

**Submission in relation to MLA/2022/00180**



*Kurt Jackson*

**Produced for and on behalf of the Save Port Isaac Bay  
Group**

**22<sup>nd</sup> July 2024**

*The Blue Marine Foundation are concerned that **this application appears to differ very significantly from the South West Marine Plan** and its supporting documents.*

Dr. Tom Appleby, Chief Legal Affairs Adviser, Blue Marine Foundation

*This site should not be deemed suitable for this kind of farming. The wave climate is far too energetic and will inevitably wreak destructive levels of wave energy onto the structure. The application was misleading as to the wave climate at the site. The **chance of failure of this farm structure at this site is undoubtedly high, if not inevitable**. The design is not fit for purpose and if deployed may present **a risk to safety of life at sea**.*

Lawrie Stove, marine engineer and seaweed farmer, Aquamoor Limited

*At an exposed spot on a wide-open coastline with such high energy levels, the structure will have a **high probability of failing**. If and when it fails, it will **pollute the nearshore and coastline**, the developers will lose money, and the climate crisis will continue getting worse.*

Dr. Tony Butt, coastal morphodynamics expert and wave forecaster

*The **MMO must** consider whether to exercise their power to **vary, suspend or revoke the licence** under section 72(2) or 72(3)(a)-(d) of the 2009 Act, reconsidering the impacts of the licence. This is so in particular due to the high risk of infrastructure failing, the lack of notice and consultation, and other relevant reasons.*

Anjoli Foster, Barrister, Landmark Chambers

*We operate a grid and longline system in less exposed conditions than the proposed site. The exposed location of the proposed seaweed farm will pose issues with structural integrity, operations and yield. Broken equipment poses a **risk to marine life and human life**. Proceeding with this scheme would demonstrate a **negligent attitude to both communities and environments**, as well as ignorance of the risks posed by the site's location. It could have a **damning impact on the future of the industry** in terms of its risk assessment, commitment to cooperation with communities and respect of their localities.*

Operations Manager of seaweed farm, west Scotland

*There is an **urgent need** for a Cornwall & Isles of Scilly marine aquaculture strategy, potentially led by the MMO, using up to date evidence and data. It is important for the MMO to **review marine planning and licence procedures** within Cornwall and the Isles of Scilly ensuring transparency and effective engagement.*

Cornwall and Isles of Scilly Marine and Coastal Partnership

## **EXECUTIVE SUMMARY**

This submission relates to a marine licence (MLA/2022/00180) granted to Penmayn Limited (“the Applicant”) by the Marine Management Organisation (“the MMO”) on 3<sup>rd</sup> August 2023 for a 25-year licence (“the Licence”) to construct and operate a seaweed farm covering 100 hectares in Port Isaac bay, North Cornwall (“the Seaweed Farm”), until 9<sup>th</sup> August 2048. We request that the MMO treat this submission, *inter alia*, as a Tier 1 Complaint.

The principle submissions within this document relate to the basis upon which the licence was granted. We request that the MMO reviews the submissions in this document and considers whether, including with reference to other evidence it has recently received, it believes it has grounds to exercise its powers under section 72 of the Marine and Coastal Access Act 2009 (“the Act”) to revoke the licence. We believe those grounds are made out by the evidence that the MMO is now in receipt of, both in this submission and a number of complaints and letters that have been sent directly to the MMO in recent months.

The evidence base that underpinned the licencing decision was largely based on the statements and evidence supplied in the application documents and in further correspondence/documents supplied by the Applicants during the determination process. Some of that evidence base is inaccurate. The MMO has further misdirected itself with respect to the interpretation of key policy provisions which were material to the decision-making basis.

The Seaweed Farm site is outside of the areas defined in the South West Inshore and South West Offshore Marine Plan (June 2021) (“the SWMP”) as being suitable for suspended aquaculture of the type proposed by this licence application. The reason the site is classed as unsuitable, in part, relates to the maximum wave heights being above a threshold defined in the MMO’s own guidance. This guidance specifically informed the SWMP policies. The Applicants provided data from the Port Isaac wave gauge to indicate that the maximum wave heights at the site were suitable. Port Isaac harbour is entirely sheltered from westerly swells, and has completely different sea conditions to the Seaweed Farm site. At the site, maximum wave heights may reach up to 15m and regularly exceed 6m.

Aquamoor Limited have provided an independent, expert analysis of the farm design and mooring system. They conclude that the risk of failure of the farm structure is ‘*high, if not inevitable*’, that it is not fit for purposes and that it may present a risk to life. Given the risk of failure, there are potential risks to the environment, human health and other legitimate users of the sea, contrary to section 69(1)

of the Act. We request that the MMO consults Cefas and the Environment Agency in relation to this data, and the likely sea conditions at the Seaweed Farm site, prior to making any further decision in relation to this Licence. We further request that the MMO consults the Maritime and Coastguard Agency in relation to the robustness of the farm infrastructure and absence of a suitable Third Party Verification of the Seaweed Farm infrastructure, prior to making any further decision in relation to this Licence.

The public consultation relating to the licence application was inadequate. During the public consultation period, the MMO received no public comments on the Application. This should have alerted the MMO to the inadequacy of publicity in relation to the scheme. The MMO is now aware that the public notice was not displayed for 28 days and the only advertisement that fulfilled the MMO's criteria was in a single, weekly newspaper. Further, the MMO is also aware that several of the stakeholders listed in the Stakeholder Engagement Log have clarified the basis upon which they were consulted and that they do not support the Licence as approved. The MMO has recently received many comments which evidence substantial conflict with relevant SWMP policies, including from Cornwall National Landscapes, five local Parish Councils, fishermen and other affected businesses, Harbour Authorities and members of the public. We request that the MMO re-consults with all parties listed in the Stakeholder Engagement Log to verify the basis of their original consultation and whether they are supportive of the Seaweed Farm, as licensed, prior to making any further decision in relation to this Licence. We further request that the MMO consults with several other relevant stakeholders who were not originally consulted during the licensing process, including Port Isaac Harbour Commissioners, prior to making any further decision in relation to this Licence.

The MMO, in approving the Licence, did not take into account the economic status of the applicant company or the potential cumulative impact of the proposal when considered with other similar schemes in the area. In both cases, this is inconsistent with the statutory duty of the decision-making body. Consequently, an inexperienced operator has been licenced to install experimental technology in an entirely unsuitable location.

Given the evidence the MMO has now received, both as part of this submission and independently, there are clearly sufficient grounds to warrant a detailed evaluation of this Licence. In undertaking such an investigation, we believe the MMO will be provided with a body of evidence that conclusively undermines the basis upon which the Licence was issued, leading to the conclusion that it should seek to exercise its powers under section 72 of the Act and revoke the Licence.

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## 1. Legal Framework

The legal framework for marine planning is set out in the Act. Section 58(1) of the Act states that a public authority, which in this case is the MMO, must take any authorisation decision “*in accordance with the appropriate marine policy documents, unless relevant considerations indicate otherwise.*” An authorisation decision includes applications for a licence (see section 58(6)). Section 58(2) makes clear that if the public authority makes a decision otherwise than in accordance with the appropriate marine policy documents, it must state its reasons. In granting the Licence, the MMO did not state that it was departing from the applicable policy documents.

The “*appropriate marine policy documents*” include the relevant marine plan for the area and any Marine Policy Statements (see section 59 of the Act). The relevant marine plan for this area is the SWMP. There are a number of policies in the SWMP which apply to this licence and the basis upon which it was granted. They are discussed in detail later in this submission.

