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Our ref: 338486 / 338489
Your ref: MLA/2020/00506 / MLA/2020/00507



Marine Management Organisation
Lancaster House
Hampshire Court
Newcastle Upon Tyne
NE4 7YH

Natural England
Lancaster House
Hampshire Court
Newcastle Upon
Tyne
NE4 7YH

VIA WEBSITE ONLY

Dear [REDACTED]

Application (Disposal of dredged material, Navigational dredging (capital), Other deposits, Other removals).

South Bank Quay - Phase 1. NZ 64730 33257, Tees Dock, Middlesbrough
South Bank Quay - Phase 2. NZ 64859 33361, Tees Dock, Middlesbrough

Thank you for your consultations dated 23rd December 2020. The following constitutes Natural England's formal statutory response for both of the above consultations.

The Conservation of Habitats and Species Regulations 2017 and The Conservation of Offshore Marine Habitats and Species Regulations 2017

We can confirm that the proposed works are located within the Teesmouth and Cleveland Coast SPA and Ramsar site.

Further information required

As submitted, the application could have significant effects on the Teesmouth and Cleveland Coast SPA and Ramsar site. Natural England requires further information in order to make an informed judgement on the significance of impacts to designated sites and the scope for mitigation.

Further information is required on the following topics:

- Benthic (including marine invasive non-native species) and sediment contaminant survey data and analysis from the South Bank Wharf area footprint;
- Cross-sectional channel dredge information and side slope analysis, particularly in relation to the North Tees Mudflat;
- Impacts to waterbird interest features at North Tees Mudflat from dredging works; and
- Results from the full year of wintering waterbird surveys at North Tees Mudflat (2020/2021).

Please see Annex 1 below for further information and specific comments on the provided EIA.

Specific comments on the provided draft HRA

Please see Annex 2 below for specific comments on the MMO's draft HRA (dated 22nd December

2020). Natural England advise that the HRA requires a number of revisions. We advise that Natural England are re-consulted once the additional information (as above) has been received and the HRA has been updated.

Marine and Coastal Access Act 2009

The works, as set out in the information supplied by the applicant, are not sited within or near to a Marine Conservation Zone. Natural England have not identified a pathway by which impacts from the development would affect the interest features of the site(s). We are therefore confident that the works will not hinder the conservation objectives of such a site.

Wildlife and Countryside Act 1981 (as amended)

We can confirm that the proposed works are located within the Teesmouth and Cleveland Coast SSSI.

The submitted application could have significant effects on the Teesmouth and Cleveland Coast SSSI and its interest features. Natural England requires the further information set out for the SPA/Ramsar site above in order to determine the significance of these for the SSSI and the scope for mitigation.

For any queries relating to the content of this letter please contact me using the details provided below.

Yours sincerely,

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Natural England
Northumbria Area Team

████████████████████@naturalengland.org.uk

Annex 1 – Comments on the EIA Report

Chapter 7: Marine Sediment and Water Quality	
General: site-specific survey results.	Natural England notes that the results from benthic sampling and contaminants monitoring for the South Bank Wharf area are not presented within the EIA, but are due for submission as a supplementary report in April. We note that the results from the Northern Gateway Container Terminal benthic sampling are provided as a proxy in the absence of the site-specific results. Whilst Natural England agrees that benthic communities within the South Bank Wharf footprint are likely to be similar to the Northern Gateway results, the levels of sediment contaminants are less clear, particularly in regards to heavy metals and Poly-brominated Diphenyl Ethers (PBDEs). Until this information is available, Natural England are unable to advise on the implications of the marine works for the integrity of the SPA and Ramsar site. Please re-consult Natural England when the results of the contaminant sediment survey are available.
7.4.1 Sediment quality	We note that polybrominated diphenyl ethers should be referred to as PBDEs, rather than PDBEs.
Chapter 9: Marine Ecology	
General: site-specific survey results.	As described above, Natural England notes that the results from benthic sampling and contaminants monitoring for the South Bank Wharf area are not presented within the EIA, but are due for submission as a supplementary report in April. We note that the results from the Northern Gateway Container Terminal benthic sampling are provided as a proxy in the absence of the site-specific results. Whilst Natural England agrees that benthic communities within the South Bank Wharf footprint are likely to be similar to the Northern Gateway results, we advise that the presence of marine invasive non-native species, and the potential for the works to re-distribute these, must be carefully considered. Until this information is available, Natural England are unable to advise on the implications of the marine works for the integrity of the SPA and Ramsar site. Please re-consult Natural England when the results of the benthic surveys are available.
9.5.1.2 Capital dredging and impacts to North Tees Mudflat	We note that, in relation to the North Tees Mudflat, the EIA states that <i>'based on the assumed side slopes to be created as part of the proposed dredge, no direct or indirect impact to this area of habitat is predicted.'</i> We request clarity on the <i>'assumed side slopes'</i> and the cross-sectional design of the proposed dredge. Natural England requires more detailed reassurance that the capital dredge immediately adjacent to the North Tees Mudflat will not impact or result in indirect impacts to this important SPA supporting habitat, e.g. increased risk of slumping. This includes the implications of the capital dredge works for the retaining wall. This could take the form of a short slope stability assessment.
9.5.1.2	We note that an area of intertidal habitat (2.5 ha) will be lost as a result of

