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

The following responses represent the coordinated views of MARINET, consisting of 35 mainly coastal FoE Groups over the United Kingdom, each consisting of some 50 or more individual members plus some 15 affiliate members and several hundred supporters. They represent the marine aspirations of National Friends of the Earth and the canvassed views of some three hundred and fifty East Anglian supporters of the North Sea Action Group

First, we provide responses as answers to the specific questions outlined in the consultation, in the order and number placed. Following these, various comments are placed following the reply to Question 18 *"Do you have any other comments on the draft RA*" for your consideration.

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

Answer to Question 1:
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 in the document. As considerable habitats 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 large scale cumulative Offshore Aggregate Dredging off the East Anglian coastline, this component requires inclusion and address.

Secondly, the serious impact through erosion that has come about to beaches vital to the holiday industry since commercial scale offshore aggregate dredging commenced appears not to have been afforded the importance deserved.

Thirdly, the distance from the dredging site from the coast needs to be at least 40 km, as the results of research of dredging quite small quantities, e.g. 925,000 cubic yards 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 resulting from dredging off Cape Canaveral - August 1990) to be found at http://www.marinet.org.uk/mad/meetingdredgers.html

Finally, that separation distance from the shore needs to be specified in absolute and meaningful terms, as it was discovered in communications with MES Limited regarding the distance of Area 202 from the shoreline that the distance could be in nautical miles, miles or kilometres, and that this could be variably interpreted as the distance from the nearest offshore sandbank or tidally exposed area, and not necessarily that from the shoreline itself.

Other than the above and that given 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" from the scope of the Regulations and is that list comprehensive? If not, please indicate which legislation should be removed or added and why.*

Answer to Question 2.
In as much as dredged port clearance material is not employed to replace that lost to the shoreline and beaches, that lost from the shoreline because of the dredging itself and the impact resulting to the valuable tourist beaches, amenity, property and the wildlife habitats 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.

Port dredging for deepening and widening channels for development needs to come under the rulings imposed. The recent serious erosion resulting in loss of both the promenade and the shoreline café at Felixtowe due to deepening the port for larger container vessels provides a good example of the need for this. (See items on Felixtowe under 'Latest News' http://www.marinet.org.uk/latestnews.html)

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 National Assembly for Wales, be awarded costs from another party if it considers that that other party has behaved unreasonably? Please explain your reasons if you do not.*

Answer to Question 3.
The term "unreasonably" is subjective. 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 the dredging companies 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 potential cost threatened to environmental groups, invariably funded only by their own members modest pocket-money can be seen as prohibitive to their involvement, this certainly not the case with the well endowed professional dredging 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 described in the draft guidance?*

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

Question 5*: Applications and monitoring fees have been identified within the proposed regulations and guidance to cover the administration costs for the National Assembly for Wales. Do you agree with the principle of charging and do you agree that the level of costs is appropriate?*

Answer to Question 5
Any charges should be levied upon those who would profit by the dredging contemplated, as it is these companies who would profit by the process. But those applying for dredging licences should not be permitted to select, appoint and pay for the Environmental Impact Assessments required. These need to be sought and appointed by the Welsh Assembly to prevent partisan findings as the wishes of the applicants. Costs should not fall upon those who oppose the provision of a dredging licence, as these normally consist of individuals and voluntary environmental organisations funded by their own meagre pockets, with nothing to gain from the decision.

Question 6 (1): *Defra has identified costs related to the technical and scientific scrutiny of applications and monitoring that have, to date, been bourne by the government. Do you agree that these direct costs should be borne by the applicant? Do you agree that the costs proposed are proportionate and should be a part of the application fee ?*

Answer to Question 6(1)
In both cases, yes! Although a case could be made that the Crown Estate gain income from the 40 – 60p per ton dredged and that the government gain by the sale of the aggregate dredged by the 17.5% VAT imposed per tonne (that sells at >£20 per tonne, hence £3-50p per tonne landed) the major profit is made by the dredging company. The fees should thus be fully covered by the costs imposed for full process.

Question 6 (2): *Do you agree that the arrangements for and costs of the venue for a public hearing or inquiry should be the responsibility of the applicant.*

Answer to Question 6 (2):
In financial terms of the costs involved, yes, but the venue and timing should be decided by a neutral body, not those potentially gaining from the selection of place and time, e.g. set by the Welsh Assembly itself or a body appointed by them.

