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The Rt Hon Lord Boswell  
Chairman  
Select Committee on the European Union  
House of Lords  
London  
SW1A 0PW

6 December 2018

Dear Tim,

**EM 11561/18: REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL ASSESSING MEMBER STATES' PROGRAMMES OF MEASURES UNDER THE MARINE STRATEGY FRAMEWORK DIRECTIVE**

**11561/18 ADD 1: COMMISSION STAFF WORKING DOCUMENT ACCOMPANYING THE DOCUMENT REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL ASSESSING MEMBER STATES' PROGRAMMES OF MEASURES UNDER THE MARINE STRATEGY FRAMEWORK DIRECTIVE**

Thank you for your letter of 22 November 2018.

We note that you have decided to retain under scrutiny the explanatory memorandum EM 11561/18 on the Commission's staff working document assessing Member States' programmes of measures (PoMs) under the Marine Strategy Framework Directive (MSFD), subject to obtaining clarity on two particular issues.

Before addressing these issues in detail, I would like to flag up two important points in order to put our response in context.

Firstly, the recommendations from the Commission in the staff working document are provided for Member States to consider by the time of the next update of their Marine Strategy Part 3 programmes of measures report, which is required by December 2021. In general the policy of the UK and Her Majesty's Government of Gibraltar (HMGoG) is not to wait until 2021, but to take the recommendations on board as soon as is practicable, and some are already addressed.

Secondly, the recommendations cover a) the PoMs reported by Defra and the devolved administrations in the UK Marine Strategy Part 3 published in December 2015 covering the North East Atlantic, b) the PoMs reported by HMGoG covering British Gibraltar territorial waters (BGTW) in 2017, and c) issues common to the PoMs for both the North East Atlantic and BGTW. The MSFD is implemented separately for BGTW by HMGoG but we have included its views on the recommendations regarding BGTW in this response.

Regarding your question about the extent that the UK intends to make changes to the PoM, in light of the recommendations, we and HMGoG agree that most of these make sense. For the North East Atlantic we have addressed the majority of them already, including the implementation of a number of the proposed measures. This includes the introduction of a ban on plastic microbeads in rinse off personal care products, the establishment of a UK Marine Noise Registry, and the designation of more Marine Protected Areas. For BGTW, HMGoG's Department of the Environment, Heritage and Climate Change has taken on board the Commission's recommendations and will be publishing its revised Programme of Measures for BGTW in January 2019. HMGoG also emphasises that further effective implementation of the MSFD will require coordination and cooperation with neighbouring countries which will depend on HMGoG participating in the working groups created under the Barcelona Convention of which it is still not a contracting party, and stresses the urgency of pressing its case for membership.

We also note that several of the recommendations are for the introduction of measures where in fact we have reported that we are already taking action, which the Commission has missed in its evaluation report.

Regarding your question about whether we will provide more robust justifications for the Article 14 exception for Descriptor 8, including a cost-benefit analysis and an analysis of the pros and cons of alternative measures to prevent environmental damage, we do not think this is necessary. For us, it is clear that the cost of removing and cleaning up hundreds of thousands of tonnes of marine sediment around the UK contaminated with highly persistent legacy chemicals such as PCBs that entered the seas before they were banned, would be disproportionately expensive and is likely to exacerbate the problem by re-suspending contaminants into the marine environment. Our view, which other countries have also taken, is that the only realistic option is to leave them in place and not disturb them until the chemicals have degraded.

We trust that these explanations address your questions, and are happy to provide further advice if necessary.

I am copying this letter to Sir William Cash MP, Chairman of the European Scrutiny Committee. I am also copying this letter to the Clerks of the Commons and Lords Committees, Lynn Gardner and Chris Johnson respectively; Les Saunders, Department for Exiting the European Union; and Tess Hanneman, Defra Scrutiny Coordinator.

Yours sincerely,



**DR THERESE COFFEY MP**