

**THE PROPOSED ASSOCIATED BRITISH PORTS (EASTERN RO-RO TERMINAL)
DEVELOPMENT CONSENT ORDER**

DEADLINE 7

Response on behalf of the Harbour Master, Humber
to Deadline 6 submissions from Immingham Oil Terminal Operators and DFDS

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Introduction

- 1.1. In this document Harbour Master, Humber (“**HMH**”) responds to the submissions made at deadline 6 by Associated Petroleum Terminals (Immingham) Limited and Humber Oil Terminals Trustee Limited (“**IOT**”) and DFDS Seaways Plc (“**DFDS**”). He also explains why he considers that the repeated requests of DFDS to cross-examine him (most recently in REP6-037) are mis-conceived and why DFDS is not prejudiced by the lack of opportunity for cross-examination.
- 1.2. The documents addressed in this submission are:
- a. REP6-038 – DFDS response to D5 submissions;
 - b. REP6-039 – DFDS Summary of Navigational Simulations;
 - c. REP6-045 – IOT comments on D5 submissions;
 - d. REP6-046– IOT’s Appendices to D6 Subs; and
 - e. REP6-037 – DFDS cover letter
- 1.3. The fact that HMH has not responded to any particular point does not mean that he agrees with it or accepts that it is correct. HMH has limited his responses to matters that are directly relevant to his areas of responsibility and where he thinks he can assist the Examining Authority.

2. Table of responses:

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REP6-038 DFDS in response to D5 Submissions	Harbour Master, Humber’s Response to IOT comments on independence (REP5-038) The Humber Harbour Master relies on legal separation to claim his independence from ABP Commercial. However, behaviour in answering written questions (e.g. see the Applicant’s answer to NS.1.6, NS.1.7 and NS.1.14 in [REP2-009] and NS.2.09, NS.2.31 and NS.2.33 in [REP4-008]) the Harbour Master and the Applicant are clearly collaborating in answering questions, at the hearings, members of the Applicant’s team answered some questions directed at the Harbour Master and particularly the Dock Master, and even at the recent simulations the Harbour Master and Applicant were working closely together, and the Harbour Master has not been able to rebut issues over common line management.	It is important to reiterate that HMH works closely with operators on and users of the River Humber and supports any stakeholder that seeks his input. By way of just one example, in his oral submissions at ISH5, HMH referred to Green Port Hull where wind turbine blades are loaded onto vessels. There is currently a proposal for much wider ships which are not yet built but in a month’s time HMH will be attending simulations to check that the new vessel will be capable of manoeuvring into the port. In doing so, he is acting independently. Throughout this examination process, HMH has contributed on particular questions where he considered that he had something specific to offer (i.e. where the questions address matters that fall within the scope of his/HES responsibilities). In several instances – but not all – this has been at ABP’s request. This is not collusion.

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		<p>HMH has nothing to do with ABP's decision as to whether or not to answer the question itself, and HMH has never been asked to amend his answers.</p> <p>The ExA will see from the examples given by DFDS that HMH has only answered those elements of the questions on which he has some particular knowledge to offer the ExA; his answers have been wholly factual, and he has not attempted to address points that are only relevant to the Applicant's case. Taking them one by one:</p> <p>REP2-009</p> <p><i>NS.1.6 - Marine Incident in vicinity of IOT - Confirm/signpost how a marine incident reported in recent years involving allision of a tanker with a mooring buoy in the vicinity of the Proposed Development has been taken into account in the submitted NRA [APP-089] and the MSMS to date.</i></p> <p>ABP answered: The Applicant understands that a response to this question is being provided by the Humber Harbour Master.</p> <p>That is their answer not HMH's and it was not entirely correct. HMH responded to that question insofar as he was involved in the investigation of the incident. He gave a description of the incident and advised the ExA that it was not considered necessary to amend any procedures or notices or the MSMS for the Humber, although the incident data contributes to the quantitative element of subsequent Risk Assessments for this area, as is usual. HMH did not seek to explain how this incident was taken into account in the Applicant's NRA as it was not for him to do so.</p> <p><i>NS.1.14 - Consequences of decision to abort berthing manoeuvre If a pilot or ship's master with a pilot exemption</i></p>

