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Canterbury City Council
Military Road
Canterbury
CT1 1YW

Customer Services
Hornbeam House
Crewe Business Park
Electra Way
Crewe
Cheshire
CW1 6GJ

BY EMAIL ONLY

Dear [REDACTED]

Land at Whitstable Beach, Whitstable Foreshore

Location: Land at Whitstable Beach, Whitstable Foreshore

Thank you for your email dated 4th October 2019 and your request for advice relating to documents submitted to the Planning Inspectorate. The following constitutes Natural England's response. The following documents have been reviewed in order to provide Natural England's advice:

- **Report Ecological Appraisal of Waterbirds for Whitstable Oyster Trestles (September 2019)**
- **Report P00002830; Whitstable Bay Oyster Trestles Ecological Assessment with Biosecurity Measures Plan (September 2019)**
- **RS.0659 Report – Info for SoS (September 2019)**

Natural England considers that the aforementioned documents provided the most relevant information to which our comments relate. Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development. The advice contained within this letter is provided by Natural England, which is the statutory nature conservation body within English territorial waters (0-12 nautical miles).

Summary of advice

Natural England has identified that the location of the aquaculture activity is within or adjacent to the following sites:

- The Swale Marine Conservation Zone (MCZ)
- The Swale Special Protection Area (SPA)
- The Outer Thames Estuary SPA
- The Swale Wetland of International Importance under the Ramsar Convention (Ramsar)
- The Swale Site of Special Scientific Interest (SSSI)

From the information provided, Natural England note that it has not yet been determined whether there is a formal requirement for an Environmental Impact Assessment (EIA) for the existing development under Schedule 2 or 3 of the Town & Country Planning (Environmental Impact Regulations) 2011. However it is advised that a Habitats Regulations Assessment (HRA) will need to be undertaken in accordance with The Conservation of Habitats and Species Regulations 2017 and The Conservation of Offshore Marine Habitats and Species Regulations 2017 by the Competent Authority. A Marine Conservation Zone (MCZ) assessment will also be required under the Marine and Coastal Access Act 2009. Additionally, impacts on the Swale SSSI need to be fully considered, under the Wildlife and Countryside Act 1981. Whilst Natural England acknowledges

that some ecological information has been submitted by the applicant, it is currently not sufficient for designated sites assessment and further information is required. Assessments of the impacts on sites should be stand alone; clearly demonstrating the impacts of pressures exerted on each designated feature and supporting habitat within the aforementioned sites. The designated site features and pressures likely to be exerted by the activity are listed in the Annex A, Table 1 and Table 2, respectively.

The Conservation of Habitats and Species Regulations 2017 (as amended) and The Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended)

Natural England can confirm that the activity is located within/adjacent to the Swale SPA & Ramsar sites and the Outer Thames Estuary SPA. Natural England is of the view that it cannot be excluded, on the basis of the objective information supplied by the applicant, that the application will have significant effects on the Swale SPA & Ramsar and the Outer Thames Estuary SPA. This is due to impact pathways such as noise and visual disturbance to birds; physical disturbance to supporting habitat; introduction of biological interactions with habitats; and potential loss of supporting habitat.

Natural England advises that the competent authority should undertake an Appropriate Assessment of the implications of this proposal against the sites' conservation objectives. Natural England advise that any measures intended to avoid or reduce the likely harmful effects on a European Site cannot be taken into account when determining whether or not a plan or project is likely to have a significant effect on a site and requires an appropriate assessment (noting the recent People Over Wind Ruling by the Court of Justice of the European Union). Natural England also advise that any permanent habitat loss must also be considered at the appropriate assessment stage. Appendix 1 of this letter contains further advice on information required to inform the Appropriate Assessment.

Marine and Coastal Access Act 2009

Natural England can confirm that the activity is located within the Swale Estuary MCZ. Further information is required in order to assess impacts to this site and for Natural England to advise on whether or not the conservation objectives of the site will be hindered. This is due to impact pathways such as physical disturbance to habitats and the introduction of biological interactions with habitats and their communities. Appendix 1 of this letter contains further advice on the information required to inform assessment.

Wildlife and Countryside Act 1981 (as amended)

Natural England advises that the activity is located within The Swale Site of Special Scientific Interest (SSSI). Natural England advises that the activity, given the location, could affect the interest features for which the site is notified.

