

MARINE LICENSING – STAKEHOLDER WORKSHOPS SEPTEMBER 2009

Introduction

The Marine and Coastal Access Act 2009 will simplify the licensing of a range of activities in our seas. This will replace current consents under Part II of the Food and Environment Protection Act 1985 and Part II of the Coast Protection Act 1949 and other legislation. The Department is now designing the details of the new system and issued a consultation paper on this in July 2009 to get the views of stakeholders. The Department will publish a response to the consultation in December 2009. We will continue to consult with stakeholders as we develop the licensing system.

As part of this consultation, Defra held three workshops in September 2009, two in Reading and one in Newcastle. In total 83 people from 62 organisations took part in the workshops. The organisations who attended the workshops are listed at Annex A.

Each workshop followed the same basic format. There were introductory presentations about the status of the Marine and Coastal Access Bill and about the Marine Management Organisation (MMO). Chris Parry, the Chairman-designate of the Marine Management Organisation, presented his perspective on the MMO at the first two workshops.

We split the participants into different groups to carry out a series of tasks throughout the day. We initially allocated people into groups with similar interests – for example, one group was largely regulators, another was from industry etc.

The groups were asked to prepare a Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis on the current licensing and consents system. The groups were then asked to consider how the issues identified in the SWOT exercise could be tackled in the future to maintain strengths, eliminate weaknesses, gain the opportunities and avoid the threats. From this analysis, the groups identified 5 key messages, 3 recommendations and 1 concern that they wanted Defra to consider. The first two workshops were also asked to suggest success criteria for the new system.

For the final tasks which focused on three policy questions, we rearranged people into groups with mixed interests. In addition, the workshops give participants the chance to raise additional concerns about the Marine and Coastal Access Bill – not necessarily about licensing.

This document summarises the common themes raised at each workshops.

First Workshop, Reading 9 September

SWOT¹ Analysis

Three groups said that regulators' knowledge or expertise is currently strong. Two groups mentioned familiarity with the current system is beneficial.

Three groups raised delays or timeframes as a weakness. Two groups identified inconsistencies in approach and two duplication of effort; other perceived weaknesses included lack of transparency and the operation of consultation/pre-application scrutiny.

Two groups felt that there were opportunities to improve stakeholder relationships and in one group to improve awareness of licensing requirements. The groups generally felt there were opportunities for process improvements such as moving towards a "one-stop shop" and reducing the number of applications, time frame etc.

Four groups felt there were threats through the change over from MFA to MMO, regarding culture, staff turnover, loss of knowledge and experience. Two groups thought devolution was a threat.

To tackle these issues, two groups mentioned the importance of retaining staff and capturing their knowledge. Three groups mentioned that time frames or timescales should be set to avoid delays and give applicants more transparency about how long the application process would take. Stakeholders also wanted to see streamlined processes and evidence-based decision-making backed by technical knowledge. Two groups explicitly mentioned the need for good/clear communication. To guarantee the opportunities, two groups raised education or public engagement. Two groups mentioned the MMO and ensuring links with stakeholders or other delivery bodies. two groups mentioned the importance of training, confidence and the job satisfaction of MMO staff to avoid the threats identified.

Summary

From the key messages 2 groups mentioned staff recruitment, ensuring good quality staff. Linked to this 3 groups mentioned knowledge and experience, with concerns about the loss or retention of staff. Several common themes were found in success criteria; two groups want stakeholders/ applicants to see improvement in the new regime compared to the old; 4 groups saw success involving timeframes; 3 groups linked success to ensuring costs to applicants are not excessive and 3 groups wanted to see transparency in the system.

Tensions

¹ S= Strengths, W= Weaknesses, O= Opportunity, T= Threats

The issues raised as tensions were largely developments of concerns about the new system though some explicit tensions were mentioned, for example between the responsibilities of different regulators including the Infrastructure Planning Commission. The difficulties of balancing costs and benefits was also raised.

Policy Questions

Question 1: How do we build transparency and certainty into the process?