### 1.1 The basis of the original approval

Section 69 of the Act states that in determining an application for a marine licence, including the terms on which it is to be granted and any conditions to be attached to it, the licencing authority “*must have regard to- (a) the need to protect the environment, (b) the need to protect human health, (c) the need to prevent interference with legitimate uses of the sea, and such other matters that the authority thinks relevant.*”

As part of that decision making, the policies of the SWMP rest at the core of the MMO’s evaluation of the licence. In evaluating whether the licence application was consistent with the SWMP, the MMO undertook an evaluation of the application against relevant policies in the SWMP, in a document entitled “Licensing Marine Plan Policy Assessment’ (“**the MPPAT**”) authored by the Case Officer, Julia Stobie. Within that document, the MMO relied on a number of documents submitted by the Applicants and the evidence and statements within those documents. That evidence included a Stakeholder Engagement Log, where the Applicant claimed to have discussed the proposed (and now licenced) scheme with a list of stakeholders. That evidence is further discussed in Section 4 of this document.

Section 69 is the principal legislative provision which determines the suitability of any proposal, with compliance with the SWMP policies being a secondary, but required, consideration. The requirement to satisfy s.69(1) has been noted in several of the MMO’s responses to Complaints about this Licence.

The statements made in those responses (e.g. to Complaints C2469, C2393, C2362, C2390, C2488) have included the statement “A positive determination will only be granted if we can conclude that the proposed works will not have a significant impact on either the environment, human health, or other legitimate uses of the sea”. This statement is not reflective of the statutory wording, which does not require that the proposed works have a “significant impact”, but that the MMO must have regard to the need to protect the environment, human health, other legitimate uses of the sea, and “and such other matters as the authority thinks relevant”. To discount any impact which is less than “significant” incorrectly interprets the legislative requirements.

## **1.2 Powers in relation to existing licences**

The context of the present submission is that the MMO has the power, pursuant to section 72 of the Act to vary, suspend or revoke a licence in certain circumstances, including:

*(2)A licensing authority may by notice vary, suspend or revoke a licence granted by it if it appears to the authority that—*

*(a)in the course of the application for the licence, any person either supplied information to the authority that was false or misleading or failed to supply information, and*

*(b)if the correct information had been supplied the authority would have, or it is likely that the authority would have, refused the application or granted the licence in different terms.*

*(3)A licensing authority 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;*

*(c)in the interests of safety of navigation;*

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

The breadth of section 72(3)(d) was discussed in *Tarian Hafren Severn Shield Cyf, R (On the Application Of) v Marine Management Organisation* [2022] EWHC 683 (Admin). In that case, the MMO had granted a marine licence in relation to the deposition of dredged material connected to the construction of the Hinkley Point power station. The judicial review, in part, related to the scope of powers contained in section 73(2)(d), as the licence had been varied by the MMO pursuant to this provision. Holgate J, referencing *Bennion, Bailey and Norbury on Statutory Interpretation*, stated that the interpretation of a “relevant reason” was not restricted in scope by the wording of section 72(3)(a-

c). The language of the provision “*guards against any attempt to exercise the power in an arbitrary manner for no reason at all*” (paragraph 132) but did not otherwise restrict the nature of the matters which the MMO might consider relevant to exercising their powers under that provision. The scope of potential considerations under section 73(d) is therefore broad.

### **1.3 The legislative context of this submission**

In the present context, this submission will (1) identify a body of evidence which, *prima facie*, falls within section 72(2)(a), which, if it had been provided at the time the licence was issued, would likely have fulfilled the criteria of section 72(2)(b), and (2) further additional evidence which, variously, relates to the criteria of section 73(3)(a-d). Collectively, this evidence undermines the basis upon which the licence was issued. We request that the MMO consults relevant Primary Advisors and other independently bodies in relation to the additional evidence it has now received in relation to this Licence, re-consults with the listed stakeholders and extends that consultation to other relevant stakeholders and, upon conclusion of that consultation, considers whether to exercise its powers under section 72 of the Act and revoke the licence.

## **2. UK Marine Plan – precautionary principle**

Applications, and decisions, should take a precautionary approach to assessing risk over the life of proposals. Paragraph 2.3.1.2 of the UK Marine Policy Statement (2011) states that:

*Where evidence is inconclusive, decision makers should make reasonable efforts to fill evidence gaps but will also need to apply precaution within an overall risk-based approach, in accordance with the sustainable development policies of the UK Administrations. This will apply equally to the protection of the natural marine environment, impacts on society and impacts on economic prosperity.*

As such, when reviewing the application for a licence, the MMO are required to take a precautionary approach to the assessment of evidence.

The Applicant states that ‘*There are no residual risks*’ on pages 15, 19 and 22 of the Licence application form. To rule out any risk is concerning, given the innovative nature of the project, the sensitivity of the receiving environment and the need for a precautionary, risk-based approach. This ruling out of risk is also inconsistent with the statements within the Navigational Risk Assessment associated with the recovery of lost equipment. Irrespective of the Applicant’s approach to risk, the MMO are required to adopt a precautionary approach in their determination of a licence.

### **3. Suitability of the Seaweed Farm site for the proposal**

The SWMP includes an interactive policies map, available via the Marine Plans Explorer website, which shows, inter alia, the suitability of areas for fishing, aquaculture, areas of tourism and recreation activity (see SWMP Technical Annex, paragraph 3, for the use of these maps in relation to the SWMP). In relation to the culturing of seaweed, these maps show that the whole of the north coast of Cornwall falls outside areas which have been assessed as suitable for suspended seaweed aquaculture of the nature licenced here (including winged kelp, dulse, sugar kelp and oarweed). There is no assessment whatsoever within the application material of the interactive maps in the SWMP. This failure to have regard to an important part of the SWMP is a significant omission within the decision-making process.

#### **3.1 Policy SQ-AQ-1**

The SWMP policies include Policy SW-AQ-1, which delineates areas of “*existing or potential strategic areas of sustainable aquaculture production*”. That policy references spatially defined areas which are available via the Explore Marine Plans mapping. Within that mapping, the defined areas include a measure of how favourable the conditions are to the proposed aquaculture type (favourable to unfavourable). The limits of those areas have been defined with reference to evidence which shows the suitability of any given location based on a number of specified constraints.

The SWMP Technical Annex states (paragraph 2):

*the Technical Annex forms part of the [SWMP] and must be read alongside the main plan document to inform policy implementation and the development of proposals... The Technical Annex also provides guidance on use of the latest data and information to support the application of policies. Policies are written in such a way as to accommodate updates to the evidence that supports implementation.*

It is clear from this statement that the contents of the Annex should be used to interpret policies and, further, that new evidence may lead to the updating of the way in which policies are applied. In relation to SW-AQ-1, paragraphs 197 and 198 of the Technical Annex are particularly instructive, and include:

*SW-AQ-1 refers to areas of existing aquaculture production and those defined as potential strategic areas of sustainable aquaculture production, the latter of which have been spatially defined by the Marine Management Organisation in the Identification of areas of aquaculture potential in English waters (MMO1184) ... At the time of the Plan’s publication, MMO1184 has*

*identified potential strategic areas of sustainable aquaculture production ... For each species, the areas are defined by overlaying the following spatial data layers: optimal species growth rates in relation to environmental factors, technical constraints (i.e. where the culture method can occur based on physical factors), and planning constraints (i.e. other users of the sea).*

It is therefore clear that the evidence base underpinning policy SW-AQ-1 and the related mapping was MMO1184, with the text accompanying Figure 5 of the Technical Annex explicitly referencing MMO1184. MMO1184 provides guidance on favourable/unfavourable conditions for aquaculture, but it also makes clear that areas which are not within the favourability mapping have been screened out due to other constraints.