The site is notified for breeding and non-breeding birds as well as coastal habitats with plant and invertebrate assemblages. The SSSI citation can be found [here](#). Information contained in the appendix regarding pressure and feature interactions is applicable to the assessment of this site.

Any authorisation for this development should take of duties of Section 28 bodies under the Countryside and Rights of Way Act in relation to providing SSSI consent.

Protected Species

We have not assessed this aquaculture operation and associated documents for impacts on marine protected species as listed on Schedule 5 of the Wildlife and Countryside Act (1981 as amended). The onus is on the applicant to ensure that they are legally compliant. Further details of the species

protected through this legislation can be found here:

<https://www.gov.uk/government/publications/protected-marine-species>

Natural England Discretionary Advice Service (DAS)

We would like to draw the applicant's attention to the opportunity to obtain further advice from Natural England under our Discretionary Advice Service (DAS). The DAS service provides additional non-statutory advice related to development proposals, in order to support sustainable development and achieve better environmental outcomes through the planning system.

Further information including charges and how to proceed with an application can be found at <https://www.gov.uk/guidance/developers-get-environmental-advice-on-your-planning-proposals>

We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us. For any queries relating to the specific advice in this letter only please contact me using the details below. For any new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

Yours sincerely


E-mail: @naturalengland.org.uk

Appendix 1

General Comments relating to the documents provided

Scope of Assessment – Interactions to Consider

It is unclear whether supporting habitats have been considered as part of the assessment. Further information can be found in our conservation advice packages for the [Swale SPA](#), the [Swale Estuary MCZ](#), and the [Outer Thames Estuary SPA](#), particularly the sections on *Advice on Operations*. Assessments need to fully consider the feature-activity-pressure interactions, as well as, the supporting habitats. The Whitstable Bay Oyster Trestles Ecological Assessment with Biosecurity Measures Plan does consider the source-pathway-receptor in some detail. However it would be clearer to relate the interactions directly to the qualifying features of the designated sites.

In-combination Impacts

In-combination effects have not been considered as part of the assessment and must be considered for the SPAs, Ramsar and the MCZ. It is important for any assessment of these sites to consider the potential cumulative effects of this activity, including all supporting infrastructure, with other similar proposals and a thorough assessment of the 'in combination' effects of the proposed development with any existing developments and current applications. A full consideration of the implications of the whole scheme, including all supporting infrastructure, should be included within assessments. The following types of projects should be considered as part of the assessment:

- a. existing completed projects;
- b. approved but uncompleted projects;
- c. ongoing activities;
- d. plans or projects for which an application has been made and which are under consideration by the consenting authorities; and
- e. plans and projects which are reasonably foreseeable, i.e. projects for which an application has not yet been submitted, but which are likely to progress before completion of the development and for which sufficient information is available to assess the likelihood of cumulative and in-combination effects.

Water Quality

Natural England welcome the consideration of water quality as part of the assessment. Increases in suspended sediment concentrations (SSC) during maintenance and operation have the potential to smother sensitive habitats. It is noted that there is no data available for chemical concentrations of sediments in Whitstable Bay. However information on the sediment quality and potential for any effects on water quality through suspension of contaminated sediments should be determined in order to assess the significance of the effect (Whitstable Bay Oyster Trestles Ecological Assessment with Biosecurity Measures Plan; Table 13, page 63) in order to determine whether increased suspended sediment concentrations resulting are likely to impact upon the interest features and supporting habitats of the designated sites. Guidance states that for activities in the marine environment up to 1 nautical mile out at sea, a Water Framework Directive (WFD) assessment is required. We defer to advice from the Environment Agency for further comments.

Trestles and Footprint of Impact

It is unclear whether any trestles removed at the end of the lifespan are replaced. Natural England would like to know if removed trestles are replaced with new trestles and if trestles are replaced would they be installed in the same location. Additionally, Natural England note that the estimated habitat loss relevant to the current number of trestles equates to 129m². This appears to be a small

area considering the number of trestles used in the aquaculture operation. The total footprint of the operation has been stated to be 11.02 hectares. Some clarity would be welcomed as to whether the stated loss of habitat area relates just to the actual area covered under the trestle legs and if any area not directly covered has been discounted (ie shaded areas). As aforementioned, Natural England would advise that an Appropriate Assessment is undertaken in accordance with The Conservation of Habitats and Species Regulations 2017 and The Conservation of Offshore Marine Habitats and Species Regulations 2017.

