



Department  
for Environment  
Food & Rural Affairs

[www.defra.gov.uk](http://www.defra.gov.uk)

# **Marine licensing: Navigational dredging and other exemptions**

## **Summary of responses**

**March 2013**

© Crown copyright 2013

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk)

This document/publication is also available on our website at:

[www.defra.gov.uk/consult/](http://www.defra.gov.uk/consult/)

Any enquiries regarding this document/publication should be sent to us at:

[Marinelicensing.Consultation@defra.gsi.gov.uk](mailto:Marinelicensing.Consultation@defra.gsi.gov.uk)

## Contents

Introduction .....	1
Overview of responses .....	2
Summary of responses to consultation questions:.....	3
A: Do you agree with the Government’s overall approach to the exemption of activities that would otherwise require a marine licence? .....	3
B: Do you have comments on the various options put forward to exempt lower risk navigational dredging activities or otherwise reduce the burden on operators? .....	5
C: Do you agree with the proposed amendments to existing exemptions? .....	9
D: Do you agree with the proposals for new exemptions? .....	10
E: Do you have comments on the effectiveness of other existing exemptions? .....	11
F: Are there other options that should be considered? .....	12
G: Do you have comments on the estimates of costs and benefits contained in Annex B; do you have alternative evidence related to the data or assumptions used in the analysis? .....	13
H: Would Harbour Authorities want to have the authority to licence activities on behalf of the Marine Management Organisation (MMO)? .....	14
I: Where a Harbour Authority is interested in pursuing/trialling this option, how would they ensure that the functions of licensing and associated activities would remain compatible with the purpose for which the Harbour Authority was established? .....	14
J: Do consultees have any views as to an appropriate definition of “temporary”? .....	15
K: We would welcome suggestions on an appropriate definition for “temporary”, with regard to marker buoys for recreational activities.....	15
The way forward .....	16
Annex A: List of consultation questions .....	17
Annex B: List of respondents to the consultation .....	18

# Introduction

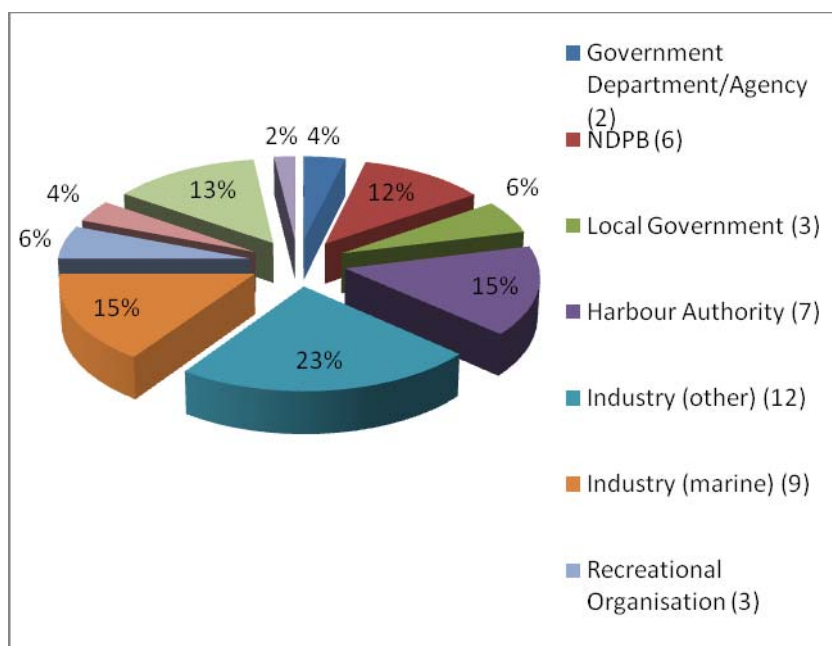
1. This document contains the summary of responses and Government response to the consultation on possible amendments to the Marine Licensing (Exempted Activities) Order 2011 (the “Exemptions Order”), which was held between 14 August 2012 and 22 October 2012.
2. Article 4 of the Exemptions Order exempts certain activities from the licensing regime, subject to conditions. This Order constituted an update of the existing exemptions from the previous legislation upon which the Marine and Coastal Access Act (MCAA) was based, plus a number of new exemptions. After 12 months of operation, it was recognised that in many instances, this Order could be revised to better suit the delivery and intent of the MCAA. As such, a number of other activities were proposed for exemption along with suggestions for further modifications to several existing exemptions.
3. The consultation set out proposals for exempting low risk activities including navigational dredging, or otherwise reducing the burden on operators. It also addressed some of the issues raised during the Government’s Red Tape Challenge spotlight on water and marine legislation. The Red Tape Challenge is a process to review the stock of rules and regulations that are in force in the UK and remove those that are unnecessary or unjustified, and one of the emerging themes of the marine spotlight was whether certain low risk activities should be subject to licensing.
4. Annex A provides the full list of consultation questions, but in summary, the consultation proposals were:
  - Measures to exempt low risk navigational dredging activities, or otherwise reduce the costs of licensing dredging such as through fast tracking of licence applications, making licences last longer, and reducing duplication of consenting by delegating functions to certain Harbour Authorities;
  - Amendments to existing exemptions:
    - i. Extending the scope of the exemption for shellfish propagation and cultivation to include marker buoys;
    - ii. Modifying the conditions to the exemption for deposit of marine chemical and marine oil treatment substances so that a non-licensing approval by the licensing authority is required in all cases;
    - iii. Requiring advance notification to the licensing authority before making use of the exemption for scientific instruments and removal of beach litter or seaweed (in order to check compliance with conditions relating to protected sites);

