FAO: Matthew Louis
Planning – Resources and Environment Policy Division
Department for Communities and Local Government
Zone 4/B1
Eland House
Bressenden Place
London SW1E 5DU
E-mail to: Matthew.Louis@communities.gsi.gov.uk

Patrick J.A. Gowen JP MIST,
Head of North Sea Action Group,
17 Heath Crescent,
Hellesdon,
Norwich,
Norfolk
NR6 6XD

Tel/Fax/Answer 01603 402554

From: -

Pat Gowen, JP MIST
MARINET & NSAG
17 Heath Crescent,
Hellesdon,
Norwich,
Norfolk
NR6 6XD

4th August 2006

Dear Matthew Louis,

Please find the following responses to the **June 2006 Consultation Paper on Draft Marine Minerals Dredging Regulations and Procedural Guidance**.

These responses represent the views of MARINET, consisting of 35 mainly coastal FoE Groups, each consisting of some 50 individual members plus some 15 affiliate members and several hundred supporters, and represent the marine aspirations of National. Friends of the Earth. It also represents the canvassed views of some three hundred and fifty East Anglian supporters of the North Sea Action Group

Further views will be sent to you by Mr. Stephen Eades, our MARINET coordinator, which may add to or duplicate some of the feedback in this document.

First, the response as answers to the specific questions outlined in the consultation, in the order and number placed.

Question 1: Is the scope of the draft regulations correct? If you do not think it is, please describe how it might be amended. (Paragraphs 3.1-3.6)

Answer to Question1:
It is not clear if the scope covered by the draft regulations proposed apply to the impact of Marine Minerals Dredging upon the shoreline, as this equally important resultant environmental damage has barely been addressed. As considerable areas of dune, shoreline and salt marsh wildlife habitat (Tern, Little Tern, Seal, Nightjar, Skylark, Sand Martin, Natterjack Toad, etc) have been destroyed due to erosion resulting from Offshore Aggregate Dredging, this component requires inclusion. The uncompensated loss of coastal housing, threat to whole villages, loss of tourist income due to beach draw down and coastal attractions are additional casualties.

Secondly, the distance from the dredging site from the coast (page 10, 3.4) needs to be at least 40 km, as the results of research of dredging quite small quantities (925,000 cubic yards) even 14 miles offshore was shown to result in serious erosion of hundreds of feet of previously accreting shoreline as far as 40 miles distant. (See findings by US Army Corps of Engineers of dredging off Cape Canaveral - August 1990). (see http://www.marinet.org.uk/mad/meetingdredgers.html)

Further, that separation distance from the shore needs to be specified in absolute and meaningful terms, as it was discovered in communications with MES Limited over the distance of Area 202/436 from the shoreline that this could be interpreted as the distance from the nearest offshore sandbank or tidally exposed area, not necessarily that from the shoreline itself. Ideally distances should be measured from the 1983 low water mark from offshore sand banks, or from beaches if no offshore sand banks exist, in the same that fishing limit lines are measured from.

Other than the above and in our replies to the questions and the comments to specific sections of the consultation document that follow, we find the general scoping content of the draft regulations, draft guidance and draft RIA to be reasonably clear and comprehensive.

Question 2*: Is it appropriate to except dredging governed by the specific legislation listed under the definition of "dredging" in regulation 2 from the scope of the draft Regulations and is that list comprehensive? If not, please indicate which legislation should be removed or added and why. (paragraph 3.11)*

Answer to Question 2.
Inasmuch as dredged port clearance material is not employed to replace that lost to the shoreline and beaches, that lost because of the dredging itself, the impact resulting to the valuable tourist beaches, amenity, property and the wildlife habitat (e.g. Harwich, Felixtowe, Montrose and many others) should also be taken into account, as it relates to both the Habitats Directive and the Human Rights Act.

All aggregate dredging is damaging, the extent, location and timing of the consequent damage inflicted being dependant upon the volume extracted, the positioning and the timing of the dredging operation and the cumulative total over many years.

Thus, port dredging for deepening and widening channels for development needs to come under the rulings imposed. Much damage is currently being brought about at Felixtowe and Montrose due to deepening the ports by dredging.

Question 3*: Do you consider it appropriate for a party to a local inquiry to be able to claim and, at the discretion of the Secretary of State, be awarded costs from another party if it considers that that other party has behaved unreasonably? Please explain your reasons if you do not. (paragraph 3.40)*

Answer to Question 3.
The short answer is 'yes', but the term "unreasonable" is subjective. Making incorrect statements or contravention of the rules would prove to be a far better definition.

