSEs on European sites that may result from the Change Application and to record the Secretary of State's conclusions and his reasons for including activities, sites or plans and projects for further consideration if an AA is required. For those features where a LSE is identified, these must be subject to an AA. This review of potential implications can be described as a 'two-tier' process, with the LSE test as the first tier stage 1 screening and if required the review of effects on integrity as the second tier stage 2 AA.
- 3.2 This section addresses the first stage of the HRA, for which the Secretary of State has considered the potential impacts of the Change Application, both alone and in combination with other plans and projects, on the interest features of the relevant European sites to determine whether or not there will be LSE.

#### **Potential for Likely Significant Effects**

- 3.3 The Secretary of State has considered the potential construction and operational impacts of the Change Application on all relevant interest features of European Sites detailed below to determine whether there will be LSE in the context of the Habitat Regulations.
- 3.4 The AMEP Habitats Regulation Assessment Report ("AMEP HRAR") submitted as part of the application for the AMEP DCO in 2011, identifies the Humber Estuary as '*one of the largest estuaries in the UK comprising extensive wetland and coastal habitats*' (paragraph 5.2.1). It is covered by all three relevant designations:
- Humber Estuary SAC;
  - Humber Estuary SPA; and
  - Humber Estuary Ramsar Site.
- 3.5 A plan showing all three European sites identified in the Revised sHRA was provided in Appendix D of that report (Figure 5). Area A is located some 1km west whilst HMWGS lies adjacent to the boundaries of all three European sites (Figures 4 and 5).