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		<p><i>certificate for Immingham decides dynamically that conditions would make it unsafe to continue with a berthing manoeuvre or entry into the Port's lock, what are the consequences for that physically and administratively?</i></p> <p>ABP answered: The Applicant understands that a response to this question is being provided by the Humber Harbour Master.</p> <p>Again, that was the Applicant's answer, and it was fair enough given that it is the SCNA that is the CHA for the purposes of pilotage and vessel passages, not the port operator. HMM's response was strictly factual:</p> <p>"The Master or Pilot of a vessel is always empowered to abort a passage, including a berthing manoeuvre, or to take other action to ensure the safety of the vessel. This can, and does regularly, occur for a variety of reasons. The consequences physically are that the vessel is put to a place of safety (e.g., an anchorage, back to sea or to another berth) until its movement can be replanned, which may be when wind or tide conditions improve. Administratively, a new voyage needs to be created and pilotage and other services planned accordingly."</p> <p>REP4-008</p> <p><i>NS.2.09 -Pilotage Incidents and consequences - Explain what actions were taken in response to the incidents that were subject to investigations undertaken by the Marine Accident Investigation Branch (MAIB), as cited in DFDS's Relevant Representation [RR-008].</i></p> <p>Again this was a matter that fell clearly within HMM's purview and it was considered by HMM that he ought properly to answer this question (regardless of whether or not ABP</p>

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		<p>chose to do so). HMH answered:</p> <p>“Although this question is directed at the applicant, the information is available to HMH and so is being provided by him to assist the ExA. The actions undertaken in relation to investigations undertaken by the Marine Accident Investigation Branch (MAIB) cited in DFDS’s Relevant Representation RR-008 are set out below save for the incident involving BOHINJ as HMH has been unable to locate a MAIB record for that incident.”</p> <p>There followed an entirely factual account of the actions taken as a result of the incidents.</p> <p><i>NS.2.31 Visibility restrictions on navigation as risk control - Respond to the IOT Operators’ comments in REP3-026 relating to the references to visibility and harbour directions for Ro-Ro vessels as a risk control for the Proposed Development made by the Applicant in REP2-009 in answering ExQ NS.1.8.</i></p> <p>Again this was a matter that fell clearly within HMH’s purview, and it was considered by HMH that he ought properly to answer this question. HMH answer:</p> <p>“Although this question is directed at the applicant, HMH is providing a response to assist the ExA.”</p> <p>There then followed an entirely factual answer.</p> <p><i>NS.2.33 - Effects arising from contingency of lack of tug availability What would be the typical consequences if an additional tug was unavailable for a planned passage if a master during an “act of pilotage” for an arriving vessel (whether with a Humber pilot engaged or acting with the benefit of a Pilotage Exemption Certificate) determined dynamically that an</i></p>

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		<p><i>additional tug would be required to make a safe manoeuvre at its commencement, having regard to the DFDS Written Representation [REP2-040] and the Harbour Master's answers to ExQ NS.1.14 [REP2-058] and NS.1.15 [REP2-059]?</i></p> <p>ABP's answer:</p> <p>"The Applicant refers to the answer above to NS2.29. The basic point is simple. If a tug is required for a safe manoeuvres (for whatever reason, whether determined dynamically or not) and there is no tug available, then the manoeuvres will not take place until such time as a tug is available or the conditions have changed to make a tug unnecessary.</p> <p>It is also understood that the Humber Harbour Master will respond to this question."</p> <p>This was an entirely appropriate answer as the port operator will direct tug use within the Pol limits. HMM has a wider remit and considered it would assist the ExA to have his perspective. HMM answer:</p> <p>"Although this question is directed at the applicant, DFDS and Stena, HMM is providing a response to assist the ExA.</p> <p>As set out in HMM's answer to question NS. 2.29 above, HES would not allow safety to be compromised. If it is determined that an additional tug is required but one is not available, then the vessel has to wait until either a tug becomes available, or conditions change such that the additional tug is not required. In practice, if the vessel's passage is effectively aborted, it will, depending on the circumstances, proceed to anchorage, back to sea or to a different berth. This occurs regularly at Immingham. IERRT would not be introducing a new or unusual risk on</p>

