

Date: 05 September 2023
Our ref: 448355
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Dear Inspector,

NSIP Reference Name / Code: TR030007

Title: Natural England's comments in respect of the Immingham Eastern Ro-Ro Terminal Project, promoted by Associated British Ports.

Examining authority's submission deadline 05 September 2023

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

For any further advice on this consultation please contact the case officer Laura Tyndall and copy to consultations@naturalengland.org.uk.

Yours faithfully,

Laura Tyndall
Lead Adviser
Yorkshire and Northern Lincolnshire Area Team

WRITTEN REPRESENTATION

PART I: Summary and Conclusions of Natural England's advice.

PART II: Natural England's detailed advice (starting at page 3)

PART III: Natural England's response to the Examining Authority's (ExA's) first written questions (starting on page 41)

PART IV: Natural England's comments on the Development Consent Order (DCO) / Deemed Marine Licence (DML) (starting on page 46)

Natural England's Written Representations

Part I: Summary and Conclusions of Natural England's advice

Summary of Natural England's Advice

Natural England considers that the applicant has either provided insufficient evidence, or updated documentation is still required, and is not yet satisfied that the following issues have been addressed:

- Internationally designated sites
 - Impacts from traffic / site plant / marine vessel emissions to air (construction and operational phases) ('amber')
 - Impacts from dust to designated habitat features (construction phase) ('amber')
 - Impacts of the presence of infrastructure on waterbird foraging and roosting (operation phase) ('amber')
 - Impacts of potential noise and visual disturbance on qualifying SPA / Ramsar bird species (construction and operation phases) ('amber')
 - Impacts of underwater noise and vibration during piling on qualifying species (grey seal and lamprey) (construction phase) ('amber')
 - Impacts of direct loss of qualifying intertidal and subtidal habitat (construction phase) ('amber')
 - Potential changes to qualifying habitats as a result of the removal of seabed material during capital and maintenance dredging (construction and operation phases) ('amber')
 - Impacts of underwater noise and vibration on marine mammals during piling, capital dredging and dredge disposal (construction phase) ('amber')
 - Potential cumulative and in-combination impacts on marine mammals (construction phase) ('amber')
 - Changes to seabed habitats and species as a result of sediment deposition (operation phase) ('amber')

- Nationally designated sites
 - For the Humber Estuary SSSI, the features affected by this proposal are broadly the same as the internationally designated site features, so please refer to the points above (construction and operation phase) ('amber')
 - Impacts from traffic emissions to air (construction and operational phases) ('amber')

1.1 Natural England's (NE) advice in these Written Representations is based on information submitted by Associated British Ports (ABP) in support of its application for a Development Consent Order ('DCO') in relation to Immingham Eastern Ro-Ro Terminal (*the project*).

1.2 Part I of these written representations provides a summary (above) and overall conclusions of Natural England's advice. This identifies whether any progress in resolving issues has been made since submission of our Relevant Representation (RR-015). Where RR-015 is referred to in this document, this also includes the amendments made by [AS-011], [AS-015] and [AS-016].

1.3 Part II of these Written Representations updates, and where necessary, augments Part II of RR-015. It expands upon the detail of all the significant issues ('amber' issues) which, in our view remain

outstanding and includes our advice on pathways to their resolution where possible. For some of these issues, it is only an updated Habitat Regulations Assessment (HRA) that is required, whereas for other issues, further information / assessment is required to determine impacts. Part II also shows 'green' issues which have been agreed since RR-015 (subject always to the appropriate requirements being secured adequately). It also contains any issues marked as 'yellow' or 'grey' (please refer to 1.7 for full definitions).

1.4 Part III of these Written Representations details Natural England's response to the Examining Authority's (ExA's) first written questions.

1.5 Part IV of these Written Representations details Natural England's current position on the draft Development Consent Order (DCO) and Deemed Marine Licence (DML).

1.6 Our comments are set out against the following sub-headings which represent our key areas of remit as follows:

- International designated sites
- Nationally designated sites
- Protected species
- Biodiversity net gain

1.7 Throughout our advice we will be using colour coding to denote the level of potential risk or significance of impact associated with our comments. They are as follows:

- **Red** are those where there are fundamental concerns which it may not be possible to overcome in their current form.
- **Amber** are those where further information is required to determine the impacts of the project and allow the Examining Authority to properly undertake its task and/or where further information is required on mitigation/compensation proposals in order to provide a sufficient degree of confidence as to their efficacy.
- **Yellow** are those where Natural England does not agree with the Applicant's position or approach. We would ideally like this to be addressed but are satisfied that for this particular project it is unlikely to make a material difference to our advice or the outcome of the decision-making process. However, we reserve the right to revise our opinion should further evidence be presented. It should be noted by interested parties that whilst these issues/comments are not raised as significant concerns in this instance, it should not be understood or inferred that Natural England would be of the same view in other cases or circumstances.
- **Green** are those which have been successfully resolved (subject always to the appropriate requirements being adequately secured).
- **Grey** are notes for Examiners and/or competent authority.

1.8 Following RR-015, Natural England (NE) have constructively engaged with Associated British Ports (ABP; the Applicant) to work towards the resolution of issues raised. This has taken place through the following meetings and / or documents. For each of these, a reference has been added, as these are referred to throughout this representation where necessary. We understand that the Applicant will formally submit these documents into Examination at Deadline 3.

- Signposting documents were produced by ABP and sent to NE on 12 June 2023, addressing the following topics / key issues:
 - Underwater Noise [SPD-UN] (addressing key issues 10, 12, 26, 28, 30, 32, 33, and 34)
 - SSSI Features [SPD-SF] (addressing key issues 36, 37 and 38)
 - Bird Disturbance [SPD-BD] (addressing key issues 5, 6, 7, 8, 10, and 39)
 - Artificial Lighting [SPD-AL] (addressing key issue 1)
 - Air Quality [SPD-AQ] (addressing key issues 1, 2, 3, 4, and 41)
- Following provision of the above documents, NE created a spreadsheet to track key issues and actions required for their resolution [KI-S]. The first version of this was sent to ABP on 30 June 2023, in advance of an online meeting arranged between our two parties on 03 July 2023.
- Online meeting to update on progress and determine next actions following provision of the first key issues spreadsheet was held on 03 July 2023.
- A letter was sent from ABP to NE by email on 10 July 2023, confirming further points addressed, alongside additional notes on the key issues spreadsheet [KI-S], an additional signposting document addressing SPA Assemblage Species [SPD-AS], and a noise contour plot figure for the outer finger pier, clarifying the position of the 200m buffer.
- A document was provided by ABP to NE dated 11 July 2023, containing bird data within survey sectors A and C [SPD-AC].
- NE provided some further comments and queries on bird mitigation measures by email on 19 July 2023. ABP sent another signposting document to NE by email on 28 July 2023 (document dated 27 July 2023) addressing Bird Mitigation [SPD-BM]. This document is awaiting further comment from NE.
- Online meeting for our two parties to update on progress held on 02 August 2023.
- Latest edition of the key issues spreadsheet [KI-S]; submitted alongside this Written Representation] was sent to ABP by NE on 03 August 2023.
- NE have also engaged with the Applicant through a draft Statement of Common Ground (SoCG) sent to us 07 August 2023. We then returned this draft SoCG to ABP with comments on 11 August 2023.