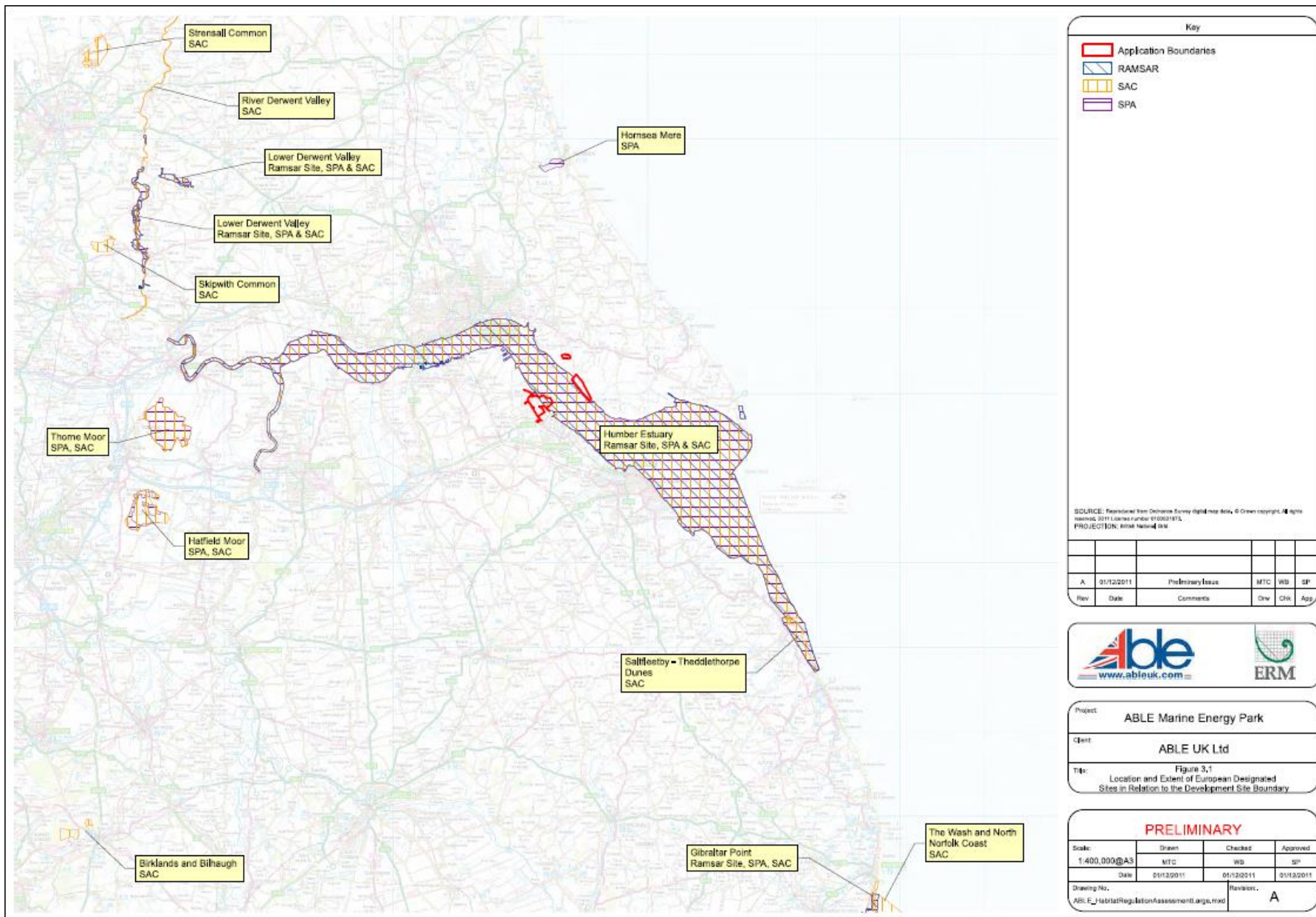


Figure 4. Humber Estuary European sites in relation to the AMEP DCO Boundary

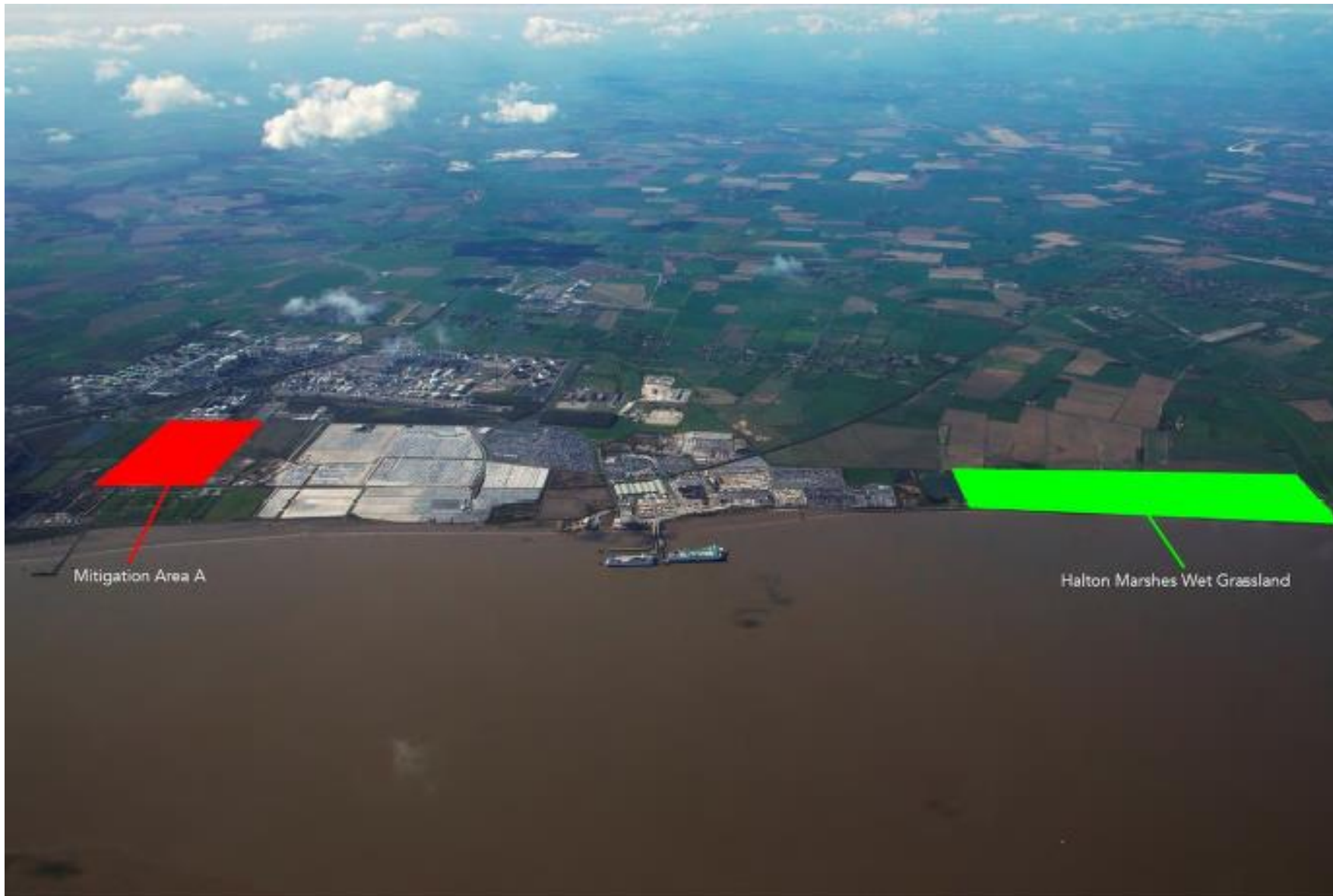


Figure 5. Location of Area A within AMEP DCO in relation to the constructed mitigation site at the HMWGS.



- 3.6 The Secretary of State is in agreement with Natural England<sup>6</sup> that the AMEP HRAR correctly identifies and lists those European Sites that require screening for LSE and the three sites identified above are the only sites that require consideration within the Revised sHRA. The relevant qualifying features of these sites are:
- All features of the Humber Estuary SAC;
  - Humber Estuary SPA waterbird assemblage qualifying feature curlew; and,
  - Humber Estuary Ramsar non-breeding waterbird assemblage feature curlew.
- 3.7 Section 5.3.25 *et seq* of the AMEP HRAR set out the existing use of the terrestrial fields on Killingholme Marshes. The AMEP HRAR noted that of six species of wetland bird using the terrestrial fields during the non-breeding season, only one, curlew, did so regularly and in numbers that exceeded 1% of that Humber Estuary SPA non-breeding population. Curlew is not a qualifying feature of the Humber Estuary SPA or Humber Ramsar in its own right but is identified as part of the non-breeding waterbird assemblage qualifying feature of the Humber Estuary SPA. Furthermore, it is assumed to form part of the non-breeding waterbird assemblage qualifying feature of the Humber Estuary Ramsar. Therefore, as the priority species identified for mitigation in Area A was curlew, the Secretary of State concludes that the approach within the Revised sHRA, considering the LSE on the non-breeding waterbird assemblage that curlew forms part of for both the Humber Estuary SPA and Humber Estuary Ramsar Site, is the most appropriate approach to take.
- 3.8 Additionally, consideration of breeding marsh harrier, a qualifying feature of the Humber Estuary SPA, has been included in the Revised sHRA as the Secretary of State identified this species as requiring further information and assessment in his letter of 28 October 2020.

