

<b>Title:</b> Marine Licensing (Delegation of Functions) (Amendment) Order 2015  <b>IA No: DEFRA 1895</b>  <b>Lead department or agency:</b> Department for Environment, Food and Rural Affairs  <b>Other departments or agencies:</b> Marine Management Organisation	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 08/09/2015		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary legislation		
<b>Contact for enquiries:</b> Amanda Furlonger 020 7238 6830			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> Awaiting Scrutiny

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2014 prices)	In scope of One-In, Two-Out? Measure qualifies as
-£0.42m	-£0.03m	£0.003m	Yes   IN

**What is the problem under consideration? Why is government intervention necessary?**

Marine activities operate under a licensing system in order to account for externalities associated with the use of the marine environment. Marine licensing determinations are devolved by the Secretary of State to the Marine Management Organisation (MMO). Ministers believe that there is insufficient opportunity for local communities to exercise democratic accountability in relation to certain marine licence proposals- particularly the most complex ones.

**What are the policy objectives and the intended effects?**

The aim is to strengthen democratic accountability on the most complex marine licensing determinations, by enabling locally accountable bodies (i.e. local planning authorities (LPAs) or Inshore Fisheries Conservation Authorities (IFCAs)) to have certain cases referred by the MMO to the Secretary of State. The Secretary of State would then make a decision on whether to recover the licence for her own determination.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

“Do nothing” option (Option 0): continue with the present level of delegation to the Marine Management Organisation (MMO). Under the Marine and Coastal Access Act 2009 (MCAA) the Secretary of State is the “appropriate licensing authority” for marine licensing in English waters (and areas offshore from Wales and Northern Ireland). However, most licensing functions in England have been delegated by the Marine Licensing (Delegation of Functions) Order 2011 (the Delegation Order) to the MMO.

(Option 1) is to amend the Delegation Order, and make certain other procedural changes, so that in certain circumstances the Secretary of State could “recover” and determine a marine licence application ‘referred’ from the MMO. This is the preferred option.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 01/10/2016						
Does implementation go beyond minimum EU requirements?			N/A			
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> 0		<b>Non-traded:</b> 0	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister: \_\_\_\_\_ **George Eustice** \_\_\_\_\_ Date: 8th September 2015

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Introduce a mechanism for the Secretary of State to recover certain marine licences for her own determination.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -4.638	High: -0.265-	Best Estimate: -0.421

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.049	0.025	0.265
High	0.074	0.530	4.638
Best Estimate	0.056	0.042	0.421

### Description and scale of key monetised costs by 'main affected groups'

Businesses (Licence applicants: marine harbours, port authorities, renewable energy and utility companies) - transitional familiarisation costs £0.013m, annual familiarisation costs £0.002m pa. Best estimate of no additional inquiries held over baseline, so no costs of managing inquiries to business. Public sector: Harbour authorities, coastal planning authorities, IFCA's and other consultees, transitional familiarisation costs £0.043m. Defra and MMO, annual implementation costs £0.040m pa.

### Other key non-monetised costs by 'main affected groups'

In addition to public costs due to referral and recovery costs there might be additional costs to private businesses from managing applications through referrals and recovery processes (but based on historical best evidence it is unlikely that extra costs will occur). Moreover no evidence on extra costs associated with delays was found and it is not possible to anticipate these costs until the process is in place (also due to high uncertainties associated with scale and type of applications).

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	Unmonetised	Unmonetised	Unmonetised

### Description and scale of key monetised benefits by 'main affected groups'

Benefits are unmonetised since it is difficult at this stage to anticipate them until the process is in place.

### Other key non-monetised benefits by 'main affected groups'

Improved working relationships between developers and others involved in projects which mean that cases avoid reaching the referral stage. A strengthened democratic process ensuring that parties representing local communities have the opportunity to play an enhanced role in raising matters of local concern before marine licences are issued. Reduced likelihood of third parties taking other action such as applying for judicial review.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

No extra inquiries costs to businesses occur compared to the baseline; apart from in the high cost scenario. Some costs to business of managing applications and of delays were not monetised due to lack of evidence. Transitional familiarisation cost based on assumption of 1 hour required for each applicant and 40 minutes for each public sector body. Annual familiarisation cost for 5 referrals (best estimate) was based on half-day for two managers at £25 per hour. Public sector cost per referral: £8000.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0.003	Benefits: 0	Net: -0.003	Yes	IN

# Evidence Base

## 1. The policy issue and rationale for Government intervention

1 Part 4 of the Marine and Coastal Access Act 2009 (MCAA) introduced a streamlined marine licensing system for most UK waters. The new licensing system came into effect in April 2011.