- iv. Extending the exemption for removal of litter or seaweed to include removal of dead animals (eg cetaceans);
  - v. Extending the exemption for moorings and aids to navigation to include other small-scale activities such as the construction of pontoons;
  - Creation of other new exemptions:
    - i. Sediment sampling;
    - ii. Removal of objects accidentally deposited on the seabed;
    - iii. Temporary marker buoys used during recreational activities.
5. The Government would like to thank everyone who contributed to our consultation.

## Overview of responses

6. A total of 56 responses to the consultation were received from a range of sectors including business, recreational, regulatory and non-governmental organisations. See Annex B for the list of respondents and Figure 1 for a breakdown by sector. One respondent simply acknowledged being consulted; the rest provided comments on either the consultation questions or on more general issues.
7. Several comments have been placed under different questions to aid in the clarity of the document.

**Figure 1 – Breakdown of respondents**



## Summary of responses to consultation questions:

### A: Do you agree with the Government's overall approach to the exemption of activities that would otherwise require a marine licence?

8. A total of 37 responses were received relating to question A. All respondents were in favour of the Government's overall approach. Some respondents were fully in favour of the proposed modifications and new exemptions, appreciating the reduction in the cost and time burden and stating it was important to be able to focus on the projects which required a more detailed assessment or control. Other respondents were in favour of the approach in principle, but had some clarifications or questions (eg concerning best practice), which are further detailed below or under subsequent consultation questions.
9. Certain respondents were in favour of the proposals providing there were suitable measures to protect safety of navigation, enable conservation, preservation and protection of the environment. There were also concerns to ensure a notification system remains in place to alert those bodies, such as harbour masters and Trinity House, who are responsible for safety of navigation. Comments from some industry representatives indicated that the notification process should not be required for certain small scale, low risk activities as it would increase cost and burden. There were

also comments requesting that more use was made of historic dredge history. Another response suggested that the wording of the scientific sampling condition needed to be altered to encompass all types of sampling, rather than grab sampling alone.

10. Other respondents required clarification or guidance on several general concerns including:

Methods of notifying an exemption;

Transitional arrangements for holders of existing licences from the Environment Agency;

Whether exemptions will be determined through self assessment or whether an assessment from the MMO would be required?

Whether navigation authorities should be treated in the same fashion as Harbour Authorities (HA) with regards to navigation and maintenance dredging?