Capital dredging	dredging in front of the new quay. It is stated within the EIA that the complete loss of intertidal mud priority habitat will be compensated by measures contained within the South Tees Regeneration Masterplan Environment and Biodiversity Strategy (Section 9.5.1.1). Natural England looks forward to receiving a draft copy of this document for comment. Natural England notes the apparent low usage of this habitat as regards foraging SPA, Ramsar site and SSSI waterbirds.
Biosecurity and marine invasive species.	We note that Section 3.12 discusses best practice working methods which will be required in order to minimise the risk of introduction and spread of Invasive Non-Native Species (INNS). This may include the 'production of a biosecurity plan or ballast water management plan.' Acknowledging the identification of new Invasive Non-Native Species (INNS) within the estuary arising from surveys for the adjacent Northern Gateway Container Terminal project, Natural England advise that a biosecurity plan and ballast water management plan should be implemented for the project, in order to minimise the spread of existing and new INNS. We advise that this is secured through a condition on the marine licence in order to minimise the risk of INNS spreading within the designated sites. <u>Condition</u> A biosecurity plan and ballast water management plan will be developed and implemented for the project. <u>Reason</u> In order to minimise the spread of existing and new Invasive Non-Native Species.
Chapter 10: Marine Mammals	
10.5.4 Disturbance at seal haul-out sites	We welcome the proposed use of a noise reduction piling shroud during percussive piling to mitigate for above water noise. We advise that the use of a piling shroud should be secured through a condition on the marine licence. <u>Condition</u> A noise reduction piling shroud (obtaining attenuation of ~14 dB) must be used when percussive piling. <u>Reason</u> To reduce above-water noise disturbance for marine mammals, including harbour seal (a feature of the Teesmouth and Cleveland Coast SSSI).
General: barrier to species movement.	We welcome the commitment to limit TSHD and backhoe dredging to working within one side of the river at time. We agree that this will help allow for unhindered migration of harbour seal and other marine mammals up and down the estuary (e.g. to haul out sites at Billingham Beck). We advise that this is secured as a condition in the marine licence. <u>Condition</u> Dredging must be limited to working on one side of the estuary channel at a time. <u>Reason</u> To restrict suspended sediment plumes to one side of the estuary at a time, and to allow for unhindered migration of marine mammals up and down the estuary to

	foraging and/or haul out sites.
Chapter 12: Ornithology	
12.4.3 South Bank Wharf wintering bird data.	We note that site-specific North Tees Mudflat waterbird surveys are currently ongoing, with data presented between July to September. Surveys are due to continue until the end of March 2021. In regards impacts on North Tees Mudflat, Natural England advised the applicant through our Discretionary Advice Service (DAS) that we are happy with the approach of assuming the worst-case scenario of waterbird usage at North Tees Mudflat at the point of submission (14th August 2020), as its high importance for SPA, Ramsar site and SSSI waterbirds is well-established. As with the direct loss of intertidal habitat within the South Bank Wharf footprint, on the basis of the information provided to date, Natural England does not consider that there will be an adverse effect on the integrity of the SPA and Ramsar site. Nevertheless, we reserve the right to re-visit our advice once the waterbird surveys have concluded, and therefore request that the MMO re-consult once this additional information has been provided.
12.5.2 Little tern foraging range.	We note the EIA states that '<i>little terns within the SPA / Ramsar site nest almost exclusively at Crimdon Dene</i>'. This statement is not correct. Whilst Crimdon Dene has been the predominant nesting site in previous years, the little tern colony relocated to Seaton Carew in 2019, and are understood to have also nested there in 2020. It is currently unclear whether the migration of the colony to Seaton Carew is permanent or whether the colony will return to Crimdon Dene. As a result of this move, the expected tern foraging range is likely to have shifted. Therefore the statement that little tern foraging grounds are '<i>confined to the coastal waters north of Hartlepool Headland</i>' may no longer be valid. However, we agree that the little tern population are unlikely to forage extensively within the estuary channel. Therefore, impacts to foraging success due to reductions in water quality is unlikely to adversely affect this species.
12.5.2 Sandwich tern presence during the breeding season.	We note the EIA states that Sandwich tern '<i>as a passage feature of the SPA, it is unlikely that significant numbers of Sandwich terns would be present during the breeding season</i>'. Whilst Sandwich tern are a passage feature of the Teesmouth and Cleveland Coast SPA, the region is an important aggregation site for Sandwich tern from breeding colonies across the North Sea, including in the summer months. Please refer to the seasonality information contained within the Teesmouth and Cleveland Coast SPA conservation advice package¹. This states that Sandwich tern are present in significant numbers between June to September, which overlaps with the breeding season for little and common tern.
12.5.2 Restrictions to	We welcome the commitment to limit TSHD and backhoe dredging to working within one side of the river at time. We agree that this will help to mitigate impacts

