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Mr D Bench  
Head of Marine Legislation Division  
DEFRA  
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Dear Dave

## **SEA USERS AND DEVELOPERS GROUP: RESPONSE TO THE MARINE BILL WHITE PAPER**

The SUDG comprises a number of industries committed to the sustainable development of the marine environment. Areas of work include offshore renewable energy, cables and telecommunications, aggregate extraction, ports, marine recreation and the offshore oil and gas industry. The aim of the Group is to enable sea users and developers to formulate views on marine policy, including the Marine Bill, with a view to taking the opportunity to achieve constructive changes to UK sea use and management. Members of the group represent 3.4% of UK GDP and, in addition to a commitment to delivering sustainable development, also have a high degree of corporate responsibility. The Group is committed to working constructively to promote the importance of sea use and development, better regulation, effective environmental protection and the proper use of science in decision-making. The Group therefore welcomes the current consultation on the Marine Bill.

This response from the SUDG represents the views of the Group as a whole. Members representing specific industries may also prepare their own responses to the consultation; consequently, the SUDG response is 'more generic than detailed'.

### **Overall comments on the White Paper**

SUDG welcomes the White Paper and continues to support HM Government's view that industry needs must be met within the content of the Bill. SUDG therefore continues to be committed to working with Government to ensure that the Bill does contribute significantly by developing cost effective regulation and marine management, which has a beneficial impact for both business and the environment.

Much emphasis is made on the importance of the development of the UK Policy Statement; the SUDG agrees strongly that such a statement will be important, but would stress that for such a statement to be successful it must also include mechanisms for high-level conflict solving. The statement must also reflect the growing understanding in both environmental terms as well in industry that the marine environment is dynamic. This is critical if there is to be effective regulation, if marine planning is to be constructive rather than hindering and if environmental targets are realistic and achievable.



Devolution has the potential to create difficulties with delivering a UK wide approach to marine management. Some examples of consistency exist (e.g. marine heritage protection) so the question must be asked whether the devolved administrations cannot have the same consistency for marine management?

We are pleased that a number of developments in the White Paper reflect some of our original concerns about the Bill and we welcome these as proof of the success of the consultation process. We have subsequently been encouraged by the references in the White Paper to "One project/one licence". This contrasts with the current situation whereby information relevant to a FEPA licence but produced for the purposes of a Harbour Revision Order cannot automatically be used for FEPA purposes without having to apply separately. We also understand that in some cases, activities currently regulated but of minimal impact could be exempted from Regulation if it is clear that the Regulation is not producing added value. If applied properly such approaches would be welcome by all within the marine industry. Having said that, although SUDG will continue to support HM Government's intentions regarding the Bill, there is still a sense that the White Paper says what everyone wants it to. Consequently, much of the support is qualified by many of the comments made below and dependent on the development of further detail arising from the drafting process. The White Paper does give further information on the more detailed and precise proposals, but also highlights that many of the specific details will be consulted on in more detail at a later and more relevant time. As a consequence, it still remains difficult to comment on many aspects of the Bill where detail is still lacking.

SUDG agrees strongly with the consultation, that objectives of the Bill must be clearly stated in tangible terms, which allow clear goals to be set by Government and the regulators who enforce legislation. However, we believe that this clarity does not yet exist and that much more work is needed to create clear, objective and deliverable goals for the Bill and the organisation(s) which will be responsible for its regulation. We further believe that it is absolutely critical that these objectives and goals must address economic and social as well as environmental needs. Further, it is essential that these objectives must have relevance to both developers and regulators and that there must be common understanding of what these objectives are and what they seek to achieve. Consequently, SUDG is concerned that although sustainability is referred to on many occasions within the White Paper, there are no clear objectives set down in one place for delivering sustainability as such. If unresolved the Bill will set clear targets for nature conservation, but remain completely unfocussed regarding sustainability and sustainable development.

SUDG emphasises the need for DEFRA to clarify transition arrangements to be developed for the Bill, to ensure that everything does not simply grind to a halt while policies, plans and licensing arrangements evolve.

## **Licensing**

SUDG welcomes the intention that regulation should be proportional to the size of any environmental impact, but also believes that it should also be proportional to size of development, which is not mentioned in the text. We therefore welcome the principles of 'one project one licence', 'lighter touch', flexibility and the ability to cater for new activities, but as with many other aspects of the White Paper, we cannot comment further due to the lack of any detail. SUDG would also emphasise that against a background of widely shared concern about the regulatory processes which currently exist; the rationalisation and improvement of regulation, licensing and other approvals is an absolute prerequisite for the success of the Bill. In addition, SUDG feels there is a need for the Marine Bill to examine

regulation in a comparative manner as well as to specific activities. For example, the total area of estuary and coastal waters around England and Wales licensed for maintenance dredging is approximately 90km<sup>2</sup>. In contrast, and critical to the view of HM Government that scale of works and impacts should drive the impact of legislation, this figure contrasts to sea bed disturbance from fishing activities estimated to be some 13,902 - 55,504km<sup>2</sup> for UK waters as a whole [Eastwood et al, 2007. Human Activities in UK Offshore Waters: An Assessment of Direct Physical Pressure on the Sea Bed. ICES Journal of Marine Science 64:453-463]. It is therefore extremely questionable whether HM Government should be seeking to further regulate dredging activity affecting a few km<sup>2</sup> of sea bed while accepting impacts many orders of magnitude greater in another sector. This is not consistent or proportionate regulation and unless properly addressed, the White Paper proposals will only serve to increase an existing inconsistency rather than deliver better regulation.

