



**Updated summary of the RSPB's position
and key concerns regarding the Boston
Alternative Energy Facility DCO Application
for the
Royal Society for the Protection of Birds**

**Submitted
10 March 2022**

Planning Act 2008 (as amended)

In the matter of:

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

**Planning Inspectorate Ref: EN010095
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1. Introduction

1.1. The RSPB submitted comments on the latest information submitted by the Applicant in our response of 9 December 2022. We set out our position with respect to:

- Construction noise at the Application site;
- Vessel disturbance at the Application site;
- Vessel disturbance along The Haven;
- Vessel disturbance at the mouth of The Haven.

1.2. That submission made clear that we consider **an adverse effect on the integrity of The Wash SPA/Ramsar cannot be ruled out beyond reasonable scientific doubt**. We also do not consider the compensation package as currently set out to be of a sufficient standard to demonstrate that the Applicant will address the adverse impacts arising from the proposed development. Our reasoning for this has been clearly set out throughout the Examination and in our submission in response to the Secretary of State's request for additional information on 9 December 2022. Below we summarise our comments to date.

Submission summarising the RSPB's position as of January 2022 (REP5-018)

1.3. At Deadline 5 (REP5-018), we provided a summary of our position on the species of concern for each section of The Haven, with our detailed assessment for features of The Wash SPA/Ramsar that have either been observed in the Applicant's surveys or are known to occur in significant numbers in areas not currently surveyed by the Applicant. Our position was that an adverse effect on the integrity of The Wash SPA/Ramsar cannot be ruled out beyond reasonable scientific doubt. Our position was based on the frequency of observations of the species, the relative proportion of The Wash SPA/Ramsar population, the species conservation status on The Wash, and their known sensitivities to disturbance.

Submissions summarising the RSPB's position with respect to the Applicant's Compensation measures (REP4-028 and REP10-043)

1.4. We provided a summary of the Applicant's compensation package at Deadline 4 (REP4-028). At that time, we did not consider this to be adequate both in scale and detail to meet the criteria for designing compensatory measures we set out in Table 12 in our Written Representation (REP1-060). In summary, the criteria were:

- **Targeted** – appropriate to the impact(s) predicted and refer to the structural and functional aspects of site integrity and habitats/species affected. Clear objectives and success criteria must be set out.

- **Effective** – based on the best scientific knowledge alongside specific investigations for the location where the measures will be implemented. Measures where no reasonable guarantee of success should not be considered. The most effective option(s) with the greatest chance of success must be chosen.
- **Technical feasibility** – design must follow scientific criteria and evaluation, taking into account the specific requirements of the ecological features to be reinstated.
- **Extent** – directly related to the quantitative and the qualitative aspects inherent to the elements of integrity that are likely to be impaired, along with an estimated effectiveness of the measure(s). Ratios need to be used where they make ecological sense and will help secure a successful outcome by providing more of something. Simply multiplying capacity to address uncertainty is not appropriate, as it risks giving a false level of confidence.
- **Location** – located in areas where option(s) will be most effective in maintaining the overall coherence of the National Site Network. Compensation measures should be as close to the area of impact as possible, while minimising the external pressures that may reduce the likelihood of success. Compensation measures proposed to benefit one SPA/SAC/Ramsar site feature must not result in damage to the integrity of any other SPA/SAC/Ramsar site and their features, or the integrity of any underpinning SSSI.
- **Timing** – must provide continuity in the ecological processes essential to maintain the structure and functions that contribute to the National Site Network. Compensation measures should be fully functional (that is, secured, designed and created) before any damage occurs.
- **Long-term implementation** – legal and financial security is required for the long-term implementation of option(s). These guarantees must be secured via an appropriate mechanism and in place prior to consent being granted. Robust financial guarantees are required to fund implementation, monitoring and any necessary remediation measures.

- 1.5. At Deadline 10, we submitted comments on the Applicant's updated compensation measures document. Our detailed comments on the Habitats Regulations Assessment and the derogation case have not been addressed. Our concerns at Deadline 10 remained the same as set out at Deadline 4. Therefore, all our comments submitted at Deadline 10 remain.

