

FAO: Tom McCormack

Marine Management Organisation  
Lancaster House  
Hampshire Court  
Newcastle upon Tyne  
NE4 7YH United Kingdom

Tel: [REDACTED]

Email: [REDACTED]

Your Ref:  
[REDACTED]

Date: 16 December 2022

By email only:  
[REDACTED]

cc: DEFRA, Environment Agency

**Pre-action Protocol letter**  
**URGENT - Requires your immediate attention**

Dear Marine Management Organisation,

**Re: Teesside – Power to Vary Licences and Halt Dredging Activity - Urgent**

1. We write on behalf of Stan Rennie in accordance with the judicial review pre-action protocol in contemplation of a challenge in relation to the Marine Management Organisation's licensing of dredging activities in the Teesside area.
2. Stan Rennie is a small-scale commercial fisherman who has lived and worked in Hartlepool his entire life, running his own boat since 1974. Throughout this time he has strived for sustainability in the industry, to protect the fishing community his family has been part of for the past 400-500 years. Stan has committed his life to protecting the coastline and marine life. Stan has been an integral part of the Northeast Fishing Collective (NEFC), campaigning for a better future for the coastal communities along the

north east. Accordingly, he has a direct interest in the matters with which this letter is concerned.

3. Since September 2021 a series of crustacean mass mortalities have occurred, and continue to occur, in the Teesside area. As set out below, the preponderance of evidence suggests that the mass mortalities *may* have been caused by pyridine released from sediment disturbed by dredging activities.
4. We are directing this letter to the Marine Management Organisation (“MMO”) as the agency responsible for the issuance and enforcement of licences for dredging under the Marine and Coastal Access Act 2009 (the “2009 Act”) with powers to vary, suspend or revoke any applicable licence, or alternatively to issue a stop notice in respect of any applicable licence, pending the conclusion of an extant independent review relating to the cause of the mass mortalities commissioned by the Secretary of State for Environment, Food and Rural Affairs.
5. We consider that the Secretary of State for the Environment Food and Rural Affairs and the Environment Agency would be Interested Parties in any proceedings. We consider that the licensees of any applicable licences may also be Interested Parties and propose to identify them as such in any proceedings.

## **Proposed Claimant**

6. The proposed Claimant is Stan Rennie (address c/o legal advisors).

## **Details of the Claimant’s legal advisors**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

7. Please quote in any correspondence the reference [REDACTED]

## Applicable Licences

8. We are concerned here with all licences issued by the Marine Management Organisation (“MMO”) currently in force which permit any dredging activities in the Teesside area (the “applicable licences” in circumstances in which it cannot be said that their activities are not contributing to the problem we identify above. Our understanding is that these licences include at least the following:
  - a) We understand PD Teesport to hold marine licence L/2015/00427/4 permitting the disposal of 243,842 tonnes from the Tees, and 42,128 tonnes from Hartlepool, dredged under their statutory powers, at Tees Bay A (TY150) disposal site per year. This licence was granted in 2015 and expires in 2025. In March 2021 it was varied by the MMO to allow additional sediment dredged by PD Teesport from the navigation channel within the Tees estuary to be disposed of within Tees Bay A.
  - b) L/2021/00333/2 which we understand to permit capital dredging and offshore disposal of dredging material in relation to the construction of a new quay at the South Bank in the Tees estuary by the South Tees Development Corporation.
  - c) L/2013/00404, permitting the disposal of all dredged material arising from the No.1 Quay scheme at Tees Bay C.
  - d) L/2015/00088/5.
9. We invite you to confirm in your response details, including reference numbers for entries in the MMO register, of all applicable licences; namely, all extant licences issued by the MMO for activities listed in section 66(1) of the 2009 Act which involve dredging and/or disposal activities in the Teesside area.

## Extant Independent Review

10. On 31 May 2022 the interim summary conclusions of a multi-agency investigation into last year’s mass mortalities were published by DEFRA in the report “Joint Agency Investigation into Teesside and Yorkshire Coast Crab and Lobster Mortalities” (“the

Interim Report”<sup>1</sup>). The Interim Report’s conclusion was that a likely cause of the mortalities last year was a naturally occurring algal bloom.