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		<p>this issue.</p> <p>As explained to the ExA by HMM during ISH3 (see HMM 13), such decisions are taken as early as possible. It is not unusual for a vessel coming up the river to decide it needs another tug or to abort a manoeuvre and go back to sea, if necessary.</p> <p>HMM repeats his observations at NS 2.29 above regarding availability of tugs."The suggestion by DFDS that <i>"members of the Applicant's team answered some questions directed at the Harbour Master and particularly the Dock Master"</i> is not accepted – and it is notable that DFDS has not specified which questions were put to HMM that he did not answer. HMM answered all questions that were put to him and also made his own contributions at the hearing.</p> <p>The comment that the Applicant and HMM were <i>"working closely together"</i> at the recent simulations seeks to imply some impropriety or bias on the part of the HMM. The Examining Authority will note that this is not borne out by DFDS and IOT's own summaries of those simulations. It is crystal clear that HMM attended all of the simulations in his capacity as harbour master for the River Humber; in other words, as an independent person, with an interest in the outcomes and with an obligation under the Port Marine Safety Code to facilitate collaboration between all of those present.</p> <p>In terms of the comment about common line management, there is simply nothing for HMM to "rebut". HMM has his own discrete role and statutory powers which are not subject to line management, and it is this capacity that he appears as an Other Party to assist the ExA. In all other respects, such as financial, organisational and administrative functions, he is an employee and officer of the SCNA and</p>

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		has a line manager. As part of his role he provides leadership to HES and presents a quarterly report to the Harbour Authority Safety Board for the Humber.
Ditto	<p>Harbour Master, Humber’s Response to DFDS and CLdN comments (REP5-037)</p> <p>The Harbour Master is still being equivocal about his view on the direction of the tide at Immingham. At paragraph 26 of his written representation [REP2-054] he said:</p> <p><i>“The Harbour Master, Humber, having reviewed the output of the early simulations, shared with the project team his concern that the tidal data used in the first simulations and the proposed orientation of the jetty at that time were not what HES would have expected based on collective experience of navigating in the vicinity (but not the actual location) of the proposed jetty. In his view, the tide would be flowing in a direction of approximately 10 degrees to the northwest/southeast. In response to his feedback, the project team carried out further measurements across the area.”</i></p> <p>143. This does not reveal if the Harbour Master has changed his mind and if so, why, (since the last hearings one of the Harbour Master's team has indicated that the Harbour Master now believes the tidal flow direction to the north of IOT has changed from that which has been widely reported until now, however, we have had no confirmation of this from the Harbour Master himself nor has he made any formal communication to this effect so we are currently unclear whether he agrees with his colleague) whether the Applicant changed their modelling, which does not appear to have happened, or whether the</p>	<p>HMH has already responded to this matter in previous representations (at paragraphs 3.7 and 4.2 of REP2-061 and in his response to NS.2.34 on page 6 of REP5-037) and again at ISH5.</p> <p>HMH explained at ISH5 that he was not present at the original set of simulations and was surprised by the results. Further measurements were carried out and, over time, the model and two sets of measurements indicated that the tide in the first simulations was correct albeit not as expected by mariners with experience in nearby locations. To the north of the area, the simulator did not seem to reflect real life experience. This concerned him less in relation to the validity of the simulations, but he shared DFDS’ observations in that he would expect it to be further round to the North West / South East and slightly stronger. HMH noted that this was dealt with at the last set of stakeholder simulations. HMH does not consider that this discredits the previous runs.</p>