That which is known and understood to cause erosive damage and habitat destruction by most independent experts and those with practical knowledge of the situation have been termed "unreasonable' by those armed with surveys conducted by those who they select, appoint and hire for the production of Environmental Impact Assessments, as are the claims made by the dredging companies of those independent experts who dispute them.

Further, the cost threatened to environmental groups funded only by their own members modest pocket-money can be seen as prohibitive to their involvement, this certainly not the case with the professional companies who would profit considerably from the granting of licences.

Thus, this issue also relates to both the Habitats Directive and the Human Rights Act.

Question 4*: Do you agree the procedures proposed in the draft regulations and described in the draft guidance? (paragraphs 3.7-3.43)*

Answer to Question 4
With the exception of that given above in Answer 1 and in our replies to the questions and the comments to specific sections of the consultation document that follow, plus the limitations of content, we find the procedures proposed in the draft regulations and draft guidance to be otherwise reasonable. That content that has not been commented upon is generally felt to be acceptable.

Question 5*: Are there any ways in which the procedures might be streamlined while retaining the same purposes and comprehensive levels of control? (paragraphs 3.7-3.43)*

Answer to Question 5
We see no way in which the procedures and process can be "streamlined" without a loss of essential consultation and feedback. The "same purposes" are not achievable without detailed revision and reconsideration.

Question 6*: Do you agree that proposals for the extraction, from a particular prospecting area, of marine minerals of less than 5,000 tonnes in total should not require dredging permission unless they are within 5 kilometres of either the coastline, an ancient monument, an identified wreck, any existing dredging operation or any completed dredging operation that was last worked within the previous 12 months, the waters of another national government, an area identified by DEFRA as having importance for fishing or a European site? If you do not agree, please explain what, if any, dredging proposals should not require dredging permission. (Paragraph 5.7)*

Answer to Question 6
This is not agreed. In seabed habitat terms it is more a question of the surface area dredged rather than the tonnage itself, although the total amount is decidedly an important factor.

Whilst dredging within 5 km of the actual coastline (or protective sand bank) will create more localised erosion coming earlier, even dredging 23 km offshore is known to result in shoreline habitat damage. (See our point under Answer to Question 1).

All proposals need to be subjected to an independent EIA and only to obtain permission subject to a satisfactory conclusion of zero impact, if such is possible. Furthermore, as advised by the House of Commons Environmental Committee, a second opinion should be sought in cases of conflicting evidence.

Only discreet sampling of <100 square metres of sea bed and of <5 metric tonnes should be permitted for sampling purposes, this quite sufficient determine the composition, granularity and cohesivity of the aggregate. At the same time, the biota captured and present in the sample needs to be reported by an independent observer as this will determine the presence of protected species or otherwise.

Other than essential port clearance to permit navigation, the Dutch do not normally permit dredging within 20 km of their own coastline because of the environmental damage both in terms of habitat and fish stock loss and in that of coastal erosion that would result were it permitted. They import their required aggregate from Britain.

Question 7*: Do you have any views on the practical implications of applicants consulting widely and comprehensively with all interested parties before submitting an application in order to minimise the number of potential objections that may be made when the Secretary of State carries out formal consultation on the proposal?(paragraph 5.8)*

Answer to Question 7
We agree that full consideration with all interested parties is essential, also that the views and findings of all of these should be taken into account. Up to now such evidence has been sidelined in preference to upholding the partisan claims of vested interest commerce. (See Answer to Question 3). Such consultation should not be minimised in any way, and it should be seen that actual consultation and dialogue arises, not a one-way delivery intended to crudely brainwash and insult the objectors as was seen the case in the ‘consultation’ held by BMAPA and Hanson at Great Yarmouth Racecourse on Tuesday 19th April 2005.

There little or no opportunity to speak was afforded to any of the opponents to the plan to again dredge off Great Yarmouth. Full consultation should be afforded to ALL including Borough, District and County Councils and the general public with Press notices for ALL applications.

Question 8*: Do you consider the extent of consultation and publicity to be given to marine minerals dredging applications as set out in both the draft Regulations and guidance to be adequate? If not, please explain what changes might be made. (paragraphs 3.24 and 5.8)*

Answer to Question 8
Yes, on the simple proviso that this advertising and consultation follows in practice (which has not always been the case up to now). That a true dialogue is afforded, that presentation by objectors is permitted, and that an independent Chairman exists.

When the Government View went from DEFRA to the ODPM notification of applications ceased to both the North Sea Group and MARINET. An application for an extension licence for Area 202/436 was not advertised by the ruling of the ODPM so many hundreds of objectors to this damaging and close to the shore further dredging attempt were thus excluded from the consultative process.