1.1 The purpose of marine licensing, together with the new marine planning system also brought in by the MCAA, is to facilitate the sustainable use of the UK marine environment so that economically beneficial activities within the marine environment such as construction, deposits (e.g. of sediment), removals (e.g. of marine aggregates), and dredging can be permitted whilst minimising negative environmental effects and avoiding interference with navigation. The licensing system, therefore, already addresses market failures in the marine environment and in particular internalises costs of externalities through the application process and fees as well as by restricting conditions placed on activities by the licence.

1.2 Under the MCAA certain marine licensing functions are given to the “appropriate licensing authority” which is the Secretary of State in English waters (and the areas offshore from Wales and Northern Ireland). Apart from a number of powers that are retained by the Secretary of State, most licensing functions in England have been delegated by the Marine Licensing (Delegation of Functions) Order 2011 (the Delegation Order) to the Marine Management Organisation (MMO), a non-departmental public body set up under the Act.

1.3 Licensable activities are assessed for any potential adverse effects before being consented. Certain licensable marine activities may need to undergo an environmental impact assessment or an appropriate assessment under the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations) in order to ensure compliance with EU Directives. In granting a marine licence the MMO, Secretary of State or the regulators in the devolved administrations can include conditions necessary to ensure that the activity does not cause harm.

1.4 Local Planning Authorities (LPAs) and Inshore Fisheries Conservation Authorities (IFCAs) can and do participate in the consultation process on many marine licences. However, they cannot oblige the MMO to arrange for an independent inquiry or have the case referred to Ministers as the appropriate licensing authority under the MCAA. In the view of Ministers, there is a democratic deficit that needs to be addressed both in the role that local communities are able to play in relation to important marine activities and in the way that Ministers are held accountable to those communities and to Parliament itself. Therefore, the aim of this proposal is to amend the current system so that in certain circumstances cases can be referred to Ministers. Anticipating how many times the Secretary of State would recover cases for her own determination is difficult at this stage but experience from regulatory practice over the past 5 years suggests that there are only a small number of controversial cases. It is the intention of Ministers to be highly selective and only recover a small number.

## 2. Policy objectives and intended effects

2.1 To strengthen democratic accountability on the most complex marine licensing determinations. The aim would be to enable locally accountable bodies (i.e. local authorities, IFCA's) to seek an independent inquiry into marine licensing cases which meet pre-set criteria with the final decision taken by Ministers directly accountable to Parliament.

## 3. Policy options considered, including alternatives to regulation

3.1 Defra considered two options. The baseline 'do nothing' option (Option '0') involves no changes to the present system and enables the MMO to retain the existing level of delegation and handle all marine licence decisions within its jurisdiction with the ability to call an inquiry in accordance with Section 70 of the MCAA. However this option does not achieve the policy objectives of strengthening the democratic role of local communities nor giving Ministers accountability on the most controversial licensing decisions. (See Appendix A1 (separate document) for a flowchart setting out the licence process.)

3.2 The preferred Option, Option 1, which Defra proposes to introduce, will enable Ministers to exercise their responsibility as the appropriate licensing authority in relation to a select number of cases that meet pre-determined criteria. (See Appendix A2 (separate document) for a flowchart setting out the revised process. The Marine Licensing (Delegation) (Amendment) Order 2015 is being introduced so that an application for a marine licence may be recovered for determination by the Secretary of State where she is satisfied that the application falls into either of the two following categories in Box 1.

### **BOX 1 –Criteria for the recovery of marine licensing determinations by the Secretary of State**

Where an application has been referred to the Secretary of State, the Secretary of State must decide whether the specified criteria are met, and if so whether that application should be determined by the Secretary of State:

The criteria are:

- (1) that the activity to which the application relates—
  - (i) falls into band 3 of Schedule to the Marine Licensing (Application Fees) Regulations 2014;
  - (ii) would take place wholly or partly within that part of the UK marine licensing area adjacent to England and extending to 6 nautical miles from baseline; and
  - (iii) is capable of having a significant effect and raises issues which are appropriate for examination in an inquiry; or
- (2)<sup>1</sup> that the activity to which the application relates raises issues which—
  - (i) are of significance to the UK as a whole and are not addressed, or for this purpose not adequately addressed, by the appropriate marine policy documents as defined in section 59 of the Marine and Coastal Access Act 2009;
  - (ii) are accordingly appropriate for examination in an inquiry.

