

THE WASH AND NORTH NORFOLK COAST

EUROPEAN MARINE SITE MANAGEMENT PROJECT

Fourth Memorandum of Agreement

This Agreement is made this day of 2012

Between:

- (1) **The Eastern Inshore Fisheries and Conservation Authority** of 6 North Lynn Business Village, Bergen Way, King's Lynn, Norfolk, PE30 2JG (hereinafter referred to as "EIFCA")
- (2) **Boston Borough Council** of Municipal Buildings, Boston, Lincolnshire, PE21 8QR
- (3) **East Lindsey District Council** of Tedder Hall, Manby, Lincolnshire, LN11 8UP
- (4) **Natural England** of The Maltings, Wharf Road, Grantham, Lincolnshire, NG31 6BH (hereinafter referred to as "NE")
- (5) **Environment Agency** of Kingfisher House, Goldhay Way, Orton Goldhay, Peterborough, Cambridgeshire, PE2 5ZR
- (6) **Fenland District Council** of Fenland Hall, County Road, March, Cambridgeshire, PE15 8NQ
- (7) **King's Lynn Conservancy Board** of Common Staithe, King's Lynn, Norfolk, PE30 1LL
- (8) **King's Lynn and West Norfolk Borough Council** of King's Court, Chapel Street, King's Lynn, Norfolk, PE30 1EX
- (9) **Lincolnshire County Council** of County Offices, Newland, Lincoln, LN1 1YL
- (10) **Norfolk County Council** of County Hall, Martineau Lane, Norwich, Norfolk, NR1 2SG
- (11) **The Port of Boston** of Dock Office, Boston, Lincolnshire, PE21 6BN
- (12) **South Holland District Council** of Council Offices, Priory Road, Spalding, Lincolnshire, PE11 2XE
- (13) **North Norfolk District Council** of PO Box 5, Council Offices, Holt Road, Cromer, Norfolk, NR27 8DZ
- (14) **The Wells Harbour Commissioners** of Harbour Office, Old Lifeboat House, Wells-next-the-Sea, Norfolk, NR23 1AT
- (15) **Water Management Alliance** (incl SHIDB and KLC) of Kettlewell House, Austin Fields, King's Lynn, Norfolk, PE30 1PH (hereinafter referred to as "WMA")
- (16) **Welland and Deepings Internal Drainage Board** of Deeping House, Welland Terrace, Spalding, Lincs, PE11 2TD (hereinafter referred to as the "WDIDB")
- (17) **Black Sluice Internal Drainage Board** of 72 Carlton Road, Boston, Lincs, PE21 8PB (hereinafter referred to as the "BSIDB")
- (18) **Lindsey Marsh Drainage Board** of Wellington House, Manby Park,

- Louth, Lincs, LN11 8UU (hereinafter referred to “LMDB”)
- (19) **Witham Fourth Internal Drainage Board** of 47 Norfolk Street, Boston, Lincolnshire, PE21 6PP (hereinafter referred to as the “WFIDB”)
 - (20) **Defence Infrastructure Organisation** Bazalgette Pavilion G/F, RAF Wyton, Huntingdon, Cambridgeshire, PE28 2EA (hereinafter referred to as “DIO”)
 - (21) **Marine Management Organisation** PO Box 1275, Newcastle upon Tyne, NE99 5BN (hereinafter referred to as the “MMO”)

Note - Though the MMO is now a Relevant Authority there are no arrangements yet in place for it to make payments to the Project. This should be kept under review; it is appropriate for all RAs to contribute as the above recognises.