Cross border issues, for example, whether Maintenance Dredging Protocols (MDP) will apply in Wales? and

Cumulative and in-combination assessments for multiple exempted activities and licensed activities.

## **Response:**

11. The Government has amended the Exemptions Order taking on board comments received during the consultation. The main changes arising from the consultation are:

- Exempting “de minimis” dredging activities as originally proposed, whilst channelling other small-scale dredging and dredging covered by an approved Maintenance Dredging Protocol through a fast track route;
- Applying the notification requirement to all deposits made for the purposes of shellfish propagation in view of the potential risks to safe navigation;
- Withdrawing the proposal to require notification of beach litter or seaweed removal activities;
- Exempting construction of pontoons by Harbour or Lighthouse Authorities, or consented by them, subject to limits in size and numbers;
- Extending the proposed exemption for sediment sampling to include other types of sampling for testing or analysis;
- Not limiting the exemption for temporary markers to just recreational activities;

- Defining ‘temporary’ as being a deposit for no more than 28 days.
12. Other than in certain prescribed cases (such as the deployment of oil or chemical dispersants) the Marine Management Organisation (MMO) would not normally “approve” an exempted activity. It is primarily the responsibility of the operator to ensure that they comply with any conditions attached to the relevant exemption. However, in certain cases there is a requirement to notify the MMO that an exempt activity is being carried on – this will help the MMO and other regulators to be aware of the cumulative impact of activities within a certain area and, if necessary, check that operators are complying with the conditions of the exemptions (for example, not interfering with safety of navigation).
  13. Obligations will remain in place under other existing legislation to protect navigation, nature conservation and historic environmental interests. An exemption from the requirement for a marine licence would not affect other legal obligations.
  14. The MMO will take account of the responses to the consultation in its guidance to operators. For example, guidance will be produced on whether certain activities are licensable, notification requirements, Maintenance Dredge Protocols (MDP) and transitional arrangements. Defra and the MMO will continue to work closely with the Welsh Government and other devolved administrations to maximise the efficiency of cross-border working.

## **B: Do you have comments on the various options put forward to exempt lower risk navigational dredging activities or otherwise reduce the burden on operators?**

15. A total of 36 responses were received relating to question B. There was broad agreement from all respondents to three of the four navigational dredging options put forward (options i – iii), but generally respondents were not in favour of option iv. Notification was again a concern, one respondent noting that notification and registration should not be used just for environmental and navigational purposes, but should also be used to inform other users of the sea who might be affected. More detailed comments were received from 27 respondents and are discussed within the four proposed options below:

### **Option i: Exempt ‘minor’ dredging activities from the requirement for a marine licence, subject to a “carve-out” to ensure EU compliance.**

16. All respondents were strongly in favour of exempting minor dredging works. However, several respondents required clarification on whether these minor works applied to capital as well as maintenance dredging and whether sampling was required for contamination assessment. Another respondent required guidance on whether the exemptions will apply to a set location, or whether multiple dredges could take place within a water body. Concerns were also raised about cumulative impacts of multiple exempt dredge operations and the assessment, notification and registration process



for these exempt dredge operations. With regard to water injection dredging, a question was also raised about how compliance would be ensured in terms of tonnages.

17. One respondent was concerned that the de-minimis threshold would not be sufficiently high in areas of highly mobile sediments, where more regular dredging was required. However, one of the Statutory Nature Conservation Bodies stated that this threshold may be suitable for use within Marine Protected Areas subject to screening. Lastly, another respondent was in favour of the proposed exemption in principle, as long as the dredging operation complied with navigational safety requirements.