The Technical Constraints to aquaculture are discussed in Section 5 of MMO1184, with Figure 21(b) showing peak wave height. Section 5.3 of MMO1184 explicitly discusses the current and wave height limitations for seaweed species, with *'peak wave height, for all seaweed species was considered optimal between 0-4 m, suboptimal between 4-6m, and unsuitable >6m'*, with further reference to *'the possibility of a catastrophic loss of the farm during storm events must also be factored into the site placement, so a detailed study of the local wave climate should be considered (Capuzzo et al., 2014).'*

The study notes the *'very limited'* number of studies which underpin these conclusions and states that *'it is likely that farming at higher currents and wave height would be possible, however, there appears very limited evidence in literature'*. The one study which is referenced to have withstood larger waves (7-8m significant wave height) is in the Faroe Islands, where Ocean Rainforest use a backbone system with vertical seedlines in 50-70m of water, a system and depth that means the lateral forcing associated with depth-limited waves is avoided. Both depth limitation and the longline system proposed in this scheme mean the environment and engineering concerns are very different to Ocean Rainforest's scheme.

Buck et al. (2018)<sup>1</sup>, referenced in MMO literature, further expands upon the issues associated with proposals such as a present scheme:

*Offshore systems need to be able to withstand continuous waves, currents and storms, and should need minimal maintenance (most routines automated) so that they do not require constant maintenance by personnel... The strong hydrodynamic conditions at many offshore*

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<sup>1</sup> <https://www.frontiersin.org/articles/10.3389/fmars.2018.00165/full>

*sites may preclude farming of species without appropriate attachment methods. For example, following Buck and Buchholz (2004), rope culture of kelps (S. latissima), including longline, ladder and grid constructions, were all unsuitable for exposed conditions.*

The Technical Annex references the possibility of evidence evolving in relation to policies. MMO1184 was published in May 2019, so remains a relatively recent document in research terms. With respect to the suitability of sites with wave heights >6m for suspended seaweed aquaculture, it is of note that Cefas' recent Seaweed in East Anglia (February 2024<sup>2</sup>) continues to adopt a 6m maximum wave height threshold in screening sites for suitability (see Tables 2.1-2.4) and that report notes (at page 20):

*It is likely that farming at higher currents and wave height would be possible, however, to our knowledge, there is very limited evidence in literature. For example, the Ocean Rainforest farm, in the Faroe Islands, withstood a maximum significant wave height of 7-8 m (Buck and Grote, 2018).*

Such that there is little apparent new evidence to suggest that the Marine Data Explorer and SWMP's existing 6m suitability screening threshold is no longer appropriate. The Ocean Rainforest farm may be robust to larger swells, but is not directly comparable to the present scheme.

In summary, the SWMP policies are based on evidence that has resulted in the MMO considering wave heights of >6m to not be suitable for seaweed aquaculture due to the risk to infrastructure. The research that this draws on goes on to state that long line aquaculture is not suitable for exposed coastal conditions. The evidence in MMO1184, which directly informed the SWMP policies, resulted in the removal of any areas of potential for seaweed aquaculture for the entire North Cornwall coast within the Marine Data Explorer.

To override the “*best available evidence*” on site suitability, noting the requirement of the Marine Policy Statement to take a risk-based and precautionary approach, an applicant should robustly demonstrate through the provision of improved evidence that a site and scheme is suitable. As noted by Capuzzo et al. (2014), such analysis should consider a detailed study of the local wave climate.

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<sup>2</sup> [https://hethelinnovation.com/wp-content/uploads/2024/02/Cefas-Review-of-species-and-farming-methods\\_V5\\_Final\\_Feb24.pdf](https://hethelinnovation.com/wp-content/uploads/2024/02/Cefas-Review-of-species-and-farming-methods_V5_Final_Feb24.pdf)

In a number of responses to Complaints (e.g. C2475, C2393, C2390) which the MMO has received in recent months relating to the Licence, the following text has been included in the MMO's reply in relation to Policy SW-AQ-1:

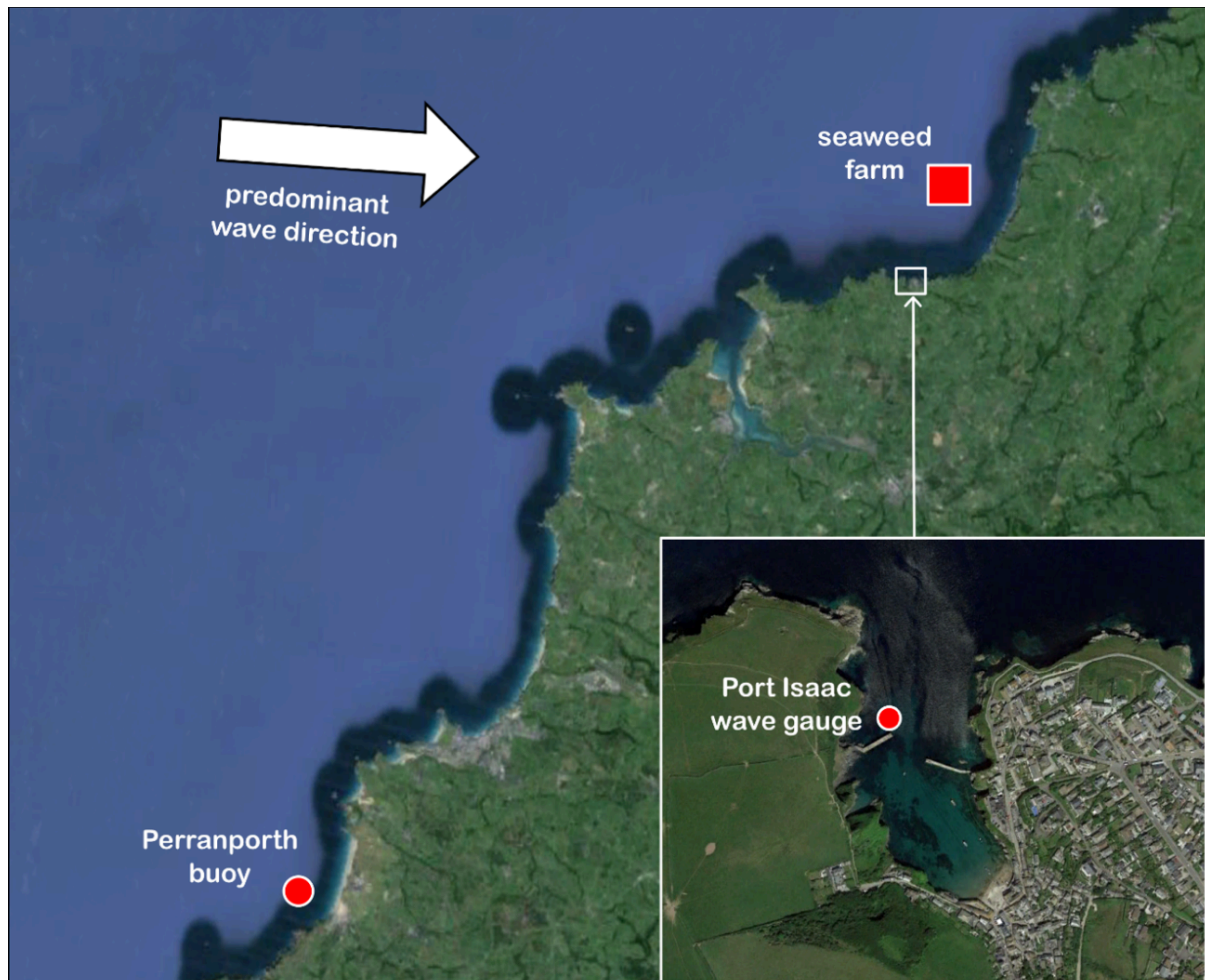
*“Explore Marine Plans” includes a map that identifies areas that have favourable and unfavourable conditions for seaweed growth. In areas that are not marked as either (such as for MLA/2022/00180) the MMO considers an application based on the information presented and best available evidence. Although the area of works was not specified as an aquaculture area as such, the marine plan policy is explicit, and so the MMO relied on this supportive policy as part of the decision making process.*