On the proviso that all dredging projects are advertised over the entirety of the area(s) potentially damaged and that full consultation is afforded, and ideally heeded, and that the accompanying EIA's are freely available for inspection, we would consider the draft regulations and guidance otherwise adequate.

Question 9*: Do you consider the timescales for the determination of applications by the Secretary of State as set out in the draft procedural guidance to be practical and acceptable? If not, please explain how they might be altered. (paragraph 5.8)*

Answer to Question 9
This is reasonable on the proviso that a sufficiency of time has been permitted for any follow up requirement based upon dispute.

Question 10*: Do you consider that the measures that are proposed to monitor permitted dredging operations and enforce conditions are adequate? If not, please specify what additional measures would, in your opinion, be feasible. (paragraph 5.9)*

Answer to Question 10
The measures have obviously been inadequate up to this time, evidenced by the results of long term cumulative dredging bringing about a 3 – 5 metre lowering of the sea bed, the reduction of sand banks and the consequent serious loss of shoreline, beaches, coastal housing and fish stocks brought about.

Supervision and monitoring needs to be totally independent with a second opinion invited in cases of unresolved dispute. It is not in the interests of the marine environment or clarity of purposeful justice to have self-regulation performed by the parties involved in the dredging itself, or those with any benefits resulting.

***Question 11**: Do you agree that the procedures proposed in the draft guidance are adequate to control marine minerals dredging in the public interest? (paragraphs 5.7-5.16)*

Answer to Question 11
No. It is difficult to envisage that any marine aggregate dredging is in the public interest, especially in the long term, because the process is damaging and unsustainable. Marine aggregate dredging and conservation of fishing stocks are mutually exclusive, as the course grit and gravel spawning beds form the very material required by the dredgers for high quality concrete. These beds are shown not to have recovered even after 20 years. The loss to coastal housing, tourist beaches, the tourist trade, the fishing industry compares starkly with the profit made from marine dredging by commercial companies.

We fear that the regulator is apt to be an interested party in the continuity of marine aggregate dredging, as the government treasury economic interest in the form of the income derived from VAT at £3-50 per tonne landed and the 40 – 60p royalties per tonne landed going to The Crown Estate will be placed paramount to the needs of the marine and shoreline environment.

***Question 12**: Are there any ways in which the procedures might be streamlined while retaining the same purposes and comprehensive levels of control? (paragraphs 5.7-5.16)*

Answer to Question 12
No ! Confidence in detail and accuracy is essential, these components already seriously lacking in the current methods of granting licences.

***Question 13**: Do you have any comments on the circumstances in which cases will be put to an Inspector, the appropriateness of the procedures proposed; and the practicality of the proposed timescales? (paragraph 5.18)*

Answer to Question 13
An Inspector should rule in all cases where defined evidence or reasons for not granting a dredging licence have not been addressed, e.g. those where damage to the sea bed ecosystem, spawning beds, protected species habitat and shoreline has been indicated and evidenced'(.) This should include cases where the precautionary principle has not been invoked, and where the results of cumulative and long term existing dredging is already evidenced as damaging.

Such an Inquiry is seen as essential where and when dispute still exists following the full consultative procedure.

***Question 14**: Do you have information on the costs of implementing the draft regulations which can inform the preparation of a final Regulatory Impact Assessment? (See Appendix 2)*

Answer to Question 14
The costs of implementing the draft regulations and the Inquiry process should be covered by those who would profit from the procedure which has been brought into being by their application. It should however be administered by an independent body.

Question 15*: Do you have any other comments on the draft RIA?*

Answer to Question 15
The Consultation Questionnaire wording appears to be that a means to aid the continuity of Marine Aggregate Dredging is being sought by modifying the vital requirements of protection of the marine and shoreline environment.

Offshore Aggregate Dredging must be seen as unsustainable and diametrically opposite to the needs of the marine environment. It is to be hoped that the forthcoming Marine Bill will recognise this fact.

In dealing with the Marine Environment, the House of Commons Environment, Food and Rural Affairs Committee expressed their concerns regarding Marine Aggregate Dredging (Sixth report of Session 2003 – 2004). This advice should now be heeded.

In the past, under DoE, DETR and DEFRA, NGO groups such as MARINET and the North Sea Action Group were informed of dredging applications, and their comments invited. This, despite protests, ceased when the responsibility was taken over by the ODPM. If the regulations are to have any democratic credibility it is seen as essential that those NGOs concerned with the marine environment are given an opportunity to comment.