### **Conservation Objectives**

- 3.9 The conservation objectives for European sites define the desired state for a European site when it will contribute to favourable conservation status for the designated features. The conservation objectives for the Humber Estuary SAC and SPA, as published by Natural England and the Joint Nature Conservation Committee ("JNCC"), are provided in Annex 3 of this HRA Report. For the purposes of this assessment these conservation objectives are also applied to the Humber Estuary Ramsar Site.

### **Assessment of LSE**

- 3.10 The screening assessments for each of the sites are discussed in turn below.
- #### **Humber Estuary SAC**
- 3.11 The Secretary of State notes that neither Area A nor the HMWGS is within the SAC, therefore no qualifying feature of the Humber Estuary SAC would be directly affected by the Change Application and therefore no pathways for LSE exist for direct effects.
- 3.12 The Secretary of State notes that HMWGS is already *in situ* and as the nature and current agricultural land use of Area A will remain unchanged there is no possibility of LSE associated with indirect effect on any features of the Humber Estuary SAC.

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<sup>6</sup> SOCG009 TR030001 Able Humber Ports Ltd Statement of Common Ground with Natural England and the Marine Management Organisation. 28/08/2012

- 3.13 The Secretary of State has also reviewed the information within the Applicant's Revised sHRA and this information combined with the screening assessment above allows the Secretary of State to conclude that based upon the lack of any impact pathways there are no LSEs on any qualifying features of the Humber Estuary SAC.

### **Humber Estuary SPA**

#### *Non-breeding waterbird assemblage*

- 3.14 Section 5.6 of the Applicant's Revised sHRA provides an assessment of LSE for the non-breeding waterbird assemblage qualifying feature, for which the Applicant concluded no LSE.

- 3.15 The Natural England response (21 December 2020) states that:

*'the relocation of the mitigation area will not result in an adverse effect on curlews commuting between the inter tidal frontage and HMWG site'*

- 3.16 Taking into account the position of Natural England (dated 8 December 2020 and 21 December 2020); the Applicant's Revised sHRA; and the combination of the HMWGS already being *in situ* and the nature and current agricultural land use of Area A remaining unchanged within the Change Application, the Secretary of State concludes that there is no pathway for LSE on the Humber Estuary SPA non-breeding waterbird assemblage.

#### *Breeding marsh harrier*

- 3.17 Section 5.7 of the Applicants Revised sHRA provides an assessment of LSE for the breeding marsh harrier qualifying feature, for which the Applicant concluded no LSE.

- 3.18 The Natural England response (8 December 2020) states that:

*'Regarding SPA breeding marsh harrier, Natural England is of the opinion that the main impact pathway would be through disturbance impacts during the construction phase of the wet grassland. As the construction phase is complete, we do not envisage any further significant impacts.'*

- 3.19 The Secretary of State concludes, taking into account the position of Natural England and the Applicant's Revised sHRA, that with the HMWGS already constructed and *in situ* there is no pathway for LSE on Humber Estuary SPA qualifying feature breeding marsh harrier as a result of the Change Application.

### **Humber Estuary Ramsar Site**

#### *Non-breeding waterbird assemblage*

- 3.20 Section 5.6 of the Applicant's Revised sHRA provides an assessment of LSE for the non-breeding waterbird assemblage qualifying feature, for which the Applicant concluded no LSE.

- 3.21 Taking into account the position of Natural England (dated 8 December 2020 and 21 December 2020); the Applicant's Revised sHRA; and the combination of the HMWGS already being *in situ* and the nature and current agricultural land use of Area A remaining unchanged within the Change Application, the Secretary of State concludes that there is no pathway for LSE on the non-breeding waterbird assemblage of the Humber Estuary Ramsar Site.

## Assessment of In-combination Effects

3.22 The Applicant's Revised sHRA identifies three consented schemes included for consideration as part of an in-combination assessment (Figure 6). The plans and projects identified and considered by the Applicant are:

- AMEP DCO (S.I. 2014/2935);
- ABLE Logistics Park (PA/2015/1264); and
- North Killingholme Power Project ("NKPP") (SI2014/3331).