[The RSPB's position on the Applicant's compensation package as set out in December 2022](#)

- 1.6. Since the Examination closed in April 2022, we have not seen any additional information that demonstrates the Applicant's compensation package will meet the criteria outlined in paragraph 1.4 above. We consider the package:

- is not suitably targeted – not all features of The Wash SPA/Ramsar will be able to utilise the proposed habitat either due to the habitat created or the distance from the point of impact.
 - will not be effective in addressing the adverse effects on the integrity of The Wash SPA/Ramsar – as set out above, not all species impacted will be catered for by the proposed compensation measures.
 - fails to demonstrate that the proposals are technically feasible – there remain significant questions about the consenting of the compensation measures. Critically, there remains no clarity that a sufficient water supply can be secured to ensure the wetland habitats remain wet and suitably functioning year-round to provide the necessary compensation measures.
 - will not be of a suitable extent to achieve the ecological requirements – the 19ha proposed area could be sufficient to provide a suitable scale of habitat, but the 7.5ha area is not likely to be sufficient.
 - is too limited in the number of locations being proposed to address the ecological requirements of the SPA/Ramsar species affected– whilst broad outlines of where compensation could potentially be delivered is set out, the information on locations remains insufficiently detailed. Habitat must be created close to the mouth of The Haven to support waterbirds displaced in this area and habitat is also needed further up The Haven to support waterbirds displaced as the vessels transit The Haven.
 - offers insufficient guarantees of long-term implementation i.e. the legal and financial security is not confirmed.
- 1.7. Overall, we have no confidence that the Applicant’s compensation package in its current form will address the adverse impact arising from the proposed development. We therefore reiterate Defra’s 2012 guidance (paragraph 35)¹:
- “If it is not possible to secure adequate compensatory measures, a derogation allowing the proposal to commence must not be granted.”**
- 1.8. It is our belief that the Applicant has had sufficient time through the NSIP process to have developed a detailed package of compensation to a standard that would meet the criteria we set out in Table 12 in our Written Representation (REP1-060).
- 1.9. Based on our experience of creating habitat, we do not consider that there is sufficient time available before July 2023 (the revised determination date) to resolve the outstanding issues with the presented compensation package or give confidence that it could be delivered. In section 2 below,

¹ Defra (2012) Habitats and Wild Birds Directives: guidance on the application of article 6(4). Alternative solutions, imperative reasons of overriding public interest (IROPI) and compensatory measures.

we detail the timeframes and costs associated with different elements of habitat creation projects to demonstrate why we hold this position.

Additional factors affecting waterbird populations on The Wash since the Examination closed that may have a bearing on their favourable conservation status

- 1.10. Since the Examination closed, additional concerns have been raised regarding waterbirds using The Wash. The concerns stem from:
 - The impact of Highly Pathogenic Avian Influenza (HPAI) on waterbirds using The Wash: It is currently unclear what the population scale impacts of the HPAI outbreak will be on breeding and non-breeding birds using The Wash, but they may potentially be severe. We will, however, not have a full picture of the scale and breadth of the losses during 2022 until we can see how many birds return for the 2023 breeding season and then the following winter. Many waterbirds are long-lived and reproduce slowly, so adult mortality on the scale seen across the UK during 2022 presents a serious threat to some populations. As a consequence, some populations will be less robust to any additional mortality arising from the direct and indirect impacts associated with new developments. It also means that there may need to be a reassessment of whether SPA populations are in Favourable Conservation Status. With such uncertainty about the impact of HPAI on waterbird populations, there is the need for a high level of precaution to be included in the examination of impacts arising from the proposed development.
 - A significant mortality event in the oystercatcher population over the 2022/23 winter: this has been linked to poor food supply and extended period of freezing (i.e. cold weather) conditions. There is a significant concern about the cockle fishery on The Wash. Cockles form a key component of the diet for a significant proportion of The Wash oystercatcher population. It is not clear what impact this mortality event will have on The Wash oystercatcher population, but this is a concerning development for a species that had been recovering from significant historic declines. Additional impacts arising from this development will need to be treated with a high degree of precaution.
- 1.11. It is vital to consider whether the SPA and its qualifying features meet the attributes and targets set by Natural England when considering whether the SPA's conservation objectives to maintain or restore site integrity can be met and the SPA achieve favourable conservation status throughout the lifetime of the development and any subsequent period where its impacts continue to affect the SPA features.