1.9 Natural England advises that the matters indicated as ‘amber’ below will require continued consideration by the Examining Authority during the Examination. Natural England will continue discussions and ongoing work toward a Statement of Common Ground with Associated British Ports, to seek to resolve these concerns throughout the Examination.

1.10 Please note that any issues that were already rated as 'Green' issues in RR-015 are not included in this letter.

2 Internationally designated sites

2.1 Our updated advice regarding impacts on internationally designated sites following engagement with the applicant (as noted in 1.8) since the submission of RR-015 is detailed against each impact pathway within Part II, Table 1.

2.2 There remain areas where a resolution is yet to be reached, and several key issues have therefore remained as 'amber' issues. As these issues remain, Natural England is not yet satisfied that it can be ascertained beyond reasonable scientific doubt that the project would not have an adverse effect on the integrity of the following internationally designated sites.

- Humber Estuary Special Area of Conservation (SAC)
- Humber Estuary Special Protection Area (SPA)
- Humber Estuary Ramsar

2.3 Further information and / or assessment is required to assess the following impact pathways for the Humber Estuary designated sites:

- 2.3.1 Potential changes in waterbird foraging and roosting (presence of infrastructure) (operation phase) ('amber')
- 2.3.2 Potential noise and visual disturbance on qualifying SPA / Ramsar bird species (construction and operation phases) ('amber')
- 2.3.3 Further information is required in relation to Tables 3 and 4 of the HRA ('amber')
- 2.3.4 Further information is required in relation to the HRA in-combination / intra-project effects / cumulative assessment ('amber')
- 2.3.5 Potential effects of underwater noise and vibration during piling on qualifying species (construction phase) ('amber')
- 2.3.6 Potential effects of direct loss of qualifying intertidal habitat (construction phase) ('amber')
- 2.3.7 Potential effects of direct loss of qualifying subtidal habitat (construction phase) ('amber')
- 2.3.8 Potential effects of changes to qualifying habitats as result of the removal of seabed material during capital dredging (construction phase) ('amber')
- 2.3.9 Potential effects of changes to qualifying habitats as result of the removal of seabed material during maintenance dredging (operation phase) ('amber')
- 2.3.10 Potential impacts of underwater noise and vibration on marine mammals during piling, capital dredging and dredge disposal (construction phase) ('amber')
- 2.3.11 Potential cumulative and in-combination impacts on marine mammals (construction phase) ('amber')
- 2.3.12 Further information is required in relation to the modelling approach taken on underwater noise impacts on marine mammals (construction and operational phase) ('amber')

2.3.13 Changes to seabed habitats and species as a result of sediment deposition in relation to maintenance dredging (operational phase) ('amber')

2.4 Adequate further information / assessment has been provided for the following impact pathways for the Humber Estuary designated sites, however, a final updated HRA is required before these issues can be moved from 'amber' to 'green':

2.4.1 Potential air quality impacts to the Humber Estuary SPA, SAC and Ramsar from traffic and/or marine vessel emissions to air (O and C), and from construction dust (C) ('amber')

2.4.2 Information in relation to SPA / Ramsar bird species data ('amber')

2.5 Following the submission of RR-015, there have been resolutions for some key issues relating to the above internationally designated sites. Some of these have now been moved from 'amber' to either 'green' or 'yellow' (please refer to Part II, Table 1 for further details and updated advice). Natural England is satisfied that 'green' issues are unlikely to result in adverse effects on the integrity (AEoI) of the of the Humber Estuary designated sites, subject always to the appropriate mitigation/compensation as outlined in the application documents being adequately secured. Please refer to 1.7 for definitions for 'yellow' issues.

2.5.1 Potential impacts on The Wash and North Norfolk Coast SAC harbour seal feature ('green')

2.5.2 Potential effects of elevated suspended sediment concentration (SSC) during capital dredge disposal on qualifying habitats and species (construction and operation phases) ('green')

2.5.3 The Zones of Influence (ZoI) used for the assessment of underwater noise impacts on marine mammals (construction phase) ('yellow')

3 Nationally designated sites

3.1 On the basis of the information submitted in relation to these sites, Natural England is not yet satisfied that the project is not likely to damage features of interest of the following nationally designated sites (Sites of Special Scientific Interest (SSSI)):

- Humber Estuary SSSI
- North Killingholme Haven Pits SSSI
- Hatfield Chase Ditches SSSI

3.2 We note that the Humber Estuary SSSI nationally designated site features that are affected by this proposal are broadly the same as the internationally designated site features. Please refer to the points in the 'Internationally designated sites' section above for all 'amber', 'yellow' and 'grey' issues, that also apply to the Humber Estuary SSSI.

3.3 Further information is still required to assess the following impact pathways:

- 3.3.1 Potential impacts on the North Killingholme Haven Pits SSSI '*Aggregations of non-breeding birds - Black-tailed godwit*' feature (construction and operation phases) ('amber')
- 3.3.2 Potential impacts from traffic emissions on Hatifeld Chase Ditches SSSI (construction and operation phases) ('amber')

Protected species

Natural England's position regarding European protected species has not changed since submission of RR-015, and this remains a 'green' issue.

Biodiversity Net Gain Provision

Natural England's position regarding provision of biodiversity net gain has changed since submission of our RR-015. Natural England provides our updated advice / reasoning for this in Part II, Table 1.

Natural England's Written Representations

Part II: Natural England's detailed advice

Part II of these representations updates and where necessary augments Part II of the Relevant Representations (RR-015). It expands upon the detail of all the significant issues ('red' and 'amber' issues) which, in our view remain outstanding and includes our advice on pathways to their resolution where possible. Part II also shows 'green' issues which have been agreed since RR-015 (subject always to the appropriate requirements being secured adequately).

Natural England will continue engaging with the Applicant to seek to resolve these concerns throughout the Examination. Natural England advises that the matters indicated as 'amber' will require consideration by the Examining Authority during the Examination.