A common link was accessible information or guidelines so that the process can be understood; this was raised by three groups. Openness in decision making was also raised with one group suggesting that applicants should have access to information about past decisions to inform their own applications.

Question 2: What should the pre-application phase look like?

Groups suggested the pre-application process may vary depending upon the project itself, it could depend upon scale or type of project. Two groups suggested the pre-application be an informal process; however another group suggested that it be formal.

Question 3: What specific factors make an activity low risk? (exemptions)

The groups suggested that we should consider activities which were already regulated as low risk. Other suggestions included like for like maintenance (two groups), science, small scale activities, activities not requiring an EIA or Appropriate Assessment (under the Habitats Directive) and emergency action.

Second Workshop, Newcastle, 17th September

SWOT Analysis

Two groups argued that the current system is well known, established or familiar; two groups raised the expertise within the current system and two groups mentioned that it was effective.

In terms of weaknesses, there was no common theme other than that two groups mentioned that enforcement was weak or not strong enough. However, a number of issues were raised about current processes – such as lack of flexibility, speed of decision-making, a perceived anti-development bias. Issues were also raised about consultation during the process such as whether the process relied too much on consultees and that MFA do not have their own expertise to challenge the advice they receive.

Two groups thought that there was an opportunity for the new system to streamline processes. Groups also identified other ways that we could improve the processes in terms of communication and education. Among the threats, two groups felt that costs might increase and there were other issues identified such as lack of resources, the scope of the new system and ensuring that exemptions do not undermine compliance with other EU legislation. Two groups brought up the use of technical expertise; two groups brought up training of staff and two groups brought up transparency.

Two common themes were mentioned for eliminating the weaknesses; 2 groups mentioned publicity, in needs to be apparent and two groups mentioned that greater clarity was needed. For guaranteeing opportunities, two groups brought up stakeholders. Two groups identified transparency in charging as a way of avoiding the threat of increased costs. Other suggestions included using trial applications to test out the new approvals system.

Summary

Two groups brought up the need for transparency. For the 3 recommendations, two groups development or investment in staff. For the 1 concern two groups raised the issue of conflict.

Tensions

Groups were asked to list potential tensions within the process and then provide a recommendation to resolve it. Three groups mentioned the potential conflict between socio-economic vs. environmental/conservation aims, two groups recommended engagement to help resolve it. Groups also raised the possible tensions between different users of the sea and between different Government objectives (e.g. for

fishing and for offshore wind energy). One suggestion to resolve such issues was to have consistent and transparent weighting of priorities.

Policy Questions

Question 1: How do we build transparency and certainty into the process?

The group that considered this question said that the process needs to be clear to all stakeholders, particularly the points at which they can comment on an application. Information needs to be widely available, in various formats and in Plain English

The information an application be shared included basics such as location, timescale, activity size, footprint but there were commercial sensitivities. One body needs to take responsibility for dissemination of information.

There should be target times from when a completed application submitted with all the supporting evidence but these should be different for 'small' and 'big' projects. The Turnaround time (e.g. 8 weeks) should be indicated on the application document but making clear that 'contentious' projects might take longer. The timeframe dependent upon activity.

Question 2: What should the pre-application phase look like?

The two groups who answered this question both said it should be a formal process. Both groups also felt the costs should be recoverable.

Question 3: Which exemptions should be registered and which ones should not need to be registered?

One group made specific comments on whether current FEPA exemptions should continue. Another group considered supported in principle exemptions compliant with other legislation but also considered that cumulative impacts need to be considered. The group also said that zoned areas emerging from planning may require MMO to know about exempted activities to manage different uses.

Third workshop, Reading, 30th September

SWOT Analysis

The Groups stressed familiarity with the processes and personnel of the existing system as an advantage. Local accountability was also mentioned as a strength.

Several concerns were raised about the current licensing process in relation to the time it takes to consider applications, lack of feedback during the process, duplication of effort and inconsistencies. Two groups raised the lack of plans on which to base decisions as a weaknesses.