## **Response:**

18. The Government will exempt de-minimis dredging, which equates to 500 m<sup>3</sup> (or less) of material dredged a maximum of three times per year (1,500 m<sup>3</sup> in total). However, this material must be maintenance dredged material, dredged in the last 10 years and not dredged to any deeper depth than previously dredged in that 10 years. Other conditions will ensure compliance with the Environmental Impact Assessment, Water Framework and Habitats Directives and with the protection of Ramsar sites and Marine Conservation Zones. A dredging activity would not be exempt if it interfered with safe navigation.
19. Given their small scale, it is very unlikely that the cumulative effect of several exempt dredging activities occurring within the same water body would be significant. However, the above conditions would enable the regulator to take action and disapply the exemption if there were serious problems with water quality or impacts on protected sites.
20. Where there are highly mobile sediments and dredging is required frequently throughout the year, it may be more appropriate to pursue option iii and apply for a fast track licence.

## **Option ii: Exempt dredging activities if they are included in a Maintenance Dredging Protocol approved by the licensing authority, subject to “carve-out to ensure compliance with other EU legislation.**

21. While respondents were in favour of a MDP, there were concerns about increasing the scope of the MDPs (eg to include strategic water body assessment) and how both MCAA and Water Framework Directive requirements would be met. Where thresholds were already assessed and in place within MDPs, a question was raised about how these tonnages would relate to the thresholds being proposed. Another concern, brought up by several respondents (in particular smaller operators and recreational organisations), was funding; how to coordinate all water users and fund a strategic assessment of a water body. Respondents were also of the opinion that option ii pursued on its own, would be unlikely to decrease time and costs for a licence. One

respondent made the point that for small operators, undertaking a MDP would be more costly than applying for the current Tier 1 licence application.

22. Comments were also received concerning updating and amending MDPs, also noting that data on all exempt dredging activities should be included within the document. It was also noted that updating existing MDPs to encompass more than just nature conservation concerns would be costly and that there needed to be a formal process of assessment and approval of each document by the MMO. It was also stated that if dredging within a MDP takes place outside harbour or port limits, consultation would still be required for navigational purposes. Cross border issues were also raised with regard to MDPs.

### **Response:**

23. The Government has decided that where there is an approved MDP in place the fast track licence process will be used, rather than having an exemption. MDPs in this context are likely to be 'regional environmental assessments' or 'maintenance dredging strategic assessments', and as such, all marine licensing, Water Framework Directive, conservational, heritage and navigational issues will be covered. The cost savings would be similar to those to be gained from an exemption, since the main benefit will be from sharing the environmental assessment costs between operators within a given water body. The additional cost of applying for fast track licences would be negligible but they would enable the MMO to set clear conditions and vary licences or take enforcement action if required.
24. The MMO will produce guidance to ensure future MDPs meet requirements set down by the MCAA and the WFD. Continued consultation will take place with the Environment Agency to use the "Clearing the Waters" guidance to full effect. Thresholds set out within previously assessed MDPs will remain valid, although there may be further work required with regard to Water Framework Directive requirements (for example). All options presented will be taken forward, therefore operators will need to weigh up whether to undertake a MDP and apply for a fast track licence or apply for a conventional marine licence. Smaller operators may only need to apply for a fast track licence under option iii. The MDP/fast track approach will be introduced as a trial before a full roll out takes place.

### **Option iii: Increase the efficiency of the licence process.**

25. All respondents were in favour of fast track licences and the possibility of longer term licences of up to 10 years. Several respondents stated that longer licences alone would significantly reduce costs. However, it was also noted that longer licences would require re-sampling and review points built in to the licence.

## **Response:**

26. It is the intention that fast track licences will apply to established small scale maintenance dredging, with no significant changes to the area, method or depth dredged. Containing these small dredge operations within a fast track process will generate significant cost savings in terms of the assessment required and the time taken to issue a licence.
27. It is confirmed that five or 10 year licences will have appropriate re-sampling and review points built in to the conditions of the licence. It is also worth stating that the conventional marine licence can last for several years, such as 10 years.