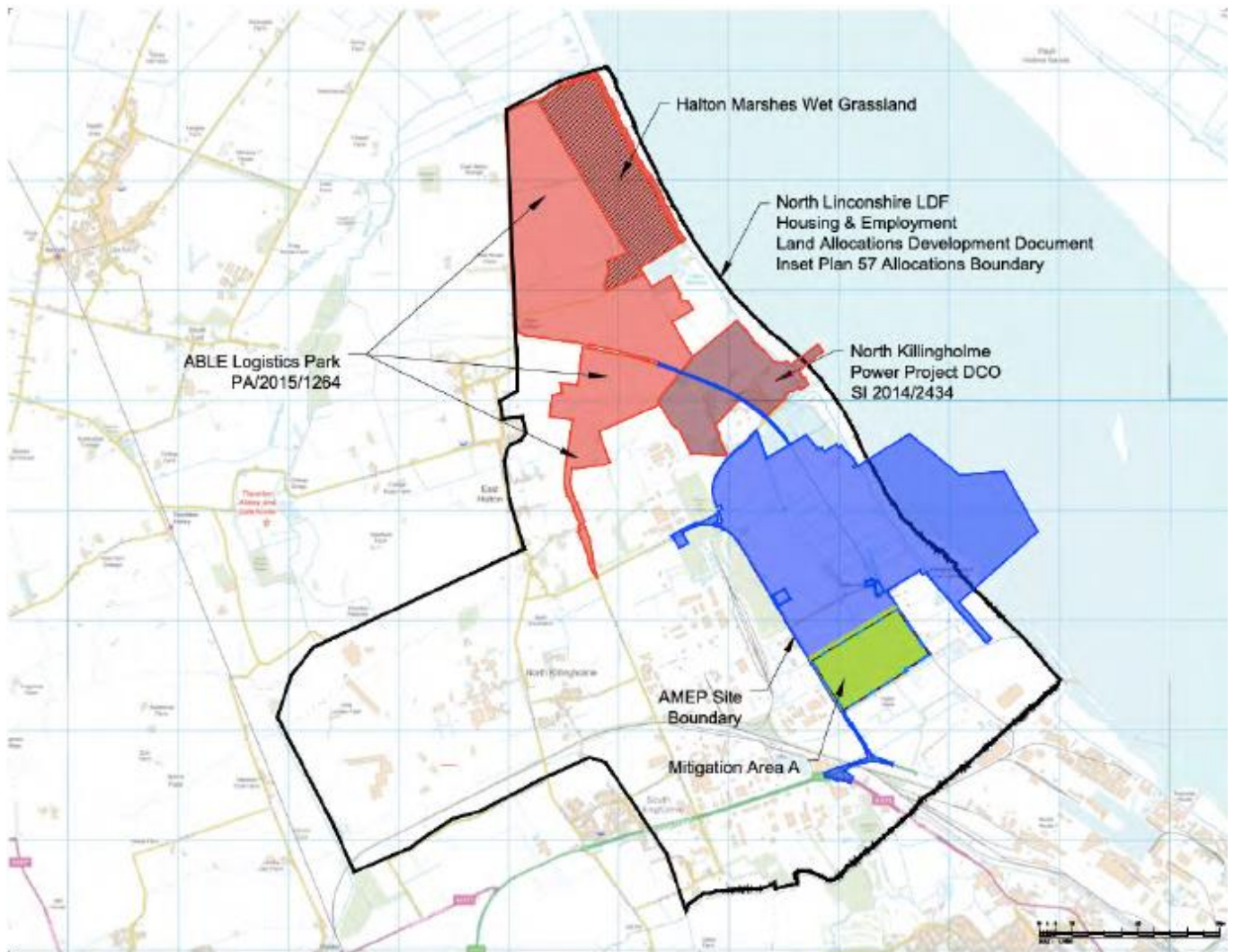


Figure 6. Sites included for in-combination assessment within the Applicant's Revised sHRA

3.23 Whilst the Applicant's Revised sHRA concluded that there would be in-combination effects due to construction disturbance, Natural England in their consultation response dated 8 December 2020 concluded that as the Applicant's Revised sHRA identified no disturbance effects as a result of the Change Application to SPA/Ramsar qualifying features (as the construction works at the HMWGS have already been completed), then it follows that there can be no in-combination LSE. The Secretary of State agrees with Natural England's position and concludes that there are no in-combination effects due to construction

disturbance.

- 3.24 In addition to the three consented schemes detailed within the Applicant's Revised sHRA, the Secretary of State has considered within this in-combination assessment the proposed application by Able UK for a monopile factory that currently lies within the current AMEP DCO boundary and Order limits, submitted to North Lincolnshire Council (PA/SCO/2020/3). Part of the development footprint for this proposal extends into Area A (Figure 7). In terms of the Habitat Regulations, the scoping response by North Lincolnshire Council commented that the works are likely to displace wintering and passage birds such as curlew using the site for feeding, roosting and loafing, representing a loss of functionally linked land, and the applicant should provide sufficient information to enable the North Lincolnshire Council to carry out a HRA. Of note was the request for details of the provision of compensatory habitat at HMWGS and confirmation of approval of the Change Application associated with this report. In their scoping response, Natural England supported the comments of North Lincolnshire Council and in particular on gaining confirmation of approval of the Change Application.



Figure 7. Boundary of PA/SCO/2020/03 in relation to Area A

- 3.25 The Secretary of State considers that should the Change Application be

granted, Area A would no longer be required to be managed as a habitat enhancement area under the AMEP DCO. However, the grant of the Change Application would not authorise the development of Area A. Any impacts arising from PA/SCO/2020/3 or any other future proposal to develop Area A, alone or in combination, will require a separate HRA .