Natural England's Written Representations, Part II, Table 1

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
1 to 4	International designated sites <ul style="list-style-type: none"> • Humber Estuary SAC • Humber Estuary SPA • Humber Estuary Ramsar 	Potential air quality impacts to the Humber Estuary SPA, SAC and Ramsar from traffic and/or marine vessel emissions to air (O and C), and from construction dust (C)	<p>Natural England previously highlighted concerns in relation to potential air quality impacts to the Humber Estuary designated sites in RR-015 (key issues 1 to 4).</p> <p>Following ongoing discussions with the applicant, we have confirmed that air quality issues will be resolved following the completion of an updated HRA. This is required as there is a pathway of impact and the 1% screening threshold is exceeded. Therefore, air quality impacts cannot be screened out at the likely significant effect stage of the HRA and must be considered under the appropriate assessment. However, based on additional information provided by the applicant since RR-015 was submitted, Natural England can now agree that the appropriate assessment could determine no adverse effect of the integrity of the designated site</p>	N/a – Updated HRA required.	'Amber'

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
			<p>(resulting from air pollution). Therefore, key issues 1 to 4 remain as ‘amber’ until the updated HRA has been submitted.</p> <p>Further details in relation to how these conclusions have been reached since submission of RR-015 are below:</p> <ul style="list-style-type: none"> • The applicant has clarified that although there are exceedances of 1% of the Critical Level for NOx at some areas of saltmarsh, the Predicted Environmental Concentration’s (PEC) for these points still remain below relevant thresholds. • The applicant has provided clarification that the habitat within the zone of influence of any air quality impact is unvegetated mud only, and all or partially tidally inundated. • The applicant has confirmed there is no saltmarsh habitat within 200m (the distance criteria used in NEA001) of any road affected by the proposals. • The applicant confirmed that the term “air quality standards” has been used as a catch-all term for all relevant Critical Loads (CLo) /Critical Levels (CLe) 		

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
			<p>We also advise that the following is clarified in the final appropriate assessment:</p> <ul style="list-style-type: none"> Table 13.16 should be amended to ensure that all CLe/CLo and PEC are to two decimal places. 		
5	<p>International designated sites</p> <ul style="list-style-type: none"> Humber Estuary SPA Humber Estuary Ramsar 	<p>General comments / further information required in relation to SPA / Ramsar bird species data</p> <p>(C) and (O)</p>	<p>Following RR-015, we can confirm that the points raised initially for this key issue will be addressed following the completion of an updated HRA. To ensure these points are formally resolved, this should contain the following information / assessment:</p> <ul style="list-style-type: none"> Justification for the identification of key species in HRA Table 2. An additional column added to SPD-BD Tables 1 and 2 containing the 5-year mean for each species. We advised in RR-015 that for HRA Table 2 and 4, we would prefer to see a list of which species have been recorded in internationally, nationally and regionally important numbers. We also consider terms such as '<i>low/lower numbers</i>' to be comparative and open to interpretation. Further information (updated bird data tables) 	N/a – Updated HRA required.	'Amber'

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
			<p>has now been provided in SPD-BD. More specific wording as advised in RR-015 should be included in the final HRA.</p> <ul style="list-style-type: none"> We welcome the provision of SPD-AS, which has provided clarification around which species fall within the SPA assemblage. This information needs to be included within the final HRA. We welcome provision of SPD-AC which provides bird data for survey secors A and C within the Port of Immingham frontage. We advise that this information is included in the final HRA. 		
6	<p>International designated sites</p> <ul style="list-style-type: none"> Humber Estuary SPA Humber Estuary Ramsar 	<p>Potential changes in waterbird foraging and roosting due to operation (presence of infrastructure)</p> <p>(O)</p>	<p>Following RR-015 and subsequent engagement with the applicant (as detailed in 1.8), we advise that the following further information and / or assessment is provided for this key issue:</p> <ul style="list-style-type: none"> Natural England welcomes evidence provided in SPD-BD that suggests that birds forage in similar densities in the vicinity of existing jetties (<50-100m) although it is not clear whether the species composition is comparable. We advise that it would be easier to draw robust conclusions if more information was provided on the numbers of birds of each species and the 	N/a: Further information required	'Amber'

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
			<p>time of year that the surveys took place. For example, is this in late winter when birds are hungry and food in other areas is depleted and birds are pushed to feed in less preferential areas. Birds that have the most to lose from a reduction in feeding time showed the least behavioural response (Beale et al., 2004), and may take greater risks when hungry and limited response to disturbance may not always be evidence of habituation.</p> <p>SPD-BD key issue 6 point 2 also mentions that birds will forage within 10-20m of existing jetties, but does not mention if this is in similar densities compared to birds feeding at greater distances.</p> <p>The construction of the new jetty will be within 10 to 20m of known bird foraging areas, and will then have the effect of surrounding the outfall channel where birds aggregate, including a 'bottle neck' where the proposed jetty appears to be less than 40m from the existing oil terminal jetty. We are currently concerned that birds will be displaced from the area (approximately 3ha) between the old and new jetties, and for 20m beyond the new jetty.</p> <p>It is recognised that the jetty will be on pillars, but concerns remain that this area will be more</p>		

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
			<p>enclosed during the operational phase than it is now, which may displace birds from the outfall channel area. It also seems possible that the location of pillars may result in significant changes to the channel itself, making it unusable during the construction phase and less valuable during the operational phase.</p> <p>SPD-BD also states that birds feed within 10-20m of existing jetties, and it was further clarified in the online meeting on 03 July 2023 that this quantifies the meaning of 'relatively closely'. Natural England have advised Associated British Ports to provide further evidence of observations as discussed in this meeting.</p>		
7	<p>International designated sites</p> <ul style="list-style-type: none"> • Humber Estuary SPA • Humber Estuary Ramsar 	<p>Potential noise and visual disturbance during construction on qualifying SPA / Ramsar bird species.</p> <p>(C)</p>	<p>Following RR-015 and subsequent engagement with the applicant detailed in 1.8, we advise that the following further information / assessment is provided for this key issue:</p> <ul style="list-style-type: none"> • Natural England does not support the use of IECS 2013 'Waterbird disturbance mitigation toolkit' as we do not consider the evidence to have been collected in a rigorous way, and the results have not been peer reviewed. Therefore, any assessment that relies on the toolkit may be inaccurate. Table 27 makes frequent reference 	N/a: Further information / updated HRA required	'Amber'