<sup>1</sup> In light of the comments received during the consultation referred to below, the word 'novel' has been removed from the second criteria in favour of putting the emphasis on the sufficiency of policy guidance to support decision-making by the MMO. An example where this might occur is an application for marine licence to use a new ocean fertilisation technique anywhere at sea, including seas outside UK waters. This revision to the criteria does not change the policy intention outlined in the consultation document.

3.3 Where it is decided to recover, the Secretary of State will exercise her power as the appropriate licensing authority under the MCAA. Using existing powers (as the appropriate licensing authority) in section 70 of the MCAA the Secretary of State will be able to call for an inquiry to be held and appoint an Inspector from the Planning Inspectorate to carry this out on her behalf.

3.4 Following the inquiry, the Inspector will submit a report and recommendation to the Secretary of State. The recommendation will either be to refuse the application or grant permission with or without conditions. The Secretary of State will make the final determination as the appropriate licensing authority under the MCAA. Once a determination had been made by the Secretary of State, responsibility for post-consent matters including compliance and enforcement will rest with the MMO.

#### Appeals

3.5 Section 73 of the MCAA requires that applicants have a means of appealing against a marine licence decision determination. Current policy is that both inquiries and appeals are handled by the Planning Inspectorate based on a memorandum between Defra and the Planning Inspectorate.

3.6 If the policy was implemented and Ministers determined a licence following a PINs inquiry and Inspector's report, the MCAA would currently require an appeal to revert to the Planning Inspectorate. This would be an anomalous situation. Therefore for the purpose of this impact assessment, DEFRA has assumed that the post inquiry appeal is to be considered by a different court, namely a First Tier Tribunal. For information on estimated cost implications, please see paragraphs 4.14, 7.10-7.11 and Appendix B, Table A8.

#### **Consultation outcome**

3.7 The Defra consultation took place between 14 January and 25 February 2015. The consultation was sent to a wide variety of interested parties. These included businesses and operators that carry out activities in the marine environment, such as the aggregates sector, energy sector, ports, water/water industry sector and the recreation sector. It was sent to other parties who may have an interest in activities that take place in the marine environment, such as other Government agencies, coastal local planning authorities, Inshore Fisheries and Conservation Authorities and harbour authorities who have a role in regulating or commenting on project proposals. It was also sent to conservation bodies and other groups that are concerned about the effects of activities on the marine environment, navigational matters, human health and research organisations that may be involved with novel uses of the marine environment.

3.8 Defra also attended the MMO's Stakeholder Focus Group meeting on 3 February and then held a workshop for industry stakeholders on 5 February to allow opportunity for discussion on the proposal. We also held a stakeholder workshop on 4 February aimed at regulators including the organisations who the MMO consult about applications, such as the Environment Agency, Natural England, English Heritage and the Maritime and Coastguard Agency. The main points arising from the 51 responses received during consultation and the workshops were:

- support for increased democratic accountability- members of the public and environmental groups also wanted to extend the right to have cases referred to bodies other than LPAs and IFCA's;
- proposals to widen the criteria to include, amongst other things, all licensable activities within Marine Conservation Zones (MCZs) and other protected areas;
- questions, mainly from industry representatives and some public bodies about the need for change. They also raised concerns about assumptions related to timings of the referral and recovery stages, and potential costs;
- requests for additional guidance on implementation of the policy including how the criteria would be applied and details of the kinds of activity within 'Band 3' of the [Marine Licensing \(Application Fees\) Regulations 2014 \(as amended\)](#);
- requests for additional guidance and information on the referral and recovery parts of the process (including the inquiry).

3.9 The Government has given careful consideration to the responses it has received and, while it does not consider that the criteria should be widened (or narrowed) it recognises the need to provide as much reassurance as possible as to how they will operate in practice, as below. Furthermore, the Government believes this relatively modest policy change will inject much needed democratic accountability into the marine licensing process while retaining the many benefits of the Act. The new approach will enable local communities to have a stronger say in the decision-making process, particularly where the potential economic, social or environmental effects of a development are significant whilst maximising certainty for developers.

3.10 The Minister will confirm the policy objectives through a ministerial statement to Parliament which will confirm that the policy to recover would be highly selective, i.e. in effect only recovering decisions which genuinely merit going to inquiry.