- 3.26 The Secretary of State has concluded, taking into account the position of Natural England (dated 8 December 2020 and 21 December 2020), that the combination of the HMWGS already being *in situ* and the nature and current agricultural land use of Area A remaining unchanged within the Change Application indicates that there is no pathway for LSE on any European site alone and this lack of pathways for LSE alone therefore also applies for the in-combination assessment.
- 3.27 Therefore, the Secretary of State is content that all plans and projects with the potential to have significant in-combination effects with the Change Application in terms of the HRA have been identified, and that there are no in-combination LSEs for the Humber Estuary SAC, SPA or Ramsar Site.

## 4. HRA CONCLUSIONS

- 4.1 The Change Application is for the removal of Area A from the Order limits and the relocation of consented mitigation to the HMWGS at Halton Marshes. The Applicant's Revised sHRA concludes that an approval would not give rise to any new physical disturbance of the environment as the construction of the alternative habitat at the HMWGS is complete and its ongoing management is already consented and approved by planning condition.
- 4.2 Natural England has previously agreed with the findings of the North Lincolnshire Council HRA for the development of HMWGS (PA/2016/649) which included an assessment of its suitability as high tide feeding and roosting areas for waterbirds displaced by AMEP and management plans for the maintenance of the wet grassland approved by the local planning authority, following consultation with Natural England, pursuant to Condition 9 of PA/2016/649 and Condition 48 PA/2015/1264.
- 4.3 The Secretary of State has undertaken an assessment of the potential for likely significant effects to determine whether an appropriate assessment is required in relation to the following European sites:
- Humber Estuary SAC;
  - Humber Estuary SPA; and
  - Humber Estuary Ramsar Site.
- 4.4 The Secretary of State is satisfied that, given the lack of effect pathways on the qualifying features of these European sites, there would not be any implications for the achievement of the conservation objectives for those European sites. Those conservation objectives are set out in Annex 3 of this HRA Report.
- 4.5 Natural England confirmed in their response (21 December 2020) that:
- 'we are satisfied that sufficient information has been provided to address the point and that the change in location of the mitigation area will not result in an adverse effect on the SPA/ Ramsar features.'*
- 4.6 Based on the submissions by the Applicant, together with the further consultations undertaken by the Secretary of State, the Secretary of State is satisfied that the views of Natural England as the appropriate nature conservation body have been considered and that they are in agreement with the scope and conclusions of the Applicant's Revised sHRA.
- 4.7 The Secretary of State considers that the HMWGS at Halton Marshes is a suitable alternative to Area A, providing the same functional ecological requirements as Area A. As the proposed Change Application only applies to removing Area A from the AMEP DCO Order limits, and replicating Area A in a different location, the Secretary of State considers that any impacts associated with the implementation of the Change Application would be the same or less than those already assessed.
- 4.8 The Secretary of State has concluded, taking into account the position of Natural England (dated 8 December 2020 and 21 December 2020), that the combination of the HMWGS already being constructed and *in situ* and the nature and current agricultural land use of Area A remaining unchanged within the Change Application indicates that there is no pathway for LSE on any European site alone or in combination.

- 4.9 The Secretary of State considers that should the Change Application be granted, Area A would no longer be required to be managed as a habitat enhancement area under the AMEP DCO. Any LSE arising from PA/SCO/2020/3, alone or in combination, will require a separate HRA.
- 4.10 As any pathway for LSE associated with the Change Application has been excluded for all relevant qualifying features of the Humber Estuary SPA, SAC and Ramsar Site, there is no requirement for the Secretary of State, as the competent authority, to undertake an appropriate assessment to determine the implications for the conservation objectives of the affected European sites.

**Date: 2 March 2021**

## Annex 1 Documents used to inform this HRA Report

### Change Application Documents

- Application for a non-material change to the Able Marine Energy Park Development Consent Order 17 September 2018  
([https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR030001/TR030001-003450-Able%20NMC%20-%20Application%20Statement%20Part%201\\_Redacted.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR030001/TR030001-003450-Able%20NMC%20-%20Application%20Statement%20Part%201_Redacted.pdf))
- Application for a non-material change to the Able Marine Energy Park Development Consent Order Rev D. 16 November 2020  
(<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR030001/TR030001-003487-201112%20TR030001AMEP%20NMC%20Application%20Statement%20Rev%20D.pdf>)
- Revised Shadow Habitats Regulations Assessment. Proposed non-material change of re-siting mitigation habitat approved to be located at Mitigation Area A to the Halton Marshes Wet Grassland Scheme 16 November 2020  
(<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR030001/TR030001-003486-201112%20TR030001%20Revised%20Shadow%20HRA.pdf>)

NB. This list is not exhaustive. The HRA Report is informed by the application and submissions to the Change Application which are publicly available at:

<https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/able-marine-energy-park/?ipcsection=docs&stage=7&filter1=Non-Material+Change>



## Annex 2 Natural England Consultation Responses

Date: 08 December 2020  
Our ref: 334958  
Your ref: TR030001 NMC



National Infrastructure  
The Planning Inspectorate  
Temple Quay House  
2 The Square  
Bristol, BS1 6PN

Customer Services  
Hornbeam House  
Crewe Business Park  
Electra Way  
Crewe  
Cheshire  
CW1 6GJ

T 0300 060 3900

**BY EMAIL ONLY**

Dear Sir/ Madam

**NSIP Reference Name / Code: The Able Marine Energy Park (AMEP) Development Consent Order 2014 – S.I. 2014 No. 2935**

1. a non-material change to amend the certified drawings set out in Requirement 6 of Schedule 11 (Requirements) of the DCO to remove reference to Area A and to introduce a new drawing which identifies the new site at Halton Marshes; and
2. a non-material change to Schedule 1 to confirm that the ecological mitigation will be provided in accordance with the environmental monitoring and management plans but to reflect that the re-siting of Area A to Halton Marshes will be outside of the Order limits.