1. Recitals

- 1.1 The Wash and North Norfolk Coast European Marine Site shown outlined on the plan attached consists of a Special Area of Conservation (SAC) designated under the “Habitats Directive” (European Council Directive 92/43/EEC) and three Special Protection Areas (SPA) designated under the Birds Directive (Council Directive 79/409/EEC) which created a network of protected wildlife areas across the European Union, known as the Natura 2000 series. These Directives have been incorporated into UK law by the Conservation (Natural Habitats etc) Regulations 1994.
- 1.2 The parties to this agreement fully recognise the nature conservation importance of the Wash and North Norfolk Coast (hereinafter referred to as “the W&NNC”) and the statutory obligations placed upon them by the legislation referred to above. In order to assist in meeting these obligations the “Wash and North Norfolk Coast Management Group” jointly prepared “The Wash and North Norfolk Coast European Marine Site Management Scheme’. Dedicated staff time is now required to implement the management scheme and an implementation officer (hereinafter referred to as the “Project Manager”) will be employed by EIFCA and financially supported by the partners.
- 1.3 This agreement aims to establish the funding of the Wash and North Norfolk Coast European Marine Site Management Project (hereinafter referred to as “the Project”) to implement the Wash and North Norfolk Coast European Marine Site Management Scheme (hereinafter referred to as “the Management Scheme”) and sets out the arrangements for running the Project, the purpose of which is set out in Clause 5.1 below.
- 1.4 Eastern Inshore Fisheries and Conservation Authority (EIFCA) are to take the lead and employ the Project Manager to implement the Project. The

Project is to be funded by those “Relevant Authorities” listed in Clauses 7.1.3.1 to 7.1.3.15.

- 1.5 The Project will work closely with other complementary initiatives, for example The Norfolk Coast Project.
- 1.6 The area within which the Project will operate is the statutorily designated areas of the European Marine Site, but on occasions will also include the wider adjoining areas in relation to specific issues, for example water quality, where a wider working area may be required to maintain favourable condition of an interest feature within the Project’s area.

2. Definitions and Interpretations

- 2.1 The provisions of Schedule 1 shall be incorporated herein and shall have effect as if expressly set out herein.
- 2.2 Reference to clauses, sub-clauses and Schedules are to clauses and sub-clauses of and Schedules to this Memorandum of Agreement.

3. Nature of Agreement

- 3.1 Nothing in this Memorandum of Agreement will be construed as creating a partnership or joint venture although the Parties enter into this Memorandum of Agreement in good faith and in the spirit of co-operation.
- 3.2 No Party will represent itself as being agent of any of the other parties nor is authorised to commit the other parties unless expressly authorised by this Memorandum of Agreement.

4. Term

- 4.1 Subject to Clause 18 this Agreement shall run from the Commencement Date to the Completion Date or for such further period as may be agreed in writing between the parties.

5. Project Objectives

- 5.1 The purpose of the Project is to deliver the requirements placed upon Relevant Authorities and local agencies to implement the U.K. Habitats Regulations as these affect the W&NNC, in particular to maintain/achieve favourable conservation status for the interest features for which the area has been designated, and also to contribute to the sustainable development of the area. This should be achieved by working with all stakeholders for the area to implement The Management Scheme. There are several strategic goals which provide a framework for the tasks of the Project:

5.1.1 Implementing and reviewing a Management Scheme for the area.

5.1.2 Reporting as appropriate on the achievements of the Project.

5.1.3 Delivering Natural England (NE) conservation objectives for the marine site interest features.

5.1.4 Undertaking a condition monitoring programme.

5.1.5 Promoting the Project and the sustainable use of the area, including the exercising of traditional activities. (See paragraph 1.6 of the Management Scheme.)