3.11 The Government will:

- enshrine the criteria in legislation (note the minor change to the criteria wording in footnote<sup>1</sup>)
- produce statutory guidance to the MMO on implementation of the policy- providing indicative time targets for each stage, further advice on interpretation of the criteria and addressing issues such as procedures for handling cases that span Devolved Administrations. Such guidance may also be useful to developers and other stakeholders. Public facing guidance will be published on .GOV.UK.
- publish guidance from the Planning Inspectorate on the inquiry process which will be made available to interested parties.

- limit the new policy to applications received after 1 October 2015, when the legislation comes into force.

#### **4. Monetised and non-monetised costs and benefits of each option (including administrative burden);**

4.1 This section sets out costs to business (paragraphs 4.6- 4.14), costs to public (paragraphs 4.15-4.18) and total costs (paragraph 4.19). The benefits are set out in paragraph 5-5.3.

4.2 **Methodology and assumptions** are in paragraphs 7-7.11 and Tables A1 to A8 from Appendix B.

4.3 This proposal does not change the regulatory requirement for a marine licence under the MCAA. Marine businesses and other bodies will submit their applications in the usual way to the MMO without placing any extra costs on applicants. There are likely to be some extra costs due mainly to familiarisation and additional time required on referred and recovered cases as explained in the next sections.

4.4 In estimating these costs Defra has made the assumptions explained in Table 1. In the baseline scenario it is assumed that 2 inquiries are held per year although in practice only two cases have occurred since the introduction of the licensing system in April 2011. This may be because the MMO has so far chosen to make little use of the inquiry power but past practice does not determine future needs and the criteria go no wider than the existing guidance on inquiries. The essential difference is that Ministers would take the decision to recover, and following the inquiry and receipt of the inspectors report determine the licence.

4.5 The best estimate is that under Option 1 there is no increase in the number of inquiries held over the baseline, i.e. the Secretary of State recovers the same number of decisions for her determination as would have been subject to an inquiry instigated by the MMO if there were no changes in the system. This reflects the policy aim that the Secretary of State will be highly selective in recovering cases for determination. We have included reference to a 'high cost scenario' ( but a low likelihood of costs occurring) in which it is assumed that the referral process is used more heavily by stakeholders wishing to increase public scrutiny of marine licence determinations, leading to an increase in the number of decisions recovered and inquiries held.

**Table 1: Assumptions on Referrals (leading to inquiries) per year<sup>2</sup>**

Scenario	Applications Referred	Inquiries Held
Baseline	0	2
Option 1 – Best estimate	5	2
Option 1 – Low Cost	3	2
Option 1 – High Cost	30	5

### Costs to business

4.6 Types of business potentially affected include ports and port developers involved in construction or dredging activities, energy or infrastructure companies. See Appendix B, Table A1 for further details.

4.7 **Transitional Familiarisation costs:** costs to business would arise from the initial need for businesses to familiarise themselves with the minor changes associated with this proposal. The consultation regulatory triage assessment used a rate of £15 per hour to assess the cost of time taken for applicants to familiarise themselves with the process. However during consultation some respondents suggested that this was too low, as it was more likely that people in managerial positions would be responsible for considering these changes. The rate used in estimating this cost has now been changed to a range of £15-50, with a best estimate of £25 per hour (all including non-wage costs) to reflect uncertainty in who would be required to familiarise themselves with this policy. It is estimated that familiarisation costs to business would take 1 hour leading to **an estimated total one-off cost of £12800** (range of £7700 to £25400, see Table A2, Appendix B). These costs are transitional since they occur only once (e.g. after the new process will be in place).

4.8 **Referral costs:** During the consultation, some respondents argued that there would be an additional familiarisation cost for applicants if their application were referred to the SoS by the MMO. This would reflect that at this stage applicants need to become more familiar with the process. As shown in Table 1, the best estimate of the number of cases referred per year is 5. Defra has assumed that it would take two members of staff for one day to obtain the necessary level of detail of the policy at this stage. This has been costed using the same wage range as for the transitional familiarisation costs, resulting in a total annual cost of £2000 (range of £700 to £23900, see Table A4 in Appendix B).

4.9 The referral stage (from the MMO to the Secretary of State) is likely to increase the time it takes to make a licence determination and the impact on business costs would vary in relation to type and size of project. Comments received during the consultation support this assumption but are not backed up by evidence in the form of cost information. Therefore no specific cost information for this aspect has been

<sup>2</sup> Recovery cases do not go beyond the current baseline (with the exception of high cost scenario) and therefore no extra costs to both public and private organisations are assumed for the recovery process.



included in the assessment. However, the familiarisation costs imply that the applicants will understand implications of the new process and be able to adapt to it as well as identify key risks (and consequently anticipating them by proper mitigations plans) once this is in place.