SUDG believes that it is essential that the Bill specifies how any legislative aspects associated with licensing will be linked to requirements arising out of EU legislation and how the above principles of 'lighter touch' etc will be met. We continue to emphasise that some aspects of the current licensing regime work well, while others need change. Without clear linkage to the present and increasing range of legislation covering many of our activities, we remain very concerned that any pledges regarding better regulation within the Bill would be unfulfilled. The evidence regarding new interpretations of existing legislation (e.g. the Marine Works EIA Regulations) and new legislation (e.g. Water Framework Directive) would lend serious weight to this view that marine industries are facing increasing difficulties without seeing any noticeable reduction in regulatory burden. SUDG also feels strongly that many of these regulatory intentions will, as stated above, only be achievable through the setting of clear targets and thresholds to be applied to developers and regulators and if applications and approvals are examined in the light of these and the wider targets prepared through marine planning and not in isolation which is the current situation.

It is important to emphasise that much of the effectiveness of any regulatory process is as dependent on the systems to deliver it as it is on the regulation itself. SUDG would therefore strongly urge that clear guidance for the delivery of regulatory aspects is a key part of ensuring good management whether in the proposed Marine Management Organisation or outside it.

### **Marine Management Organisation**

SUDG feels strongly that increased consideration must be given to demonstrating how a MMO can deliver sustainability in both economic as well as environmental terms and that as stated above, these intentions must be related to clear targets for the MMO to ensure it delivers economic as well as environmental results. While there is considerable knowledge and emphasis on environmental needs, there is little objective focus on the objectives for sustainability and how these may be delivered. SUDG therefore feels strongly that this must be an essential and major focus for any MMO. In addition, clarity on objectives must also be met by clarity on mechanisms for delivery of these objectives. HM Government emphasises that the MMO must not be another layer of bureaucracy, but we feel strongly that evidence will need to be provided to demonstrate that this is not the case and that the evidence must comprise an element of the goals and targets for the MMO

SUDG is also concerned that the MMO will not be considered independent if it is attached to a single Government department which may be perceived as representing sectoral interests. We were therefore particularly pleased to see that the MMO will be set up as a non-departmental public body under DEFRA, but with the interests of DTI, DfT, CLG, DCMS

and the MoD being taken into account. The accountability to Parliament of the DEFRA Secretary of State for the operation of the MMO is also welcomed. However, as with many other aspects of the White Paper it is clear that further evidence on how the MMO is to be managed is required before these concerns can be resolved.

## **Marine Planning**

SUDG supports the principle that the marine planning process will consider, as far as possible, all relevant activities in an area and the impact they have on each other. Para 4.51, page 28 states that there will be early and broad consultation and that steering groups will be set up in the coastal areas of England to help advise the MMO and contribute towards the preparation of marine plans. If success of the plans is dependent on the delivery of clear economic and environment targets as discussed above, SUDG would welcome any new licensing regime which aims to translate the objectives of the plans into decisions about activities, and provides a link to Government policies (UK marine policy statement), creating transparency Para 5.2, page 41. However, as stated earlier in this response to the consultation, if the benefits of wider planning are not incorporated into making the licensing systems more streamlined, it is debatable whether marine planning could have any overall significant benefit.

A major concern for SUDG is the potential for delay, uncertainty and cost in the proposals for marine planning and their development. This concern will be amplified if the plans are to meet their stated function of assisting with the planning process and help ease licensing and regulatory aspects of marine management.

The importance of the UK Policy Statement has been raised above, along with the recognition that the marine environment is dynamic. Consequently SUDG questions whether plans can be legally binding as they are in terrestrial plans or whether this issue needs to be addressed differently.

## **Improving nature conservation – control of unlicensed activities**

On Marine Nature Conservation, we support the approach in the Bill which is to apply sustainable development principles to the designation of marine conservation zones. We also take the view that these zones should not be identified until more work on marine planning has been completed. Of particular concern is the statement that a previously licensed activity could be affected by the designation of a MCZ, to the extent that the licence could be withdrawn. Whilst this should be a rare event, SUDG remains concerned that the possibility exists. Consequently, we are concerned that, despite reassurances, it is difficult to see how 'business as usual' will be maintained during the development of policy, objectives and MCZs. Staff in new positions will tend towards precaution until they are comfortable with their remit, unless they have explicit guidance to work with.

We are also concerned that 8.112 suggests that NE and JNCC will consult with stakeholders to identify sites for consideration for designation as MCZs and that the nature conservation agencies will seek advice and information from the MMO with respect to socio-economic factors. We feel that designation of MCZs should be the responsibility of a neutral body (such as the MMO), taking advice from the nature conservation agencies regarding proposed locations, and from other stakeholders regarding socio-economic factors. The process outlined in the White Paper suggests that it will be the remit of nature conservation agencies to make socio-economics decisions, based on advice from the MMO. This effectively

removes socio-economic stakeholders one stage away from the final decision-making process.

## Conclusions

SUDG welcomes the consultation and the evidence that previous consultation has had an impact on drafting the White Paper. There remain a large number of unresolved issues which are unlikely to be clarified until the process evolves to the next stage and beyond. As we read it, much of the 'delivery' outlined by the White Paper will actually come after the main Bill, in the form of secondary or enabling legislation. To a certain extent, this is where the practical difficulties will lie in delivering their vision.

The shared UK marine policy statement will be absolutely critical in defining the balance between the socio-economic components and the wider environmental aspirations. The need for marine objectives, reflecting all aspects of marine management, to sit under the marine policy statement will be where the various sectors will be able to make their case based on existing policy positions etc., but again this is quite a way down the line. SUDG remains committed to assisting with this and in the process being reassured that deliverable targets are identified allowing sustainable development which protects economic growth as well as the environment.

Yours sincerely

Yolanda Lurba

P.P. PETER BARHAM  
CHAIR SEA USERS AND DEVELOPERS GROUP