6. Employment of Project Manager

- 6.1 The Project will be implemented through a Project Manager (PM) appointed to the staff of the EIFCA (that is shall be an employee of EIFCA) and funded through the project. A job description for the Project Manager will be set out in Schedule 2 (N.B Sch 2 job description for the Project Manager will be agreed by the FMB following the signing of this Agreement and annexed to each parties copy of this Agreement . Sch 3 costings are based on PM 5 days per week).
- 6.2 EIFCA agree to:
- 6.2.1 employ the Project Manager on the local government salary scale 6-S02 and , the conditions of service being those for APT & C staff, including a probationary period for a new entrant to the local government service;
 - 6.2.2 provide or seek the provision of appropriate office accommodation and administrative services and, where appropriate, professional and technical services; and
 - 6.2.3 pay travelling costs at rates established in the local government Scheme of Car Allowances.
- 6.3 The appointment is for a period of 23 months, to be reviewed during 2013 jointly by the participants to this Memorandum of Agreement as part of the overall review of the Project.
- 6.4 The Project Manager will be line managed by the EIFCA CEO, directed by the Core Management Group (hereinafter referred to as the “CMG” – see clause 7.2) and will be expected to maintain regular contact with the other partners to this agreement. The Project Manager must submit a written report at regular intervals (at least six-monthly) to meetings of the Wash and North Norfolk Coast European Marine Site Full Management Board

(hereinafter referred to as the “FMB” – see clause 7.1) and to the CMG.

- 7. Administrative Arrangements** – The Administrative Arrangements will be delivered through the FMB and CMG. The details of these groups are set out below.

7.1 The FMB

7.1.1 The FMB will oversee progress on implementing the Project through the Project Manager. The FMB will receive an annual report at least 2 weeks prior to an Annual General Meeting (hereinafter referred to as the “AGM”) and discuss and agree the report at an AGM. At an AGM a costed annual work programme and any increase in resources therein will be discussed and agreed before commitment to the next financial year.

7.1.2 In carrying out its work the FMB will continue to foster a spirit of mutual co-operation and partnership between all parties to the Project.

7.1.3 The FMB will be chaired by the lead authority, be serviced by the Project Manager and consist of the following listed below:-

- 7.1.3.1 one elected Member of the Boston Borough Council
- 7.1.3.2 one elected Member of the East Lindsey District Council
- 7.1.3.3 one representative of Natural England
- 7.1.3.4 one elected Member of the King’s Lynn and West Norfolk Borough Council
- 7.1.3.5 one elected Member of the Lincolnshire County Council
- 7.1.3.6 one representative of the Environment Agency
- 7.1.3.7 one elected Member of the Norfolk County Council
- 7.1.3.8 one elected Member of the South Holland District Council

- 7.1.3.9 one elected Member of Fenland District Council
- 7.1.3.10 one elected Member of Internal Drainage Boards
(to represent all other Lincolnshire and Norfolk IDBs
relevant to the European Marine Site)
- 7.1.3.11 one representative of EIFCA
- 7.1.3.12 one elected member of the North Norfolk District Council
- 7.1.3.13 two ports representatives to represent the King's
Lynn Conservancy Board, the Port of Boston, and
the Wells Harbour Commissioners
- 7.1.3.14 one representative of Defence Infrastructure Organisation
- 7.1.3.15 one representative of the Marine Management Organisation

all of whom will be entitled to vote, or can delegate their vote to a
named substitute on all issues affecting the Project.

7.1.4 The following parties shall be entitled to attend FMB meetings but
shall not be entitled to vote on financial or constitutional issues:

- 7.1.4.1 one representative from Common Rights Holders
- 7.1.4.2 one representative from Norfolk Coast Project
- 7.1.4.3 one representative from Crown Estates
- 7.1.4.4 each of the chairmen of Advisory Groups
(see Schedule 1/1.1.4)

7.1.5 The Board will meet twice a year or more frequently if necessary.

7.1.6 Except for the provisions of Clause 7.1.7 below any decision,
agreement or approval to be made by the FMB in respect of the
Project shall be decided by votes taken at a FMB meeting. Such
meetings shall be convened on not less than 14 days' written
notice given to each of the parties. The necessary quorum for such
a meeting shall be not less than 6 representatives in number of the

parties entitled to vote at the time present in person or by proxy. At such meetings each Representative will be entitled to 1 vote each and resolutions shall be carried by a simple majority.