11. The Interim Report, as was made clear on its face, was a summary report of provisional findings on the cause of the mass mortalities. The Interim Report had considered a possible causal link between dredging activity and mass mortalities, a link suggested by observation that mortalities of crabs and lobsters occurred in the Teesside area immediately after the commencement of dredging activity under licences granted by the MMO, including dredging by the ORCA vessel in September and October 2021. Subsequent episodes of mass mortalities following publication of the Interim Report have, likewise, occurred immediately after a period of dredging has commenced, further indicating that the Interim Report’s conclusions on likely causation may be wrong.
12. At the time of publication of the Interim Report, concerns were raised with DEFRA that the investigation which led to the Interim Report and the evaluations and conclusions set out in that Report were not lawful and anyway flawed. In the months since then, further doubts have emerged as to the correctness of the conclusions of the Interim Report regarding the probable cause of the mass mortalities. For example, a comprehensive report by researchers at Newcastle University, Durham University, the University of Hull and the University of York published in early October 2022<sup>2</sup> found that the crustacean mortalities were consistent with poisoning by industrial toxins and raised concerns that the Interim Report had not considered results from any thorough or systematic tests for Pyridine in sediment including arising from dredging.
13. Against this background of significant doubt as to the correctness of the provisional findings of the Interim Report, on 25 October 2022, the Environment, Food and Rural Affairs Committee heard evidence on the mass mortalities around Teesside, including the potential causes. Following that hearing, on 1 November 2022 the Chair of the Committee wrote to the Secretary of State for Environment, Food and Rural Affairs highlighting the Committee’s interim conclusions<sup>3</sup>. Those conclusions included that:

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<sup>1</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1082129/Joint\\_agency\\_investigation\\_into\\_Teesside\\_and\\_Yorkshire\\_Coast\\_Crab\\_and\\_Lobster\\_mortalities.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1082129/Joint_agency_investigation_into_Teesside_and_Yorkshire_Coast_Crab_and_Lobster_mortalities.pdf)

<sup>2</sup> [https://drive.google.com/file/d/10mJtcqEsq\\_ozNFg83FipnkUY1XkPAlnU/view](https://drive.google.com/file/d/10mJtcqEsq_ozNFg83FipnkUY1XkPAlnU/view)

<sup>3</sup> <https://committees.parliament.uk/publications/31447/documents/176357/default/>

*“there is a need for further data and research on the causes of mass die-off. This must include urgent investigation of the potential sources of pyridine that Dr Gary Caldwell of Newcastle University identified in his oral evidence including more extensive sampling of the sediments in the bed of the Tees Estuary to create a map of potential sources of pyridine in proximity to maintenance dredging and the wider area.”*

14. The Chair of the Committee urged the Secretary of State to ensure the Government Chief Scientific Adviser to urgently appoint an expert independent scientific panel to review the evidence, including as regards the cause of the die-offs.
15. As you will be aware, the EFRA Committee’s view, as communicated to the Secretary of State, is that *“dredging should be kept to the minimum level needed to keep the port operational until the panel’s investigation is complete”* as part of *“sensible, proportionate steps that could be taken to help manage the risk while further investigations are undertaken”*. The Chair of the Committee informed the Secretary of State that it is imperative that the Marine Management Organisation should (i) *“urgently review the dredging activity in the Tees”*; (ii) *“explore, in line with the precautionary principle, what steps could be taken to reduce the risk associated with capital and maintenance dredging such as improved techniques to prevent dredged sediment escaping into the wider environment during excavation”*, and (iii) *“ensure that all the current conditions on its licence are met and should include pyridine in the testing as part of any future licence approval process [and] all dredged material should be tested for pyridine and any that is found to have dangerous levels of pyridine should not be disposed of at sea”*.
16. On 15 November 2022 the Rt. Hon. Mark Spencer MP responded to the EFRA Committee on behalf of the Secretary of State<sup>4</sup>. That response confirmed that the Secretary of State has instructed *“DEFRA’s Chief Scientific Adviser, who has not previously been involved in consideration of this issue, to liaise with the Government Chief Scientific Adviser to establish an independent group of external experts to assess the evidence and consider all explanations for sealife mortality, including the possible role of pyridine”* (the “Independent Review”. The letter confirmed that the Secretary of State *“has asked that this work is completed in a timely fashion”*. The Independent Review will include, among other things, seeking *“advice from the external expert panel to assess whether additional*

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1117462/EFRA-follow-up-letter-minister-spencer-to-chair.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1117462/EFRA-follow-up-letter-minister-spencer-to-chair.pdf)

*measurements of pyridine in the sediments and waters of the Tees region would be beneficial*". In respect of dredging practices, the work of the Independent Review "will steer consideration of further action" including in respect of reviewing dredging practices.