One of the most recent applications for renewed aggregate dredging Area 202 only 7 km offshore to Great Yarmouth was not so advised. Further, at the dictation of the ODPM, no Press Notice was allowed. Even further to this, no EIA was called for. Thus, few knew of this application, and were thus given no opportunity to object. Despite evidence of the damage already enacted on the adjacent coastline, that the sea bed has already been lowered by 5 metres due to previous dredging and the presence of protected species in the proposed dredging area, the application was passed. This ‘dealing’ was felt to be very underhand. We ask that all interested NGO’s are advised of dredging applications and that both Press Notices and EIAs are provided.

Here follows our comment on various sections of the content of the Consultation Paper, giving in order the page number and the item indicator where required.

P.10. 3.4 “Some way from the coast” is subjective, and not accurate. Dredging only 7 Km from the Norfolk eastern coastline recently been permitted, and in the past, prior to satellite navigation reporting, with 2 kilometres. Other than port clearance for navigation the Dutch do not permit dredging within 25 km of their shoreline, and then only in sea depths of >25 metres due to awareness of the erosion and eco-damage that would result follow if it were allowed.

Empirical research 20 years ago by the American Corps of Engineers proved that dredging a total of less than two million tonnes of sand over a four year period 14 miles from the coast of Cape Canaveral brought about massive erosion of previously accreting beaches forty miles away. Numerous other such cases exist.

If the offshore aggregate dredging is allowed to continue it is proposed that 40 km offshore is the closet limit. In practice, distances can be given not from the shoreline but from the nearest landward sand bank. Clarification is needed here.

P.13. 3.6 The priority of 'National Defence' might well be employed to stop the threat to life and the loss of our country to the sea if rationality is not applied to offshore aggregate dredging.

P.14 A "reasonable charge" might be appropriate for commercial consultation bodies and funded government departments, but not for protest groups and individuals who are funded by their members and supporters own pocket-money. Please ensure that NGOs are notified without charge, perhaps by e-mail or website.

P.14 3.22 Add to 'every licence application' and 'each application' "applications for the extension of dredging licences"

P.14 3.24 Regulation 11. This must be adhered to and (g) be provided without charge to non-funded NGOs, groups and individuals.

P.15 3.25 It must be recognised that coastal wildlife habitats also require protection from the shoreline damage created by offshore aggregate dredging. e.g. Norfolk has lost seal colonies, tern and little tern nesting colonies, nightjar habitats, and salt marsh, dune and sand cliff habitats to beach draw down, sand cliff and dune undermining resulting from the beach draw down due to intensive and cumulative offshore aggregate dredging.

P.15 3.30 These must be freely communicated to all opposers of the licence.

P.17 3.38 This should be reworded to "made freely, readily and easily available and advertised by press notices.

P.18. Research 55 also P.21. 9. The government must ensure that it makes the best possible use of the impartial scientific expertise and knowledge of both international institutions and those within the United Kingdom, particularly those independent bodies and persons impartial of the outcome, and not just those selected by, appointed by, employed and funded by those who would prosper by a favourable decision.

P.20 2 (1) (a) Amend to 'all local newspapers within a radius of 50 miles'.

P.35 20. (1) This has yet to be enacted despite evidence of significant damage.

P.42 1(b) Add "destination and use intended" also why recycled construction waste could not be used. If the aggregate seized is to be exported, the application should be refused.

P.49 Regulations, regulation 8. See above P.14 3.24.

P.100 B.15 Parties that may participate in the decision making process should include those individuals and organisations involved with and concerned for the future of the marine environment and all those impacted by the decisions. These should include NGO's such as MARINET, the NSAG and the MCS. They should be included and involved as a right with all of those objecting to granting a licence.

P.135. 3. Add to "marine environment" "coastal environment"

p.136. 10. Change 'is likely' to "has led to"

We trust that you will phase this consultation in with that of the Marine Bill, as many of the issues are common and complimentary.

It is our hope that a thorough and detailed independent investigation comes about by the study of the full effects of bygone dredging operations, of the full effects of cumulative dredging and of the seabed and shoreline changes that have resulted due to past operations, and that these findings are considered before and binding decisions on the regulations are reached.

Although within the constraints of your deadline for responses, I apologise that our reply has taken rather a long time to compose, and hence later than intended. But it has taken much time with meetings, debates and consultations with our own members and supporters.

With best wishes and hopes for a successful outcome,

Pat Gowen, 3rd August 2006

Patrick J.A.Gowen JP MIST o.b.o. MARINET and the NSAG