## **Option iv: Harbour Authorities carry out the function of issuing marine licences on behalf of the MMO where the maintenance dredging activity is within the Harbour Authority.**

28. The majority of respondents were not in favour of Harbour Authorities issuing licences for maintenance dredging. Harbour Authorities that were not in favour cited reasons of resources (time and money) and a lack of expertise as their reasoning for not seeking a delegated responsibility. Other respondents made the point that the licensing authority needed to be independent and free of commercial and financial interests, which is why the MMO was best placed to issue licences.
29. One Harbour Authority (Port of London Authority, PLA) was in favour of taking the MCAA licensing responsibility for maintenance dredging. Some respondents were interested in the licensing powers for minor dredging applications, but no mention was made of licensing dredges within a MDP. Another respondent, who currently issues licences for harbour works sees the MMO as duplicating this work.

## **Response:**

30. The Government recognises that most Harbour Authorities are not in a position to have licensing functions delegated to them, and that such delegation would only be justified where it resulted in a reduction in duplication and costs for operators and regulators alike. It notes, however, the interest of the Port of London, where there is some duplication between the Port's own licensing role and the marine licensing role carried out by the MMO under the MCAA. Further discussions will be held between the MMO and the PLA with a view to reducing duplication and reducing the regulatory burden on operators. The MMO will scope delegating the function of licensing maintenance dredging to PLA, with the possibility of conducting a pilot study.

## C: Do you agree with the proposed amendments to existing exemptions?

31. A total of 29 responses were received relating to question C. Most responses were in broad agreement, although guidance on notification was requested, especially with regard to whether notification was required for removing litter from beaches and ensuring appropriate notification for shellfish cultivation activities. Several comments also stated that there should be a requirement to notify Harbour Authorities about any exemption, to ensure adherence to relevant Harbour Authority conditions. Guidance was also requested for diving activities.
32. Several comments were received concerning 'like for like' replacements, and ensuring consistency in wording between article 25 and the consultation document (replacement piles and small scale structures were referred to in the consultation but are not contained within the current Exemptions Order).
33. Other respondents were in agreement with the proposed amendments as long as appropriate conditions were included on navigational safety, the historic environment and protected sites. One respondent also had a concern about the access impact of machinery to remove dead animals. Other comments concerned the need for a distinction to be made between 'emergency' and 'urgent' works, and the need to treat the historic environment in the same way as EU protected sites.

### Response:

34. As detailed in paragraph 3, the Government proposed several amendments to the existing Exemptions Order:
- i. Extending the scope of the exemption for shellfish propagation and cultivation to include marker buoys;
  - ii. Modifying the conditions to the exemption for deposit of marine chemical and marine oil treatment substances so that a non-licensing approval by the licensing authority is required in all cases;
  - iii. Requiring advance notification to the licensing authority before making use of the exemption for scientific instruments and removal of beach litter or seaweed;
  - iv. Extending the exemption for removal of litter or seaweed to include removal of dead animals (eg stranded cetaceans); and
  - v. Extending the exemption for moorings and aids to navigation to include other small-scale activities such as the construction of pontoons.

35. Following the consultation, a number of modifications have been made to these proposals in order to ensure that requirements for notification are more risk-based and tightening up the precise scope of the exemptions, notably:
- i. Applying the notification requirement to all deposits made for the purposes of shellfish propagation in view of the potential risks to safe navigation;
  - ii. Removing the proposal to require notification of beach litter or seaweed removal activities (given that the exemption only applies to work done by or on behalf of local authorities);
  - iii. Exempting construction of pontoons by Harbour or Lighthouse Authorities, or consented by them, subject to limits in size and numbers;
  - iv. Extending the proposed exemption for sediment sampling to include other types of sampling for testing or analysis;
  - v. Not limiting the exemption for temporary markers to recreational activities only; and
  - vi. Defining 'temporary' as being a deposit for no more than 28 days.
36. The MMO will update the suite of marine licensing guidance as is necessary. This will include the requirements for notification, guidance for divers, guidance for repairs and maintenance.

