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Dear Sir

Second consultation on secondary legislation under the Marine & Coastal Access
Bill: Part 4 Marine Licensing

1. The British Marine Aggregate Producers Association (BMAPA) is the representative trade organisation for the British marine aggregate sector and a constituent body of the wider Mineral Products Association. The Mineral Products Association (MPA) is the trade association for the aggregates, asphalt, cement, ready-mixed concrete, lime, mortar and silica sand industries. With a growing membership of 272 companies, it is the largest UK trade association in the sector and represents the majority of independent companies, as well as the 9 major international and global companies. The MPA represents 100% of GB cement production, 90% of aggregates production and 95% of asphalt and ready-mixed concrete production. Each year the industry supplies £5 billion of materials to the £110 billion construction and other sectors. Industry production represents the largest materials flow in the UK economy. BMAPA represents 11 member companies of MPA who collectively produce around 90% of the 20 million tonnes of marine sand and gravel dredged from licensed areas in the waters around England and Wales each year.

Background

2. Marine dredged sand and gravel is principally used by the construction industry, and the marine contribution provides 20% of overall sand and gravel demand in England, 90% of fine aggregate demand in South Wales, 35% of total construction aggregate demand in South East England and over 50% of construction aggregate demand in London. In this respect, marine aggregate supplies play a key role in supporting the delivery of various Government policies, including Sustainable Communities, the regeneration of Thames Gateway and the 2012 Olympic Games.

3. Marine dredged sand and gravel also provide a strategic role in supplying large scale coast defence and beach replenishment projects – over 25 million tonnes being used for this purpose since the mid 1990's. With the growing threats posed by sea level rise and increased storminess, the use of marine sand and gravel for coast protection purposes will become increasingly important.

BMAPA is part of the Mineral Products Association, the trade association for the aggregates, asphalt, cement, concrete, lime, mortar and silica sand industries

Registered in England as Mineral Products Association Limited No. 1634996
Registered at the above address

4. In the near future, marine sand and gravel resources can be expected to play a key role in supporting the successful delivery of major infrastructure projects associated with Government policies related to energy security and climate change, such as nuclear new builds, tidal power developments, port developments and offshore wind farms. The coastal location of many of these developments means that the sector is ideally placed to supply the large volumes of construction aggregate and fill material that will be required.

5. In all cases, the marine aggregate sector is dependant upon identifying and licensing economically viable sand and gravel deposits to secure sufficient reserves to maintain long term supply to existing and well established markets. The location of such deposits is extremely localised around the waters of England and Wales, restricted to their geological distribution and their geographical position related to the markets location.

6. At present 1286km² of seabed is licensed for marine aggregate extraction, of which around 124km² is dredged in a typical year. This represents around 0.15% and 0.016% of the total UK continental shelf area (867,000km²) respectively. A further 1931 km² of seabed is currently under application or covered by prospecting licence. In this respect, the marine aggregate sector is responsible for managing a significant area of the UK seabed.

Overview

7. We very much welcome the opportunity to comment on the second consultation on the secondary legislation for Marine Licensing. A robust, efficient and proportionate regulatory regime which delivers a 'licence to operate' for activities and operations is essential to support the wider sustainable development and management of UK waters. Given the wide range of activities and operations that take place in the marine environment, it is also important that the information requirements and regulatory processes and expectations are as consistent as possible – allowing for the differing scales of activity, the environment in which they occur, their environmental significance and the nature of the associated impacts.

8. As indicated in our response to the first consultation, as a sector we welcome the evolution of the current licensing regime into a single consolidated licence system, to be delivered by the Marine Management Organisation. We note that the current proposals will only apply to marine aggregate operations in English waters, and given that the sector has interests in both English and Welsh waters (often along the median line between the two) it is important that the two national regimes are aligned and consistent.

9. As a sector that has a range of ongoing licensed interests, many of which require renewal by the end of 2013, it is important to have clarity over licensing arrangements during the transitional planning period, so that consents and decisions can be delivered while the Marine Plan process is evolving. Without continuity of licensing process, there is a risk that essential licence renewals may be delayed with knock on implications to both operator's business interests and the supply of strategic construction aggregate resources.

10. There also needs to be further clarification of the transitional processes to allow the range of existing marine aggregate permissions to be brought into the new Marine Licence regime. We are aware that Defra are developing this, and we look forward to discussing this in due course.