Question 7: *Do you agree that where an application is considered by the Planning Inspectorate, the cost for the number of days that the application is being considered by the Inspector should be met by the applicant, or, on the basis of "public good" and access to justice, should these costs be met the National Assembly for Wales?*

Answer to Question 7:
As given in the reply to Question 5 and 6(1 &2), it is the applicant that potentially gains from the consideration, not those who oppose it on grounds of the damage wrought. Thus the full costs should be met by the applicant who holds such financial resources.

Question 8: *"Consultation bodies" are defined as bodies that the regulator considers by reason of their specific environmental responsibilities to have an interest in the proposed minerals dredging. Should specific bodies, such as the Countryside Council for Wales and Environment Agency (Wales) be statutory consultees?*

Answer to Question 8
Indeed they should, but as well as independent environmental organisations such as Friends of the Earth and other bodies with an interest in the protection of the marine and coastal environment. Fishing organisations, the RSBP, the Marine Conservation Society, etc, all of whom possess considerable independent expertise, should also be included as consultation bodies.

Question 9*: 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 meeting certain criteria? If you do not agree, please explain what, if any, dredging proposals should not require dredging permission.*

Answer to Question 9
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 taken is decidedly an important factor. Furthermore, it must be recognised that it is not only the dredging area that is impacted by the operation, but a considerable downtide area of the seabed also, due to the smothering of these by the released wash off of the non-commercially viable fine silt from the dredged aggregate.

Whilst dredging within 5 km of the actual coastline (or protective sand bank) will create more localised erosion coming about earlier than that caused from distant dredging sites, even dredging 23 km offshore is known to result in shoreline habitat damage. (Again, see our point under 'Answer to Question 1', findings by US Army Corps of Engineers of dredging off Cape Canaveral - August 1990). To be found at http://www.marinet.org.uk/mad/meetingdredgers.html).

All proposals need to be subjected to an independent Environmental Impact Assessment in order 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 being quite sufficient to 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 onboard independent observer, as this will knowingly determine the presence of protected species or otherwise.

The Dutch do not permit dredging within 20 km of their 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 so permitted.

Our deliberations are based upon the experience of East Anglia where the sediment flow has all but ceased since commercial scale offshore aggregate dredging began. East Anglia is virtually devoid of rock other than that placed for reasons of coastal defence. It may not be so serious a matter off the far more stable Welsh coastline. Furthermore it has been pointed out by one of our Welsh members that the North Wales / Liverpool Bay coast has abundant sand moving with every storm, and that sand dredging may not be an issue there.

Question 10*: 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?*

Answer to Question 10
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 evident the case in the 'consultation' held by BMAPA and Hanson at Great Yarmouth Racecourse on Tuesday 19th April 2005, when little or no opportunity to speak or comment upon the dubious claims put forward was afforded to any of the opponents to the plan to again dredge off Great Yarmouth.

Question 11*: 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.*

Answer to Question 11
Yes, on the simple proviso that this advertising and consultation follows in practice, which has not always been the case up to now. A true and uninhibited dialogue must be afforded, presentation by objectors must be permitted, and an independent Chairman appointed and agreed to see that meaningful consultation exists.

Prior publicity of all applications needs to be placed upon local radio and TV, and in the press reporting to the wider area likely to be impacted by the dredging contemplated, e.g. up to 100miles down the coastline.

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. Such flagrant escape from obligations must not be allowed in the future.

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, would we consider the draft regulations and guidance set out in your proposals to be adequate.

Question 12*: Do you consider the timescales for the determination of applications by the National Assembly for Wales as set out in the draft procedural guidance to be adequate? If not, please explain what changes might be made.*

Answer to Question 12
This is reasonable on the proviso that a sufficiency of time elapses from the Press Notice to the consultation, and that that a further sufficiency of time is permitted for any follow up requirement(s) based upon dispute.

Question 13*: Do you consider that the measures that are proposed to monitor permitted dredging operations and enforce conditions are adequate? If not, please explain how they might be altered. specify what additional measures would, in your opinion, be feasible.*

Answer to Question 13
The measures have obviously been inadequate up to this time, as 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 for clarity of purposeful justice to have self-regulation performed by the parties involved in the dredging itself, or those with any benefits resulting.