## **D: Do you agree with the proposals for new exemptions?**

37. A total of 22 responses were received relating to question D. There was strong support for the additional proposals. All respondents agreed with the addition of sediment sampling, although some respondents felt that a 1m<sup>3</sup> limit was too small for their requirements and that there should be scope for other types of sampling (eg ground investigation works and biological sampling). Slipways (and associated cleaning) were also suggested as an additional exemption. It was also suggested that minor repairs to structures should also be exempt and this comment will be addressed under question F.
38. Clarification was requested to ensure that where the Harbour Authority does not have powers to approve the proposed exemptions, that the exemptions cover their own relevant activities. There are also comments that any temporary buoys must comply with navigational marking requirements and that flood defence consents may still be required.

## Response:

39. The Government has proposed (and modified) several new exemptions:

- De-minimis dredging (< 500 m<sup>3</sup> per campaign and <1,500 m<sup>3</sup> per annum);
- Sediment sampling (modified to any sampling for testing or analysis);
- Removal of objects accidentally deposited on the seabed; and
- Temporary marker buoys used during recreational activities (modified to any temporary activity or structure, with 'temporary' defined as no more than 28 days) - see questions J and K.

40. It is confirmed that 1 m<sup>3</sup> is the volume of sediment removed per sample, rather than in total. Cleaning of slipways is unlikely to be considered as a licensable activity and other activities which are unlikely to be licensable will be detailed in MMO guidance. The guidance will also detail navigational requirements and other consents that may be required from other regulators.

## E: Do you have comments on the effectiveness of other existing exemptions?

41. A total of nine responses were received relating to question E, with most respondents having no comments on the effectiveness of the existing exemptions. One respondent commented that in certain areas, fairways committees have similar responsibilities to Harbour Authorities and therefore should be treated in a similar manner.

42. Several comments concerned article 19 (maintenance of coast protection, drainage and flood defence works) noting that if work is covered under a Land Drainage Consent for maintenance purposes (with approval from the Environment Agency and Natural England) it should also be exempted from requiring a marine licence.

43. One comment related to extending article 24 to include emergency works by, or on behalf of Harbour Authorities, for navigational safety. The possibility of retrospective notification to the MMO was also raised, as occurs in Scotland for the notification of removal of dead animals. Lastly, it was suggested that like for like replacements, when the modern replacement is slightly larger (a few cm) should not trigger the requirement for a marine licence.

## Response:

44. It is not proposed that the Order is extended to include fairways committees, as they do not have a similar legal status or regulatory function as Harbour Authorities. Like for like replacements, where the modern replacement is slightly larger, will be treated on a

case by case basis, but where a licence is required, it is likely that these applications will fall within the fast track process.

45. The MMO will produce guidance on the proposed changes. Notifications are only required where there is a clear need for the MMO to be able to check compliance with conditions. Single combined licences will be possible in certain circumstances and small scale activities which are not currently exempted may benefit from entering the fast track process.

## **F: Are there other options that should be considered?**

46. A total of 16 responses were received relating to question F. Some comments suggested that the exemptions should be widened to include more low risk activities (although in most cases, this issue was more about clarifying whether the proposed activity would be licensable in the first place).

47. Other options/questions proposed by respondents included:

- The registration of certain exemptions and non licensable activities;
- Whether certain activities, such as de-silting or intake dredging, that did not require consent under the previous legislation (eg Food and Environment Protection Act 1985 or the Coast Protection Act 1949) would be licensable under the MCAA?;
- Automatic licence renewals when combined with Water Framework Directive assessments;
- The exemption of maintenance and minor repairs to existing structures;
- Cleaning chemicals for slipways should be on an approved exempted list;
- Exemption/fast tracking of small constructions (which may be greater than £10,000 in cost), subject to screening;
- Combining similar activities into one licence, rather than multiple licences;
- Maintenance of moorings outside of Harbour Authority areas,
- The exemption of hull scrubbing.

### **Response:**

48. The Government has not decided to create any additional new exemptions beyond those proposed in the consultation paper. However, there are a number of actions being taken by the MMO to reduce the burden on operators where a marine licence is required, including through fast tracking or by issuing licences for longer periods of

time. The MMO will update its guidance to make it very clear where activities such as routine maintenance or minor repairs are unlikely to be licensable. The effectiveness of the proposed changes and any new concerns or proposals will be reviewed by April 2014.