This statement does not properly interpret the policy, which is explicitly informed by the evidence based discussed in the SWMP Technical Annex. The policy is not “supportive” of aquaculture proposals outside the areas of strategic potential. The text and mapping of the SWMP cannot be interpreted as being agnostic to areas that fall outside the areas of strategic potential (“favourable and unfavourable”) since those areas have been excluded from the mapping due to one or more technical constraints that make them unsuitable for suspended seaweed production. The argument that a decision can instead be made on “information presented and best available evidence” overlooks the evidence base which explicitly informed policy SW-AQ-1 and associated mapping. If an applicant can provide robust, independently verifiable and credible evidence that a site outside an area of potential is suitable, thereby overcoming the existing technical constraints applied in the SWMP mapping, then a site might be appropriately licenced, but such evidence would need to demonstrate how that evidence overrides the “best available evidence” that fed into the constraints identified in MMO1184 and applied in the SWMP.

### **3.2 Sea conditions at the site – site suitability and policy context**

In Appendix 1 an analysis is provided by Dr. Tony Butt, an oceanographer and experienced wave forecaster, relating to the suitability of the Port Isaac wave gauge for assessing the sea state at the Seaweed Farm site, and further evaluating more comparable data to establish the likely sea conditions at the Seaweed Farm site. In Appendix 2 a further analysis is provided by Dr. Matt Hawcroft, a climate scientist, on these same points. Dr. Butt and Dr. Hawcroft draw on a number of independent data sources for their analysis, including Cefas’ Coastal Monitoring wave buoy at Perranporth, the Environment Agency’s State of the Nation dataset and the Copernicus MyOcean analysis, which was used by Cefas in their recent Seaweed in East Anglia (2024) project.

The Navigational Risk Assessment (NRA) provided in the application documents includes wave data from Port Isaac (Appendix 3 of the NRA). The Water Framework Directive & Ecology Assessment (WFD) discusses Site Suitability, but does not reference the Port Isaac data. Dr. Butt and Dr. Hawcroft both reference the data supplied in the application documents in their submissions.



*Figure 1: The Seaweed Farm site, the location of Port Isaac wave gauge (the data used in the application documents), the location of Perranporth buoy and the predominant wave direction in this area.*

The details of Dr. Butt and Dr. Hawcroft's submissions will not be replicated in full here, but a summary of those analyses can be distilled as follows:

- The wave data at Port Isaac does not reflect the conditions at the application site. Port Isaac is a harbour, sheltered from westerly swells, where the location of the wave gauge is depth limited. The Seaweed Farm site is directly exposed to westerly swells, which is the typical direction of the largest waves.

- That significant wave heights (the average of the highest 1/3 of waves) can exceed 6m at the Seaweed Farm site, with peak wave heights being necessarily greater than this. It is peak wave heights that are relevant to suitability and risk of infrastructural failure. At Perranporth, a location with equivalent swell exposure, significant wave heights exceed 6m most years (15 of the last 17 years).
- That evidence suggests peak wave heights in the range of 15m cannot be discounted at the Seaweed Farm Site.
- That during the lifetime of the Licence, the 6m threshold will be exceeded regularly and that it is likely peak wave heights will increase in the future when compared to the historic data used in this analysis due to the impacts of climate change.

This analysis indicates that the sea conditions at the site regularly exceed the 6m threshold that the MMO has previously defined as “*unsuitable*” for a proposal of this nature. The evidence provided in the application documents, from Port Isaac, is not representative of the Seaweed Farm site. The application documents provide no evidence to rebut the “*best available evidence*” which was used in MMO1184, relied upon in formulating the SWMP, and is still being used by Cefas for seaweed related projects in 2024. The application documents do not include a “*detailed study of the local wave climate*” but include a dataset from a location which is not comparable to the Seaweed Farm Site.

**We request that the MMO consults Cefas and the Environment Agency in relation to this data, and the likely sea conditions at the Seaweed Farm site, prior to making any further decision in relation to this Licence.**

### **3.3 Risk of infrastructure failing and policy context**

SPIBG have commissioned an independent Third Party Verification of the Seaweed Farm proposal by Aquamoor Limited. The report produced by Aquamoor is provided with this submission. Lawrie Stove, the engineer responsible for producing that report, and the principal of the Aquamoor business, has recently been taken ill. The report is therefore provided in draft form, with the completed document to follow when Mr. Stove is able to do so. The conclusions of the draft report are based on detailed analysis undertaken in relation to the proposal and we believe those conclusions are robust based on conversations with Mr. Stove. We fully expect the completed report to reaffirm the existing

conclusions, since they are based on work that has already been undertaken but has not all been written up as yet.

The application documents include the statements *“There is significant in-situ evidence for the stability of the infrastructure system in similar bay conditions within the South West”* (NRA, page 3) and that the *“farm is within a relatively sheltered area (protected from south westerlies due to the bay formation and location) and the tried and tested farm system has been tested successfully in similar conditions in the South West”* (WFD Assessment, page 4). No evidence is provided for where a system like that proposed by Penmayn has been shown to be stable or *“tried and tested”* in similar conditions to the Seaweed Farm site. As is clear from Section 3.2, above, the site is not sheltered from large swells. A seaweed farm with similar infrastructure to the Penmayn scheme in Torbay, a far more protected site on the south-east Devon coast, recently suffered an infrastructure failure (see Appendix 3).

As part of the Licence determination process, the MMO/MCA requested that Penmayn provided a Third Party Verification (TPV) of the mooring arrangements (email from MCA to MMO, dated 17<sup>th</sup> March 2023) that satisfied the below requirements, consistent with HSE/MCA guidance<sup>3</sup>:

- *it can withstand such forces acting on it as are reasonably foreseeable;*
- *its construction, commissioning, operation, modification, maintenance and repair of the installation may proceed without prejudicing its integrity;*
- *it may be decommissioned and dismantled safely;*
- *in the event of reasonably foreseeable damage to the installation or its moorings, it will retain sufficient integrity to enable action to be taken to safeguard the health and safety of persons on or near it.*

*Reasonable foreseeable considerations include:*

- *Environmental conditions, e.g. winds, waves, water depth, tidal and current conditions;*
- *Loads during operational conditions including normal operation, contact loads from access boats and temporary loads maintenance operations.*
- *The weight of the installation and anything on it, buoyancy, drag and inertia forces from movement of the seaweed farm;*
- *Unplanned incidents including vessel impact; and*

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[https://assets.publishing.service.gov.uk/media/5a822d33ed915d74e623631c/Regulatory\\_expectations\\_on\\_mooring\\_devices\\_from\\_HSE\\_and\\_MCA.PDF](https://assets.publishing.service.gov.uk/media/5a822d33ed915d74e623631c/Regulatory_expectations_on_mooring_devices_from_HSE_and_MCA.PDF)

- *Mooring failure (thereby becoming a navigational hazard to third parties)*

The documents that Penmayn provided in relation to this were from Fielder Marine Services. Those documents did not provide any substantive reference to the design of the Seaweed Farm, the environmental conditions, loadings or weights, unplanned incidents or mooring failure. The email provided to the MMO as a TPV (2<sup>nd</sup> May 2023) stated that these considerations had been taken into account, without reference or quantification of what had been considered and how. It is evident that FMS have experience in offshore engineering, but no material evidence is provided in relation the evaluation of the Seaweed Farm itself.