Question 14: Do you agree that the procedures proposed in the draft guidance are adequate to control marine minerals dredging in the public interest ?

Answer to Question 14
Although one of our Welsh members accepted the point that dredged aggregate has some societal benefit, in that in providing building sand and gravel it saves the impaction to communities caused by the production of quarried materials, we find it difficult to envisage that any marine aggregate dredging is in the public interest, especially in the long term, because the process is by its very nature damaging and unsustainable.

The public can only lose when offshore aggregate dredging is instituted. Only the dredging companies, The Crown Estate and the Treasury gain. Marine aggregate dredging and conservation of fishing stocks are mutually exclusive, as the course grit and gravel spawning beds, also the feeding grounds and refuges for fish form the very material required by the dredgers for high quality concrete. These beds are shown not to have recovered even after 20 years following dredging.

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

Question 15*: Are there any ways in which the procedures might be streamlined while retaining the same purposes and comprehensive levels of control*

Answer to Question 15
It would appear to be not so.! Confidence in study detail and accuracy is essential, these components already seriously lacking in the current methods of granting licences. A full sufficiency of time must be allowed for full consultation and comprehensive study. To foreshorten the period required is not in the public interest. 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 16*: 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?*

Answer to Question 16
An Inspector should rule in all cases where defined evidence or reasons for not granting a dredging licence have 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 17*: Do you have information on the costs of implementing the draft regulations which can inform the preparation of a final Regulatory Appraisal?*

Answer to Question 17
My organisations do not possess the information required, thus are unable to estimate these. The costs are a huge variable, brought about by the detail and time required to democratically process an application and cannot be predetermined. 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 the application. They should however be administered by an independent body.

Question 18: *Do you have any other comments on the draft RA?*

Answer to Question 18
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. We would wish to see changes resulting in an absolute refusal to grant a licence unless it can be conclusively evidenced that no damage will result to the ecosystem, the marine environment or the shoreline. Offshore Aggregate Dredging can only 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 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 from the NGO groups, 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 and their findings heeded and acted upon.

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 instruction 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 always provided.

Your broad statement "Some way from the coast" is subjective and not accurate. Neither is it relative. Dredging only 7 Km from the Norfolk eastern coastline has recently been permitted, and, in the past, prior to satellite navigation reporting, within 2 kilometres of the nearest coastline. 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 so 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. (The detail of this is to be found by visiting http://www.marinet.org.uk/mad/meetingdredgers.html)

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

P.15 (b) The priority of 'National Defence' might well be employed to stop the threat to life and limb from dredging induced erosion resulting in marine inundation the consequent loss of our country to the sea if rationality is not applied to offshore aggregate dredging.

Apropos a "reasonable charge", this unqualified sum 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.

We would like to see added to 'every licence application' and 'each application' "applications for the extension of dredging licences"

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.

It is agreed by our Welsh members that dredging for aggregates should be excluded from the inner and mid Severn Estuary, but if it is agreed that the exploitation is to continue, any dredging should be moved to the outer estuary. Here the deeper water and extra distance involved will impose higher costs. But this is felt to be a good thing, as the cheapness of marine derived aggregate discourages the use of recycled materials as aggregate for purpose.

The National Assembly 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 by and funded by those who would prosper by a favourable decision.

It is suggested that the destination and use intended of the exploited aggregate should be included in the application and Press notice, also why recycled construction waste could not be used. If the aggregate seized is to be exported, and/or no reason is advanced as to why recycled aggregate and building material was rejected, the application should be refused.

It is proposed that as the assessment of the wildlife and ecosystem is currently at public cost, then why should not the dredging industry be levied for this? Further, why not ask for a public assessment of resources and plan for sustainable exploitation, instead of the present licensing system?

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. (Marine Conservation Society) These groups should be included and involved as a right as well as all those members of the public objecting to granting a licence for offshore aggregate dredging.

We trust that you will phase this consultation in with the relative aspects 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 any binding decisions on the regulations are reached.

With best wishes and hopes for a mutually agreeable and successful outcome,

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