7.1.7 Where any decision, agreement or approval is to be made by the FMB which relates to a change in any financial contribution made by any or all of the Relevant Authorities or of a constitutional nature this shall be decided by votes taken at a FMB meeting of the Relevant Authorities and the decision or approval of all of the Relevant Authorities is required and shall only be resolved by a unanimous vote of all of the Relevant Authorities. Such meetings shall be convened on not less than 14 days' written notice given to each of the Relevant Authorities.

7.1.8 Any Party to this agreement may appoint another Party his proxy to vote on his behalf at any meeting. The instrument appointing a proxy shall be in writing and deposited with the Chairman of the FMB at least 1 day before the meeting.

7.1.9 Representatives of other interests not directly represented on the FMB may be invited to attend meetings on an *ad hoc* basis as appropriate but will not be entitled to vote.

7.1.10 It is anticipated that the members of the FMB, besides representing the interests of their appointing body, will represent a broader constituency of views in order to act as an integrated and cohesive partnership in pursuing the best interests of the Project area as a whole.

7.1.11 The FMB will elect a Vice Chairman to stand for a two yearly office. The Vice Chairman may stand for election for a total of two office

periods (i.e. four years) when a break in office will be enforced. This will not preclude a previous vice chairman from being nominated again after a break in office.

7.2 The CMG

7.2.1 The CMG will set annual work programmes, review and report on progress and issues to the FMB. The CMG will meet prior to each FMB meeting and otherwise as necessary, and will consist of officers representing:

Eastern IFCA

A port authority (to represent all the port authorities)

A district council (to represent all the district councils)

Natural England

Lincolnshire County Council

The Environment Agency

Norfolk County Council

An Internal Drainage Board (to represent all other Lincolnshire and Norfolk IDBs)

The Marine Management Organisation

If officers cannot attend then replacements where possible will be sent.

7.2.2 Schematic relationship between FMB and CMG

Full Management Board (FMB)

Composition: Officers, elected members, representatives of user groups & other partner organisations, plus project manager. Chaired by the lead authority (or other elected body.) Meets twice a year.

Role: Accountable under legislation & protocols
Agrees policy and direction
Bids for project support within relevant authority/other partner organisations
Represents project within same
Responsible for management scheme & its Progress

Core Management Group (CMG)

Composition: A subgroup of the relevant authorities within FMB, plus the project manager. Chair as for FMB. Meets 2 times a year, or as required.

Role: A working group taking forward functions delegated from FMB
Sets programme & manages project manager
Reports to & advises Full Management Board

8 Financial Arrangements

8.1 The Project's annual cost for core and output funding will be shared between the various participants to this Memorandum of Agreement, as set out below:

Boston Borough Council	£2,700
East Lindsey District Council	£2,700
King's Lynn and West Norfolk Borough Council	£2,700
Lincolnshire County Council	£2,025
Norfolk County Council	£2,700
South Holland District Council	£2,700
Fenland District Council	£2,700
North Norfolk District Council	£2,700
Internal Drainage Boards (5 x £306 excluding Kings Lynn Consortium)	£1,530
Natural England	£11,200
Environment Agency	£5,500
Defence Estates	£500
 Total income 2012-13	 <u>£39,655</u>

8.2 EIFCA will make contribution in kind up to the value of £7,000 p.a. The King's Lynn Conservancy Board will make contribution in kind up to the value of £1,100 p.a. The Port of Boston will make contribution in kind providing alternative venues for FMB and advisory group meetings and access to marine craft for site visits (all subject to requirement and availability) or other facility as agreed with them. The Wells Harbour Commissioners will make contribution in kind providing accommodation for North Norfolk Coast Advisory Group meetings, access to marine craft and their Leisure Users Advisory Committee (all subject to requirement and availability) or other facility as agreed with them. The King's Lynn Consortium of IDBs will make contribution in kind through access to their conservation staff, conference room and Geographic Information System (GIS) (subject to requirement and availability) or other facility as agreed with them.

8.3 The estimated budget for each of the three years of the project is set out in Schedule 3 which will be reviewed annually by the FMB to take account of increased pay and prices.