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	Harbour Master has not changed his mind and still thinks the tide in the simulations is wrong.	
<p>REP6-039</p> <p>DFDS Summary of Navigational Simulations</p>	<p>Paragraph 1.6:</p> <p>On 3 November, BDB Pitmans, DFDS' legal representatives emailed the Applicant with proposed amendments to the minutes of 31.10.23 meeting (Appendix 6). The minutes of the meeting of 31 October as drafted by the Applicant omitted a key discussion, where the representative for the Humber Estuary Services (HES) indicated the tide data had 'recently' changed. DFDS queried this, what was considered 'recent' and sought clarity on this and the implications in terms of updating all published documents and guidance, the HES representative did not provide a response. DFDS has sought to correct the minutes. As of 13 November 2023, DFDS has not received a response to that email and its proposed amendments on the draft minutes of 31 October 2023, a copy of DFDS' proposed amendments can be seen in Appendix 6.</p> <p>Paragraph 9 - DFDS' Position</p> <p>9.1 Whilst DFDS agreed the majority of the simulations runs operated on 7 and 8 November were categorised as a success, as clearly set out in the preceding correspondence, the simulations were not conducted as DFDS would have liked. The application of tidal data was the best the Applicant could in the circumstances but is still unsatisfactory and it was inappropriate to only simulate the vessel which is initially intended to use the Proposed Development, rather than also simulating a vessel the size of the design specification (i.e the largest vessel which could operate at the Proposed</p>	<p>With regard to paragraph 1.6 and Appendix 3 of REP6-039, the substantive point on tidal data is answered above and in giving that response HMH is speaking for his team at HES. In any event, HMH has already addressed how guidance to vessels updated at the appropriate time to take account of the introduction of the IERRT. As described on page 8 of REP6-042:</p> <p><i>“Guidance to vessels using the IERRT will reflect the latest available data at that time, including data for areas already navigated as well as the locality of the proposed IERRT development.</i></p> <p><i>“HMH would expect new guidance to be related initially through Notices to Pilots and PECs as well as VTS and Dockmaster Standard Operating Procedures. It would also be included in the Pilot Handbook in due course.”</i></p> <p>Thus, new guidance would be issued in advance of any construction operations for IERRT, reflecting the latest knowledge of conditions in the area at that time and further new guidance would be issued following construction to reflect the IERRT and surrounding area.</p> <p>With regard to paragraph 9 of DFDS's submissions, the design vessel was discussed at ISH5. HMH stated that any vessel which was significantly different to those already tested would need to be assessed. An example of this was the introduction of Jinling vessels into Immingham Outer Harbour. The introduction of a new vessel could require tugs or have an impact upon the operating window. Such a vessel would not expect unfettered access in all conditions.</p>

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	<p>Development).</p> <p>9.2 The simulations did not provide DFDS with comfort that a vessel the size of the design specification could safely use the Proposed Development, in a real world situation, with the correct tidal data.</p> <p>9.3 Other points to note:</p> <p>9.3.1 DFDS's concerns regarding the Harbour Master's independence remain and were not diminished by the interactions witnessed at the simulations.</p> <p>9.3.2 ABP noted that the design specification of the proposed berths is for engineering purposes and not necessarily to accommodate vessels of that size.</p>	<p>If a larger vessel were to be introduced, the operator would have to apply for a set of controls to be examined and at that point conditions would be imposed. HMM confirmed that Stena would be expected to bring the vessel to HES at the design stage, and he would expect Stena to design a vessel capable of moving in most conditions at this berth. HES would apply whatever controls were necessary for the specific vessel at the particular berth.</p> <p>HMM gave an example of this process at Green Port Hull where wind turbine blades are loaded onto vessels. There is currently a proposal for much wider ships which are not yet built but in a month's time he will be going to the simulator to check that the new vessel, as designed, would be capable of manoeuvring into the port.</p> <p>HMM would expect the design vessel would be designed, fitted with correct propulsion and be capable of manoeuvring out of that berth. He notes that a smaller vessel that is underpowered can be as dangerous as a larger vessel. Any vessel has to be fit for purpose and the SHA would always check before allowing it to operate.</p> <p>In practice, and usually at the design stage, any operator who wishes to introduce a larger vessel comes to HMM with a set of proposed control measures to be examined. HMM then considers the testing that is needed, (whether simulation or real world), to determine whether the set of controls proposed are sufficient. This process ensures that HMM is satisfied that the set of controls and conditions of operation are sufficient, before any new vessel is introduced.</p> <p>Therefore, for the IERRT development, any vessel proposed to be used that differs from vessels used in the assessments to date would undergo its</p>