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<https://designatedsites.naturalengland.org.uk/Marine/Seasonality.aspx?SiteCode=UK9006061&SiteName=Teesmouth&SiteNameDisplay=Teesmouth+and+Cleveland+Coast+SPA&countyCode=&responsiblePerson=&SeaArea=&IFCAArea=&NumMarineSeasonality=4>

dredging.	to tern foraging within the estuary channel. We advise that this is secured as a condition in the marine licence (also see the marine mammal condition above). <u>Condition</u> Dredging must be limited to working on one side of the estuary channel at a time. <u>Reason</u> To restrict suspended sediment plumes to one side of the estuary at a time, in order to reduce loss of tern foraging habitat.
12.5.4 Construction-phase disturbance	At present, the effects of visual and noise disturbance to waterbirds from dredging activities occurring in close proximity to North Tees Mudflat are unclear, particularly if undertaken simultaneously with percussive piling. We note that local redistribution of waterbirds is predicted to occur, indicating that the availability of SPA/Ramsar site supporting habitat for waterbirds may be compromised. To assess whether there should be a seasonal and/or tidal restriction to dredging works in the vicinity of the North Tees Mudflat, Natural England requests clarity as to the likely duration of dredging activities (particularly TSHD) occurring within 200m of North Tees Mudflat.
12.5.4 Construction-phase disturbance	Above-water noise generated by percussive piling has the potential to disturb SPA, SSSI and Ramsar site bird features. We welcome that percussive piling is only expected for a maximum of 40 minutes each day (10 minutes for each piling rig). We advise that a condition is added to the marine licence to limit percussive piling to less than 60 minutes each day (which is less than the predicted maximum duration). <u>Condition</u> Percussive piling should be limited to a maximum of 60 minutes each day. <u>Reason</u> To limit above water noise disturbance to SPA, SSSI and Ramsar site bird features.
12.5.4 Construction-phase disturbance.	We welcome the use of a noise reduction piling shroud during percussive piling to mitigate for above water noise. We advise that the use of a piling shroud should be secured through a condition on the marine licence. <u>Condition:</u> A noise reduction piling shroud should be used for all percussive piling, obtaining a minimum of 14 dB attenuation. <u>Reason:</u> To reduce above-water disturbance to SPA, SSSI and Ramsar site protected species.
General: freezing weather.	Percussive piling works should avoid periods of freezing weather, during which SPA, Ramsar and SSSI birds are especially sensitive and have high energy requirements. Natural England advises that this is added as a condition to the marine licence.

	<u>Condition:</u> The undertaker must ensure that if temperatures of zero degrees Celsius (or lower) occur on the site, at any point within a 24 hour period, for five consecutive days leading up to or during any instance of the licenced activities then any piling works must be suspended. Once temperatures have not reached zero degrees Celsius or below for three consecutive days then piling works can recommence. <u>Reason:</u> To avoid disturbance impacts to the overwintering bird populations of the Teesmouth and Cleveland Coast SPA, Ramsar site and SSSI, during the most sensitive periods.
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Annex 2 – Specific comments on the MMO draft HRA

MMO draft HRA (dated 22 December 2020)	
Quality of the draft HRA	We note that the MMO's draft HRA requires several revisions and amendments, which are detailed below. We advise that Natural England is re-consulted once the draft HRA has been updated.
Site name	Please note that the Teesmouth and Cleveland Coast pSPA extension was confirmed by the Minister back in January 2020. As a result, the pSPA no longer exists and should not be referred to within the HRA.
Conclusion of HRA	Natural England advise that we are unable to rule out an adverse effect on site integrity at this stage, based on the information provided in the EIA. We advise that further information is required in order to assess the significance of impacts to designated sites and to determine mitigation measures.
Likely Significant Effect (LSE)	
Ruff, Avocet and Knot	We note that ruff (nb) and pied avocet (b) have been screened into the appropriate assessment for the following pressures: • Above water noise disturbance; • Visual disturbance; • Barrier to species movement; • Introduction of light; and • Water flow (tidal current changes) including sediment transport. Natural England advise that ruff and avocet use habitats away from the main estuary channel, such as RSPB Saltholme or Greenabella Marsh, so are unlikely to be impacted by the proposed development and LSE can be ruled out. Therefore we advise that these features are not carried forward to appropriate assessment. In addition, knot are almost exclusively confined to coastal habitats, away from the main estuary channel. Therefore, we advise that LSE to knot can also be ruled out at this stage.