8.4 8.4.1 The Parties agree to review their contributions set out in Clause 8.1 and 8.2 annually for debate and agreement at the Annual Full Management Board consistent with Section 7 of this agreement and Clause 7.1.7 subject to contributions being agreed at no less than the amounts set out in Clauses 8.1 and 8.2.

8.4.2 The Parties agree the balance of funds carried forward from previous years at 31st March 2012 is to be used at the discretion of the Board to ensure the viability of the project.

8.5 Contributions by participants in the Project will be made to the EIFCA annually on the 1st April of each year in advance of expenditure as invoiced. The EIFCA CEO will be responsible for proper accounting and budget management on behalf of the FMB.

8.6 Any financial payments legally due to staff under the Redundancy Payments Act 1965, Employment Protection (Consolidation) Act, as amended by the Trade Union Reform and Employment Rights Act 1993, or other relevant legislation on termination of employment shall be met by the EIFCA. Costs for public and employer's liability premiums and payments in the event of industrial injury should be met in the same way by the EIFCA.

9. Statutory Duties

9.1 Nothing in the Memorandum of Agreement shall prejudice or affect any of the statutory bodies which is a party to this Memorandum of Agreement in the exercise of their functions, duties, powers, rights, jurisdictions and obligations conferred, arising or imposed under any legislative provision, enactment, byelaw or regulation whatsoever.

9.2 Nothing in the Memorandum of Agreement shall operate as a statutory approval, consent or licence from any of the parties to this Agreement as may be required to effect the terms of this Memorandum of Agreement or achieve the objectives of this Project.

10. Assignment

10.1 No Party may assign or transfer all or any part of its rights or obligations under this Memorandum of Agreement without the prior consent in writing of the other Parties.

10.2 For the purpose of the Contracts (Rights of Third Parties) Act 1999 nothing in this agreement confers or purports to confer on a Third Party any benefit or right to enforce a term of this Agreement.

11. Waiver

11.1 No failure or delay by the Parties in exercising any right, power or privilege under this Memorandum of Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right power or privilege.

11.2 The rights and remedies provided in this Memorandum of Agreement are cumulative and not exclusive of any rights and remedies provided by the law. No waiver will be effective unless made in writing.

12. Data Protection

12.1 Where a Party processes personal data (as defined in Section 1 (1) of the Data Protection Act 1998) in carrying out the Project that Party

shall take such appropriate technical and organisational measures as are necessary to comply with the seventh data protection principle set out in Part 1 of the Data Protection Act 1998 to protect against unauthorised or unlawful processing of data and against accidental loss or destruction of or damage to personal data.

13. Entire Agreement

13.1 This Memorandum of Agreement shall supersede all arrangements or agreements relating to all matters which are in it and which were previously entered into or made between the Parties hereto relating to the Project and all such arrangements or agreements are hereby terminated.

14. Mutual Assurance

14.1 Each of the Parties undertakes with the others that it has full power and authority to enter into this Memorandum of Agreement.

15. Health & Safety

15.1 In carrying out this Memorandum of Agreement EIFCA will pay due regard to and will comply with all relevant health and safety legal obligations and shall be solely responsible for the health and safety of the PM all other person employed by them pursuant to this Memorandum of Agreement.

16. Dispute Resolution

16.1 All disputes under or in connection with this Memorandum of

Agreement shall be referred first to the CMG who will make recommendations to the FMB.

16.2 If the FMB are unable to resolve the dispute within 30 days from it being referred to them, the dispute shall be referred to the Parties' respective senior Managers or Directors.

16.3 If the Parties' respective senior Managers or Directors are unable to resolve the dispute, it shall be referred to the Centre for Effective Dispute Resolution.

16.4 This procedure shall be binding on all the Parties as to the procedure but not the outcome. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties.

16.5 The Parties shall bear their own costs of the dispute resolution procedure but the costs and expenses of mediation shall be borne equally.

