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18th November 2016.

Dear Matthew, Aggregate Marine Licence Applications : Area 453 and 488.

We are in receipt of your Organisation's draft Decision Report, 14th November, prepared by the Case Officer, Linda Porteus, in respect of proposed aggregate extraction from the seabed in Area 453 and 488 (Kingmere MCZ, West Sussex), ref. MLA/2015/00431 and MLA/ 2015/00432.

When we met last month at the MMO's Head Office in Newcastle you told us that you always signed off decisions on applications, and therefore we have felt it correct that we share our perception of this particular licence application and the decision-making process related to it with you.

We would like to offer the following comments on this particular draft Decision Report.

First, it must be noted that the application sites lie almost entirely within the Kingmere Marine Conservation Zone (MCZ). MCZs are a principal feature of the UK Government's response to the progressive destruction of the marine component of the biosphere. They are therefore created in order to arrest that progressive destruction. The Kingmere MCZ is drawn not only to protect the MCZ's designated features but also the surrounding biosphere and ecological system which directly sustains these protected features (Black Bream and their nesting sites). Accordingly in an assessment of possible adverse impact by the activity seeking a licence, the impact not just upon the protected feature but also the surrounding biosphere which sustains it needs to be evaluated with comparable rigour.

Natural England is the statutory nature conservation agency (SNCA) with responsibility for this specific MCZ designation. In their submission on the Public Register, dated November 2015 ref 170841 & 170852, Natural England state that under the MMO's MCZ Regulations a Stage 1 Assessment to determine impact will be required.

In the MMO's draft Decision Report it is stated: "*The MCZ Stage 1 Assessment will be available on the MMO public register alongside the other MMO decision documents once a determination has been made on this application.*"

We have to inform you that Marinet Limited does not believe that this situation is acceptable. It is **wholly inconsistent** with the evaluation of this marine aggregate licence application being conducted publicly in an **open and transparent manner**. We believe that this Stage 1 Assessment should be on the Public Register now, and that this Assessment should be open to comment from all interested parties **before** the MMO arrives at a decision on this application. Only then can the public have confidence that

this part of the assessment procedure is being conducted in an open and transparent manner, and in such a way that allows evidence to be properly examined and questioned.

We request you specific response to this matter.

Second, the Kingmere MCZ lies within the 6 nautical inshore fisheries limit and therefore the management of the Kingmere MCZ, particularly with regard to fisheries, rests with the Sussex Inshore Fisheries and Conservation Authority.

We have consulted the Public Register and we can find no evidence that the IFCA has been consulted by the MMO or that the IFCA has made any submission at its own behest to the MMO with regard to this licence application.

We have been in communication, 17th November 2016, with the IFCA. It has informed us that it is not a statutory consultee, and that *“If you would like to ask Sussex IFCA for a copy of our response to the aggregates licence consultation directly, please send a written request as this will have to be put to the Committee. Please email: admin@sussex-ifca.gov.uk.”* The implication of this reply from the IFCA is that its comments are confidential, and only released upon its consent. Whilst the IFCA may not be a statutory consultee, we cannot accept that this confers an exemption upon this organisation’s views being placed by the MMO in the public domain, especially when the IFCA concerned is also engaged in a public and legally governed decision-making process, and when it too derives its powers and responsibilities from a Statute of Parliament.

We have spoken with the MMO Case Officer, 17th November 2016, on this specific matter of the IFCA’s comments being placed on the Public Register, and have been advised that the IFCA has been consulted but these are internal documents, and the matter of a MMO Public Register recording of this evaluation by the IFCA will be examined.

We have to inform you that Marinet believes that it is **wholly unacceptable**, regardless of whether the IFCA is a statutory consultee or not, for the consultation between the MMO and the IFCA not to be placed in full on the Public Register. There is an imperative need for the decision-making process in marine licence applications to be recorded in an **open and transparent manner** for the public, enabling evaluation and comment to be made by the public to the MMO **prior to** a decision on the licence application. This has **not** occurred in this case to date. Furthermore, the MMO’s draft Decision Report makes **no mention** of any consultation or their conclusions between the MMO and the IFCA. Marinet Limited regards this as **wholly unacceptable** given the statutory and legal conservation status of the licence application area, and the need to ensure that not just the MCZ’s protected features but also the surrounding biosphere which sustains these protected features is fully protected, and thus unlikely to experience any adverse impact.

We request your specific response to this matter.

Third, in the matter of the impact on fisheries, and separate from the impact on Black Bream, a number of representations including those from Marinet Limited, the National Federation of Fishermen’s Organisations and the Marine Conservation Society, addressed questions raised by the evidence in the applicant’s Environmental Statement e.g.

- The fish spawning and nursery grounds likely to be affected by dredging. These are recorded in the Environmental Statement, Chapter 7: Biological Environment, Table 7.13

Species	Spawning Area	Nursery Area
Black Bream	√	X
Brown Crab	√	√
Sole	√	√
Sand eel	√	X
Plaice	√	√
Cod	√	X
Sprat	√	X
Undulate Ray	X	√
Thornback Ray	X	√
Whiting	X	√
Lemon Sole	X	√

and, also the absence of any consideration in the Environmental Statement of the impact on Herring, a species known to breed widely throughout the English Channel in connection with gravel seabeds.

The MMO’s draft Decision Report states that it has sought advice from its technical advisers, including the Centre for Environment, Fisheries and Aquaculture science (CEFAS). However, the submission from CEFAS recorded on the Public Register contains no material or advice regarding fisheries. Nor is there in the draft Decision Report any reporting by the MMO of its evaluation of the issues raised concerning fisheries.