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		<p>own assessments.</p> <p>Measures that might be implemented to address the differences could include the use of tugs, or use of tugs more often, or there could be a certain set of conditions in which the vessel cannot berth. No vessel would initially have unfettered 100% access in all conditions, and there will always be a set of control measures and operating windows that will be applied to any vessel, following that assessment.</p> <p>HMH refutes the comment at 9.3.1 regarding conduct at the simulations – there has always been all round collaboration, from all parties, at the simulations at which he has been present and he has no reason to believe that this has not been the case at the other simulations that have been held.</p>
<p>REP6-045</p> <p>IOT comments on D5 submissions</p>	<p>IOT comments on HMH D5 response to IOT (REP5-037)</p> <p>Page 10</p> <p>HMH is mis-construing the difference between a “passage plan abort location” which is a contingency decided in advance of a transit, compared to an action of aborting a manoeuvre at a later point if it is not going to plan or no longer likely to remain safe. The HMH is trying to conflate an abort point, a near miss and incident. The IOT Operators’ concern is that the manoeuvre is terminated without the benefit of advanced planning, which should be considered as a safety issue for the IERRT development.</p>	<p>HMH stands by his previous representation on this matter in which he sought to clarify that an abort and a near miss/incident are separate and distinct outcomes. HMH is satisfied that in practice, a properly planned and executed passage is being continually assessed by a pilot or PEC, and that manoeuvres in the vicinity of the IERRT development can be managed safely.</p>
<p>Ditto</p>	<p>IOT comments on HMH D5 response to IOT (REP5-037)</p> <p>Page 12</p> <p>The IOT Operators request that the</p>	<p>HMH is aware of all of the potential control measures identified in all the NRA’s. As is normal when new infrastructure is introduced to the river Humber, HMH will ensure that IERRT operations are managed with an</p>

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	<p>HMH confirm whether or not that the control measures specified in the sNRA are required.</p> <p>As an independent Statutory Harbour Authority, empowered to manage safety of navigation, we would expect HMH to accept that there is significant disagreement and seek to find consensus of solution. This has not occurred and the HMH (or indeed the Port of Immingham Dock Master) do not seem to be acting independently to the Applicant in this regard.</p>	<p>appropriate level of operating controls to manage the risks that have been identified. In doing this, he acts independently of the Applicant and has regard to the needs and safety of all users of the river.</p>
<p>Ditto</p>	<p>IOT comments on HMH D5 response to IOT (REP5-037)</p> <p>Page 12</p> <p>The point the IOT Operators are making is that HMH is brushing aside the safety issues inherent in the IERRT project, in favour of the Applicant, and has not appropriately adapted the approach in light of either the issues with independence from the Applicant or the heightened risk inherent in this particular project.</p> <p>As noted above, there are numerous documented concerns raised by the IOT Operators (and other stakeholders) in relation to the IERRT project which do not appear to have been considered, appropriately, by HMH. The Applicant's view appears to be that the HMH will address any safety concerns in due course following granting of the DCO, though no details or commitments have been provided to date, despite the Applicant accepting protective provisions substantially in the form advanced by the IOT Operators [REP1-039] would be included in any change request. Additionally, the Humber baseline NRA in MarNIS, as a critical assessment, was not shared as part of the IERRT development stakeholder agreed baseline risk assessment, and the same</p>	<p>The suggestion that HMH is “brushing aside the safety issues inherent in the IERRT project” is absurd and is refuted entirely. HMH will treat this development in the same way as he would treat any development – applying the same set of principles to identify and manage risks, having regard to particular risks and consequences present and dealing with them proportionately.</p> <p>This matter was also addressed at ISH5, where HMH explained that the consequences of the impact on a trunkway became very clear during the HAZID workshops. There is a series of potential risk controls that have been identified. Consideration will be given to how those are applied. These vary from tug use and restricted operating windows to physical impact protection measures, depending on what is appropriate. As matters stand, the results from the simulations to date demonstrate to the satisfaction of HMH that the IERRT is capable of being operated safely, notwithstanding the proximity of the IOT Finger Pier and trunkway. However, this remains under review and, whatever is decided, the potential cost of the control measures concerned will not affect HMH's decision and the application of those controls.</p>

