

REPORT TO FISHERIES WORKING GROUP – 17 FEBRUARY 2017

DEFRA PROPOSALS TO BAN THE USE OF PLASTIC MICROBEADS IN COSMETICS AND PERSONAL CARE PRODUCTS IN THE UK – CONSULTATION RESPONSE

1 Recommendations

The Group is recommended to:

- 1.1 Consider and approve the draft response to the above consultation attached as Appendix 1.

2 Background / Discussion

- 2.1 Small pieces of plastic (microbeads) are a common component in cosmetics and personal care products such as face scrubs and toothpastes and are typically washed into waste water systems. Microbeads are also used in industrial processes as an abrasive (eg for paint removal). Due to their small size, microbeads can elude sewage filtration systems and find their way into the marine environment where they can be mistaken for food particles by filter feeders and other marine animals, and ultimately, enter the food chain. Microbeads can also act as a substrate for marine pathogens.
- 2.2 On 20 December 2016, DEFRA's Marine Division issued a consultation on proposals seeking to ban the manufacture and sale in the UK of cosmetics and personal care products containing microbeads and also to gather evidence on the extent of the environmental impacts of microbeads found in other products to inform future actions to protect the marine environment. Although the consultation document describes the wider impact of litter entering the marine environment, the questions in this consultation, which closes on 28 February 2017, are confined specifically to microbeads.
https://consult.defra.gov.uk/marine/microbead-ban-proposals/supporting_documents/Microbead%20ban_Consultation%20Document.pdf
- 2.3 The consultation's narrow focus on microbeads is perhaps rather surprising, given that 'Microbeads from personal care products are believed to make up a very small percentages of the total of microplastics entering the marine environment, with estimates ranging from 0.01% to 4.1%' and 'a ban only on microbeads within personal care products in the UK would therefore be expected to have only a small impact on the environmental situation'. By comparison, a report issued in 2015 by the Danish Ministry of the Environment indicates that vehicle tyres are the source for over 60% of 'the total ultimate microplastic emission to the aquatic environment, with 11.4% from paints (including ship paints), 7.4% from footwear and 5.2% from road markings. <http://www2.mst.dk/Udgiv/publications/2015/10/978-87-93352-80-3.pdf>

- 2.4 That a number of countries have already implemented cosmetic-derived microbead bans - or plan to do - appears to be a key driver for DEFRA to follow suit and there is a logical argument for a level, regulatory playing field for cosmetic products, many of which are traded internationally.
- 2.5 DEFRA's current proposals are that:
- a) the manufacture and sale of cosmetics and personal care products containing microbeads in the UK (including all devolved territories) are banned.
 - b) the ban would apply to solid microplastic ingredients <5mm in size in every dimension that are used as an ingredients in rinse-off cosmetics and personal care products including but not limited to exfoliating scrubs, shower gels and toothpastes.
 - c) in England, the legislation is expected to come into force by 1st October 2017, the latest common commencement date in 2017 for regulation bearing on business. DEFRA will aim to coordinate their approach with Devolved Administrations who will introduce legislation according to their own legislative processes and timetables.
 - d) in England, the ban on manufacture is expected to apply from 1 January 2018 and the ban on sale expected from 30 June 2018. DEFRA will aim to coordinate their approach with Devolved Administrations who will introduce legislation according to their own legislative processes and timetables.
 - e) the legislation will be developed collaboratively with the Devolved Administrations and secondary legislation introduced to implement the proposed ban across the whole of the UK. It is expected that such legislation will be made by each Administration as a result of the devolution settlements. It is expected that the implementing legislation will be published prior to it being made and therefore those with an interest will be able to make representations on it.
 - f) in England, it is proposed that the policy will in practice be enforced through civil sanctions set out in part 3 of the Regulatory Enforcement and Sanctions Act 2008 (though this would require the creation of an offence punishable by a fine, to facilitate the use of the 2008 Act). As part of the consultation, DEFRA are seeking views on how such civil enforcement can most effectively and proportionately be carried out. The Devolved Administrations will establish appropriate enforcement mechanisms and would welcome views on this issue.
- 2.6 The consultation questions and proposed responses are attached as **Appendix 1**. Part 3 of the consultation acknowledges that much more data is required and 'seeks to gather evidence on the extent of the environmental impacts of microbeads found in other products and other sources of microplastics, to inform future UK actions to protect the marine environment by identifying targeted, proportionate measure to address key avoidable sources of marine plastics pollution'. The four questions posed by DEFRA in Part 3 are primarily directed at researchers, academic and specialists in the

marine environment but for the purposes of completeness are also listed in Appendix 1 to this report along with suggested responses.

- 2.7 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and had no comments to make and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

3 Scheme of Governance

- 3.1 The Fisheries Working Group is able to consider this item in terms of its remit to advise the Council on issues affecting the Industry and (fishing) dependent communities.

4 Equalities, Staffing and Financial Implications

- 4.1 An equality impact assessment is not required because this report is a consultation responses and does not have a differential impact on any protected characteristics.
- 4.2 There are no staffing or financial implications.

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Report prepared by Derek McDonald, industry Support Executive (Rural & Maritime)
9 February 2017

APPENDIX 1

CONSULTATION QUESTIONS AND PROPOSED RESPONSES

- a. **Are our proposals for a ban fit for purpose? If not, please explain why. What alternative wording in a ban would most effectively reduce the risk of microplastic particles from personal care and cosmetic products reaching the marine environment?**

The proposals for the banning of microbeads are in general clear and fit for purpose. The open and inclusive tone of the consultation is welcome. However it could be argued that the size of particles falling within the scope of the legislation (less than 5mm in every dimension) is somewhat arbitrary.