Assessment of Birds

Natural England concur with the statement on Page 38 (Ecological Appraisal of Waterbirds for Whitstable Oyster Trestles), *as there are no bird surveys that have been conducted in more recent years when the number of trestles have increased significantly it is not possible to conclusively determine whether there has been an effect on waterbird abundances and distribution within the study area.* There has been a significant increase in the number of trestles, and therefore an increase in the footprint of the activity of the operation. An increase in trestles numbers from 15 in 2010 to 5,187 in 2019, a considerable increase (34480%). Comparing the data from 2001/02 (zero trestles) and 2011/12 (15 trestles) is not relevant to the current operation. More recent data is required. Conversely Natural England cannot concur with the statement on page 39 of the same document, *Overall, it can be concluded that the study area is not a particularly important site for waterbirds and there is currently no evidence of any significant impacts on their distribution or abundance as a result of the Whitstable oyster trestles development or the activities associated with it.* Surveys will need to be undertaken in order to assess the scale of potential impact of the shellfish aquaculture activity on the bird features of the designated sites. Additionally Natural England would require further assessment on feature-activity-pressure interaction in order to concur with the following statement on page 35, *In summary, considering all the above criteria and evidence from trends in abundances regionally and locally within the Study Area it has been determined that no species qualify for further more detailed assessment.*

Biotope Data

Natural England welcome the recent Phase 1 surveys. It would be clearer if the biotope characteristic figures used the same key for data, Figures 6 and 7 in the Whitstable Bay Oyster Trestles Ecological Assessment with Biosecurity Measures Plan and if a table could be provided to show the comparison of the biotope characteristics in 2004 and 2019. Natural England note the statement on page 36, *Some areas of flat clay without piddock holes were mapped as muddy sand in 2004, due to a muddy sand covering that was not present in 2019.* Intertidal sand and muddy sand is a qualifying feature of the Swale Estuary MCZ and it is of concern that some of this feature may be lost. Natural England would welcome details as to why this habitat may not be present in some of the survey area. From the aforementioned figures, it appears that the extent and distribution of the qualifying feature muddy sand has changed. This may be due to natural processes but it should be determined whether the activity of the aquaculture operation is having an impact on the broad-scale habitats.

Specific Comments to Issues previously raised as set out in the *Ecological Appraisal of Waterbirds for Whitstable Oyster Trestles and Whitstable Bay Oyster Trestles Ecological Assessment with Biosecurity Measures Plan* (Table 2, page 15 and Table 4, page 19, respectively).

Issues raised by NE (15 th June 2018)*	Comments
Footprint of activity in relation to protected habitats	The footprint of the activity has been shown as a red line plan in Figure 1 (Ecological Appraisal of Waterbirds for Whitstable Oyster Trestles, pg3). Natural England welcome this visual resource to ascertain the area used for the aquaculture activity. However the activity of the

	whole operation should be included to represent the supporting land infrastructure as well as the access routes used to maintain the trestles/harvest the oysters.
Access routes	Natural England welcome the inclusion of the access points in aforementioned Figure 1. However we would like to see the actual access routes on the intertidal area used to access the trestles. These access routes could be defined on a figure (please see above). Natural England recommend best practice and that vehicle movements on the foreshore are kept to a minimum and access/egress routes are clearly defined.
Types of access e.g. Vehicles and/or people on foot	Natural England welcome the information in the documents which provides further detail on the type of access. Natural England would encourage the use of Check, Clean, Dry ¹ for all vehicles accessing the marine environment.
Seasonal and daily timing of access	Natural England welcome some detail on the seasonal and daily timing of access. However it is not clear on the frequency of access in any given tidal regime. Average frequency data to demonstrate the intensity of access by all modes of transport to and from the trestles is required in order to determine the scale of impact.
History of using Pacific oysters within operations	Natural England welcome the information in the documents relating to the history of the operation.
Diploid and/or triploid oysters	Natural England welcome the information that only tetraploid derived triploid Pacific oyster stock are introduced as part of the shellfish aquaculture activity. However if settlement in the environment occurs then the non-native species can exert pressure on designated features, in particular rock features and mussel beds are likely to be most at risk. It states in the documents that there is embedded mitigation in the operation of the aquaculture activity including the use of triploid oysters. However research (Gong <i>et al.</i> , 2004 as cited in Herbert <i>et al.</i> , 2016) ² has shown that the relative reproductive potential of triploids is increased where a wild diploid stock is present. A monitoring and management plan would be advisable to observe and remove any broken mesh bags and remove escapees and to limit any impacts from wild settlement.