The report produced by Aquamoor concludes that the assessment of the proposal, as Licenced, was insufficiently rigorous, with a failure to follow best practice. It further notes that the site is not suitable for this kind of farming, given the sea state, and that the evidence provided in the application documents was misleading. Aquamoor note that the chance of failure is *“high, if not inevitable”*. They conclude that the design is not fit for purpose and may present a risk to safety of life at sea. If the moorings fail, and parts or all of the Seaweed Farm infrastructure catastrophically fail, the risks associated with loose infrastructure quite clearly have the potential to have risks to the environment, human health and other legitimate users of the sea, contrary to section 69(1) of the Act.

It is noted that in response to a complaint (C2401) the MMO have stated that *“Please note that it is outside of the MMO’s jurisdiction to comment on the structural integrity/engineering/stability of the proposals which are submitted to us.”* This statement clearly fails to recognise the MMO’s requirement to consider section 69 of the Act, and the possibility of any infrastructural failings having further implications that are inconsistent with policies contained in the SWMP. A further statement in response to a query in relation to the limited availability of emergency response (C2401), that *“the MMO cannot comment on existing infrastructure in terms of emergency response and policing as this is not within our jurisdiction”* also fails to recognise the MMO’s obligations under the Act. If any infrastructure fails, then the ability to recover and/or repair that infrastructure is critical to mitigating any risks to the environment and other users of the sea, and a failure to have regard for this is inconsistent with the requirements of section 69 of the Act.

In approving the Licence, the MMO relied on the statements made in the application documents in relation to risk and failure and have recently stated (response to C2490) *“in relation to the seaweed farm infrastructure being damaged and washing up on the coast the applicant states they have*

*assessed this as “NO impact” as the system is a “tried and tested system in the South-west in dynamic sea conditions offshore – with no incidents of damaged or lost gear over a 5+ year period.” The Navigational Risk Assessment (NRA) assesses loss of equipment as low risk and notes that equipment will be marked and traceable in the event that it does break free.”* As set out above, and evidenced in the report produced by Aquamoor, these statements are incorrect and/or unevidenced. The system is not *“tried and tested”* in equivalent conditions. There has recently been an incident of lost gear, in an area with sea conditions far less dynamic than the Seaweed Farm site. The assessment of lost equipment as *“low risk”* is not properly evidenced and contrary to the conclusions of an independent, expert analysis. Whether or not it is marked does not change that risk, and the Licence does not, in any event, appear to require such marking and traceability.

**It is requested that the MMO, prior to making any further decision in relation to this Licence, consult with the MCA in relation whether the scheme, as Licenced, satisfies their TPV guidance given the evidence now available, whether they agree with the existing conclusions of Aquamoor in relation to the scheme, and whether they now consider the proposal is suitable for this location.**

#### **4. Public consultation, reliance on pre-engagement and policy conflict**

The MMO have now received a large number of objections/Complaints in relation to this licence. A number of those objections reference the lack of proper public and stakeholder consultation. The MMO have stated *“Any objections to a licence application should have been raised by third parties and considered during the pre-application and application processes”* (e.g. responses to C2362, C2355) but this requires those third parties to be aware of any given application at the time it was submitted and considered.

It is noted that section 68(1) of the Act requires that notice of an application is published, and that in this case (per section 68(1)(b)), it was published by the applicant. Such notice *“must be in such manner as the authority thinks is best calculated to bring the application to the attention of any persons likely to be interested in it”* as required by section 68(2).

In the context of these statutory requirements, the MMO is aware (C2499) that the notice for the application was put at a location near to, but not within, a car park at New Road, which is not the main car park for Port Isaac, and is principally used by tourists. Given this, the placement of the notice could not reasonably be said to be *“best calculated”* to bring the attention of *“persons likely to be*

*interested*", being residents and local stakeholders, including the residents of Treligga, being the closest village to the Seaweed Farm site.

The MMO further requires that the notice be displayed for 28 days. The MMO have relied on the satisfactory display of this notice in responding to Complaints (*"The applicants also placed a public notice in Port Isaac's main car park overlooking the area where the project was planned for 28 days"*, response to C2362). The notice was taped to a fence (see Appendix 4) and the MMO is aware that it was no longer in place in less than a week. As such, the application's publication was not consistent with section 68 of the Act and the MMO's public notice requirements. Further, the associated newspaper advert was placed in a single weekly paper (see Appendix 4), at page 46, and contained no substantive details about the proposal. It would not allow a member of the public to grasp the nature of the proposal and assess the potential impacts of the proposal.

Within the application documents, a stakeholder engagement log was provided. The MMO is now aware (via Complaints it has directly received) of the fact that the information in that document is, at minimum, not wholly correct. The MMO has received correspondence noting that the scheme, as described to some of those listed, was not the scheme that was approved and/or the level of engagement that is listed in that document is not consistent with that which has now been reported to the MMO.

The applicant made further representations to the MMO (*"Response Table"* document) in relation to stakeholder consultation, with the statement *'All parties reached agreement'* (Response 2, see also Navigational Risk Assessment, page 3, for the same statement) being made in relation to the proposal. The MMO has received statements/objections that confirm this statement is not correct. In a meeting with the MMO and Maritime and Coastguard Association (MCA, 19<sup>th</sup> October 2022, Appendix 5) further representations were made in relation to consultation, with the applicant stating that the location had been agreed with the Harbour Commissioner and fishing community. There are two relevant harbours in the area – Port Isaac and Padstow – with Port Isaac being closest to the Seaweed Farm site. The Applicant further stated that *"Sea Safari had no issues - saw it as a positive thing - something else for customers to look at while out on sea safari."* The Applicant has provided no letter of support or independent evidence for this statement.

A response to consultation from the MCA (16<sup>th</sup> November 2022, Appendix 6) includes the statements *"It is our understanding that discussions have taken place with local harbour authorities, other users,*

*recreation and fishing representatives with regards to the location and all have agreed the location. No concern has been raised by the RYA, fishing representatives or the Port Isaac Harbour Master*". The Port Isaac Harbour Master has since voiced his concerns to the MMO. The Port Isaac Harbour Commissioners were never formally consulted in relation to this application, in spite of being the closest harbour, where the applicant proposes that *"A vessel will be on standby at Port Isaac Harbour ready to respond when safe to do so, should any equipment break free"* (per MCA, Appendix 6), and in spite of St. Endellion Parish Council specifically requesting that the Harbour Commissioners were consulted.

The Cornwall Fish Producers' Organisation was never consulted in relation to the application and their members, including the majority of the commercial fishing businesses in the area, therefore cannot be said to have agreed to this location. In the Stakeholder Engagement Log, the North Devon Fishermen's Association is listed as having been consulted, but is not a relevant organisation, given this Licence is in Cornwall. No recreational sea users who are likely to be affected by the proposal are listed on the Stakeholder Engagement Log, with the most notable representative body being the Port Gaverne Fishermen's Association, which licences boats in Port Gaverne (the closest launching point to the Seaweed Farm site), and were never consulted.

In response to Complaints, the MMO has stated (e.g. response to C2488) that *"It should also be noted that the MMO can only assess information that is submitted to us by the applicant as part of their application and throughout the application process."* This statement is not correct. The MMO, under section 69(3) of the Act, has the power to consult persons or bodies independently as part of the application process. The MMO is not reliant on the provision of information by the applicant alone. The MMO has further stated that *"the MMO do not rely on letters of support in determining a marine licence."* (Response to C2488).