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
			<p>to the IECS 2013 toolkit. See Part III of this letter which explains our reasoning in more detail.</p> <ul style="list-style-type: none"> In RR-015, we stated that we advocate a precautionary approach to assessing disturbance to waterbirds on mudflats, using 300m as an initial disturbance zone and then reducing this where mitigation measures allow. Following this, we also advised Associated British Ports on 03 August 2023 in KI-S that for Environment Agency (EA) works on the Humber we have agreed this initial disturbance distance of 300m, which can then be reduced with mitigation measures (e.g., screening). We continue to advise using this precautionary distance of 300m at the HRA screening stage, with any reductions at the appropriate assessment stage justified through consideration of the bird data. <p>The applicant has provided SPB-BD with Figures 1 and 2 showing sound levels from piling with a noise suppression system in place. It is stated within the text of the document that a 200m buffer (from the piling rig) will result in noise levels less than 70dB L_{Amax} beyond 200m. However this is not supported by the figures, for noise levels to be below 70dB L_{Amax} the buffer would have to include the 65 to 70dB (orange) zone. The HRA should also include</p>		

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
			<p>details about whether piling will take place in more than one location at the same time and include assessment of any terrestrial piling, as this may also affect SPA birds on the adjacent mudflats.</p> <ul style="list-style-type: none"> As in RR-015, we continue to advise that Footnote 21 of 4.10.16 is important to the assessment and should be given more prominence. We advise that reference is made to Figure 9.10, with the areas marked which are most important for roosting and feeding SPA / Ramsar birds from the data collected (Sector B). We continue to advise that an assessment should be made of the potential reasons why Sector B is important for SPA / Ramsar birds. Factors contributing to this could be a lack of existing disturbance from recreation, available intertidal mud, or could relate to invertebrate resource in this area. The HRA should assess whether this is likely to change when the development is operational. As advised in RR-15, we continue to advise that the HRA should indicate the expected number of passage and wintering seasons for SPA birds that will be affected by the construction period. We advise that the length of the expected 		

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
			<p>construction programme is included. It would be particularly helpful if the HRA could set out the expected period of each of the main construction activities (e.g., capital dredge, construction of jetties etc.)</p> <ul style="list-style-type: none"> • Following RR-015, we continue to advise that further assessment is still required around the information provided in 4.10.29 (relating to birds disturbed in the intertidal area). We advise that with regard to energy budgets, one of the key species we are concerned with is black-tailed godwit This species is on the edge of its range around the Humber Estuary and can be particularly tight on its energy budget, especially if food is scarce and weather is harsh. Additionally Alves et al. (2013) found that the black-tailed godwit population that winters on the east coast of England are energetically stressed with the energy demand in January - March exceeding the energy input in their studies. Godwits wintering in this location must feed during both low tides. The WeBS Low Tide Count Data also suggests that black-tailed godwit are more restricted than other species in where they will feed at low tide. Alkborough Flats, Reads Island Flats and the Sectors from Halton Marshes to Pyewipe (including Immingham) appear to be of key importance to 		

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			<p>this species. We also advise that the Collop et al. (2016) paper referred to in SPD-BD does not consider this key species of concern. We recommend that the loudest and most disturbing elements of construction take place during the summer months when godwit are absent or lower in numbers.</p> <ul style="list-style-type: none"> The draft HRA states that it is expected that if birds are disturbed (after mitigation measures are applied) they will relocate to other mudflats. The final HRA should consider the likelihood that birds will relocate and whether there is additional capacity in those areas. <p>Alongside the completion / provision of the additional assessment / information detailed above, we also require the following to be included in the final updated HRA:</p> <ul style="list-style-type: none"> The amendments recommended for HRA Table 20 and 27 as advised in RR-015. In RR-015, we requested that the expected noise levels during piling and other construction activities at 200m and 300m from the source are provided. Initially, only noise levels at 600m and 1.8km were provided in 4.10.19. However, on 10 July 2023, Associated British Ports provided an 		

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
			<p>up-to-date figure modelling noise from piling on the outer finger pier, marking the 200m buffer. Please see comments above in relation to the 200m buffer, the noise level Figs 1 and 2 do not indicate that noise levels will be below 70dB LA max at 200m from the source. Further work is needed in the assessment of noise impacts on birds.</p> <ul style="list-style-type: none"> • Following RR-015, the submitted SPD-BD has addressed our query in relation to the following statement on 4.10.23 (page 221): “<i>The near shore environment in the Port of Immingham area is already subject to large numbers of vessel movements...</i>”. This information should also be included in the final HRA. • SPD-BD addressed our point in RR-015 in relation to 4.10.24 (page 221). This has confirmed that this comment only related to capital dredging, which has been assessed to occur at any time of year in line with maintenance dredging, as a worst-case scenario. This should be clarified in the final updated HRA. • Shelduck should be added to the important species list (as approximately 2% of the Humber 		

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
			<p>Estuary population have been recorded at the application site).</p> <ul style="list-style-type: none"> • Submission of SPD-BD has confirmed that feeding birds and roosting birds have been assessed separately. This also confirms assessment of impacts on birds roosting on structures in the intertidal zone identified in Fig 9.10, consideration of whether there are other suitable structures for the birds to use, and whether additional mitigation measures are required. This additional assessment needs to be included in the final HRA. • We reiterate our comment in RR-015 around 4.10.35 stating that mitigation measures have been discussed with Natural England. It continues to be the case that mitigation measures have been discussed generally, but have not been fully agreed with us at this stage. <p>Further comments on proposed mitigation measures for construction disturbance</p> <p>Natural England have now reviewed Table 29 (Construction disturbance to SPA birds) of the HRA following further engagement with the applicant / provision of additional information. This currently states</p>		

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
			<p>that there will be no adverse effect with mitigation measures in place.</p> <p>Following RR-015 and further engagement with the applicant (including submission of the draft SPD-BM), we have reviewed the proposed mitigation measures in more detail and how they relate to the different work areas (e.g., capital dredge, jetty construction etc.). We still have concerns about construction disturbance on birds over the winter and the effectiveness of mitigation measures, and this should be addressed in further detail in the final HRA. The further information / assessment required is detailed below:</p> <ul style="list-style-type: none"> In particular we are concerned that piling will take place during the winter when significant numbers of birds are using sector B, and that this is likely to lead to displacement of birds to other areas of the estuary. A number of mitigation measures have been proposed and their effectiveness for reducing the impact on SPA birds should be assessed (as indicated in Part III). In the draft SPD-BM the applicant has identified that significant mitigation measures are required for migratory fish in the spring and summer which is restricting the mitigation measures that can be applied for SPA birds during the winter. As the risk to SPA birds during the winter is likely to be high (based on numbers 		