In-combination assessment	
Additional projects to be screened into the incombination assessment.	Natural England advise that the incombination assessment is incomplete and that major projects have been omitted from the assessment. The following projects should be considered: - The incomplete or non-implemented parts of plans or projects that have already commenced; - Plans or projects given consent or given effect but not yet started; - Plans or projects currently subject to an application for consent or proposed to be given effect; - Projects that are the subject of an outstanding appeal; - Ongoing plans or projects that are the subject of regular review; - Any draft plans being prepared by any public body; and - Any proposed plans or projects published for consultation prior to the application. We advise that the incombination assessment omits major developments currently within the planning domain, including the Northern Gateway Container Terminal (NGCT) and the Anglo American (previously Sirius Minerals) projects. These projects were assessed and screened into the Appropriate Assessment within the applicant's EIA Report and shadow HRA, but have not been included within the MMO's incombination assessment. We advise that the following projects should be assessed in-combination with this project: - Anglo American Harbour Facilities; - Anglo American Materials Handling Facility; - Dogger Bank C (formerly known as Teesside A) and Sofia offshore wind farms (export cable and landfall); - Hartlepool Approach Channel; - Tees navigational channel deepening (maintenance dredge); - Northern Gateway Container Terminal; - New cinema development; and - South Industrial Zone development. We advise that, in this example, the applicant's shadow HRA should be considered to be best practice when completing the incombination assessment. We advise that the HRA is updated to incorporate assessment of the projects listed above.
Appropriate Assessment (AA)	
Features of the Teesmouth and Cleveland Coast SPA	We note that the AA states that all features of the Teesmouth and Cleveland Coast SPA are breeding. This is incorrect. Please see below for details on whether each feature is breeding or not: - Common tern (b) - Little tern (b) - Pied avocet (b) - Sandwich tern (nb – passage)

	• Redshank (nb) • Ruff (nb) • Knot (nb) • Waterbird assemblage (nb) We advise that the AA should be updated to include the accurate breeding / non-breeding nature of the designated features.
Non-breeding waterbird assemblage.	We note that the non-breeding waterbird assemblage feature was screened into the AA at LSE stage for multiple pressures, but has not been assessed within the AA. We advise that the AA should be updated to include assessment of the non-breeding waterbird assemblage feature.
Above water noise; Barrier to species movement; Visual disturbance; Introduction of light	We note that the MMO's AA states that all works will occur between 1st May <u>2020</u> to 30th September <u>2020</u>, which falls outside of the main over-wintering period. The HRA also states that works will take 'a short period of five months'. However, we note that the EIA states that construction will take 3 years (Section 3.9, page 17) and that piling alone will take 15 months in total. We request clarity on the scheduling and timing of the works, and advise that the AA should be updated to reflect the correct anticipated dates for construction work. We also request clarity as to whether all works will indeed occur outside of the main over-wintering period (see 'Mitigation measures' comment below).
Above water noise; Barrier to species movement; Visual disturbance; Introduction of light	Noting the above (works falling outside of overwintering period), the AA does not justify why no Adverse Effect on Site Integrity (AEOSI) will occur for features which are present during the proposed work dates (May-September). These include: • Common tern; • Little tern; • Sandwich tern; • Redshank (present in significant numbers between July to April inclusive²); • Non-breeding waterbird assemblage NB: Avocet is also present in the SPA during the proposed work dates, but can be screened out at LSE stage (see above).
Changes in suspended sediment (water clarity); Water flow (tidal current) changes, including sediment	We note the following statement contained within the AA. 'The applicant has stated that the excavation of the foreshore, and the <u>placement of the site won</u> will be carried out during the low tide.' Please provide clarity as to the meaning of the underlined phase above.

transport considerations.	
Mitigation measures	We note that the HRA states that the following mitigation measure will be secured in the marine licence, as proposed by the applicant: • 'No works will take place during the overwintering period 1st October to 31st March inclusive'. Whilst seasonal restrictions would minimise disturbance impacts to wintering waterbirds, it is not clear whether this mitigation measure has been proposed by the applicant or whether it would be compatible with the proposed timeline of works. We request clarity on this point.