It is quite clear from the MMO's MPPAT document that the Applicant's statements in relation to engagement and support were relied upon as part of the policy assessment for the Licence. Indeed, the MMO Coastal Office response states that *"The consultation documents show extensive local engagement"*. The MMO, in response to Complaints, has also noted that (emphasis added) *"Any objections to a licence application should have been raised by third parties and considered during the pre-application and application processes"* (e.g. responses to C2362, C2355), again referencing pre-application engagement as a consideration within the licencing process. The MPPAT that was produced as part of the MMO's licencing process makes this reliance explicit. In relation to policies

SW-ACC-1, SQ-AQ-1, SW-FISH-1, SW-FISH-2 and SW-PS-1 the MMO's MPPAT analysis (see Case Officer Assessment of plan policy) and screening out of conflict with those policies all references, and relies upon, the applicant's pre-engagement. Further, the MCA's response to consultation (16<sup>th</sup> November 2022, Appendix 5) also explicitly relies on the Applicant's pre-engagement to screen out conflict and risk.

The MMO is now in receipt of a body of evidence that provides sufficient evidence to justify investigation of the accuracy of the stakeholder engagement reported in the application documents, particularly given the MMO's reliance on statements made in the application documents, and further correspondence whilst the Licence was being determined, in relation to conflicts with other stakeholders and users and the nature and level of public/stakeholder engagement that was undertaken.

We therefore request that the MMO independently contacts all of those stakeholders listed on the stakeholder engagement log to clarify (1) whether they knew the scheme was for a 100-hectare, 25-year licence at the Licenced site off Tregardock at the time they were consulted, (2) whether they operate in the area of the Seaweed Farm site and therefore could be affected by it, and (3) whether they support the proposal as Licenced. In addition, we request that the MMO, at minimum, consults the below listed businesses and bodies, notwithstanding the further need to re-consult with Primary Advisors in relation to other issues discussed in this submission:

Port Isaac and Padstow Harbour Commissioners

The Cornwall Fish Producers' Organisation

All commercial fishermen working from Port Isaac and Port Gaverne

Port Gaverne Fishermen's Association

St. Endellion, St. Teath, Delabole and Tintagel Parish Councils

Cornwall National Landscapes

Cornwall and Isles of Scilly Marine Coastal Partnership

The National Trust

Cornwall Wildlife Trust

Tourism operators - Padstow Sea Safaris (Padstow), Wavehunters (Rock/Padstow), Boaty (Port Isaac), Cornish Rock Tours (Port Gaverne), Trebarwith Surf School (Trebarwith), Caradoc of Tregardock (Tregardock)

Recreational users - Port Isaac Rowing Club, Tintagel Surf Lifesaving Club

The MMO's reliance on the applicant's statements in relation to impacts on other users fails to identify and assess the potential negative economic impact that the proposal may have on fisheries and other commercial enterprises, and fails to recognise and consider conflict with other individuals. In this context, the Licence has potential or explicit conflict with policies SW-ACC-1, SW-CO-1, SW-EMP-1, SW-FISH-1, SW-FISH-2 and SW-SOC-1. The MMO has already received some independent evidence in relation to these conflicts. The MMO has relied on unquantified and unevidenced statements in relation to employment and economic benefit (for example, Marine Policy Statement, section SW-EMP-1), which the MMO has repeated in response to Complaints "*The construction of a seaweed farm would mean some increase in related employment*" (Response to C2469). There is no evidence for this increase, but there is tangible evidence for negative economic impact within the wider community. As such, there is a prima facie policy conflict.

In applying the required precautionary principle in considering evidence and determining a Licence application, it is not appropriate for the MMO to rely on unsubstantiated representations in relation to the potential benefits of an application. The application documents include no detail or specificity as to what the economic and societal benefits consist of, for example, how many jobs will be created, what training initiatives will there be, how much local revenue will be generated, what tourism and community programmes will there be, and no positive evidence is offered to support these claims. If these benefits are not quantified and evidenced, then they cannot lawfully be taken into account as part of the policy assessment.

## **5. MMO's Quality Assurance criteria and the application documents**

The MMO has published a "*Process for evidence quality assurance*" (QA) document, which requires a high quality of evidence to be provided by applicants, given the precautionary approach the MMO must follow in order to make lawful decisions. This, relevantly, includes the following:

- i. Evidence produced by applicants must be "collected, processed and published with rigour" and there must be "appropriate quality assurance processes" in place and embedded within the organisation that has produced the evidence.*
- ii. Evidence must be proportionate and targeted and "the best available evidence". For example, "a set of conclusions on one population of a marine species may not be appropriate for a separate population for reasons such as tides or wave action."*

- iii. *There must be a clear and recognised “methodology” in the evidence.*
- iv. *An “independent external review” will add to the confidence placed in the evidence, and evidence must be “unbiased”.*

The MMO, in response to Complaints and queries in relation to this Licence (e.g. E2700), has referenced the use of the MCMS, but has not commented on how the application documents were scrutinised for consistency with the requirements of the QA document. Almost all of the application documents appear to have been prepared and written by the applicant themselves, rather than by any external, independent expert consultants. This is unusual and reduces the weight that can be given to these assessments, particularly given the requirement for *“independent external review”* and *“unbiased”* evidence in the MMO’s own guidance. The Marine Policy Assessment provided by the Applicants includes many statements which are unreferenced and without any supporting evidence, yet the MMO’s MPPAT document references those statements as being sufficient to evidence policy compliance. Such statements are made in the Marine Policy Assessment for policies SW-INF-1, SW-FISH-3, SW-EMP-1, SW-CC-1, SW-CC-2, SW-CC-3, SW-WQ-1, SW-SOC-1, SW-MPA-1, SW-MPA-2, SW-BIO-1, SW-BIO-2 and SW-DIST-1. The MPPAT then referenced and relied on those statements in relation to the assessment of policies SW-INF-1, SW-FISH-3, SW-EMP-1, SW-CC-1, SW-CC-2, SW-CC-3, SW-WQ-1, SW-SOC-1 and SW-BIO-2.

Beyond many statements included in the Marine Policy Assessment, and elsewhere in the application documents, being unevidenced, some are demonstrably incorrect. These include:

- The Water Framework Directive (WFD) Assessment states that the water quality is Good and the chemical status is Good. It is not. The overall status of this water body is Moderate and the chemical status is Fail<sup>4</sup>.
- The WFD also states that *“Peer-reviewed, published research articles have established that seaweed farms of 100 Ha and below do not significantly or negatively impact water quality or the natural marine environment”* without any reference. The WFD references Campbell et al. (2019)<sup>5</sup> as authority for this point. In that study a hypothetical risk assessment is undertaken for a farm of 100 Ha (their Table 1), and the paper cannot be used as authority for this point. Indeed, Marine Scotland’s guidance<sup>6</sup> is referenced in Campbell et al., where the potential for

<sup>4</sup> <https://environment.data.gov.uk/catchment-planning/WaterBody/GB610807680002?cycle=3>

<sup>5</sup> <https://www.frontiersin.org/articles/10.3389/fmars.2019.00107/full>

<sup>6</sup> <https://www.gov.scot/publications/seaweed-cultivation-policy-statement-2017/pages/2/>

environmental harm is noted at a far smaller scale (farms with >50 x 200m lines) and also cites Norwegian government guidance which operates a 10 Ha threshold before environmental monitoring is required (see Campbell et al. for discussion).