17. Insurance

17.1 EIFCA shall insure and maintain insurance against Employer and Public liability to the value of £5,000,000

18. Termination

18.1 Unless terminated in accordance with clause 18.2.1 below in accordance with clause 4 this Memorandum of Agreement shall terminate on the Completion Date

18.2 Any of the Parties to this Memorandum of Agreement may reduce or withdraw funding after giving six months' notice, in writing to the Chief Executives of all the participating authorities.

18.2.1 In the event that one or more of the Parties gives notice in accordance with clause 18.2 above the FMB shall convene a meeting as soon as reasonably practicable in accordance with clause 7.1.7 to decide if this Memorandum of Agreement shall terminate and agree the time scale of such termination.

18.3 In the event of termination of this Memorandum of Agreement the EIFCA will be liable to meet the net costs (after disposal of any assets). Any surplus surviving will be returned to the organisations signed up to this Memorandum of Agreement (*pro rata*).

19. Variation

19.1 This Memorandum of Agreement may be amended by mutual consent, and will be subject to review prior to April 2015 and any subsequent period of renewal as appropriate.

Schedule 1.

1.1. The following terms should have the following meanings:

- 1.1.1. 'the Parties' – means the parties to this Memorandum of Agreement.
- 1.1.2. 'Commencement Date' – means the 1st April 2012
- 1.1.3. 'Internal Drainage Boards' – means the WMA, the WDIDB, the BSIDB, the LMDB, the WFIDB
- 1.1.4. 'Advisory Group' – means the body of representatives from local interests, user groups formed to advise the FMB. There are three such advisory groups based at Boston, King's Lynn and Wells-next-the-Sea
- 1.1.5. 'Completion Date' means the 31st March 2015
- 1.1.6 'Lead authority' means EIFCA'

Signed for and on behalf of the

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in the presence of:-

Witness signature

Witness name

Witness address

.....

Witness occupation

Estimated Project Costs MOA SCHEDULE 3

European Marine Site Projected Costs 2012-15

Income	£	
Annual income from Relevant Authorities		39,655.00

Expenditure	£	£
Accommodation, financial management and line management for Project Manager	7,000.00	*
Admin support Advisory Groups	1,000.00	
Equipment - Landline and Mobile phones FAX clothing etc	1,500.00	
Conference Fees inc Accommodation etc	1,000.00	
General Travel & Subsistence	1,500.00	
Training	1,000.00	
Stationery Postage Photocopies	1,500.00	
Computer costs	1,500.00	
Publicity and Associated Printing Costs	3,000.00	
Total Cost of Administration		19,000.00

After £7k PIK from EIFCA(*)	£7,000.00
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Balance cost of Administration	£12,000.00
Including inflation @ 2% for year 1	£12,240.00
Including inflation @ 2% for year 2	£12,484.80
Including inflation@ 2% for year 3	£12,734.50

As part of the Project review process, the CMG feel this low operational budget is constraining the project, and recommend an increase in £5,000 operational budget annually

Including additional £5,000 and inflation @ 2% for year 1	£17,340.00
Including additional £5,000 and inflation @ 2% for year 2	£17,686.80
Including additional £5,000 and inflation @ 2% for year 3	£18,040.54

Staff salaries	
Staff salaries including Employer's NI and Pension Costs Gross	£30,483.00

Total cost of project for year 1	£47,823.00
Total cost of project for year 2	£48,169.80
Total cost of project for year 3	£48,523.54

Balance at 1st April 2013	£-8,168.00
Balance at 1st April 2014	£-8,514.80
Balance at 1st April 2015	£-8,868.54

Likely reserves in hand @ 1st April 2012 (kept separate from working capital) Est. £ 33,500.00

The MOA agrees that the reserves can be used at the discretion of the board, and inflation and overspend will be absorbed by the reserves for the MOA period.

Assuming inflation at 2% for running costs	Reducing reserves by £8,168-£8,868 per year
Estimated Reserves @ 1st April 2013	£25,332.00
Estimated Reserves @ 1st April 2014	£16,817.20
Estimated Reserves @ 1st April 2015	£7,948.66