17. The exact terms of reference of the Independent Review have yet to be determined by the Secretary of State, but on 6 December 2022 in an appearance before the EFRA Committee she confirmed her intention that the Independent Review should report in early 2023.

## **Breach of licences**

18. Our client is further concerned that apparent breaches of potentially relevant conditions on the licences have been observed and reported but no, or at least no adequate, investigatory and enforcement action appears to have been carried out by the MMO to date.
19. Given that the burden to investigate is on the MMO as the relevant regulatory body, we do not intend to recite here every instance of potential licence breaches of which our client is aware.
20. By way of example only, we note that MLA/2020/00506/R15 requires, among other things that materials from certain areas must be excluded from disposal at sea and that material is required to be removed with an enclosed bucket for disposal at a recognised contaminated disposal site. Further, a report detailing results of any surface grabs any remedial action is required to be submitted to the MMO. Despite this, our client is concerned that (i) open buckets have been observed to be in use in the relevant area. (ii) slippages and spillages have been observed, and (ii) the sampling requirement in the licence appears not to have been complied with.
21. You will be aware also that significant apparent breaches of licence conditions have been reported in national media coverage of the die-offs. We refer, for example, to the recent report by Channel 4 News; <https://www.channel4.com/news/scientists-call-for-massive-dredging-operation-to-be-halted-pending-investigation-over-pollution>

## The Issues

### **(1) Power to vary, revoke or suspend the applicable licences and to issue stop notices**

22. The applicable licences have been issued by the MMO. Under section 72(2) the MMO “may by notice vary, suspend or revoke a licence granted by it if it appears to the authority that the licence ought to be varied, suspended or revoked—

*(a) because of a change in circumstances relating to the environment or human health;*

*(b) because of increased scientific knowledge relating to either of those matters;*

*[...]*

*(d) for any other reason that appears to the authority to be relevant.”*

23. In circumstances where:

- (i) there is wide consensus that the provisional conclusions of the Interim Report on the cause of the mass mortalities cannot be relied on and further investigatory work is required;
- (ii) there is a preponderance of evidence that the mass mortalities may have been (and continue to be) caused by (or contributed to by) Pyridine at least in part released from sediment disturbed by dredging activity;
- (iii) there have been observed repeated and ongoing breaches of the applicable licences; and
- (iv) an independent review commissioned by the Secretary of State and led by DEFRA’s Chief Scientific Adviser, in conjunction with the Government Chief Scientific Adviser, is currently being undertaken and it is expected that the conclusions of the review will be published in early 2023,

it is our position that the MMO should by notice suspend or revoke all extant applicable licences at least until such time as the Independent Review concludes and publishes its

final report because each of the three circumstances set out in section 72(2) of the 2009 Act is clearly at play.

24. Further, or in the alternative, any decision of the MMO not to exercise its powers under section 102 of the 2009 Act to issue a stop notice would be unlawful because activities under applicable licences are, at the very least, likely to create an imminent risk of harm to the environment (if not in fact causing or being likely to cause harm to the environment, a matter which cannot be fully determined at this stage pending the conclusion of the Independent Review) (s.102(4) and (5)). In light of the inconclusive findings of the Interim Report, the findings of the joint university report, and the Secretary of State's commission of the Independent Review, it is incontrovertible that at present there exists a likelihood that licenced activities may create a risk of harm.
25. While the power to suspend or revoke the licences under section 72(2), and the power to issue stop notices under section 102, are discretionary, any decision not to exercise such powers would in all the circumstances be irrational and in breach of the precautionary principle in environmental matters, and hence unlawful.
26. It would be Irrational for the MMO to decide to permit the continued dredging and the disposal at sea of large amounts of sediment while the investigation instigated by the Government is ongoing because there is no consensus on the cause of the die-offs such that it cannot be excluded that such dredging and disposal will cause significant harm.
27. To be clear, we are not concerned here with the underlying merits of the matters in question (namely, the eventual outcome of scientific investigations as to the correct cause of the mass mortalities which is a matter of expert or technical judgment). We are concerned only with the MMO's obligations as a decision-maker to proceed on the basis of proper evidence and to follow a lawful and rational process. That process requires the MMO here to consider all material matters, including that:
  - (i) there is an obvious possibility (not ruled out by any proper investigation) that licenced activities are creating a risk of harm;
  - (ii) there has been a change in circumstances relating to the environment since the applicable licences were issued;



- (iii) there is increased (and increasing) scientific knowledge relating to the environment;
- (iv) the Independent Review has been ordered by the Secretary of State and is anticipated to report in early 2023 and that Review is clearly relevant to the matters at hand.