- The statement *“Seaweed farming plays an important role in carbon sequestration”* is not evidenced (Marine Policy Statement, section SW-CC-1). The WFD includes the statement *“seaweed will lock up carbon within its biomass (carbon sequestration)”*. Recent peer-reviewed research (Boyd et al., 2024<sup>7</sup>) suggests that this role is, at best, uncertain and likely minimal. Boyd et al. note that *“most seaweeds do not directly remove CO<sub>2</sub> from the atmosphere, and nor do they store carbon in living biomass or soil”*, such that the statement made in the WFD is not correct. Further, given the intention to farm the seaweed and remove it from the sea, the carbon sequestration benefits of the Seaweed Farm are likely to be, at best, extremely minor and have not been evidenced in the application documents.
- The statement *“The benefits of seaweed farms include resilience to climate change”* (Marine Policy Statement, section SW-CC-1) is unevidenced. The UK Marine Policy Statement (paragraph 2.6.8.6), states that developments should take account of the impacts of climate change over their estimated lifetime, in particular taking account of risks such as increased land and sea temperatures. There is no analysis on the proposal’s tolerance/resistance to sea surface temperature change over the 25-year Licence period. This is perhaps most relevant for the August harvest of dulse (see MMO Project 1184, Section 3.2 references 15-18°C limiting growth and >18°C being unsuitable). These thresholds are already being exceeded during the summer at the nearest station to the Seaweed Farm site with available data (Perranporth<sup>8</sup>). The WFD further, incorrectly, states that *“sea temperatures (8-12°C) are optimal for farming/growth of all native seaweed species”* (WFD, page 3). This is not the temperature range at the Seaweed Farm site, which will closely correlate with the Perranporth buoy, and will currently likely exceed 18°C in the summer, with a likelihood of further increases in temperatures during the lifetime of the Licence.
- The statement *“The Penmayn farm will protect habitats and biodiversity”* (Marine Policy Statement, section SW-MPA-1, SW-BIO-1, SW-BIO-2, SW-FISH-3) is, again, unevidenced. Boyd

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<sup>7</sup> <https://iopscience.iop.org/article/10.1088/1748-9326/ad502f>

<sup>8</sup>

[https://coastalmonitoring.org/realtimedata/?chart=76&tab=stats&disp\\_option=&data\\_type=TSea&year=All%20years&data\\_plot=1](https://coastalmonitoring.org/realtimedata/?chart=76&tab=stats&disp_option=&data_type=TSea&year=All%20years&data_plot=1)

et al. conversely note that *“farmed seaweeds are monocultures and expansive farms can reduce benthic biodiversity and result in habitat loss”*. Given the intention to remove the seaweed annually, this further erodes the basis for suggesting that the Seaweed Farm will create a beneficial habitat. Relatedly, the habitat created by the growth of the seaweed will be removed during spawning season for some fish species identified in the Seabed, Fisheries and Marine Mammal Assessment submitted with the application, with no reference to the fact that a substantial change in the local marine environment during spawning may be particularly harmful.

- The WFD (page 5) states that currents at the site are *“expected between 50-100 m/s-1”*. This is physically impossible and would also be contrary to the guidance in MMO1184 on current speeds.
- The Keel Clearance Study (Schedule 10 of the Licence) produced by Penmayn concludes by stating *“the analysis of the vessels identified as users of the area show they will not have the keel clearance to safely traverse the site, unless confined to the escape channel. It is noted however that ribs with outboard engines capable of raising the prop will be able to increase their clearance and leave the site.”* If any vessel enters the site and is required to raise the propeller, it will not be able to propel itself from the site. There is no evaluation of how vessels without propulsion may leave the site and/or the risks to a vessel drifting within the site, such as entanglement with the lines, and/or whether another vessel may be able to safely access the site (such as the RNLI lifeboat) to recover the stranded vessel.

There are substantial knowledge gaps and a lack of objectively and independently evidenced information in relation to many of the statements made in the application documents. Given the requirement for a precautionary approach in assessing applications, and given the context of the environment in which the Seaweed Farm is sited, the failure to require independent, unbiased and rigorous evidence is inconsistent with the MMO’s QA requirements. This undermines the basis upon which the Licence was approved. Given the further and substantial evidence provided elsewhere in this submission in relation to the clear statutory and policy conflicts associated with this Licence, the evidence base for many conclusions reached within the MPPAT should be reviewed.

## **6. Impact on seascape and adjacent protected landscape (AONB/CNL)**

SW-SCP-1 sets out requirements in relation to landscape and seascape as follows (emphasis added):

*The location, scale and design of proposals should take account of the character, quality and distinctiveness of the seascape and landscape.*

*Proposals should ensure they are compatible with their surroundings and should not have a significant adverse impact on the character and visual resource of the seascape and landscape of the area.*

It is therefore clear that the relevant policy requires that the impact on both the sea and land should be assessed as part of the licencing process. The scope of the word “seascape” is described in the Marine Policy Statement, paragraph 2.6.5, to include “*landscapes with views of the coast or seas, and coasts and the adjacent marine environment with cultural, historical and archaeological links with each other*”. The Seaweed Farm site quite clearly sits within an area of sea which falls within this definition. It is adjacent to, and visible from, a protected landscape.

The MMO has stated in response to a recent Complaint that: “*The seaweed farm location falls beyond the boundary of the Cornwall Area of Outstanding Natural beauty and therefore Cornwall National Landscape were not consulted*” and that “*No issues were raised regarding impacts to seascape by consultees*” (response to C2488).

In the MPPAT, section SW-SCP-1, reference is made to consultation with Natural England, but the two pieces of correspondence referenced (11 August 2022 and 10<sup>th</sup> July 2023) solely relate to the Habitats Regulations Assessment for the Licence. A further statement in that section of the MPPAT, “*No issues raised (sic) regarding seascape (the farm is offshore)*” is non-sensical, since the scope of the word seascape quite clearly captures areas that could be offshore, and is explicitly protected by SW-SCP-1. This section of the coast is Cornwall National Landscape (formerly termed an Area of Outstanding Natural Beauty), a Heritage Coast and a Marine Character Area. In the formulation of the SWMP policies, the adjacent AONB and Heritage Coasts were explicitly recognised as considerations as part of MMO 1134 “*Seascape Character Assessment for the South West Inshore and Offshore marine plan areas*”<sup>9</sup> and the creation of Marine Character Area 44, which covers Hartland Point to Port Isaac Bay.

The consultation undertaken as part the licencing did not therefore appear to take into account impact on the protected landscape which the Seaweed Farm site will be visible from. The MMO did not appear to properly consult any body on either seascape or landscape impact. The requirement within section 85 of the Countryside and Rights of Way Act 2000, as amended by the Levelling Up and Regeneration

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<sup>9</sup> <https://www.gov.uk/government/publications/seascape-assessments-for-north-east-north-west-south-east-south-west-marine-plan-areas-mmo1134>

Act 2023, requires relevant authorities to “*have regard to*” and to “*further*” the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty, including any functions which may “*affect*” an AONB/CNL, whether or not the activity is actually undertaken within the AONB/CNL. The MMO’s approach to SW-SCP-1 is therefore both contrary to the SWMP and primary legislation.

The application documents state that the project is “*underwater*” (Marine Policy Assessment, section SW-SCP-1) with the MMO further stating that “*no farm infrastructure would be visible*” (e.g. response to C2488). These statements are incorrect. The Licence conditions require that lighted buoys, visible from 5nm away, are placed on the site, in addition to the up to 2400+ buoys that could be placed on the lines as detailed in Licence Schedule 2, the size and appearance of which is not restricted by the Licence conditions. These are clearly visible pieces of infrastructure. Given the lines which the seaweed will be cultivated on will be 2m below the surface, they will likely have a substantial visible impact on the overall appearance of the seascape when viewed from the elevated position of the South West Coast Path.