2. Guidance on delivering wetland habitat to support roosting, foraging and bathing waterbirds associated with The Wash SPA/Ramsar

Introduction

- 2.1. To support our position that the current compensation measures are not sufficient to address adverse impacts arising from the proposed development we set out below some detail on developing wetland habitat in The Haven area based on our experience.
- 2.2. The RSPB has worked with the Environment Agency since 2002 to deliver freshwater and intertidal habitats at Frampton Marsh and Freiston Shore. These have been developed in part to compensate for habitat losses as a result of Shoreline Management Plan policies up to 2025. These reserves have been created from farmland and would be of an identical nature to the land which the Applicant would need to create compensatory habitat.

Comments on the number of birds to be accommodated by compensatory habitat

- 2.3. The Applicant has identified a number of options for providing compensation habitat along The Haven that it believes will be adequate to address impacts on the following species:
 - Dark-bellied brent geese
 - Black-tailed godwits
 - Oystercatchers
 - Redshanks
 - Turnstones
 - Lapwings
 - Golden plovers.
- 2.4. The Applicant states in in paragraph 3.5.7 (p.26) of their 'Without Prejudice Derogation Case: Compensation Measures' document submitted in November 2022² that its aim is to:
 - "...create brackish or freshwater off-Haven sites that could support up to 175 high-tide roosting birds from the Principal Application Site..."
 - "...create brackish or freshwater off-Haven sites that could support up to 7000 birds from the MOTH, during high water."
- 2.5. With respect to the 175 birds that need to be compensated at the Application Site, we recognise that these will include the roosting redshanks, but impacts on additional SPA species using the area must also

² [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010095/EN010095-001393-9.30\(3\)-Without-Prejudice-HRA-Derogation-Case-Compensation-Measures-\(tracked\).pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010095/EN010095-001393-9.30(3)-Without-Prejudice-HRA-Derogation-Case-Compensation-Measures-(tracked).pdf)

be compensated. A number of species associated with The Wash SPA/Ramsar have been identified in our previous submissions as foraging within close proximity to the Application Site (for example, paragraphs 3.23-3.37 of our Written Representations (REP1-060), our comments on the Ornithology Addendum (REP4-026) and summary of our position in January 2022 (REP5-018)). These birds risk being displaced from foraging areas during construction and operation of the wharf area. It does not appear that foraging redshanks, ruffs and other species will be compensated for in the current proposals.

- 2.6. With respect to the 7000 birds that the Applicant will seek compensation measures, we appreciate the breakdown in numbers presented in the Compensation Measures document (paragraph 3.5.7, pp.26-27). Each of these species will have specific ecological requirements that will need to be considered when designing a suitable extent of compensatory habitat; we therefore appreciate Table 4-1 (pp.39-41 of the Compensation Measures document). However, the Applicant appears to be attempting to deliver a large number of measures for different species within the 19ha and 7.5ha areas that they are considering. At this stage, the Applicant has presented options that could be delivered, but there needs to be careful consideration about what is possible to create on the potential compensation areas to meet the necessary ecological requirements. No such follow up conversations have taken place. Delivering all the options set out may not be possible, as, for example, there may be conflict between delivery of different options that would need to be addressed.
- 2.7. The RSPB remains seriously concerned that the Applicant's calculations for the scale and breadth of compensatory measures does not consider The Wash SPA/Ramsar features using the navigation channel area between the Application site and the Mouth of The Haven. We have detailed this concern repeatedly through the Examination in our Written Representations (REP1-060), comments on the Applicant's Ornithology Addendum (REP4-026) and comments on the Applicant's Compensation Measures (REP4-028 & REP10-04). This has significant implications about the appropriateness of the measures being proposed. Unfortunately, the Applicant has not assessed the numbers of birds using the whole of The Haven in detail, which remains a significant gap in the evidence base and is not something that can be resolved in time for the July determination date.