4.10 The time taken for the referral stage will relate to the MMO needing to prepare a case file and submit it to the Secretary of State for consideration. Overall we anticipate there may be some impacts on business due to the added time taken, though we could not rule out a more significant cost impact in individual cases. The situation in each case will be different, and the impact will depend on unquantifiable and unknowable factors such as whether, in the absence of a referral, a case would otherwise have been approved or not by the MMO; the need for further discussions between the MMO, the applicant, and interested parties; and the extent to which the process reduces the likelihood of judicial review. The costs of this extra time were not quantified.

### **Costs of inquiries**

4.11 If the Secretary of State chooses to recover a decision for their determination, this will trigger an inquiry through the Planning Inspectorate. In the consultation Regulatory Triage Assessment the costs of inquiry were unquantified due to a lack of evidence. However during the consultation, some extra information was collected relating to costs associated with inquiries.

4.12 Comments from parties who have been involved in the inquiry process for other non- marine related cases, suggested it would be beneficial for an applicant to employ a programme officer. The programme officer would coordinate and manage the inquiry process including provision of papers and evidence. The comments suggested this role is vital and will help to minimise the time, effort and costs to all parties. These costs would be for businesses to meet<sup>3</sup>. Defra obtained evidence on the costs of employing a programme officer from several self-employed programme officers, which suggested a range of £6150 to £22850<sup>4</sup>. As our best estimate is that there would be no increase over the baseline in terms of the number of inquiries called on marine licensing determinations following this change in the process, the best estimate is that there are no additional costs to applicants from this process. However, in the high cost scenario, where there is an increase in inquiries, this would lead to costs to business (see Table A6).

4.13 Other more generic comments during consultation suggested that additional costs could arise for developers employing a lawyer or environmental consultant to help with the inquiry process. However, the recovery process will only capture the most complex cases, which would already require the applicant to employ specialists in order to obtain a licence from the MMO under the existing system. These costs are not included in the analysis, as they are covered in the baseline.

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<sup>3</sup> PINS, personal communication.

<sup>4</sup> Programme Officers, personal communication. Based on an average of the ranges indicated from contact with two Programme Officers.

## Appeal Process Costs

4.14 Where a decision is recovered and the Minister chooses to reject an application, the applicant may choose to appeal the decision. In the baseline, an applicant is already able to appeal against the rejection of an application by the MMO; the appeal would be determined by PINS and would be included already in the baseline scenario. As discussed in paragraph 3.6, in the appeals process proposed for decisions recovered by the Minister, the appeal could be determined by a First Tier Tribunal (FTT) rather than PINS, as PINS will have already scrutinised the case as part of the ministerial recovery process. As a result, because the power of appeal already exists within the baseline, the costs of appeal within the proposal are the additional costs of an FTT over a PINS inquiry. It is not expected that applicants will incur any additional costs from an appeal which goes to an FTT compared to an appeal which goes to a PINS inquiry, as in the baseline.

## Costs to public bodies

4.15 The main costs from this proposal are costs to the Government and public bodies (including Harbour Authorities, coastal planning authorities, IFCA's and other consultees). Total public costs are in paragraphs 4.16 to 4.19 and Table 2.

4.16 The costs are as follows:

**Familiarisation costs:** Comments received during the consultation suggested that the costs of familiarisation for public authorities (such as Harbour authorities, Local Planning Authorities, IFCA's and other key consultees) to familiarise themselves with the recovery policy change, should be higher than the estimated costs of **£3100 which were based on a £15/hour wage rate**. This is because respondents felt that more senior staff on a higher wage rate would be required to familiarise themselves with the policy. In order to reflect uncertainty in who would be required to familiarise themselves with this policy, Defra has adjusted the rate to a **range of £15 to £50 per hour, with a best estimate of £25 per hour including non-wage costs. As a result, the best estimate of the costs of familiarisation for public bodies is £5200**. See Appendix B (Table A3) and Table 3 in section 7 below.

## Referral and recovery costs:

**-Referral costs:** The best estimate would be annual public costs of **£40k per year assuming 5 additional referral cases per year**. These costs include costs to the MMO of preparing evidence summaries and papers for submission to Defra and costs to Defra in processing requests for referral and other associated administrative costs, including preparation of decision letters (See Table A5, Appendix B).