Accordingly we must advise that Marinet Limited can see **no evidence** which is in the public domain at the present time which shows that these issues have been thoroughly evaluated and reported upon. We regard this as **wholly unacceptable**, and inconsistent with the need to report on these matters in an **open and transparent manner**.

We request your specific response to this matter.

Fourth, Marinet Limited presented detailed evidence in its submission of 7th January 2016 that we do not believe that the applicant had adequately assessed the deposition of sediment and the impact of sediment plumes whilst the vessels are turning on their dredging runs. If our evidence is correct, then this renders many of the applicant’s assertions regarding impact on the protected feature of the Kingmere MCZ (Black Bream and their nesting sites) **incomplete** and **invalid**.

The draft Decision Report of the MMO makes no mention of the evidence we presented. As a result we can only conclude that this matter has not been evaluated by the MMO and its technical advisers.

This being so, Marinet Limited regards this as **wholly unacceptable**. If an evaluation has been undertaken, it has not been reported upon by the MMO and, equally importantly, nor have these details been recorded on the Public Register thus enabling the public to examine and assess their veracity. This failure is wholly inconsistent with conducting a licence application in an **open and transparent manner**.

We request your specific response to this matter.

Fifth, Marinet Limited presented considerable evidence in its submission of 7th January 2016 to demonstrate that alternative sources of sand and gravel exist and are likely to be available to the construction industry and the applicant, and that these alternative sources have not been evaluated in the Environmental Statement. We recorded that this failure is in contravention of the EIA Regulations.

In the draft Decision Report the MMO states *“The proposed material to be dredged from Areas 453 and 488 is not considered to be interchangeable with other sources due to the quality material required for concrete manufacture. The MMO believes that relevant alternatives have been considered and despite their merits, as demonstrated by the applicants’ interests in recycled aggregates, there is a demonstrable need for the aggregate resource within application Areas 453 and 488.”*

However, there is no information on the Public Register to demonstrate the nature and conclusions of the additional investigations which the MMO has conducted into this matter. Given that the aggregate being sought by this licence is claimed to have a character that is “not interchangeable with other sources” (in other words, is unique), and given that the area of the MCZ from which this aggregate material is to be dredged is both vital to the wider system that sustains the MCZ’s protected feature (Black Bream) and also other fish species which use the area for spawning and as a nursery ground, it is the belief of Marinet Limited that it is **essential** that all further information and evaluation of these matters is placed by the MMO in the public domain.

Unless this is so, we cannot accept that the EIA Regulations have been complied with, nor that an evaluation of no adverse impact from the proposed dredging is being undertaken in an **open and transparent manner**, nor that the Stage 1 Assessment under the MMO’s rules for assessment of impact on MCZs has been complied with.

Summary.

Marine Conservation Zones are part of the UK Government’s strategy for arresting the progressive destruction of the biosphere. They are in the front line of that strategy, and therefore an activity which clearly challenges that strategy by engaging in destructive practices demands to be assessed with absolute rigour; and, in a manner that is equally rigorously reported upon in the public domain.

There has to be a presumption that the application will fail unless it can demonstrate unequivocally and beyond all reasonable doubt that no adverse impact will occur to both the specific protected features and also the wider ecosystem within the conservation area which sustains those protected features. This is important because the reverse is **not true** – that the application will succeed if the damage is not proved beyond all reasonable doubt. In other words, **primacy lies with the conservation designation** and the upholding of its integrity, and **not** with the application.

At the present time there are, in the clear opinion of Marinet Limited, a number of parameters where the upholding of the integrity of the conservation area has not been demonstrated either by the applicant or the regulator, the MMO. This is **not** acceptable, and **not** the basis for the granting of a licence.

Two supplementary points need to be made:

Firstly, **if** this conservation area were a terrestrial site and the protected feature (for example: a bird and its nesting habitat which, in turn, is a specific species of tree) and the area involved were clearly

delineated (for example: a woodland established statutorily as a nature reserve), then it would **not** be acceptable for a forestry company to enter the woodland to fell all the woodland's other species of tree save for the protected species (nesting habitat), and then to claim that the protected feature (the bird and its nesting sites) were unaffected.

Logic and visual evidence would not support this assertion **because** the protected feature cannot be regarded in isolation from the impact (deforestation) of the surrounding environment which sustains it.

Although visual evidence may be harder to access in the case of Kingmere MCZ, logic is not. Accordingly, it must surely be evident that what is true for the terrestrial protected site is also true for the marine protected site.

Accordingly the onus must be, in the consideration of this marine licence application, upon the **primacy** of the conservation designation and **not** on the ability of the application to secure consent. To proceed otherwise would be to undermine the statutory basis and purpose of the conservation designation.

Secondly, **if** this were a terrestrial planning application then the planning authority would place on the page of its Public Register dealing with the application **all** substantive correspondence and communications between the planning authority and the applicant and relevant technical advisers. This practice is firmly established in terrestrial planning procedure and law.

The need for the **same standards** to apply in the case of all marine licence applications must surely be equally true.

Accordingly, there are a number of serious issues which Marinet Limited believes the Marine Management Organisation and the applicant need to address, and not just to ourselves but also in a manner that places the evidence fully in the public domain, before this application MLA/2015/00431 and MLA/2015/00432 can be determined.

Yours sincerely

S. D. Eades
Marinet Limited.