Comments on the Applicant's criteria for identifying suitable compensatory habitat

- 2.8. The RSPB broadly agrees with the criteria that the Applicant has identified as needing to be met with respect to identifying and delivering suitable compensatory habitat (para 3.5.5, p.24):

- *"Contain short sward grassland and an area of shallow water such as a lagoon or scrape (potentially with a small island within the lagoon);*
- *Of sufficient size and suitable landscaping and design to be able to be capable of attracting and accommodating waterbirds (in the order of thousands) for roosting, foraging, loafing and bathing. The estimated minimum size requirement is 15 hectares (ha) based on the size of the roosting site which lies within The Haven area, both above the high-water mark and within the boundary of the designated sites and covers approximately 15 ha. It is recognised that if sites are only available at locations further away, that the size of the feature and/or the condition and status would need to increase in order to provide greater functionality in order to provide adequate compensation;*
- *Open in nature;*
- *Not close to trees or shrubs (i.e., vegetation that provides cover sites for predators);*
- *Away from areas frequented by walkers with dogs;*
- *Away from areas there would be other forms of noise disturbance (i.e., bird scarers/high level of vehicular disturbance);*
- *Not already providing a conservation benefit to birds or other species that would be adversely affected if the site is enhanced for bird use by the required species; and*
- *For compensation of the mouth of The Haven vessel disturbance, compensation roost sites should be close to the existing mouth of The Haven roost site, preferably within 1km and ideally within 500m (refer to section 4 which discusses the location (in context of the SPA location) of sites in more detail)."*

2.9. However, we consider that some critical criteria are not covered in the Applicant's list. In order to achieve the ecological requirements of the SPA/Ramsar waterbirds affected the following criteria are considered essential:

- Having access to the necessary water resources and hydrological infrastructure to ensure that the habitat can be effectively managed.
- Islands will be essential within lagoons to create suitable roosting areas for waders. Whilst a lagoon might be used by feeding waders (if shallow enough) and dark-bellied brent geese for bathing, without islands it is highly unlikely roosting waders will benefit.
- Linked to the 'Open nature' is the requirement for habitat to not be located under pylons.

2.10. More information is required from the Applicant to confirm that any of the options for compensatory sites that they are considering will avoid pylons and, critically, have a suitable, sustainable water supply. Any access to water from the local drainage network would need to ensure that it does not impact on the ability to manage Frampton Marsh and Freiston Shore

habitats which are fundamental to supporting features of The Wash SPA/Ramsar. Water sources will also need to be sustainable over time, so there may need to be consideration of water storage that can be used to supplement the water levels during dry conditions. In order to maintain supply of water and habitats, a regulated tidal exchange may be required. This has significant costs and consenting associated with it and does not appear to have been considered by the Applicant. Without a full options appraisal to identify the best approach to deliver the necessary compensatory habitat there can be certainty that the Applicant has identified and secured the appropriate financing, identified the appropriate timescales for delivery based on the relevant consenting requirements or that the ecological that will be required can be delivered.

Comments on the potential costs for delivering suitable compensatory habitat

- 2.11. It remains unclear that the Applicant has provided sufficient certainty that the compensatory measures are financially secured. We have extensive experience in the area of The Haven with respect to land acquisition, the creation of freshwater and intertidal habitats and their ongoing management to deliver ecological objectives for waterbirds associated with The Wash SPA/Ramsar. Table 1 below provides indicative costs of buying land, creating habitat and then maintaining the habitats to assist in the assessment of the adequacy of the Applicant's package of Compensation Measures.

Table 1: Indicative costs for creating and maintaining a 15ha habitat for roosting, foraging and bathing waterbirds along The Haven. This does not include the additional costs for creating and maintaining an alternative high tide roost to the north or south of the Application Site.

Feature	Indicative Cost (£)	Comment
15ha land	£650,000	This is for purchasing land to ensure that the created habitat will be maintained in perpetuity as part of the National Sites Network.
Surveys	Minimum £50,000	Assessments will be needed to understand the current ecological status of any proposed compensation sites, which will include Schedule 1 and Protected Species, as well as any SPA/SAC/Ramsar/SSSI features. Any ecological assessments will need to provide at least two years of data to account for inter-annual variation. Additional environmental factors such as hydrology and soils will also

Feature	Indicative Cost (£)	Comment
		need assessing to understand any constraints and to inform the site design. Specialist surveys such as archaeology are also likely to be required – an Unexploded Ordnance Survey could cost £7,000 and that is without a cost for addressing any ordnance found.
Lagoon & island creation, hydrological infrastructure (sluices, water pumps etc)	£150,000	This is for the excavations and groundworks needed to create the necessary ecological conditions plus all associated hydrological infrastructure (the precise nature of which will depend on the location). This does not assume a new connection through a primary flood defence is required (this will be more expensive).
Predator-proof fence (for 15ha site)	£40,000	A predator-proof fence to keep foxes, badgers and otters out of the wetland habitat will be critical to ensure the ecological objectives can be met. This will help address recreational pressure from dogs and people.
Planning & consenting costs	£20,000	<p>These are essential to ensure that the compensation measures will be possible to take forward. These will also dictate the timeframe for delivery of any compensation measures. Based on the RSPB's experience of Frampton Marsh and Freiston Shore habitat creation the following consents will be required:</p> <ul style="list-style-type: none"> • Planning permission • Environmental Permit • Flood defence consent (to include any permissions needed not covered by the Environmental Permit) • Reservoirs Act (if required) • Transfer/abstraction/impoundment licence(s) for water supply from drainage network/Haven river • Marine licence will be needed if regulated tidal exchange needed to secure suitable water supply