Thank you for your consultation which was received by Natural England on 20 November 2020. In addition to our previous responses dated 24 October 2018, 13 December 2018 and 17 May 2019, below Natural England sets out our response to the additional information that has been provided by the Applicant in support of the application for a non-material change.

Natural England welcomes the additional information and confirmation that the current Mitigation Area A land will not be developed as part of the DCO and is excluded from the development limits.

For clarification, we confirm that we did not review the sHRA (dated 17 May 2019). We were not aware of its availability and did not receive a request from the SoS to review the document. Therefore, our letter of 17 May 2019, is not based on the contents of the sHRA (dated May 2019).

### **Revised shadow Habitats Regulations Assessment (dated November 2020)**

The sHRA has considered the relocation of mitigation from Mitigation Area A to the Halton Marshes Wet Grassland site within the likely significant effects test, with reference to the conservation objectives for the relevant SPA features. These features have been identified as:

- SPA breeding marsh harrier.
- SPA waterbird assemblage

Regarding SPA breeding marsh harrier, Natural England is of the opinion that the main impact pathway would be through disturbance impacts during the construction phase of the wet grassland. As the construction phase is complete, we do not envisage any further significant impacts.

The focus of the HRA should be whether the relocation of the mitigation area from Area A to HMWG site will result in any impacts on the designated site features. The impacts of construction HMWG have been covered in a separate HRA. The Terrestrial Ecological Monitoring and Management Plan

has been agreed in principle, Natural England is therefore satisfied that HMWG is capable of delivering the required mitigation.

A key aspect which has not been addressed in the sHRA will be the timing of the relocation: it would be useful to specify the formal date of the relocation for future reference (once agreed). It is also worth noting that whilst construction works have been carried out at HMWG and the site is being managed in line with the TEMMP, it has not yet met all of the site objectives (i.e. it is not yet fully providing the functional habitat that is required). It may take a number of years for the site to fully meet its mitigation objectives and this should be addressed within the sHRA.

**Target:** Restore the overall abundance of the assemblage to a level which is above 153,934 whilst avoiding deterioration from its current level as indicated by the mean count or equivalent.

5.6.6 The relocation of Mitigation Area A is likely to have a neutral or potentially beneficial effect on the abundance of the assemblage. This is evidenced in Natural England's consultation response to the Application, dated 24 October 2018, which states that:

*'the proposed change of location to Halton Marshes for the mitigation for the loss of functionally linked land at Killingholme Marshes, alongside mitigation measures for other permissions, will create a larger, contiguous area of wet grassland habitat overall that will potentially have significant value for SPA birds'*, (emphasis added, refer to Annex K).

In a number of locations in the sHRA Natural England's previous comment that a larger wet grassland habitat at the HMWG site will potentially have a significant value for SPA birds has been used to support the relocation of Mitigation Area A (resulting in a neutral or beneficial effect). We advise that these are separate issues and NE's comment should not be used to evidence that the relocation will be beneficial. Separate evidence should be used to show that there will be no likely significant effect on the designated site.

**Target:** Maintain the structure, function and supporting processes associated with the feature and its supporting habitat through management or other measures (whether within and/or outside the site boundary as appropriate) and ensure these measures are not being undermined or compromised.

The assessment refers to the desirability of having 3 or 4 larger mitigation areas secured as part of the South Humber Gateway Mitigation Strategy and that by consolidating the mitigation areas this is helping to deliver this objective. Note 1 below addresses this point.

At 5.7.42, it states that cumulative impacts of North Killingholme Power Project and Able Logistics Park in relation to disturbance have been assessed 'in combination'. Since there were no disturbance effects identified alone (as the construction works have already been completed for HMWGS), we are unsure why it is deemed necessary to consider disturbance impacts in combination. If there are no effects at all causing disturbance to SPA/Ramsar birds, then it follows that there can be no LSE in combination.

#### **Natural England's previous comments and how they have been addressed in the sHRA**

The following comments (in italics) have been taken from our letter of 17 May 2019. We have indicated whether we consider that these points have been addressed.

*In the original HRA, the screening assessment concluded that the effects of loss of terrestrial habitat within the AMEP site, which is used by foraging and roosting SPA birds (predominantly curlew), required mitigation to ensure that there were no adverse effect on the integrity of the Humber Estuary SPA and Ramsar site. It was agreed that Mitigation Area A was adequate to mitigate these losses. Natural England recommends that the updated HRA should address the complete loss of this Functionally Linked Land (FLL) on the development site. In addition, we advise that the HRA demonstrates that the proposed off-site mitigation at Halton Marshes will ensure that the overall coherence of the Natura 2000 network remains protected.*

As mitigation Area A will remain as an open field in relation to the AMEP DCO development, the complete loss of functionally linked land does not need to be assessed as part of this application, however any future development proposals for this site should address this aspect.