**-Recovery costs:** The best estimate is that there are **no costs to public bodies from recovered decisions**, as there would not be an increase in the number of inquiries held compared to the baseline. (See Table A7, Appendix B).

## Costs of inquiries to public bodies

4.17 Costs to public could arise from the likely involvement of the MMO at the start of the inquiry process as it will be required to prepare an information pack for referral to Defra to allow the Secretary of State to consider whether to recover the licence determination. Further costs to the MMO and statutory advisors could arise during the inquiry process, i.e. through the submission of evidence and/or attendance at inquiry, but it is likely that most of these costs are already covered in the baseline for the original Impact Assessment for the Marine and Coastal Access Act 2009. As a consequence, no extra costs were considered for the purpose of this IA.

## Appeal costs

4.18 **First Tier Tribunal costs:** Defra will incur additional costs for setting up the FTT process for appeal and where the costs for an FTT exceed those for a PINS inquiry. Therefore, Defra is expected to incur transitional costs of £38,000 in the first year of operation, and in the best estimate £350 per year for costs of appeal hearings (see Appendix B, Table A8).

## Total costs

4.19 The total costs for all scenarios are shown in Table 2. These have been assessed over a ten-year appraisal period and discounted at a social time preference rate of 3.5% to obtain the present value of costs. A ten-year appraisal period has been used because it is difficult to estimate the length of time associated with the referral and recovery processes due to the uncertainties about the number of cases that would be referred and how the course of each decision-making process would run.

**Table 2: Estimated Present Value Costs (2014 Prices)<sup>5</sup>**

	Costs to businesses			Public Sector Costs			Total PV costs <sup>6</sup>
	Transitional costs	Annual costs	PV of total costs	Transitional costs	Annual costs	PV of total costs	
Low case scenario	£7,700	£700	£13,900	£41,100	£24,350	£250,700	£264,700
High case scenario	£25,400	£92,500	£821,500	£48,300	£437,800	£3,816,600	£4,638,000
Best Estimate	£12,800 <sup>7</sup>	£2,000	£30,000	£43,200	£40,350	£390,500	£420,500

<sup>5</sup> All round to the nearest £100. Some figures may not sum due to rounding.

<sup>6</sup> This is the sum of the present value of total public and private costs.

<sup>7</sup> Figures are rounded in the summary leading to £0.013m

## **5. Benefits**

5. The main benefit from this proposal is the strengthened democratic process to ensure that parties representing local communities have the opportunity to play an enhanced role in raising matters of local concern before marine licences are issued.

5.1 For recovered cases this would include the opportunity to submit new evidence or to cross-question the developer or other parties involved in the decision. Inquiries would focus on the areas of difference between parties and help to ensure that they are given a full and transparent airing. Ministers would make their final determination in the light of an independent Inspector's report and be held accountable directly to Parliament for that decision.

5.2 Other benefits will likely be enhanced working arrangements between developers and local communities to ensure that any issues of local concern are resolved before a proposal reaches the marine licensing application stage. On the most controversial cases this may help to reduce the likelihood of third parties taking other action such as applying for judicial review.

5.3 The proposal to recover marine licence applications for certain novel activities that give rise to issues of national significance (for example experiments with potentially widespread effects) would ensure that their economic, social and environmental implications are subject to the enhanced public scrutiny offered by inquiries and that ministerial determination provides a necessary policy context.

## **6. Rationale and evidence that justify the level of analysis used in the IA (proportionality approach);**

6.1 This policy introduces a minor change to the Marine Licensing (Delegation of Functions) Order 2015 to enable the Secretary of State to take licence decisions on the most complex cases.

6.2 The policy is intended to be highly selective with a best estimate of 2 cases recovered per year, the same number of cases would undergo an inquiry under the 'do nothing' option (therefore no extra recovery costs are assumed). This figure is based on the relatively low annual marine licensing caseload (around 500 applications received per annum), the low number of cases that have been heard so far at inquiries, and the MMO's assessment of past objections from LPAs or IFCA's and the lack of challenge against MMO marine licensing decisions.

6.3 The full Impact Assessment for the MCAA produced in 2009 assessed the impacts of the introduction of the marine licensing system which covered the licence decision-making and inquiries. This IA therefore focuses on the additional element of the policy which is the referral and recovery process.

## **Methodology and assumptions:**

7. This IA considers the costs and benefits including the administrative impacts of this proposal. These are the impacts associated with bodies that need to familiarise themselves with the policy change. This

would include potential licence applicants (mostly represented by businesses but also by some public sector organisations) and public bodies with an interest in the licensing process.