The MMO has recently received a detailed letter from Jim Wood of Cornwall National Landscapes (3<sup>rd</sup> April 2024) setting out how this Licence has the potential for considerable landscape/seascape impacts, and how that impact conflicts with a substantial number of policy provisions, above and beyond SW-SCP-1. This letter is independent, expert evidence of how the proposal substantially conflicts with a number of policies. Since receiving Mr Wood’s letter, the MMO has stated (response to C2488) that it is “*content that impacts to visual amenity are minimal.*”, a position without robust supporting evidence and in direct conflict to Mr Wood’s opinion.

In terms of the evidence provided by the applicants in relation to this impact and whether it satisfied the MMO’s QA criteria, the Landscape Institute and Institute of Environmental Management and Assessment have published the Guidelines for Landscape and Visual Impact Assessment (“GLVIA”) which sets out a transparent and objective methodology for assessing landscape and visual effects. However, there is no substantive attempt to assess visual impact in the application documents. The Landscape Institute has also published a Technical Guidance Note on the production of photomontages and visualisations. The application documents do not include any photomontages or visualisations to enable an accurate assessment of what the level of visual effects will be. As such, the MMO cannot lawfully or reasonably conclude that visual effects will be acceptable.

The landscape and seascape in this area has a substantial economic role, given how important tourism is to the local economy. It also has a substantial recreational role for residents. Any negative impact

on either tourist activity or the ability of individuals to enjoy the marine and coastal environment have the potential to have further conflict with policies SW-SOC-1, SW-TR-1, SW-ACC-1 and SW-CO-1. The potential conflicts with these policies associated with the landscape and visual impacts of the Licence were not referenced during the licencing process and are material considerations.

## **7. Cumulative impact assessment**

The MMO is required to, per policy SW-CE-1, ensure that proposals assess and seek to avoid, minimise or mitigate “*adverse cumulative effects with other existing, authorised or reasonably foreseeable proposals*”. In response to Complaint C2362 the MMO stated “*The MMO had not received an application for a seaweed farm at Port Quin at the time of this application.*” However, it is clear that the MMO were aware of the two applications MLA/2023/00307 and MLA/2023/00308 at the time the present application was determined and licenced, such that they were “*reasonably foreseeable proposals*”. Those applications were submitted on 12<sup>th</sup> July 2023, prior to the determination date of the present Licence. In addition, the MMO Coastal Office response for this Licence was received in August 2022 and included the following statement:

*Are there any other projects planned or in progress in the area which the licensing team should consider as part of any assessment of in-combination effects?*

*A few of the people I have spoken to regarding this have mentioned that there are plans for another Sea weed farm in Port Quin, which is very close to Port Isaac.*

It is therefore quite clear the MMO failed to take into account the potential for cumulative effects associated with these schemes and their potential impacts across other SWMP policies, or require the applicant to do so. The two Port Quin licence applications are now being assessed and should be taken into account in the MMO’s evaluation of the propriety of this Licence. As part of this assessment, the Habitats Directive and Habitats Regulations require that an appropriate assessment must take into account cumulative effects which result from the combination of that plan or project with other plans or projects (see also *Waddenzee* [2005] All ER 353 at [53]) and the assessment produced in relation to this licence did not do so. This should be undertaken as part of any further review the MMO now undertakes in relation to the potential exercise of its power under s. 72 of the Act.

## **8. Economic status of applicant company**

The Applicant company is a shell with no material assets or trading history. The directors of the company appear to have no relevant experience in aquaculture or marine engineering projects. This

is relevant to a decision on whether to grant the licence applications insofar as it is related to considerations of deliverability and protection of the environment. The deliverability of a proposal can be a relevant material consideration (see *Newcastle City Council v SSHCLG* [2022] EWHC 2752 (Admin)) and this would equally apply to the deliverability of the safe operation and decommissioning of a proposal. The Applicant's WFD notes that, from a monitoring perspective:

*It is possible to monitor the effects of seaweed farms on the marine environment, biodiversity and habitats, as well as assess the wider economic and social benefits of seaweed farming for local coastal communities... Such programs are costly in terms of expertise, time, equipment, University overheads and other resources. They are usually beyond the affordability of typical seaweed farmers operating a typical seaweed farm business. However, if other bodies were to collaborate (IFCA, CEFAS, MMO and NE), and if grants were allocated to collecting and monitoring such data, knowledge gaps would be filled and any impacts detected, avoided or mitigated accordingly.*

As such, the Applicants recognise their own financial inability to monitor the ecological impacts of the proposal during the lifetime of the Licence. The current licencing condition relating to monitoring (NRA and Licence Schedule 9) relates to monitoring the robustness of the infrastructure, but even without a failure of the infrastructure, the proposal may have ecological impacts that are inconsistent with the SWMP. If the Applicant company is unable to finance the monitoring of such impacts, and it is noted that their management is not conditioned within the Licence beyond the Biosecurity Protocol, then these risks and impacts have not been properly considered or protected as part of the Licencing process.

The Licence notes that decommissioning is not considered as part of the licencing process, but an apparent lack of financial viability in relation to an applicant is concerning in relation to whether the applicant has the financial ability to monitor, maintain and safely decommission and remove infrastructure, in a way that does not cause harm to the environment.

The MMO has stated in response to Complaints (e.g. C2390, C2393, C2355) that "*It is not within the remit of the MMO to comment on past experience, financial resources of the applicant or funding of the project*" but this is clearly a material consideration, since if the Licence holder is unable to operate, maintain or recover infrastructure in the event of a failure of the farm, then it may have the potential to cause harm that is inconsistent with section 69(1) of the Act. Given the conclusions of the report

produced by Aquamoor in relation to this Licence, this is a particularly material concern in this instance and has obvious implications for whether the Licence is consistent with section 69(1) of the Act.

## **9. Conclusion**

In conclusion, for the reasons set out above, the Licence appears to conflict with the South West Marine Plan, when considered as a whole, and poses substantial risks that are contrary to s.69(1) of the Act.

The MMO has the power to revoke licences under s.72 of the Act under certain circumstances. There is substantial evidence within this submission, and in other letters and Complaints that the MMO has now received, that the basis upon which the Licence was approved was erroneous. The application documents include a body of inaccurate and/or unsubstantiated information, and the MMO has further been provided with a large body of new evidence which further erodes the basis upon which the Licence was approved.

In approving the Licence, the MMO did not independently verify much of the evidence presented in the application documents. The MMO, in recent correspondence, has repeatedly indicated that it misdirected itself as to the interpretation of policy and guidance relevant to the Licence. The MMO did not seek independent, expert opinion on a number of issues which could have been provided by Primary Advisors and other bodies.

We request that the MMO now reviews the evidence that has been supplied in this submission and that it has received from other individuals and bodies in recent months. We further request, as detailed elsewhere in this statement, that, at minimum, the MMO re-consults with Cefas, the Environment Agency, the Maritime and Coastguard Agency, the individuals and organisations listed on the Stakeholder Engagement Log, and the stakeholder organisations and individuals listed in Section 4 of this statement in relation to the basis upon which this Licence was granted, and the evidence that the MMO is now in receipt of in relation to this Licence.

In undertaking such an investigation, we believe the MMO will be provided with a body of evidence that conclusively undermines the basis upon which the Licence was issued, leading to the conclusion that it should seek to exercise its powers under section 72 of the Act and revoke the Licence.