49. Certain exemptions will need to be notified to the MMO and hence registered by them. Other licensable small scale works, including those works outside of Harbour Authority areas, will likely be fast track activities. Multiple similar activities (such as the installation or maintenance of tidal flaps) may also be combined into one licence and be put forward for a longer term licence of up to 10 years.

## **G: Do you have comments on the estimates of costs and benefits contained in Annex B; do you have alternative evidence related to the data or assumptions used in the analysis?**

50. A total of 10 responses were received relating to question G. Most comments concerned aspects of Annex B where respondents did not think that the estimates calculated or assumptions applied were quite correct. One response commented that the potential benefits had been over estimated as it is assumed that the exemptions will apply in all Harbour Authority areas, but not all Harbour Authorities have the powers to consent activities such as pontoons within their area. Another comment suggested that the numbers of applications for certain activities were too low and needed to be re-assessed (eg four applications for temporary marker buoys). It was also suggested that the cost to industry had been under estimated, as well as not assessing certain costs to the MMO (such as the cost to consider the litter and seaweed removal notifications).
51. However, the cost and time for Harbour Authorities was seen as appropriate, although only where there was an existing Harbour Authority consent. Where there is no Harbour Authority consent, a comment received suggested that costs would be much greater as the application would not have been subject to the Harbour Authority's navigational risk assessment, environmental assessment or determination by the Harbour Board.

### **Response:**

52. The Government has revised the estimated number of licensable activities, based on applications rather than determinations and including data on pontoons. The cost-benefit estimates have also been revised with regards to dredging. The updated information has been incorporated into the final Impact Assessment.



## **H: Would Harbour Authorities want to have the authority to licence activities on behalf of the Marine Management Organisation (MMO)?**

And

## **I: Where a Harbour Authority is interested in pursuing/trialling this option, how would they ensure that the functions of licensing and associated activities would remain compatible with the purpose for which the Harbour Authority was established?**

53. A total of 24 responses were received relating to questions H and I. These responses have been combined as the questions are linked. The majority of responses to these questions was 'no'. There was little interest from Harbour Authorities to take on these powers, primarily due to a lack of resource and expertise. Other sectors were also against Harbour Authorities taking on this role, stating concerns of consistency, conflict of interest and a lack of independence.
54. Questions were raised about who would pay for any required amendments to Harbour Revision Orders and that it would be necessary for Harbour Authorities to produce guidance and criteria with the MMO on how the licensing function would be consented, monitored and enforced to ensure consistency.
55. One Harbour Authority (PLA) was interested in having the authority to licence activities on behalf of the MMO.
56. Comments were received from a few Harbour Authorities who expressed an interest in meeting with the MMO to discuss streamlining of licensing rather than delegation of authority.

### **Response:**

57. See paragraphs 33 and 34 above. The MMO will discuss with Harbour Authorities the streamlining of licences in the coming year.

## **J: Do consultees have any views as to an appropriate definition of “temporary”?**

And

## **K: We would welcome suggestions on an appropriate definition for “temporary”, with regard to marker buoys for recreational activities.**

58. A total of 31 responses were received relating to questions J and K. Again the responses have been combined as the questions are linked. Responses concerning the definition of temporary ranged from 28 days to nine months, with one respondent commenting that with regard to temporary works related to construction activities, these works could remain in place from two months to two years, dependent on the construction they were supporting.
59. There were also concerns that the length of time was irrelevant, and it was the navigational safety (along with location, size and number) that needed to be assessed for exemption.