11. Finally, we note that this consultation does not cover the proposed fees and charges associated with licensing, and that this will be the subject of a separate consultation later in the year.

Specific comments

12. We recognise that the new licensing regime has been designed to cover a wide range of activities and operations – both in terms of their scale and their nature. Our comments are directed at the consultation content as it applies to the marine aggregate sector. In responding we have endeavoured to respond directly to the questions posed.

Question 1

13. From the perspective of the marine aggregate sector, the costs associated with the Environmental Impact Assessment (EIA) process required to support a successful consent decision are considerably more expensive than the £50,000 suggested.

14. There is a requirement to undertake supporting site specific studies to cover issues such as coastal processes, sediment plumes, fisheries, navigation, benthos, conservation issues and heritage to inform the EIA process. There is also a requirement to undertake extensive consultation with a wide range of stakeholders throughout the process. On this basis we would suggest that the basic EIA costs for a new marine aggregate permission will in fact range between £500-800k per site, depending on site specific location and sensitivity.

15. Should a hearing or inquiry be required, there could obviously be significant additional costs on top of this in order to reach a decision.

Question 2

16. The idea of front loading the work associated with marine licences to a pre-application stage, as occurs under the current Marine Mineral Dredging Regulations (2007) (MMDR), can speed up the determination time at the end of the process. However, in the experience of the marine aggregate sector, the overall time taken to realise a permission does not significantly change as the overall assessment process along with the identification and resolution of issues still has to occur.

17. There are though some risks involved in taking the pre-application stage outside of the formal statutory process and making it an optional or voluntary exercise. These arise from the level of resourcing and ability of primary consultees to support the pre-application stage alongside their wider statutory functions. While MMO and their scientific advisor will receive significant fees to support this part of the process, the majority of primary consultees will not. This means that their ability to make a full and timely contribution to the pre-application stage may in fact be limited, alongside their existing statutory workload which would obviously have priority.

18. Given the degree to which issues tend to overlap and inter-relate, experience suggests that the overall EIA process can only proceed at the pace of the slowest participant. This was flagged up in the sectors consultation responses through out the development of the MMDR during 2006 and 2007, which can be provided if required. From a marine aggregate sector perspective, the only way that that this has been able to be delivered in practice is through a separate service level agreement between the individual statutory advisors and The Crown Estate (as the mineral owner), whereby a minimum level of service in support of marine aggregate casework is secured via external funding. Without this, we would suggest that the pre application stage would be almost unworkable.

19. Looking forwards under the new licensing regime, it will be important that all sectors are treated equally in the way their needs and requirements are met at the pre-application stage. If a means arose whereby other sectors were able to receive timely well resourced advice from primary advisors, the marine aggregate sector would not expect to continue providing external funding support.

20. Under the process proposed, the ability to deliver practical improvements is further constrained by the proposal to withdraw the binding timescales that currently exist within the MMDR, and their replacement with more flexible Service Level Agreement frameworks.

21. While we note that discussions are underway with MMO's primary advisors, given the current funding and resourcing constraints, we would suggest that the means to practically support and deliver pre-application advice is a critical issue that needs to be very carefully considered if the anticipated savings in process time and effort are to be realised in practice.

Question 3

22. In practice, and based on the experiences with the MMDR, we do not believe that the proposed process will actually speed up the time taken to resolve marine aggregate applications. Instead, the time and effort that will be required is simply relocated to an earlier phase of the licensing process.

Question 4

23. The Impact Assessment (IA) is perhaps a little misleading, as it does not reflect some of the practical issues that are highlighted above in our response to Questions 2 and 3, particularly relating to the resourcing of primary advisors to support the pre-application stage and the removal of statutory timescales as a result of the MMDR being repealed.

24. While on paper the benefits may appear straight forward, experience to date suggests that actually realising some of these in practice will be considerably harder. However, we accept that by transferring to a single licence regime some savings should be realised. We also note that the transfer of effort from one part of the process to another is acknowledged as being cost neutral.

25. We note that while Table A includes some indicative costs for MMO arising from the current marine aggregate licensing regime, there is no reference to the current fee structure that is in place, namely £47,000 for pre-application and £29,000 for formal application. Nor the costs associated with marine aggregate EIA, which are considerably more than the £50k average suggested in Question 1.