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	<p>methodology was not used to assess the risk of the IERRT infrastructure and Design vessels to other traffic and marine facilities in the area. The IOT Operators have repeatedly requested this assessment be shared since February 2022.</p>	
<p>Ditto</p>	<p>IOT comments on HMM D5 response to IOT (REP5-037)</p> <p>Page 14</p> <p>In respect of:</p> <p><i>“Harbour Master, Humber Response</i></p> <p><i>HMH stands by the content of paragraphs 3.1.5 and 3.1.6 of his earlier submission.”</i></p> <p>The IOT Operators stand by the statements made, and previous submissions on independence.</p>	<p>The appropriate opportunity to respond to HMM's submission on independence was at D6. There is no weight to be given to this statement in light of IOT's failure to do so.</p>
<p>Ditto</p>	<p>IOT comments on HMM D5 response to IOT (REP5-037)</p> <p>Page 17</p> <p>Whilst the HMM is not the applicant, concerns as to independence remain despite the HMM submissions on a statutory separation between HMM and ABP.</p> <p>The IOT Operators remain concerned that HMM considers that “safety will be managed for IERRT just as it is for the other destinations on the Humber” – the location of IERRT is more challenging navigationally than all other Ro-Ro berths on the Humber, no simulations have been undertaken for the proposed design vessel, the NRA is flawed, the proximity of IERRT to the IOT is unique and the consequences should an incident occur are nationally significant, as such for HMM to rely on safety of navigation to be “just as it is for the</p>	<p>HMM's response on this matter is the same as set out above - HMM will treat this development in the same way as he would treat any development – applying the same set of principles, having regard to its particular risks and consequences and dealing with them proportionately. HMM was quite clear at ISH5 that he would not treat an oil terminal in the same way as a minor wharf, given the different risks involved with such infrastructure. Each will have the controls appropriate to their individual situation.</p> <p>HMM has already made written submissions about the priority given to large tankers over Ro-Ro vessels (see paragraphs 3.6 and 3.7 of REP4-032) as a matter of practice. No vessel has a free run – the process is managed, every time, for every vessel, every day.</p> <p>HMM is comfortable that the provision of pilotage can be managed and does not consider that there will be any long-</p>

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	<p>other destinations on the Humber” is considered by the IOT Operators to be of grave concern.</p> <p>In the absence of any empirical analysis on pilot utilisation for the IERRT in the context of available pilot, then the IOT Operators require that HMH commits there will be no delays to IOT arrivals and departures brought about by the IERRT developments. No such control is presently being offered through the Applicant’s DCO.</p> <p>The IOT Operators remain concerned with the provision of pilotage and the opinions of the HMH that there are no issues.</p>	<p>term issues relating to pilotage. Put simply, if at any time 6 more ships are present on the river, then 6 more pilots will be provided – regardless of whether the IERRT infrastructure is built. The capacity of tugs and pilots adjusts, and goes up and down, according to need.</p>
<p>REP6-046</p> <p>IOT’s Appendices to D6 Subs</p>	<p>Consultation on change – response letter dated 13 November 2023 from APT to ABP</p> <p>Paragraph 2.20:</p> <p><i>“At Para. 3.21 [of the change request] the Applicant seems to remain of the view that, based on a flawed NRA, impact protection measures are not required. However, in meetings with the Applicant and its Harbour Authority (Humber Estuary Services), the consensus was that impact protection was required.”</i></p> <p>Paras 2.32 and 2.33:</p> <p><i>“Enhanced Navigational Management Controls</i></p> <p><i>2.32 The Applicant states at Para 2.42 that “Enhanced navigational management controls” will be developed with the IOT Operators but documents the “vehicle for these enhanced controls will be either by the issue of a General Direction/Notice to Mariners or a revision to the Immingham Marine Operations Manual” which are to be provided by the Statutory Harbour</i></p>	<p>It is not clear which meetings are being referred to in the letter of 13 November.</p> <p>In the view of HMH, impact protection has always been – and remains - an option. However, as matters stand, and as he has consistently stated, HMH is confident from the information he has seen and the simulations undertaken to date, together with his experience of vessel manoeuvres on the Humber, that physical impact protection is not required.</p> <p>As HMH explained at ISH5, all vessels are considered on a sliding scale of risk – and that risk assessment is vessel specific. There are broad principles that apply to risk assessments based on vessels coming and going all the time, and while some general assumptions can be made, the assessment is always performed on a vessel specific basis.</p> <p>In the view of the HMH, it is not appropriate for navigational management controls to be prescribed in the DCO – those powers have already been set out in legislation. The discretionary nature of the statutory powers to control vessel movements reflects the fact that there needs to be a</p>