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
			<p>of birds present), it would be useful to understand the risk of piling within the Port of Immingham to migratory fish and whether this is also high. It would be useful to discuss the mitigation measures that have been applied for migratory fish and wintering birds and whether the correct balance has been achieved.</p> <ul style="list-style-type: none"> In relation to cold weather working restrictions proposed by the applicant, we advise that where the Environment Agency is undertaking works on the Humber Estuary SPA, a three day precautionary stop is used for periods of freezing weather. Although the JNCC seven day stop was developed in relation to wildfowling, wildfowling clubs often choose to stop much earlier than seven days in very harsh weather. As a precautionary measure we would advocate taking a precautionary approach of three days at this location, especially where freezing conditions are accompanied by high winds and poor visibility. However we recognise that 7 days has been agreed for other port developments on the Humber Estuary. We also advise that there is no robust evidence to suggest that soft start piling prevents disturbance caused by the noise. Birds are still likely to move away, but it does reduce a 'startle' 		

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
			<p>impact so that birds may use less energy as they move away. Our advice is that soft start piling should not be relied on as a mitigation measure for SPA birds.</p> <p>Alongside the completion / provision of the additional assessment / information detailed above, we also require the following to be included in the final updated HRA (as provided in the draft SPD – BM):</p> <ul style="list-style-type: none"> • Information around the effectiveness of the proposed noise suppression system for piling on the outer finger pier. • Information around the effectiveness of the proposed acoustic barrier / screening on marine construction barges. • We advised in RR-015 that phrases such as ‘<i>occur in relatively large numbers</i>’ in Table 29 should be replaced with statements derived from the data. Bird numbers should be referred to in relation to the bird data. • HRA Table 29 to be amended once the applicant have considered our updated advice. 		

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
8	International designated sites <ul style="list-style-type: none"> • Humber Estuary SPA • Humber Estuary Ramsar 	Potential noise and visual disturbance during operation on qualifying SPA / Ramsar bird species. (O)	Following RR-015 and subsequent engagement with the applicant detailed in 1.8, we advise that the following further information / assessment is provided for this key issue: <ul style="list-style-type: none"> • In RR-015, we noted that 4.10.46 (page 237) of the HRA states that “<i>Birds are regularly recorded feeding nearby or below port structures such as jetties or pontoons and appear to be relatively tolerant to normal day-to-day port operational activities</i>”. We continue to advise that if there is evidence to show birds feeding nearby and below port structures, then this should be submitted. This would be very useful to illustrate / assess (for shelduck, curlew and black-tailed godwit in particular) habituation and potential impacts of both construction and operational phases. Alongside the completion / provision of the additional assessment / information detailed above, we can confirm that the below points are resolved, and will now need to be included / clarified in the final updated HRA: <ul style="list-style-type: none"> • We are satisfied that that if there evidence is provided as detailed above in relation to 4.10.46 (page 237) to show that birds are feeding within 10-20m of existing busy jetties at this location, it is likely that the birds will do so next to the 	N/a: Further information / updated HRA required	‘Amber’

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
			<p>proposed jetty after a period of time. We have clarified with the applicant that permanent screening is proposed for the linkspan and approach jetty. For the foreshore edge of the dock frontage screening is proposed for 2 years and then removed. We recognise that maintenance of permanent screening would need to be a regular event and could be disturbing in itself, and so we agree that removal of screening after a period of time is a sensible approach.</p> <ul style="list-style-type: none"> • In relation to our previous comments in RR-015 regarding the monitoring and annual report proposed in 4.10.52 (page 238), we have now clarified with the applicant that monitoring will be used to provide data for future projects, not specifically to trigger additional mitigation measures. Natural England supports this approach, and this should be clarified in the final HRA. • In relation to the impact of additional vessel movements we queried in RR-015, following additional engagements with the applicant, we are now satisfied that the additional vessel movements will not have an adverse effect on the SPA birds using the port area. 		

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
9	International designated sites <ul style="list-style-type: none"> • Humber Estuary SAC • Humber Estuary SPA • Humber Estuary Ramsar 	General HRA comment (C) and (O)	Section 4.2.1 - It would be clearer to organise the assessment: all construction effects, then all operational effects as per PINS advice note 10 quoted in 4.1.4.	N/a – Comment for examining authority	'Grey'
10	International designated sites <ul style="list-style-type: none"> • Humber Estuary SAC • Humber Estuary SPA • Humber Estuary Ramsar 	General HRA screening comments	<p>The Applicant will address the omission of the LSE conclusion for the impact pathway 'Direct loss or changes to migratory fish habitat' with regard to the project activity 'Dredge disposal' on sea and river lamprey in the SoCG. We consider this concern to be addressed.</p> <p>NE agrees in principle with using Green Port Hull as a suitable proxy for the Port of Immingham. However, we have asked the Applicant to demonstrate how this is a comparable approach to take i.e., how similar is it to Immingham? Although lamprey are less sensitive to hearing, we advised that this impact pathway should be taken through to AA under the precautionary approach. NE remains of this opinion, however we consider that coupled with the justifications previously provided in</p>	N/A – Further information required. Provide more information on the existing maintenance dredge licence as well as an up-to-date maintenance dredging protocol.	'Amber'

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
			<p>relation to LSE along with the additional information about the comparable proxy used, we could concur with a conclusion of no AEOL from this both alone and in-combination.</p> <p>NE agrees with the explanation provided in the Bird Disturbance Signposting document BD_DOC for the omission of capital dredge disposal in the LSE screening table (Table 4) for impacts to the SPA features.</p> <p>NE agrees with the additional information provided in the Bird Disturbance Signposting document for assessing 'Changes in water and sediment quality' in relation to SPA features and will be included in the updated HRA.</p> <p>NE agrees with the extra information provided regarding why supporting habitats (both intertidal and subtidal) were omitted from the LSE screening table (Table 4) for impacts to the SPA. A consistent approach to assessment of supporting habitats for SPA birds is required in the updated HRA.</p> <p>NE accepts that additional construction lighting will not significantly impact SPA features as the port is already lit for safety reasons that was detailed in the Artificial Lighting Signposting document provided by the Applicant in [SPD_AL]. However, NE is of the opinion</p>		

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
			<p>that this aspect should be included in the LSE test in the updated HRA.</p> <p>NE acknowledges that a minor typo was made in the previous HRA and accepts the explanation given.</p> <p>ABP have advised that an updated Maintenance Dredging Protocol will be produced. We request that this is submitted into Examination for review.</p>		
11	International designated sites <ul style="list-style-type: none"> • Humber Estuary SAC • Humber Estuary SPA • Humber Estuary Ramsar 	General HRA in-combination / intra-project effects / cumulative assessment comments and further information required (C) and (O)	NE have requested further information from the Applicant which is to be included in the in-combination assessment within the HRA. This information is still outstanding and will need to be included in the updated HRA.	N/a: Further information required	'Amber'
12	International designated sites <ul style="list-style-type: none"> • Humber Estuary SAC 	HRA assessment - The potential effects of underwater	The Applicant is engaged in ongoing discussions with CEFAS to provide clarifications on this matter. Natural England will defer to CEFAS' advice regarding underwater noise issues and as a result, no further	N/A: Further information required.	'Amber'