***NB These issues raised by Natural England on 15th June relate to initial high level comments communicated via email and specifically states that the information required would include but not be limited to those comments listed under 'Issues Raised'.**

¹ <http://www.nonnativespecies.org/checkcleandry/index.cfm>

² <https://link.springer.com/article/10.1007/s10531-016-1209-4>

Annex A – Advice related to the content of this letter

1. Designated Site Features

Table 1 Designated Site Features

The Swale Estuary MCZ	The Swale SPA	The Outer Thames Estuary SPA	The Swale Ramsar
Designated feature			
<ul style="list-style-type: none"> - Estuarine rocky habitats - Intertidal mixed sediment - Intertidal coarse sediment - Intertidal sand and muddy sand - Low energy intertidal rock - Subtidal coarse sediment - Subtidal mixed sediment - Subtidal mud - Subtidal sand 	<p><i>Non-breeding birds:</i></p> <ul style="list-style-type: none"> - Dark-bellied brent goose (<i>Branta bernicla</i>) - Dunlin (<i>Calidris alpina alpina</i>) - Waterbird assemblage <p><i>Breeding birds:</i></p> <ul style="list-style-type: none"> - Breeding bird assemblage 	<p><i>Non-breeding birds:</i></p> <ul style="list-style-type: none"> - Red throated diver (<i>Gavia stellate</i>) <p><i>Breeding birds:</i></p> <ul style="list-style-type: none"> - Common tern (<i>Sterna hirundo</i>) - Little tern (<i>Sternula albifrons</i>) 	<p><i>Non-breeding birds:</i></p> <ul style="list-style-type: none"> - Dark-bellied brent goose (<i>Branta bernicla</i>) - Dunlin (<i>Calidris alpina alpina</i>) - Grey plover (<i>Pluvialis squatarola</i>) - Oystercatcher (<i>Haematopus ostralegus</i>) - Ringed plover (<i>Charadrius hiaticula</i>) - Curlew (<i>Numenius arquata</i>) - Redshank <i>Tringa totanus</i> - Shelduck (<i>Tadorna tadorna</i>) - Wigeon (<i>Mareca penelope</i>) - Teal (<i>Anas crecca</i>) - Waterbird assemblage <p><i>Assemblages of species:</i></p> <ul style="list-style-type: none"> - Wetland invertebrates - Wetland plants

2. Pressures likely to be exerted by the activity

Using the generic framework within our conservation advice packages (section: *Advice on Operations*) and expert judgement, we can confirm the pressures that are most likely to be of concern and require further assessment for the designated sites. (Table 2). This table also highlights designated features and supporting habitats for designated SPA bird species that are likely to have a medium to high sensitivity to the pressures identified, again based on generic information contained within our conservation advice packages. This may not be an exhaustive list of feature/pressure interactions that needs to be assessed, which will be dependent on the exact nature of the activities. It should be noted that detailed conservation advice packages have not been produced for assemblage features or Ramsar sites, although much of the information below will be applicable.