26. Finally, we would suggest that the wage rates used for external industry staff costs are considerably wide of the mark, given they are expected to reflect overheads as well.

Question 5

27. The comments set out under Question 2 above apply to this section, although they are not repeated here. There are though other issues that need to be considered.

28. Firstly, the process map provided at Annex 2 is misleading, in that it suggests that the Environmental Statement (ES) is undertaken at the scoping phase. The wider EIA process encompasses both the scoping and the investigation/preparation phases, the final outcome of which will be the ES. For this reason, we suggest that

the box actually needs to be re-titled EIA and widened to include both the scoping and the investigation/ preparation stages.

29. Secondly, while under the proposed pre-application process it is suggested that the MMO will manage the consultation process (presumably with the primary advisors referred to under para 5.6), there is no reference to engagement with wider consultees such as local interest groups, industries or communities. Given that under para 5.28, the consultation document indicates that all consultees are on an equal footing, this appears to be a key omission, particularly as it would be impossible to undertake a robust EIA without engagement and dialogue with the wider stakeholder community that potentially could be affected.

30. The precise role of the MMO is also unclear. Under the pre-application stage defined in the MMDR, the applicant is responsible for identifying all issues via scoping, addressing them through the EIA process, and ensuring that all identified issues are then fully resolved to consultees satisfaction, including the development of appropriate management, mitigation and monitoring measures. It is very clear that it is the applicants' responsibility to do this.

31. Under the pre-application arrangements proposed, the approach would seem to be very much more confused, with responsibilities split between the MMO (to engage and liaise with their advisors) and potentially (though not explicitly stated) the applicant (for engaging with everyone else). The EIA process involves considerable iteration and discussion in order to identify and resolve issues which often relate to a range of consultees. While we can see some merit in the MMO being drawn into this process so they are aware of key issues (from both advisors and wider stakeholders) and the steps being taken by the applicant to resolve these, we are not convinced that it is necessarily in the best interest of either the MMO or appropriate for the process as a whole for them to directly manage the pre-application stage.

32. The transparency of the respective roles and responsibilities of the applicant and the regulator is absolutely critical, and if there is a perception that the pre-application process is a two tier affair (which at present it appears to be) this will create confusion and uncertainty amongst wider consultees. That being said, if primary advisors could become 'bound' to their advice and position at the end of the pre-application stage through the involvement of the MMO, that would perhaps reduce the degree of issue creep at the formal application stage.

33. A secondary, but nevertheless important consideration is the considerable administrative burden on the MMO that will result from having to undertake multiple phases of consultation, identifying issues and responding/engaging with individual consultees for every application proceeding through the pre-application stage. Given the scale of workload anticipated for aggregates over the next 40 months (37 renewal applications to be delivered by the end of 2013) we have considerable doubts the organisation will be in a position to effectively deliver this given the considerable additional burdens required under the new regime. Furthermore, we believe that the additional layer of administration involved would make the process less efficient and unnecessarily bureaucratic for both the applicant and consultees, increasing the time required to complete the process.

34. Finally, in terms of the time taken to complete the pre-application stage, para 5.14 suggests that a minimum 2 year period will be required. While understanding the need to provide some guidance, it is important that such timescales are not considered binding and that the time required to complete the pre application stage will depend on the sensitivity of the site/activity and the availability of background information and supporting evidence. From a marine aggregate perspective, and particularly for the renewal of existing permissions by the end of 2013, we would expect this timescale to be considerably shorter given the background evidence

provided by the Regional Environmental Characterisation projects and the Marine Aggregate Regional Environmental Assessment studies that will be available.

Question 6

35. The application process proposed is similar to that which exists under the MMDR. The key difference is that there appears to be further potential for negotiation and iteration under the formal stage of the process than exists under the MMDR. We would strongly suggest that the objective should be for an applicant to have resolved issues as far as possible under the pre-application stage, with only outstanding issues to be determined. Without this, there is a risk that the formal decision making process reverts back to a process of extensive iteration and negotiation that characterised the non statutory Government View process. This in turn would marginalise the value and benefit of the pre application process.

36. The proposal to not have statutory timescales at the formal application stage represents a distinct change from the current MMDR regime, where such timescales were introduced in order to ensure timely decisions were in fact delivered. Given that resourcing of the MMO and its primary advisors is likely to become increasingly constrained, it would appear sensible to maintain some form of statutory timescale on the basis that this then provides a lever to ensure that they are able to retain adequate resourcing to perform to the timescales defined.