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
	<ul style="list-style-type: none"> • Humber Estuary SPA • Humber Estuary Ramsar 	<p>noise and vibration during piling on qualifying species</p> <p>(C)</p>	<p>information has been requested until CEFAS' comments on this issue are provided.</p> <p>NE welcomes the use of vibro-piling where possible along with the explanations given for the proposed restrictions in the Underwater Noise Signposting document provided by the Applicant [SPD_UN].</p>		
13	<p>International designated sites</p> <ul style="list-style-type: none"> • Humber Estuary SAC • Humber Estuary SPA • Humber Estuary Ramsar 	<p>HRA assessment - Potential effects of direct loss of qualifying intertidal habitat</p> <p>(C)</p>	<p>NE have requested further information from the applicant which is to be included in the in-combination assessment within the HRA. This information is still outstanding and will need to be included in the updated HRA.</p>	<p>N/A: Further information and a revised in-combination assessment required</p>	‘Amber’
14	<p>International designated sites</p> <ul style="list-style-type: none"> • Humber Estuary SAC • Humber Estuary SPA • Humber Estuary Ramsar 	<p>HRA assessment - Potential effects of direct loss of qualifying subtidal habitat</p> <p>(C)</p>	<p>NE have requested further information from the Applicant which is to be included in the in-combination assessment within the HRA. This information is still outstanding and will need to be included in the updated HRA.</p>	<p>N/A – Revised in-combination assessment required</p>	‘Amber’

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
15	International designated sites <ul style="list-style-type: none"> • Humber Estuary SAC • Humber Estuary SPA • Humber Estuary Ramsar 	HRA assessment - The potential effects of changes to qualifying habitats as result of the removal of seabed material during capital dredging (C)	NE have requested further information from the Applicant which is to be included in the in-combination assessment within the HRA. This information is still outstanding and will need to be included in the updated HRA.	N/A – Revised in-combination assessment required.	'Amber'
20	International designated sites <ul style="list-style-type: none"> • Humber Estuary SAC • Humber Estuary SPA • Humber Estuary Ramsar 	HRA assessment - The potential effects of elevated SSC during capital dredge disposal on qualifying habitats and species (C & O)	After review of the information provided by the Applicant in the ES and HRA, NE is now satisfied that this issue has been resolved.		'Green'

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
25	International designated sites <ul style="list-style-type: none"> • Humber Estuary SAC • Humber Estuary SPA • Humber Estuary Ramsar 	HRA assessment – The potential for an AEOI on qualifying habitats and species of the Humber Estuary SAC due to in-combination effects (C)	NE have requested further information from the Applicant which is to be included in the in-combination assessment within the HRA. This information is still outstanding and will need to be included in the updated HRA.	Provide a more detailed assessment of in-combination disturbance/barrier effects to the grey seal feature of the Humber Estuary SAC. If needed, consider further mitigation of this impact.	'Amber'
26	Environmental Statement	Chapter 9: Nature Conservation and Marine Ecology Marine mammals (C)	No new information has been provided by the Applicant regarding this issue, therefore Natural England's position remains unchanged. However, we consider that this point would not have a material effect on the outcome of the assessment.		'Yellow'

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
27	Environmental Statement	Chapter 9: Nature Conservation and Marine Ecology Implications of policy legislation and guidance – Conservation of Seals Act 1970 (CoSA) (C & O)	9.5.24 - Please note that the Conservation of Seals Act 1970 was amended in 2021. The killing of seals is now prohibited.	N/A – To note.	'Grey'
28	Environmental Statement	Chapter 9: Nature Conservation and Marine Ecology Underwater noise and vibration during piling, capital dredging and dredge disposal (C)	NE advised the Applicant to undertake separate assessments of injury and disturbance pathways to marine mammals. The Applicant has provided extra information relating to assessing injury and disturbance as separate impact pathways in [SPD_UN]. However, NE is of the opinion that the extra information is not sufficient for the issue to be resolved and as a result, our advice remains unchanged on this matter. Although NE has not agreed with the sensitivity used for PTS, we have agreed that the mitigation measures proposed are sufficient. The Applicant does not consider underwater noise monitoring to be necessary given the results of the	Undertake separate assessments of injury (PTS and TTS) and disturbance pathways to marine mammals. Consider revising the assessment of disturbance in line with comments, by adding more detail, and/or considering further mitigation or monitoring of this pathway specifically.	'Amber'

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
			underwater noise modelling. NE are not satisfied with the reasoning/evidence to back up the statements made by the Applicants. We have advised that underwater monitoring should be undertaken to validate the predicted underwater noise levels. This information can then be used to inform and validate the impacts to ecological receptors. We highlight that noise monitoring was undertaken for Able Marine Energy Park, which is also in the Humber Estuary, which further justifies our request.		
29	Environmental Statement	Chapter 9: Nature Conservation and Marine Ecology Underwater noise and vibration on fish and marine mammals as a result of construction (C)	NE have advised the Applicant to produce a Marine Mammal Management Plan to capture all the mitigation measures which need to be taken in accordance with NE advice. The MMMP will also include the condition that piling operations will cease if marine mammals enter the mitigation zone. This condition is not a standard mitigation measure in the JNCC protocol but displays further commitment to reducing the impact on marine mammals as another level of protection.	Undertake mitigation in accordance with Natural England advice. Consider developing a MMMP to capture all mitigation measures committed to, including the proposal to cease percussive piling operations if marine mammals enter the mitigation zone.	'Yellow'

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
30	Environmental Statement	Chapter 20: Cumulative and in-combination effects Table 20.2 - Overview of Zones of Influence (C)	In view of CEFAS' advice, NE is satisfied with the 15km threshold to capture potential behavioural disturbance and/or displacement effects in marine mammals. NE has also advised the Applicant to carry out the underwater noise level monitoring as stated in Key Issue 28.		'Yellow'
31	Environmental Statement	Chapter 20: Cumulative and in-combination effects Table 20.5 – Review of other projects, developments and activities on the short list (C)	NE have requested further information from the Applicant which is to be included in the in-combination assessment within the HRA. This information is still outstanding and will need to be included in the updated HRA.	Provide a more detailed assessment of in-combination disturbance/barrier effects to the grey seal feature of the Humber Estuary SAC.	'Amber'