### **Types of businesses likely to be affected by this proposal**

7.1 Table A1 in Appendix B shows the types of applicant according to inshore band 3 marine licences processed in 2013-2014. Of these 102 organisations are assumed to be businesses. Given the nature of the proposal which is aimed at large scale or highly complex activities, it is extremely unlikely that this policy will apply to any micro or small businesses.

7.2 Applications to which the policy may apply: It is assumed that the recovery policy will apply only to a small number of marine licensing applications for large-scale or complex (i.e. band 3) activities taking place within six nautical miles of the coastline or the activities raise issues of national significance not addressed adequately by the appropriate marine planning documents. The best estimate is that 5 cases are referred each year and 2 of these are recovered (not additional) for determination by the Secretary of State. The recovered cases do not produce additional costs since they are already in the baseline.

### **Assumptions for familiarisation costs**

7.3 It is assumed that there will be a need for businesses and relevant public authorities (such as LPAs, IFCA's and key consultees) to familiarise themselves with the minor changes associated with this proposal. It is also assumed that initial familiarisation would take an average of one hour for each band 3 applicant and forty minutes for other bodies.<sup>8</sup> These time requirements for both public and private sector are costed at a range of wage rates as shown in Table 3. This range reflects the uncertainty as to which staff would be required to familiarise themselves with the policy, with the higher cost scenarios assuming more senior and costly staff involvement.

**Table 3: Wage Rates Used to calculate familiarisation costs<sup>9</sup>**

<b>Scenario</b>	<b>Wage Rate</b>	<b>Wage Rate Source</b>	<b>Cost of labour including non-wage costs<sup>10</sup></b>
Low Cost	£11.61	Average wage of UK labour force	£15.09
High Cost	£38.33	Average wage of chief executives and senior officials in UK	£49.83
Best Estimate	£19.27	Average wage of managers and directors in UK	£25.05

<sup>8</sup> This assumption is based on an estimate by the MMO of the time taken for this type of activity.

<sup>9</sup> Source: ONS Annual Survey of Hours and Earnings, provisional results 2014. See <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-337425>, Table 14.5a.

<sup>10</sup> Includes a 30% allowance for non-wage costs.

7.4 Defra has assumed that businesses which are planning to apply for a marine licence within the next 5 years will need to familiarise themselves with this policy. Given that 102 business applied for marine licences in the year 2013-2014, we therefore consider that 510 businesses would need to familiarise themselves with this policy. In addition, 310 public bodies would be required to familiarise themselves with the policy changes. See Tables A2 and A3 in Appendix B.

7.5 Following review of the consultation responses, it is assumed that there would be an additional familiarisation cost for applicants if their application is referred to the minister for determination. This reflects that applicants would need to learn about the process in greater detail at this stage, and that their application may require a small degree of additional management at this stage. However, this is unlikely to be burdensome, as the MMO will be able to provide copies of documents and evidence submitted by the applicant to Defra in order for the Secretary of State to decide whether to recover the decision. It is assumed that this would take up 8 hours of time for two senior members of staff at the business which has made the application for the marine licence. This time requirement has been valued at the same rates as for transitional costs – see Table 3.

### **Assumptions for referral and recovery costs**

7.6 The experience of MMO staff indicates that the number of sustained objections from local authorities and IFCA's is likely to be low. In order to consider potential costs we have based our analysis on a costs range varying between a low scenario (assuming similar levels of objections to past trends) and a high scenario (assuming much increased levels of objection prompted by the change in policy), with the best estimate assuming a slight increase in objections.

7.7 Table 1 shows the assumed number of referrals and recovered decisions. Table A4 in Appendix B has more details on these costs to business which could arise following referral. These costs relate to familiarisation with the policy and have been included in response to consultation comments which suggested those involved in cases would need to look through the online Guidance and re-familiarise themselves with the process. In addition, where applications are subject to an inquiry, this could lead to additional cost to business from employing a programme officer, which is estimated to be between £6150 and £22850<sup>11</sup>. These costs are shown in Table A6 in Appendix B.

7.8 Estimated annual costs to the public sector for the referral stage are in Table A5 of Appendix B. Referral costs include costs to the MMO of preparing evidence summaries and papers for submission to Defra and costs to Defra in processing requests for referral and other associated administrative costs (including preparation of decision letters).