28. In respect of i), ii) and iii) above we note that these developments have all occurred since the MMO granted the applicable licences. Accordingly, it follows that there is a real prospect that any mitigation measures included in the applicable licences are not sufficient to safeguard against the risk of harm.

## **(2) Application of the precautionary principle**

29. Even if it were the case that, notwithstanding the weight of the foregoing, any doubt remained as to whether the MMO should exercise its powers under section 72(2) or section 102 of the 2009 Act, the precautionary principle in environmental matters requires that the MMO exercise those powers.
30. The MMO is required to apply the precautionary principle as a result of a number of international conventions to which the UK is a party.
31. While pyridine is not listed as a contaminant of concern by the OSPAR Convention, OSPAR does not prohibit the right of contracting Parties to identify new chemicals and act upon that knowledge – indeed the Convention requires Parties to apply the precautionary principle with respect to preventive measures when there are reasonable grounds for concern that substances introduced into the marine environment may bring about hazards to human health, harm living resources and marine ecosystems, damage amenities or interfere with other legitimate uses of the sea, even when there is no conclusive evidence of a causal relationship between the inputs and the effects (OSPAR Convention Preambular text and Article 2(2)). As such, the Convention represents a floor not a ceiling and the interests of the precautionary principle the MMO should exercise its powers to ensure all dredging and maintenance activity ceases until such at least time as the Independent Review concludes.

32. While UNCLOS does not refer expressly to precaution, it does lay down obligations for the protection of the marine environment, to which in our view the precautionary environment is clearly relevant, taking into account related obligations. UNFAS, by contrast, does address the issue of precaution explicitly, requiring (by Article 6) that States *“apply precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment”*. UNFAS further requires that *“States shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.”*
33. The MMO is also required by domestic legislation to comply with the precautionary principle in this context where fish stocks are at risk of harm. As you will be aware, section 1 of the Fisheries Act 2020 sets a number of objectives by which the MMO is bound. These include (by s.1(3)) that a *“precautionary approach to fisheries management is applied”*. As described above, our client is a fisher with a fishing vessel licence. Quite plainly, our client has a legitimate interest here in fisheries management and the protection of marine life including fish.
34. That the precautionary principle here requires the MMO to exercise its powers to suspend or revoke the applicable licences pending the conclusion of the Independent Review is also clear given the specific circumstances: namely, that the forthcoming capital dredging relating to the development of the Tees Freeport will go significantly beyond previous dredging activities, extending dredging to Chart Datum depths of 16m and removing virgin sediment and contaminants that have accreted over a long period from various sources, including from waste disposals from heavy industry in the area. The forthcoming dredging is, in short, a high-risk activity in respect of which the MMO is required to exercise heightened caution.
35. The precautionary principle is relevant here and any lack of full scientific certainty in this regard should not justify a failure to act; indeed, on the contrary it is precisely because of the lack of scientific certainty at this juncture that the MMO is required by law to exercise its powers to ensure on an urgent basis that dredging and disposal activities cease.

### **(3) Impact on MCZ**

36. As you will be aware, the recommended Runswick Bay MCZ<sup>5</sup> lies in the vicinity of dredging and disposal activities being carried out under the applicable licences. This is an area where the *“rich seabed habitats supports a number of crustacean species, including eight species of crab and the common lobster”*. As such, the MMO is a public authority having functions the exercise of which are capable of affecting both the protected features of an MCZ (s.125(1)(a) and ecological process on which the conservation of protected features within an MCZ are dependent (s.125(1)(b).
37. Accordingly, by section 125(2) of the 2009 Act, the MMO is required to exercise its functions (including its decision-making functions in respect of its powers under s.72 and s.102 of the 2009 Act) on the manner which “best furthers the conservation objectives stated of the MCZ” (or, where that is not possible, to at least exercise its functions “in the manner which the authority considers least hinders the achievement of those objectives”).
38. In order to exercise its regulatory functions in accord with s.125 of the 2009 Act, requires that the MMO exercises its powers under sections 72 and/or section 102 to ensure dredging and disposal activity carried out under the applicable activities ceases until such time as the Independent Review concludes. To act otherwise would be in breach of the MMO’s obligations under s.125, and hence unlawful.