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	<i>Authority – Humber Estuary Services or Port of Immingham. However, there appears to be no provision for these controls to be secured in the DCO to reassure the IOT Operators that they will be implemented.</i>	degree of flexibility attached to such controls.
Ditto	D6 Appendix 3 IOT “Summary comments on IERRT Navigational Simulations”	HMH response to this matter has been dealt with above.
REP6-037 DFDS cover letter	<p>“DFDS would also wish to request for cross-questioning, this time at ISH5:</p> <p>- Andrew Firman, the Harbour Master, Humber – this is to ensure adequate testing of his representations. DFDS remain concerned that his view on the tidal direction used at the simulations has not been properly established and his independence in practical rather than legal terms has not been properly explored and can only be explored through oral questioning;”</p>	<p>Government (DCLG) Planning Act 2008 Guidance for the examination of applications for development consent provides at paragraph 98 that in certain circumstances the ExA may allow an interested party, or his/her representative, to question a person making oral representations at a hearing (i.e. allow cross- examination). It may do so where it considers that this is necessary to ensure the adequate testing of any representations, or where it considers that it is necessary to allow an interested party a fair chance to put their case.</p> <p>Paragraph 99 goes on to say that the ExA will carefully consider all requests from parties for cross examination and will ensure that parties are not denied the opportunity to ask questions where the answers are required in order to complete their cases.</p> <p>Thus, cross-examination has to be <u>necessary</u> for achieving the purposes in the guidance – to <u>ensure</u> the adequate testing of any representations and/or to allow a party to <u>complete its case</u>.</p> <p><u>In other words, it has to be necessary to prevent a party being prejudiced in the proceedings.</u></p> <p>Taking the first point on which DFDS expressed a desire to cross-examine HMH, namely the adequate testing of HMH’s representations:</p>

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		<p>HMH has given full answers to all assertions made by DFDS that concern him and it is noted that DFDS has not spell out which representations they considered needed further testing other than the point on tidal directions.</p> <p>That particular point has been rehearsed at length in the written submissions of parties including HMH, at the further simulations (where it was dealt with to the satisfaction of those present, including DFDS) and at ISH5.</p> <p>The only other point appears to be whether the HMH is truly independent of the Applicant.</p> <p>On this point, it is notable that DFDS found nothing to rebut in HMH's legal note on the separation of powers and his independence.</p> <p>Nor has DFDS overtly impugned HMH's bona fides or suggesting that he is acting beyond his statutory powers.</p> <p>Indeed, there is no aspect of his behaviour that DFDS has identified as being indicative of acts that go beyond HMH's normal functions as they would apply in relation to any developer on, or user of, the Humber.</p> <p>HMH has responded to the generalised insinuations regarding his independence in his detailed written responses and in response to the questions put to him by the ExA at the ISH hearings.</p> <p>HMH submits that both the issues of tidal direction and his own independence have been addressed in detail over the course of the hearings.</p> <p>Moreover, DFDS have not given any indication that its case has been prejudiced by a lack of cross-examination and it is difficult to see how it could be. Nor has DDS has explained what cross-examination of HMH would</p>

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		<p>add to the ExA's understanding of the issues before it.</p> <p>DFDS has alleged that HMM has not answered questions put to him. HMM considers that is simply incorrect.</p> <p>With regards to the allegation that HMM has liaised with the Applicant in relation to responding to written questions, HMM has responded on this point in detail above, but would add here that, as a matter of practice HMM's lawyers have reviewed both the questions asked of him and other questions on which he may be able to offer assistance. There have also been a few occasions where the Applicant has come to the view that a question may best be answered by HMM and have requested him to consider doing so. There is nothing wrong with that.</p>

Winckworth Sherwood LLP