Feature	Indicative Cost (£)	Comment
		More detail on this is set out in our comments on the Fifth Report on outstanding submissions (REP10-045), Specifically, the sub-section entitled " <i>Paragraphs 4.6.3-4.6.7: timeline to secure, develop and implement compensation</i> " on pages 6-8.
Site maintenance costs	£25,000 per annum	This includes staff and/or contractor costs to maintain habitat through vegetation and water management. There will be a need to maintain infrastructure such as fencing. Maintenance must be planned in perpetuity.
Monitoring	£10,000 - £15,000 per annum (minimum)	A programme of monitoring will be needed to ensure that the habitat establishes and the site functions effectively. This is necessary to demonstrate that the ecological objectives are being and to implement any changes to management where deficiencies are identified. Monitoring would need to include: bird numbers, vegetation development, water quality, water level, prey availability where compensation for foraging is needed. The data will then need to be analysed in detail and reported annually both to any management group and the Secretary of State.

2.12. Based on the above costs, the RSPB estimates that to create a 15ha lagoon would cost a minimum of c.£910,000. Whilst leasing land may be cheaper, we query the current approach by the developer as we do not consider that there is sufficient certainty that any compensatory habitat can be guaranteed to remain in place on expiry of any lease. More information is required from the developer on this issue.

2.13. As we have previously set out, any habitat should be managed to a standard that would enable it to be incorporated into the National Sites Network. This would mean management and monitoring of the site would be required in perpetuity. There is a need for the Applicant to provide multiple sites to meet the compensatory requirements for birds using the Mouth of The Haven and The Haven channel, as well as birds impacted at the Application Site. Table 2 below sets out some scenarios with indicative costs provided based on the information set out in Table 1.

2.14. To provide an indication of the level of funding commitment that would be required, over an 80-year period, our indicative costs suggest site maintenance and monitoring could cost a minimum of c.£4,400,000 to c.£5,200,000 (Table 2). However, a 7ha lagoon is not going to be sufficient to meet the ecological requirements of the impacted species. Based on our experience, we consider two areas of land at least 15ha in size will be required to meet the compensatory requirements. This would increase necessary funding to a minimum of c.£5,600,000 – c.£6,400,000 (Table 2). Depending on the location of the sites and the ecological requirements of the species affected, additional habitat areas may be required in order to deliver the full suite of compensation needed to maintain the integrity of The Wash SPA/Ramsar.

Table 2: Indicative costs of delivering compensatory habitat options along The Haven to address adverse impacts predicated for the Boston Alternative Energy Facility. Compensatory habitat should be provided in perpetuity and indicative costs for 80- and 125-year periods are provided to understand the potential scale of long-term funding that needs to be secured by the developer. This does not include the additional costs for creating and maintaining an alternative high tide roost close to the Application Site.

Compensation measure	Indicative costs to create (£)	Indicative management and monitoring costs (£)	Indicative management and monitoring costs for 80-year period (£)	Indicative management and monitoring costs for 125-year period (£)
7.5ha lagoon	490,000	20,000 – 30,000	1,600,000 – 2,400,000	2,500,000 – 3,750,000
15ha lagoon	910,000	35,000 – 40,000	2,800,000 – 3,200,000	4,375,000 – 5,000,000
19ha lagoon	1,130,000	40,000 – 45,000	3,200,000 – 3,600,000	5,000,000 – 5,625,000
19ha and 7.5ha lagoons	1,620,000	60,000 – 75,000	4,800,000 – 7,000,000	7,500,000 – 9,375,000
Two 15 ha lagoons	1,820,000	70,000 – 80,000	5,600,000 – 6,400,000	8,750,000 – 10,000,000
Two 19 ha lagoons	2,260,000	80,000 – 90,000	6,400,000 – 7,200,000	10,000,000 – 11,250,000