*SPA/Ramsar bird species are known to use both terrestrial and intertidal habitats at different times, for example, when water levels are high and there is little intertidal habitat available, terrestrial habitat provides an essential foraging and roosting habitat. Natural England recommends that the HRA should assess whether the new location of the mitigation at Halton Marshes can adequately provide this alternative terrestrial habitat function for birds that use the North Killingholme marshes fronting and North Killingholme Haven Pits (NKHP).*

(Note 1) This aspect is not specifically addressed within the revised sHRA. As the mitigation area at HMWG site is at approximately the same distance as Mitigation Area A from North Killingholme Haven (NKH) Pits, we consider that there will be no significant effect from relocating the mitigation area on SPA birds using NKH Pits. However Natural England advises that additional information is required to confirm that SPA/Ramsar waterbirds using the Killingholme intertidal frontage will not be adversely impacted from the relocation of the terrestrial mitigation area.

*In the original HRA, the screening assessment also determined that the disturbance effects on birds using NKHP from construction activities (other than piling) and operation of AMEP required mitigation. It was concluded that based on a commitment to achieve 65 dB(A) L<sub>Amax</sub> at the NKHP site boundary that there would be no adverse effect on birds within NKHP [Schedule 11 Requirement 42]. Therefore, if Mitigation Area A becomes part of the AMEP development site, Natural England would like assurance that the noise level commitment will continue.*

This is not specifically addressed within the sHRA. However it is Natural England's view that as mitigation Area A will remain as an open field in relation to the AMEP DCO development, there will be no increase in noise levels at North Killingholme Haven Pits associated with relocating the mitigation area to Halton Marshes Wet Grassland site.

For any future applications for development on Mitigation Area A, Natural England considers that an assessment should be carried out to determine if there are any additional environmental impacts as the application has only previously considered this area as grassland. In particular it will be important to assess the ecological function provided by HMWG site at the time of any development proposals for Area A and whether HMWG will fully mitigate for the loss of Area A.

#### **Application Statement Rev D**

We note that section 3.1.3 refers to a letter from NE to PINS which was dated 13 Dec 2020, this should be 13 Dec 2018.

#### **Indicative Masterplan**

It is unclear why the red line boundary remains in the same location, although it is understood that this would now be removed from the DCO development limits. No further comment.

For any queries relating to the specific advice in this letter please contact Hannah Gooch at [Hannah.Gooch@naturalengland.org.uk](mailto:Hannah.Gooch@naturalengland.org.uk) on 02082 258503. For any new consultations, or to provide further information on this consultation please send your correspondence to [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk).

Yours faithfully

Susan Wilson  
Yorkshire and Northern Lincolnshire Area Team  
Natural England

From: Wilson, Susan <[susan.wilson@naturalengland.org.uk](mailto:susan.wilson@naturalengland.org.uk)>  
Sent: 21 December 2020 15:40  
To: Richard Cram <[rcram@ableuk.com](mailto:rcram@ableuk.com)>; Gooch, Hannah <[hannah.gooch@naturalengland.org.uk](mailto:hannah.gooch@naturalengland.org.uk)>  
Cc: Tailor Kishor <[k.tailor@humberlep.org](mailto:k.tailor@humberlep.org)>; Forecast, Lauren <[Lauren.Forecast@naturalengland.org.uk](mailto:Lauren.Forecast@naturalengland.org.uk)>; Neil Etherington <[netherington@ableuk.com](mailto:netherington@ableuk.com)>  
Subject: RE: AMEP Non material Change Application

Hi Richard

Thank you for your email, I have added notes as below. Do you require an amended letter or is this sufficient?

Regards

Susan

Susan Wilson  
Senior Adviser of the Coast (Northern England)  
Based in Yorkshire and Northern Lincolnshire Team  
Natural England

My normal working days are Monday to Thursday.

From: Richard Cram <[rcram@ableuk.com](mailto:rcram@ableuk.com)>  
Sent: 18 December 2020 14:39  
To: Wilson, Susan <[Susan.Wilson@naturalengland.org.uk](mailto:Susan.Wilson@naturalengland.org.uk)>; Gooch, Hannah <[Hannah.Gooch@naturalengland.org.uk](mailto:Hannah.Gooch@naturalengland.org.uk)>  
Cc: Tailor Kishor <[k.tailor@humberlep.org](mailto:k.tailor@humberlep.org)>; Forecast, Lauren <[Lauren.Forecast@naturalengland.org.uk](mailto:Lauren.Forecast@naturalengland.org.uk)>; Neil Etherington <[netherington@ableuk.com](mailto:netherington@ableuk.com)>  
Subject: AMEP Non material Change Application

Susan, Hannah

As discussed during our telecon yesterday, I expect it would be helpful to the SoS if we could resolve those matters highlighted in your attached correspondence so that there was no residual cloud of doubt in your advice. Taking the points in sequence as they arise in your letter:

1. *'It may take a number of years for the site to fully meet its mitigation objectives and this should be addressed within the sHRA'.*

This passage could be read to mean that some programme restriction should be applied to the development as amended that is not applied in the consented scheme. I understand that you did not mean this to be inferred. As we discussed, the approved TEMMP envisaged that the wet grassland habitat created to mitigate for the loss of FLL would take at least 2-4 years to reach some objectives (refer to the TEMMP, Objective SPA3) and these objectives remain the same in the TEMMP that NE has approved in principle for the alternative site. So

there is no change in the anticipated time for the alternative habitat to reach optimality. I understand that you agree that this time lag is not likely to give rise to any likely significant effect. Can you confirm this is your position.