### **Response:**

60. Further consultation has taken place with Trinity House (the General Lighthouse Authority for England and responsible for providing and managing navigational aids) on an appropriate threshold for defining temporary markers for the purposes of the Exemptions Order. Based on their advice, the exemption for markers will be limited to those in place for no more than 28 days, subject also to a requirement to notify the MMO. It will be a condition of the exemption that the placing of markers does not interfere with safe navigation or damage protected sites. Markers that are placed for longer periods (eg for a summer season) are still likely to require a marine licence, but depending on the nature of the activity, could be fast tracked and/or be issued with a long term licence if the location remains the same. Where there are multiple locations for a certain activity (eg marker buoys for protected wrecks), it should also be possible to apply for one licence for all locations.
61. Regarding temporary works linked to construction activities, a marine licence will be issued for the whole project, including the temporary works. Relevant conditions will be placed on the licence, for example, to ensure the temporary works are removed at the end of the construction period.

## The way forward

62. In view of the benefits to business and other marine users and taking account of the responses to its consultation document, the Government has proceeded with the making of the Marine Licensing (Exempted Activities)(Amendment) Order 2013. This incorporates the post-consultation changes described in this document and summarised in paragraph 11 above. The new and amended exemptions will come into force on [6 April 2013].
63. Further work will be undertaken by Defra and the MMO to respond to other comments about the implementation of marine licensing, in particular through the provision of guidance on licensable activities and a range of efficiency measures to further reduce the burden on operators. This will include the development of fast track licensing for non-exempt navigational dredging projects.
64. The impact of the changes will be reviewed after the first year's operation, in April 2014.

## **Annex A: List of consultation questions**

- A. Do you agree with the Government’s overall approach to the exemption of activities that would otherwise require a marine licence?**
- B. Do you have comments on the various options put forward to exempt lower risk navigational dredging activities or otherwise reduce the burden on operators?**
- C. Do you agree with the proposed amendments to existing exemptions?**
- D. Do you agree with the proposals for new exemptions?**
- E. Do you have comments on the effectiveness of other existing exemptions?**
- F. Are there other options that should be considered?**
- G. Do you have comments on the estimates of costs and benefits contained in Annex B; do you have alternative evidence related to the data or assumptions used in the analysis?**

The following questions are contained in the text at the paragraphs indicated:

- H. Would Harbour Authorities want to have the authority to licence activities on behalf of the Marine Management Organisation (MMO)? (paragraph 4.22)**
- I. Where a Harbour Authority is interested in pursuing/trialling this option, how would they ensure that the functions of licensing and associated activities would remain compatible with the purpose for which the Harbour Authority was established? (paragraph 4.22)**
- J. Do consultees have any views as to an appropriate definition of “temporary”? (paragraph 4.24)**
- K. We would welcome suggestions on an appropriate definition for “temporary”, with regard to marker buoys for recreational activities. (paragraph 4.29)**

## Annex B: List of respondents to the consultation

Associated British Ports
Bristol Port Company
British Marine Aggregates Producers Association
British Marine Federation
British Ports Association
Canal & River Trust
Centrica Energy
Civil Engineering Contractors Association
Crown Estate
Deben Estuary Partnership
Deben Yacht Club
EDF Energy
English Heritage
Environment Agency
Faversham Creek Consortium
Federation of Dredging Contractors
Gloucester Harbour Trustees
Harwich Haven Authority

Individual entry
Institute for Archaeologists
Institute of Fisheries Management
Joint Nautical Archaeology Policy Committee
Lancaster Port Commission
Land & Water
Maldon Harbour Improvement Commissioners
Marina Developments Limited
Marine Ecological Surveys Limited
Marine Scotland
Maritime & Coastguard Agency
MMO
National Grid
Natural England
Northern Ireland Tourist Board
Peel Ports
PIANC
Poole Harbour Commissioners
Port of Dover
Port of London Authority
River Hamble Harbour Authority

Royal Yachting Association
Scarborough Borough Council (Coastal Projects Unit)
Scottish Power Renewables
Seafish
SSE
Suffolk Coast Against Retreat (SCAR)
Suffolk Coastal and Waveney District Councils
Suffolk County Council
Suffolk Yacht Harbour Ltd
The Law Society
The Lune Rivers Trust
The Rivers Trust
Trinity House
UK Major Ports Group
United Utilities
West Dorset DC & Weymouth & Portland BC