- 2.15. We appreciate that the figures presented in Table 2 may be higher or lower when actual costs are determined, but provide this as a guide to inform the level of financial planning that is needed to give confidence that any proposed compensation package will be viable. At this stage, it is not clear that this level of funding has been accounted for by the Applicant. More information is required from the Applicant on this issue.
- 2.16. It must be noted that the above does not account for the additional alternative roost sites that are proposed by the Applicant, specifically for redshanks that have roosted at the Application Site. This will incur additional costs to secure land, commission assessments, secure all necessary consents, create the alternative roosts and then maintain and monitor their effectiveness. More information is required from the Applicant to ensure confidence that sufficient funding will be available to deliver the proposed scheme.

Comments on the Applicant's proposed timeline for delivery of the development

- 2.17. We highlighted in our comments at Deadline 10 in our detailed comments on the Compensation Measures that we do not consider the Applicants proposed timeline for delivery to be appropriate (see our comments on paragraphs 1.2.3, 4.6.1, 4.6.11, 4.8.5, 4.8.8, and Figure 4-3; REP10-043).
- 2.18. This was further discussed in our comments on the Fifth Report on outstanding submissions (REP10-045), specifically, the sub-section entitled "*Paragraphs 4.6.3-4.6.7: timeline to secure, develop and implement compensation*" on pages 6-8. As we stated, a realistic construction timeline must be provided that incorporates compensation measures delivery that ensures they are fully ecologically functional before damage. This is in order to protect the coherence of the National Site Network.
- 2.19. Our position set out in the two Deadline 10 submission remains, as the Applicant has not provided any additional information that addresses our concerns.
- 2.20. The current timeline set out by the Applicant does not account for the need for at least two years ecological data to be collected for the proposed compensation sites and surrounding area, or the 6-12 months needed to navigate the necessary consenting processes. Indeed, consenting process could be considerably longer if there are gaps in the evidence base or the proposal is complex (e.g. creating a regulated tidal exchange through a flood defence would be such a scenario). This equates to at least three years before construction could take place. See Section 3 on the need to ensure no construction takes place before compensation measures have been agreed and secured.

- 2.21. We agree with the Applicant that allowing two years for adjusting the compensation habitat to ensure it functions fully is appropriate. However, it must be recognised that this may also take longer depending on the habitats and issues that are encountered; this will not be known until the habitat is created.
- 2.22. The Applicant's proposed timeline for delivery, therefore, remains unrealistic.
- 2.23. We recommend this be confirmed with Natural England, the Environment Agency, Boston Borough Council and the Marine Management Organisation.

3. The need to agree and secure compensation measures in advance of any development taking place

- 3.1. The RSPB and other interested parties consider there to be significant outstanding issues with the Applicant's DCO application. This includes a lack of detail and certainty that the Applicant's compensation package will address the identified adverse effects on The Wash SPA/Ramsar. The RSPB's position remains that the project should therefore be refused.
- 3.2. However, should the Secretary of State be minded to approve the project there must be strong safeguards in place to ensure that no development can take place until compensation measures are fully functional.
- 3.3. The Applicant has set out in paragraph 4.1.10 (p.46) of their Compensation Measures document that they will create an Ornithology Engagement Group (OEG) to oversee delivery of the Ornithology Compensation Implementation and Monitoring Plan (OCIMP). Our detailed comments on the Final Development Consent Order (REP10-042) set out a number of areas where detail on the OEG and OCIMP should be strengthened. For ease of reference our key points were:
 - Compensation for roosting redshanks and other waterbirds at the Application site need to be fully functioning before construction starts (comment on Clause 18 of the Deemed Marine Licence, pp.2-5; REP10-042). Construction operation will impact on birds foraging in close proximity to the Application site. This displacement effect must be addressed, not just the loss of roosting area.
 - The purpose of the OEG must be strengthened. We recommended adding the following text to Clause 11: "*...which will oversee the implementation, management and monitoring of the compensation measures in perpetuity*" (comment on Clause 1 of Schedule 11, pp.6-7; REP10-042). This amendment would ensure the OEG has a key function in ensuring that all necessary measures are in place before any damaging activities that could impact on features of The Wash SPA/Ramsar commence
 - Concerns that significant detail regarding the development needed to be set out pre-consent (for example, our comments on Clauses 3, 5, and 12 of Schedule 11; REP10-042). If consented, there will need to be ongoing discussions to resolve the outstanding issues, which will be a key function of the OEG.
 - The need for the OEG to confirm to the Secretary of State that all necessary measures are in place and functioning fully to enable construction to commence (comments on Clauses 4 and 6 of Schedule 11 ; REP10-042). We set out some amendments that we consider are necessary to strengthen this Clause. We provide our recommended amendments (underlined text) below and consider they are essential to