NE comment: we can confirm that this is our position.

2. *'We advise that these are separate issues and NE's comment should not be used to evidence that the relocation will be beneficial. Separate evidence should be used to show that there will be no likely significant effect on the designated site.'*

As I mentioned in the meeting, the SHRA does not state that the relocation will be beneficial, merely that the relocation is likely to have a 'neutral or beneficial effect on the abundance of the assemblage', (underline added). In your role as the appropriate national conservation body, NE's opinion on matters is plainly very important (see for example *Akester [2010] EWHC 232 (Admin)*, at paragraph 112, <https://www.bailii.org/ew/cases/EWHC/Admin/2010/232.html> ) and the SHRA merely draws attention to your own expert opinion that the combined proposal is '*potentially (of) significant value to SPA birds*'. We do not appear to be quoting the passage out of context. The principal evidence that we rely on however, to ascertain no likely significant effect on the waterbird assemblage, is that the mitigation site is only required (so far as the European site is concerned) to mitigate the impacts on curlew, see the approved TEMMP, paragraph 2.6.1. Further that the alternative site is within the observed commuting distance for the curlew (paragraph 5.6.11 of the SHRA), and that NE has previously agreed with the HMWG HRA (Application Statement, Appendix C, final sheet, e-mail Alistair Welch to Andrew Taylor). Finally of course, the fact that the draft TEMMP is approved in principle by NE. The final piece of evidence being a compelling point since the SoS plainly gave significant weight to the fact that a TEMMP had been agreed in his original HRA for AMEP (see at paragraph 7.1.3 of the SHRA), relevant abstract from original HRA below:

9. The Secretary of State notes Natural England's opinion that Mitigation Area A, taken with the management and monitoring measures to be agreed under the Terrestrial EMMP, is sufficient to avoid an adverse effect on the site Integrity of the SPA (PR 10.68). He notes also the Panel's view that the draft Terrestrial EMMP submitted at the end of the examination formed a firm basis for finalising measures that would fully mitigate the impacts on habitats and species of the AMEP development on land at North Killingholme (PR 10.76-78). Since the details of this and the other EMMPs have now been agreed between the applicant and Natural England, the Secretary of State is satisfied that the Terrestrial EMMP will ensure that the objectives of the mitigation measures relevant to the SPA (as well as other habitats and species) will be achieved.

Can you confirm the evidence base is sufficient, taken with the rest of the SHRA, to conclude no adverse effect on integrity (AEOI).

NE comment: NE's comment related to the beneficial effect of having a larger mitigation area (ie the size of the mitigation area) not specifically the change in the location of the habitat area. However we are satisfied that sufficient information has been provided to address the point and that the change in location of the mitigation area will not result in an adverse effect on the SPA/ Ramsar features.

3. *'However Natural England advises that additional information is required to confirm that SPA/ Ramsar waterbirds birds using the Killingholme intertidal frontage will not be adversely impacted from the relocation of the terrestrial mitigation area.'*

In response, we reiterate the points made above and the associated evidence. It is only the impact on curlew that needs to be considered and the alternative site is within the observed commuting distance for this species.

Can you confirm the evidence base is sufficient, taken with the rest of the SHRA, to conclude no AEOI.

NE comment: the information provided in sHRA 5.6.11 on curlew commuting distances covers this point, and provides evidence that the relocation of the mitigation area will not result in an adverse effect on curlews commuting between the inter tidal frontage and HMWG site.

4. *'It is unclear why the red line boundary remains in the same location, although it understood that this would now be removed from the DCO development limits.'*

The boundary delineates the Order land and is unchanged. Please refer to the draft amendment Order which redefines the Order Limits to preclude development on the site of the 'former Mitigation Area A' under the DCO. Can you confirm this clarifies the matter.

NE comment: point is clarified.

Kind regards

*RICHARD CRAM*  
Engineering Director

-----  
Able UK Ltd  
Able House  
Billingham Reach Industrial Estate  
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## **Annex 3 Conservation Objectives**

Available from:

<http://publications.naturalengland.org.uk/category/6490068894089216>

NB. In the case of all European sites identified below, the Conservation Objectives are to be read in conjunction with the accompanying Supplementary Advice documents, which provides more detailed advice and information to enable the application and achievement of the Objectives set out.

### **Humber Estuary SAC (UK00300170)**

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring:

- The extent and distribution of qualifying natural habitats and habitats of qualifying species;
- The structure and function (including typical species) of qualifying natural habitats;
- The structure and function of the habitats of qualifying species;
- The supporting processes on which qualifying natural habitats and the habitats of qualifying species rely;
- The populations of qualifying species; and,
- The distribution of qualifying species within the site.

### **Humber Estuary SPA (UK9006111)**

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring:

- The extent and distribution of qualifying natural habitats and habitats of qualifying species;
- The structure and function (including typical species) of qualifying natural habitats;
- The structure and function of the habitats of qualifying species;
- The supporting processes on which qualifying natural habitats and the habitats of qualifying species rely;
- The populations of qualifying species; and
- The distribution of qualifying species within the site.