- b. **This proposed ban applies to rinse-off cosmetics and personal care products including but not limited to exfoliating scrubs, shower gels and toothpastes. Is this category appropriate? If not, what range of products should the ban apply to, bearing in mind that the purpose of the ban is to protect the marine environment? Please supply evidence to support your suggestions.**

The ban should apply to all cosmetic and personal care products – whether or not they are intended to be rinsed off in the shower

- c. **Should any products be exempt from the ban? If so, please supply evidence to support your suggestions.**

This consultation refers to cosmetic and personal care products. There is little reference to medical/medicated personal care products. Were evidence to be presented affirming the absence of a suitable microbead alternative for a medical/medicated product, there may be a case for exempting such products from the ban.

- d. **If products are not designed to go down the drain, but may still be disposed of in this way, what interventions or warnings are appropriate to protect the marine environment?**

The ban should apply to all cosmetic and personal care products – whether or not they are intended to be rinsed off in the shower.

- e. **How should compliance with the ban be monitored?**

Manufacturers should be required to provide independent verification that their products are compliant. Risk-based spot checks on products and manufacturing premises should be carried out.

- f. **Our proposals for enforcement are set out at point (f) on page 9. We would welcome comments on our proposed approach, suggestions for alternative approaches and views on how enforcement of the ban can most effectively and proportionately be carried out? Details of the types of civil sanctions available are set out in the Regulatory Enforcement and**

Sanctions Act 2008 Part 3 Civil Sanctions sections in particular sections 39, 42 and 46.

No comment

- g. What costs and/or constraints would industry, including in particular small and medium-sized enterprises (SMEs), incur in meeting a ban on microplastics in cosmetics and personal care products?**

That most cosmetics companies have agreed voluntarily to phase out microbeads suggests that alternative, benign, ingredients do exist (perhaps a return to natural components?). The use of ecological alternatives in reformulated cosmetics could confer a powerful marketing advantage to the industry, especially for 'early adopters'. The net effect therefore, over time, should be broadly cost-neutral.

- h. To what extent will imports be affected by the ban? Please supply evidence to support your suggestions.**

As similar legislative proposals are generally further advanced in the US (a major manufacturer of cosmetics) - while other European countries with strong cosmetics industries (France, Spain) are also proceeding along the same path at approximately the same speed as the UK (or faster), it would appear likely that UK consumers will continue to access a broad range of imported cosmetic products when the ban on sale comes into effect on 30 June 2018. The ban is unlikely therefore to adversely affect imports.

It is surprising that a similar question relating to the anticipated impact on UK-manufactured cosmetics has not been posed, especially as the manufacturing ban is due to take effect in the UK on 1 January 2018, potentially placing UK manufacturers supplying the domestic market at a competitive disadvantage between 1 January 2018 and 30 June 2018 (ie overseas manufacturers will have several months longer to adapt and in which to manufacture products for sale in the UK using old formulations).

- i. What are the risks that alternatives to microbeads will themselves have significant environmental impacts? If so, how could these risks be avoided, minimised or mitigated? Please supply evidence to support your suggestions.**

It is extremely important that microbeads are not replaced by unproven or equally damaging materials. There should be a presumption in favour of known, natural, inert substitutes over alternative manufactured materials unless and until manufacturers can provide independently-verified assurances on their safety, both to the consumer and to the marine environment.

- j. Is there anything else you would like to tell us?**

Achieving early progress on tackling more of the most significant sources of marine pollution would be welcome.

Additional questions in Section 3:

- a. Key sources of microplastics are set out in Part 3: Background. Are any missing or inappropriate? Please provide evidence to support your response.**

The list is fairly comprehensive but microplastics emanating from artificial turf should be included.

- b. Which sources of microplastic pose the greatest risks to the marine environment? Please provide evidence to support your response.**

The study on microplastics carried out by the Danish Government's Ministry of Environment* identifies vehicle tyres as the largest contributor to microbeads in the marine environment - up to 600 times more damaging than emissions from cosmetic products. While the current proposals will certainly raise the profile of microbeads in the marine environment and their sources, it could be argued that the current focus on personal care products is cosmetic in more ways than one.

* <http://www2.mst.dk/Udgiv/publications/2015/10/978-87-93352-80-3.pdf>

- c. How should sources be prioritised for action? Please explain your response.**

GESAMP is an international advisory body consisting of specialized experts nominated by Sponsoring Agencies including United Nations, International Maritime Organisation, FAO and UNESCO.

GESAMP's principal task is to provide scientific advice on the prevention, reduction and control of the degradation of the marine environment.

The GESAMP 93 report* provides a risk assessment process which could form the basis for setting the UK's priorities on dealing with microplastics.

*http://www.gesamp.org/data/gesamp/files/media/Publications/Reports_and_Studies_93/gallery_2542/object_2832_large.pdf

- d. What possible interventions could be developed to reduce these risks and how might the cost of these interventions be minimised? What is the likely impact on industry of these interventions? Please explain your response.**

Early progress is required to establish consensus in the UK, firstly on identifying (and filling) knowledge gaps and secondly to act without delay on the most damaging sources of microplastic pollution, both to the marine environment and also to the food chain and in turn, human health. The costs to industry are minor when compared to the ultimate costs of inaction.

Although the clear priority is to tackle plastic pollution at source, the GESAMP report highlights how much marine plastic moves from shoreline, to sea and back to shoreline, shedding particles as it goes. While the Marine Conservation Society and other charities have a very active programme of beach cleans, much more support should be made available to help intercept marine litter whilst on the shoreline while it is relatively accessible.