37. In terms of consultation, it is essential that the MMO is required to directly consult every party that has participated in the pre-application stage, and not simply a standard common list of organisations set out in guidance.

Question 7

38. While understanding the need and rationale to update and rationalise the existing EIA regulations, we would refer back to our previous comments under Question 6, relating to the loss of statutory timescales.

39. We also note that the provisions under the MMDR were specifically developed to support the consenting of marine aggregate extraction. The issues and requirements for marine aggregates are rather different to almost every activity currently controlled by the Marine Works Regulations, such as permission term, conditions and management and even the environmental setting where the activity occurs. As such it is important that those issues which are unique to marine aggregates are not completely lost, both through the application and assessment processes required, and through sector specific provisions such as those which currently exist to allow bulk sampling operations to be undertaken for example.

Question 8 – No comment.

Question 9

40. The concept of full cost recovery is already well established in the marine aggregate sector under the existing MMDR. This can offer significant improvements in service quality and performance on the basis that dedicated resources can be made available. However, it is important that the quality and standard of the service provided by such fees is comprehensively monitored and transparently reported on a regular basis to ensure it delivers the best value for money.

41. We understand that the details of the new fee structure will be covered through a separate consultation, and we look forward to participating in those discussions.

Question 10

42. Yes, subject to the caveat presented under para 6.8 which allows for the window to be extended should the applicant be attempting to first resolve the outstanding issues through informal discussions.

Question 11

43. Yes, it ensures effort is focused on the relevant areas.

Question 12

44. Yes.

Question 13 – No comment

Question 14

45. We note the comments over Emergency Action and that under Section 86 of the Act there is a defence for any activity carried out to secure the safety of a vessel and to save life. In the case of marine aggregate operations, should a vessel have to dump a cargo while on transit in order to maintain the stability and integrity of the vessel we assume that it would be covered by this defence rather than requiring specific exemption.

Question 15

46. The proposed exemptions relating to aggregate or mineral dredging (para 7.29 – 7.30) cover the routine operational issues accurately and comprehensively.

47. We note that under para 7.47 the exemption relating to the deposit of scientific instruments on the sea bed is to be extended to include the removal of substances and objects as well, which is welcomed. However, we are concerned that the proposed restrictions in areas designated under European and UK nature conservation legislation could prove to be counter productive, given that the use of such scientific survey equipment is essential to effectively monitor such sites. In many cases development activities within or adjacent to such sites will have monitoring conditions attached to their consents which require scientific survey operations occur, the precise scope of which will be determined by the regulator and their statutory advisors. As such we would argue that consent or operational compliance survey activities should be automatically exempt from any further licensing burden.

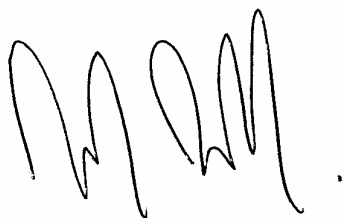
48. There is also the potential for wider scientific surveys to be undertaken in the restricted areas proposed – for example for site investigation or for scientific research. Given the nature of the survey pressure and the limited risk that it poses, it is important that any licensing arrangement is proportionate – both in terms of the costs (which should be minimal) and the time required to obtain a consent. In many instances survey operations have to be undertaken at short notice, due to vessel availability and weather windows. Therefore the time and process required to secure a licence will need to reflect this if it is to be practically workable.

Question 16 – No comment

49. In conclusion, the marine aggregate sector welcomes the proposals to streamline and simplify the licensing requirements for marine development activities. In the marine aggregate sectors experience the current MMDR regime has demonstrated that pre-application discussions can be effective in making the regulatory process more robust and effective. However, the sector has some serious concerns that the changes proposed under the new Marine Licence regime could potentially make the process required to obtain regulatory licences more complicated than the current MMDR regime. This in turn would reduce both the efficiency and the robustness of the application process and increase risk and uncertainty for all participants in the process.

50. We trust that you find these comments of use. If you require us to clarify any of the issues that are raised or elaborate upon any of the practical points that we refer, please do not hesitate to contact the undersigned.

Yours faithfully

A handwritten signature in black ink, consisting of several stylized, overlapping loops and curves, followed by a period.

Mark Russell
Director, Marine Aggregates