ensure confidence that adverse effects on The Wash SPA/Ramsar will be addressed:

"The undertaker must implement the measures as set out in the OCIMP approved by the Secretary of State, unless otherwise agreed in writing by the Secretary of State in consultation with the relevant statutory nature conservation body.

Construction and no part of the authorised development may not begin until the OEG has agreed that the measures set out in the OCIMP to compensate for the adverse effects on The Wash SPA/Ramsar site arising from the loss of roosting and foraging habitat at the Application site have been implemented and are fully functional.

Operation of the authorised development may not begin until the OEG has agreed that the measures set out in the OCIMP to compensate for the adverse effects on The Wash SPA/Ramsar site arising from displacement from areas of The Haven for roosting, foraging, bathing and loafing until the implementation of the measures set out in the OCIMP have been implemented and are functioning fully functional."

- We also recommended an amendment to Clause 5d that would ensure the OEG signed off a final version of the OCIMP before construction commenced (comment on Clause 5d of Schedule 11, pp.9-10; REP10-042). This was deemed necessary given the significant amount of outstanding detail that needed to be resolved and to ensure confidence that appropriate compensation measures would be secured and delivered in advance of impacts on features of The Wash SPA/Ramsar. This amendment would also ensure that an appropriate timeline for delivery of the proposed development was in place (as discussed in Section 2 above). We consider this amendment (the underlined text) is essential to provide the necessary confidence that the integrity of the National Sites Network would be maintained:

"an implementation timetable for delivery of the compensation measures that ensures all compensation measures are in place and fully functioning prior to the start of construction, which will need to be confirmed by the OEG and provided in writing to the Secretary of State."

- We also recommended that the OEG should have a key role in ensuring that any amendments to the OCIMP were appropriate (comment on Clause 12 of Schedule 11, pp.14-15; REP10-042). We still consider the amendment (the underlined text) is needed and provide our suggested wording below for ease of reference:

"Any amendments to or variations of the approved OCIMP must be in accordance with the principles set out in the ornithology compensation plan and following consultation with and the agreement of the OEG and may only be approved where it has been demonstrated to the satisfaction of the Secretary of State that it is unlikely to give rise to any new or materially different environmental effects from those considered in the ornithology compensation plan."

- 3.4. We hope the suggested text above is helpful in order to ensure that suitable conditions will be in place to ensure the integrity of The Wash SPA/Ramsar is maintained should the Secretary of State be minded to consent the DCO application.

4. Conclusions

- 4.1. The RSPB has seen no new evidence provided by the Applicant to address the deficiencies that we and other Interested Parties have highlighted through the Examination.
- 4.2. Our position therefore remains that **an adverse effect on the integrity of The Wash SPA/Ramsar cannot be ruled out beyond reasonable scientific doubt.**
- 4.3. As set out in Section 1 above, we also do not consider the compensation package as currently set out to be of a sufficient standard to demonstrate that the Applicant will address the adverse impacts arising from the proposed development. Our reasoning for this has been clearly set out throughout the Examination and in our submission in response to the Secretary of State's request for additional information on 9 December 2022.
- 4.4. We therefore do not consider that adverse effects on the integrity of The Wash SPA/Ramsar will be addressed. We consider that there is insufficient time between now and July for outstanding issues to be resolved. Consequently, consent should be refused in line with paragraph 1.7 above.
- 4.5. Notwithstanding our position, should the Secretary of State be minded to consent the proposed development, we request that a clear set of conditions be in place to ensure that no construction can be commenced until outstanding details have been resolved and appropriate compensation measures have been secured, implemented and confirmed as fully functioning. This is essential to ensure the integrity of The Wash SPA/Ramsar and National Sites Network is maintained. Our suggested text in Section 3 is provided to enable such conditions to be developed.