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
32	Environmental Statement	Volume 3, Chapter 9.2: Underwater noise assessment Marine mammals (C)	NE is deferring to CEFAS' advice related to underwater noise modelling; however we may provide comments where underwater features affect nature conservation features or any instances which affect the outcome of the noise modelling.	N/A	'Amber'
33	Environmental Statement	Schedule of Mitigation – Marine mammals (C)	Natural England welcomes the Applicant's commitment to undertake vibro piling where possible. NE have requested further detail on how much of the piling could be achieved using vibro piling, however no new information has been made available.	Further information required	'Yellow'
34	International designated sites • North Norfolk Coast SAC	HRA assessment – Screening conclusion	The Applicant has addressed this issue through the inclusion of a high-level assessment provided in the Underwater Noise Signposting document [SPD_UN]. However, the information needs to be included in the updated HRA.		'Green'

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
36	National designated sites (biodiversity & geodiversity) <ul style="list-style-type: none"> Humber Estuary SSSI 	Potential impacts on Humber Estuary SSSI designated features (C) and (O)	NE’s advice regarding impacts on the Humber Estuary SSSI coincides with our advice regarding the potential impacts upon the Humber Estuary SAC/SPA/Ramsar features.	N/a: Further information required	‘Amber’
39	National designated sites (biodiversity & geodiversity) <ul style="list-style-type: none"> North Killingholme Haven Pits SSSI 	Potential impacts on the SSSI ‘ <i>Aggregations of non-breeding birds - Black-tailed godwit</i> ’ feature (C) and (O)	As in RR-015, we continue to advise the following: <ul style="list-style-type: none"> Chapter 9 (Table 9.7) of the ES states that <u>direct</u> impacts on North Killingholme Haven Pits SSSI are unlikely. However, black-tailed godwit is a non-breeding feature of this SSSI, and if the project is determined to have an overall negative impact on this species for the Humber Estuary SPA / Ramsar, <u>indirect</u> impacts to this SSSI should also be considered in the assessment. 	N/a: Further information required	‘Amber’
41	National designated sites (biodiversity & geodiversity)	Construction and operational phase traffic impacts on all relevant terrestrial SSSIs	NE consider that information provided by the Applicant in SPD-AQ in relation to Hatfield Chase Ditches SSSI was not sufficient. NE advised that Hatfield Ditches is notified for its ditch vegetation. The critical load levels used must therefore be for the swamp / fen habitat type.	N/a – Further information required (in relation to Hatfield Chase Ditches SSSI only).	‘Amber’

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
	<ul style="list-style-type: none"> Any relevant terrestrial SSSIs 	(C) and (O)	<p>However, following submission of SPD-AQ, the remaining aspects of this issue are now resolved as follows:</p> <ul style="list-style-type: none"> NE acknowledges that annual emissions rather than peaks of emissions are the key emissions of relevance to ecosystems. No further assessment was deemed to be necessary as emissions from construction traffic will only marginally exceed the 200AADT HGV data on only a few days and therefore will have minimal impact. This issue has been addressed using further information contained within the [SPD-AQ] provided by the Applicant. Additional justification relating to NOx change at Edlington Wood SSSI was provided by the Applicant in the Air Quality Signposting document and enabled NE to agree with the points raised. 		

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
43, 44	Biodiversity net gain	Information to demonstrate a 10% Biodiversity Net Gain (key issue 43) and Additionality of Biodiversity Net Gain (key issue 44) (C)	Natural England have previously highlighted some areas within the current proposals that could be improved to further enhance the project's overall environmental outcomes. We have identified areas within the current approach that deviate from the well-established core principles of Biodiversity Net Gain (BNG) and from the guidance for the use of the Defra biodiversity metric. We have suggested ways in which the proposals could be improved to bring them in line with industry best practice however, as BNG is not yet a mandatory requirement for NSIPs, we acknowledge that the approach may not align with these.	No further comment, now both 'Green' issues.	'Green'
45	International designated sites <ul style="list-style-type: none"> • Humber Estuary SAC • Humber Estuary SPA • Humber Estuary Ramsar 	HRA assessment – general comment	NE previously stated that we do not agree with the capital dredge site being classified as impoverished, based on evidence obtained from studies carried out by the Institute of Estuarine and Coastal Studies (IECS) in 2015 and Environment Agency (EA) in 2016 within the Humber Estuary SAC. This has now been deemed a 'yellow' issue as it would have no material effect on the outcome of the HRA.	N/A	'Yellow'

NE key issue ref(s)	Topic	Issue summary (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment	Natural England comment on the mechanism for securing mitigation/ compensation measures in the DCO	Risk (RAG)
46	International designated sites <ul style="list-style-type: none"> • Humber Estuary SAC • Humber Estuary SPA • Humber Estuary Ramsar 	HRA assessment – Table 3 Potential changes to seabed habitats and species as a result of sediment deposition from maintenance dredging (O)	<p>NE considers the justification referring to Key Issue Reference 17 in the additional information provided by the Applicant to NE on 10 July 2023 in the [KI-S] is insufficient to conclude that there is no potential for LSE for sedimentation from maintenance dredging/dredge disposal. NE agrees that sedimentation arising from capital dredging/dredge disposal is not likely to cause an adverse effect on integrity of the Humber SPA/SAC based on additional information provided at the Appropriate Assessment stage. Furthermore, NE considers that however low risk the impact is deemed to be in relation to sedimentation effects arising from capital dredging/dredge disposal, the pathway still exists for there to be a potential impact from sedimentation arising from maintenance dredging/dredge disposal.</p> <p>NE is now satisfied with the definition of “some deposition” based on additional information provided by the Applicant on 10 July 2023 in the [KI-S].</p>	N/A: Further information required	‘Amber’

Natural England's Written Representations

PART III: Natural England's response to the Examining Authority's (ExA's) first written questions reference EXQ1 with a deadline of 05 September 2023

Table 2: Natural England response to Examiner's initial questions			
ExA question ref	Question addressed to	Question	Answer
BNE.1.8	Natural England	<p>Effects arising from the use of artificial lighting</p> <p>With respect to effects for the qualifying features of the SAC, SPA and Ramsar site arising from the use of artificial lighting during the construction and operational phases of the Proposed Development, please identify which qualifying features it is considered would be affected, as referred to in key issue 10 in your Relevant Representation [RR-015], as amended by [AS-011] and [AS-015].</p>	<p>Following engagement with the Applicant and provision of SPD-AL from ABP to NE, we accept that the port is already lit for safety reasons and the additional construction lighting will not significantly impact any relevant features of the Humber Estuary designated sites. However this aspect should be included in the likely significant effect (LSE) test in the final updated HRA.</p>
BNE.1.15	Natural England	<p>References to the Institute of Estuarine and Coastal Studies toolkit</p> <p>In your Relevant Representation [RR-015], as amended by [AS-011] and [AS-015], concern has been raised about the Applicant's use of the Institute of Estuarine and Coastal Studies water disturbance mitigation toolkit. Please elaborate on what the concern is about the use of the toolkit and how that might have affected the assessment undertaken by the Applicant.</p>	<p>The waterbird disturbance mitigation toolkit was produced in 2013 by the Institute of Estuarine and Coastal Studies (IECS), University of Hull and funded by the Environment Agency and Interreg. The toolkit provides some useful background information on noise and visual disturbance of waterbirds from construction activities. However, the toolkit then identifies disturbance distance thresholds for some SPA waterbird species. The IECS toolkit itself recognises that assessment of disturbance is complex, with factors such as background noise levels, regularity of noise events and habituation by birds all interacting and influencing bird's reactions to disturbance, which Natural England agrees with. The introductory information (Context of Toolkit) recognises that there is a paucity of published data on the subject and this means that</p>