Three groups saw the opportunity for the new system to deliver consistency in decision making. Other opportunities identified included cost reduction (two groups) and new approaches e.g. in public consultation or joining up EU systems etc. The threats identified included the lack of experience in MMO (two groups) and lack of resources in MMO or statutory advisers.

Summary

The messages from the group focused on the need to show that the processes for the new system improved on the existing system. The groups identified different aspects that they wanted to see in the new system such as an effective pre-application stage, flexibility to take into account local circumstances, predictability. Two groups identified their main concern as being about resources, while one group identified over-regulation and the other a general uncertainty that the new system would deliver.

The success criteria identified covered both how the system operated (fair, proportionate, effective process; low application fees; decisions based on sound science, single MMO) and the outcomes (a healthy marine environment; avoidance of over-regulation; timely decisions etc).

Tensions and Conflicts

The Groups identified a similar range of tensions and conflicts to the previous workshops in terms of the potential conflict between the needs of different sea users and interests (e.g. nature conservation/environmental interests against development). Most of the solutions proposed centred on setting out in advance how such issues would be dealt. One group felt that marine planning could help resolve conflicts between local and national priorities. The same group identified the tension between regulators' need for information and costs/time for the applicants. The

group proposed a common data bank and clear timeframes as ways of addressing this issue.

Policy Questions

Question 1: How can we build transparency and certainty into the process?

The groups identified that transparency and certainty were not the same thing.

For transparency, it was necessary to set out the process and roles and responsibilities clearly.

Question 2: What should the pre-application process look like?

The developer/applicant should maintain ownership, the process should be formal with clear timescales (with obligations on statutory advisers to meet timescales); depend on thresholds on the size and nature of the project; and have a formal sign off so that applicants are not surprised later in the process. Other comments were that there should be consultation regardless of the scale of the project, legislation should recognise need for flexibility and that only fair, proportionate costs should be recoverable.

Question 3: What information is needed to decide whether maintenance dredging is low risk or de minimis?

The group identified size/frequency, location, contamination, dredging technique, potential conflicts with other users, historical data, sampling regime, competency/track record of operators. Other issues raised included auditing by local MFA/MMO office or possible applicability of waste framework directive to relocation of sediment.

Annex A

Reading 9th September 2009	Newcastle 17th September 2009	Reading 30th September 2009
<p>Associated British Ports Bournemouth Borough Council Bristol Port Company British & Irish Association of Zoos and Aquariums Chamber of Shipping Countryside Council for Wales Department of Energy and Climate Change Department of Environment (NI) E.ON Engineering Environment Agency Gloucester Harbour Trustees Marine and Fisheries Agency Marine Ecological Surveys Ltd Ministry of Defence MRAG Ltd Natural England Norton Rose Portland Harbour Authority QinetiQ Renewable Energy Association River Hamble Harbour Shell UK Ltd Trinity House University of Plymouth Welsh Assembly Government World Wildlife Fund</p>	<p>Amble Marine Limited Angling Trust Caravan Club CEFAS D P Energy Ltd Department of Energy and Climate Change English Heritage, Extramussel Ltd, Associate Director Friends of the Earth, Marine Reserves Campaign Halcrow Group Ltd Joint Nature Conservation Committee Marine & Fisheries Agency Marine Scotland North Western & North Wales Sea Fisheries Committee Northumberland County Council One North East Tourism Pinsent Masons LLP Scottish Fishermen's Federation Severn Estuary Partnership SMRU South Tyneside County Council Team Humber Marine Alliance University of Hull, Centre for Environmental & Marine Sciences</p>	<p>BAE Systems PLC British Marine Aggregate Producers Association British Marine Federation BVT Surface Fleet Ltd BWEA CEFAS Deepdock Ltd Gloucester Harbour Trustees Lester Aldridge Solicitors Marine & Fisheries Agency Ministry of Defence National Oceanography Centre Natural England Network Rail Poole Harbour Seafish Industry Authority SUDG Taylor Wessing LLP The Crown Estate Welsh Assembly Government</p>