Table 2 Pressures associated with shellfish aquaculture: trestle culture on qualifying features

Pressure	Designated features/supporting habitats affected by pressures (with the potential for medium to high sensitivity)		
	The Swale Estuary MCZ	The Swale SPA	The Outer Thames Estuary SPA
<ul style="list-style-type: none"> - Abrasion /disturbance 	<ul style="list-style-type: none"> - Estuarine rocky habitats - Intertidal sand and muddy sand - Low energy intertidal rock - Subtidal mixed sediment - Subtidal mud 	<ul style="list-style-type: none"> - Intertidal seagrass beds - Intertidal biogenic reef: mussel beds - Intertidal sand and muddy sand - Subtidal seagrass beds 	<ul style="list-style-type: none"> - Intertidal sand and muddy sand - Subtidal mixed sediments - Subtidal mud - Subtidal sand

	- Subtidal sand		
- Penetration	<ul style="list-style-type: none"> - Estuarine rocky habitats - Intertidal mixed sediment - Intertidal coarse sediment - Intertidal sand and muddy sand - Low energy intertidal rock - Subtidal coarse sediment - Subtidal mixed sediment - Subtidal mud - Subtidal sand 	<ul style="list-style-type: none"> - Intertidal seagrass beds - Intertidal biogenic reef: mussel beds - Intertidal sand and muddy sand - Subtidal seagrass beds 	<ul style="list-style-type: none"> - Intertidal sand and muddy sand - Subtidal coarse sediment - Subtidal mixed sediments - Subtidal mud - Subtidal sand
- Physical change to another seabed/ sediment type	<ul style="list-style-type: none"> - Estuarine rocky habitats - Intertidal mixed sediment - Intertidal coarse sediment - Intertidal sand and muddy sand - Low energy intertidal rock - Subtidal coarse sediment - Subtidal mixed sediment - Subtidal mud - Subtidal sand 	<ul style="list-style-type: none"> - Intertidal seagrass beds - Intertidal biogenic reef: mussel beds - Intertidal mud - Intertidal sand and muddy sand - Subtidal seagrass beds 	<ul style="list-style-type: none"> - Intertidal sand and muddy sand - Subtidal coarse sediment - Subtidal mixed sediments - Subtidal mud - Subtidal sand
- Smothering and siltation rate changes (light)	<ul style="list-style-type: none"> - Estuarine rocky habitats - Intertidal coarse sediment - Low energy intertidal rock - Subtidal mixed sediment 	<ul style="list-style-type: none"> - Intertidal seagrass beds - Intertidal biogenic reef: mussel beds - Subtidal seagrass beds 	<ul style="list-style-type: none"> - Subtidal mixed sediments - Subtidal mud
- Introduction of microbial pathogens	<ul style="list-style-type: none"> - Estuarine rocky habitats - Intertidal mixed sediment - Intertidal sand and muddy sand - Low energy intertidal rock - Subtidal mixed sediment 	<ul style="list-style-type: none"> - Dark-bellied brent goose - Dunlin - Intertidal seagrass beds - Intertidal biogenic reef: mussel beds - Intertidal sand and muddy sand - Subtidal seagrass beds 	<ul style="list-style-type: none"> - Common tern - Little tern - Red throated diver - Intertidal sand and muddy sand - Subtidal mixed sediments - Subtidal sand
- Introduction or spread of invasive non-indigenous species	<ul style="list-style-type: none"> - Estuarine rocky habitats - Intertidal mixed sediment - Intertidal sand and muddy sand - Low energy intertidal rock - Subtidal coarse sediment - Subtidal mixed sediment - Subtidal mud - Subtidal sand 	<ul style="list-style-type: none"> - Dunlin - Intertidal seagrass beds - Intertidal biogenic reef: mussel beds - Intertidal mud - Intertidal sand and muddy sand - Subtidal seagrass beds - Water column 	<ul style="list-style-type: none"> - Common tern - Little tern - Intertidal sand and muddy sand - Subtidal coarse sediment - Subtidal mixed sediments - Subtidal mud - Subtidal sand - Water column
<ul style="list-style-type: none"> - Visual disturbance - Above water noise 	N/A	<ul style="list-style-type: none"> - Dark-bellied brent goose - Dunlin 	<ul style="list-style-type: none"> - Common tern - Little tern - Red throated diver - Water Column
- Genetic modification and translocation of indigenous species	<ul style="list-style-type: none"> - Subtidal mixed sediments 	<ul style="list-style-type: none"> - Water column 	<ul style="list-style-type: none"> - Subtidal mixed sediments - Water column

It should be noted that due to the large geographical area of the Outer Thames SPA that generic sensitivity information for habitats may be different to generic sensitivity information for habitats in the Swale SPA and MCZ.