### **(4) Article 1 of the First Protocol (“A1P1”) to the European Convention on Human Rights**

39. Our client is a fisher with an operative vessel fishing licence, whose livelihood have been dramatically impacted by the mass mortalities. Like other members of the NEFC, as well as other recreational and professional fishers who are not member of the NEFC, he has a right of possession in his licence.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/492315/mcz-runswick-bay-boundary-map.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/492315/mcz-runswick-bay-boundary-map.pdf)

40. A1P1 provides as follows:

*“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. [...]”*

41. In the circumstances, the following principles are clear:

- (i) Any person who holds a fishing vessel licence has a right of possession in that licence and a right to enjoyment of that possession;
- (ii) Any interference with the right guaranteed by A1P1 must be limited to that justified by public interest and subject to the conditions of law;
- (iii) To be justified, any interference must: (1) take place in accordance with domestic legal provisions which are adequately accessible and sufficiently precise and foreseeable in their application (the requirement of legality); (2) pursue a legitimate aim in the public, or ‘general’, interest; and (3) strike a “fair balance” between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights, with a reasonable relationship of proportionality between the means employed and the aim sought to be realised (the requirement of proportionality).

42. It is incontrovertible that the right to the enjoyment of fishing vessel licences guaranteed by A1P1 is here being interfered with. The MMO’s failure to suspend or revoke relevant dredging and disposal licences is itself an interference with that right that is not justified on any basis. In all the circumstances suspending or revoking the commercial dredging licences is a proportional means to protect individuals’ fundamental rights in respect of vessel fishing licences. The impact on the property rights of fishermen is in any event a factor of significant weight in support of a decision to suspend dredging pending outcome of the review.

## Details of what action the MMO is expected to take

43. The MMO is asked, **within 5 days of this letter and in any event prior to the commencement of forthcoming capital dredging**, to respond to the matters raised above and, in light of the ongoing investigation and on the application of the precautionary principle as required by international law, to confirm:

- (iv) That the MMO will immediately exercise its powers under section 72(2) of the 2009 Act to suspend or revoke the applicable licences, or alternatively its powers under section 102 to issue stop notices in respect of activities being carried out under the applicable licences;
- (v) What steps, if any, the MMO has taken in response to the Chair of the EFRA Committee imploration to the Secretary of State that the MMO must (i) *“urgently review the dredging activity in the Tees”*; (ii) *“explore, in line with the precautionary principle, what steps could be taken to reduce the risk associated with capital and maintenance dredging such as improved techniques to prevent dredged sediment escaping into the wider environment during excavation”*, and (iii) *“ensure that all the current conditions on its licence are met and should include pyridine in the testing as part of any future licence approval process [and] all dredged material should be tested for pyridine and any that is found to have dangerous levels of pyridine should not be disposed of at sea”*; and
- (vi) The details of all breaches of the applicable licences reported to the MMO over the past 12 months as well as details of what pro-active steps, if any, have been taken by the MMO to investigate such breaches and any enforcement action taken in respect of such breaches.

## Aarhus costs

44. If a claim is pursued it will plainly be an Aarhus claim to which the cost protection of CPR 45.43 will apply. If you disagree, please fully explain why.

## **ADR proposals**

45. We do not currently consider that these issues are suitable for alternative dispute resolution but would be pleased to consider any proposals you have for this.

## **Address for reply and service of court documents**

46. See above for the address of the Claimant's legal advisers. Service of documents by email is accepted.

## **Proposed reply date**

47. We seek a response within 5 days of this letter **and in any event prior to the commencement of forthcoming capital dredging**. An urgent response within this period is clearly necessary and justified in circumstances where further dredging activity risks causing further irreparable harm.

We look forward to your timely response.

Yours faithfully



**Leigh Day**

Cc: [defra.helpline@defra.gov.uk](mailto:defra.helpline@defra.gov.uk); [enquiries@environment-agency.gov.uk](mailto:enquiries@environment-agency.gov.uk)