7.9 Estimated costs arising from the recovery stage are in Table A7. Recovery costs are based on the cost of paying for a PINS inspector (£27,300 per inquiry)<sup>12</sup> and the costs of hiring a venue and the PINS inspector's travel and subsistence expenses (estimated between £5,000 and £37,500, depending on

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<sup>11</sup> Source: Programme Officers, personal communication. Based on estimates provided by two programme officers.

<sup>12</sup> Source: Marine Management Organisation personal communication, based on marine licence inquiries held previously following the Marine and Coastal Access Act.

interest in the inquiry and the length of the inquiry)<sup>13</sup>. The total cost per inquiry is therefore estimated to be within the range of £32,300 to £64,800. Since only 3 extra cases are assumed to occur for the high scenario and the best estimate assumes no extra cases, no additional costs are accounted for the purpose of this IA.

### **Assumptions for appeal costs**

7.10 Costs for appeals processes are assumed to be incurred by Defra for setting up the process, and the additional costs of an appeal being processed through a First Tier Tribunal (FTT) rather than PINS as in the baseline. The appeals provisions in the MCAA have not as yet been used in any marine licensing case and it is assumed that their use on recovered cases would be extremely rare. It has therefore been assumed that a best estimate of one recovered case would be subject to appeal in a ten year period, with a high cost scenario of 3 appeals over a ten-year period. As it is not certain when an appeal via an FTT would occur across the ten-year appraisal period, we have presented this cost as an annual cost across the appraisal period to reflect the 10% chance of an appeal via FTT in each year.

7.11 HM Courts and Tribunal Service (HMCTS) has advised that set up costs for the FTT process would total £3,000, the running costs of the process in the first year would total £35,000 and the average costs for each appeal heard would be £3,500 per appeal. (HMCTS, personal communication 2015). It is not expected that Defra would incur any additional costs for preparing for an appeal heard at a FTT above that which would be incurred for an appeal processed through PINS.

### **Environmental and social impacts**

8. These are the impacts associated with the effects of this policy change on the environment and society at large. There are no expected environmental impacts associated with this policy since any environmental impacts are assumed to be taken into account at project level when licence applications are submitted and determined. The policy proposal seeks to ensure that there is an enhanced democratic process for assessing the environmental and other impacts of marine licence applications and some of these social impacts are discussed in the 'Benefits' section at paragraph 5. Certain licence applicants or interested parties may feel adversely affected where cases are referred or recovered. It is difficult to anticipate at this stage what these impacts might be. However the Government believes the change we are introducing strikes a reasonable balance between enabling affected communities- through their chosen representatives- to focus on the most significant cases while maximising certainty for developers where possible.

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<sup>13</sup> Sources: Environment Agency and programme officers, personal communication. The Environment Agency provided estimates for costs of venue hire and PINS' inspector's expenses based on 5 previous inquiries, from which a range of daily rates for venue hire was estimated. Programme Officers provided estimates of a range of the length of an inquiry from 5 days to 15 days. The high cost is based on inquiries lasting 15 days, but in practice of cases which are subject to an inquiry, only the most complex would last this long.

## **Direct costs and benefits to business calculations (following OI30 methodology)**

9. The Regulatory Policy Committee confirmed on 8 December 2014 (ref: RPC14-FT-DEFRA-2286) the proposed amendment to the Marine Licensing (Delegation of Functions) (Amendment) Order 2015 for the fast track as a low cost regulatory proposal.

9.1 It also confirmed that the regulatory proposal is in scope of OITO and would impose a direct net cost to business (an 'IN'). Based on the evidence the Equivalent Annual Net Cost to Business (EANCB) is £3500. In the high cost scenario the EANCB would be £95,400, due to an increase in the number of inquiries held. Neither of these estimates include any costs of delays following the referral of a policy for the Minister's determination, which could increase costs but have not been quantified due to a lack of evidence and high uncertainties towards size and type of projects experiencing the delays.

## **Summary**

10. The Marine Licensing (Delegation of Functions) (Amendment) Order 2015 will be amended to enable the Secretary of State to 'recover' and determine a marine licence application referred from the MMO. This is the preferred option. The policy is intended to be highly selective with very few cases being recovered.

## **Implementation Plan**

11. The Government has introduced the Marine Licensing (Delegation of Functions) (Amendment) Order 2015 which is due to come into force on 1 October 2015.

11.1 Implementation measures such as website communications for .GOV.UK, Guidance to the MMO and a revised Service Level Agreement with the Planning Inspectorate are being put in place.

## **Post implementation review**

12. Defra has agreed to review this policy 1 year after implementation in order to assess the costs and benefits. A review will be conducted in October 2016.