			<p>large amounts of information used within the toolkit are from direct observation of flood protection works in the UK. As such the information may require updating as further research is carried out. In other words, the data is not scientifically robust or peer reviewed.</p> <p>Natural England does not support the use of specific noise and distance thresholds for individual species based on the IECS toolkit. Whilst we recognise that the sensitivity of birds to disturbance does vary between species, we do not consider that there is sufficient published data to justify allocating specific thresholds to all Humber Estuary SPA species. We therefore advocate taking a precautionary approach to identification of disturbance distances taking into consideration that a range of SPA bird species are likely to be present during the works.</p> <p>The draft Appropriate Assessment: Table 27 (Summary of evidence of the sensitivity for different key species to noise and visual disturbance stimuli) makes frequent reference to the IECS toolkit to identify specific disturbance distances for key waterbird species. In addition, based on the information in Table 27 the Applicant has proposed using a disturbance distance of 200m (4.10.15) for assessing impacts on SPA birds (includes other evidence). We advocate taking a precautionary approach, assessing impacts on all bird species within the construction zone, taking into consideration the type of noise and background noise levels. References to specific disturbance distances for species should be removed from the final HRA (unless scientifically robust) and the mitigation measures identified based on expected levels of noise and visual disturbance as a result of the proposed development on the range of SPA species that were recorded on site.</p>
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<p>BNE.1.16</p>	<p>Natural England</p>	<p>Effectiveness of construction mitigation measures</p> <p>In your Relevant Representation [RR-015], as amended by [AS-011] and [AS-015], concern has been raised about the proposed construction mitigation measures. Please elaborate on what additional information would be required to demonstrate the effectiveness of the proposed construction mitigation measures.</p>	<p>Within the draft Appropriate Assessment, the Applicant has identified a number of mitigation measures in 4.10.35 in relation to noise and visual disturbance to SPA birds during construction. The mitigation measures have been described and then Table 29 concludes that with these mitigation measures in place, some SPA birds will leave the construction zone but that this will not lead to an adverse effect on site integrity. We have suggested to the Applicant that the following information would support the assessment;</p> <ol style="list-style-type: none"> 1. Clarity about which mitigation measures will be applied for the 3 main marine construction activities: capital dredge, construction of outer finger pier and construction of approach jetty and inner pier. 2. Further information on the effectiveness of each mitigation measure i.e., whether the measure will completely avoid the adverse effect on the feature or reduce it to an acceptable level. 3. The level of certainty that the mitigation measures will be effective should also be identified (high, medium, or low). <p>We have noted that some of the mitigation measures have been applied in relation to other species groups, such as soft start piling for marine mammals, but also applied to SPA birds, we therefore advise that the effectiveness of all mitigation measures identified for SPA birds should be assessed.</p>
<p>BNE.1.17</p>	<p>Natural England</p>	<p>In-combination assessment</p> <p>In terms of the matters raised in your Relevant Representation [RR-015], as amended by [AS-011], [AS-015] and [AS-016] and the assessment of in-combination effects, is there any additional information that you consider should be submitted by the Applicant to enable the ExA to comprehensively report</p>	<p>Natural England does not consider that the scope of the current in-combination assessment is sufficient. We advise that the final updated HRA will need to consider in-combination impacts from other relevant projects and plans. The in-combination requirement makes sure that the effects of numerous proposals are assessed to determine their combined effect. Plans or projects that should be considered in</p>

		<p>on this matter when it makes its recommendation to the SoST? In answering this question Natural England should identify and submit any information that the Applicant has provided to it following the submission of the application on 10 February 2023. Should any information have already been submitted as an Examination document then it will only be necessary to cite the Examination Library document reference number for that documentation.</p>	<p>the in-combination assessment include the following:</p> <ul style="list-style-type: none"> • <i>The incomplete or non-implemented parts of plans or projects that have already commenced;</i> • <i>Plans or projects given consent or given effect but not yet started;</i> • <i>Plans or projects currently subject to an application for consent or proposed to be given effect;</i> • <i>Projects that are the subject of an outstanding appeal;</i> • <i>Ongoing plans or projects that are the subject of regular review;</i> • <i>Any draft plans being prepared by any public body;</i> • <i>Any proposed plans or projects published for consultation prior to application.</i> <p>We suggest that relevant sites / plans within East Riding of Yorkshire, North Lincolnshire and North East Lincolnshire local authority areas should also be considered, where appropriate. We also advise that the proposed Immingham Green Energy Terminal (IGET) should be included, in addition to any other relevant plans/projects that are identified. If full data is not yet available for the IGET project, we advise that a worst-case scenario / precautionary approach is used to assess in-combination impacts.</p> <p>We'd also highlight that suitable justification of the final approach taken should be included in the final updated HRA.</p> <p>We note also however, that is the role of the competent authority, not Natural England, to determine the scope of the in-combination assessment.</p>
BNE.1.18	Natural England	Identification of matters needing to be addressed by the Applicant before a DCO could be made	Matters Natural England consider to remain outstanding are detailed in Table 1 of this Written Representation. Further

	<p>Further to: 1) your Relevant Representation [RR-015], as amended by [AS-011], [AS-015] and [AS-016]; and 2) the requirement placed on the Applicant by the ExA to submit an updated version of the HRA by not later than Examination Deadline 5, please identify the matters in your view needing to be addressed by the Applicant before the ExA could recommend that a DCO could be made. (If not fully addressed in any Written Representations to be made by Natural England at Deadline 2.)</p>	<p>information can also be found in our Principal Areas of Disagreement submission [REP1-022].</p>
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Natural England's Written Representations

PART IV: Natural England's comments on the Development Consent Order (DCO) /Deemed Marine Licence (DML) and associated documents

4.1 Due to outstanding issues highlighted in Table 1, the additional information required to address these may result in changes to the Draft DCO/DML. Natural England will provide comments on this aspect of the application when the relevant outstanding information has been provided by the Applicant.