

# **Department for Environment, Food and Rural Affairs**

**Summary of responses to the consultation on an amendment  
to the Marine Works (Environmental Impact Assessment)  
Regulations 2007 - 27<sup>th</sup> November 2008 to 19<sup>th</sup> February 2009**

**August 2009**

## **1. Introduction**

**1.1** Defra issued a consultation document *Consultation on an amendment to the Marine Works (Environment Impact Assessment) Regulations 2007* in November 2008, with a response deadline of 19<sup>th</sup> February 2009.

**1.2** The consultation sought views on:

- a proposed amendment to the Marine Works (Environmental Impact Assessment) Regulations 2007 (“Marine Works Regulations”) so that they apply to the extraction of minerals by marine dredging in harbours in England and Wales;
- whether the Port of London Authority (PLA) should be an “appropriate authority” for the purpose of the Marine Works Regulations;
- the transposition of the Habitats Directive (94/43/EEC) in relation to ‘marine works’ and the extraction of minerals by marine dredging in harbours in England and Wales.

## **2. Summary of responses**

### **2.1 The respondents.**

2.1.1 There were 29 responses to the consultation document. A complete list of respondents is at Annex A.

2.1.2 Most of the respondents commented on one or more but not necessarily all of the individual questions. Some of the responses consisted of general comments rather than comments on individual consultation questions.

### **2.2 Amendment to the Marine Works (Environmental Impact Assessment) Regulations 2007**

#### Defra proposal

2.2.2 The Marine Works Regulations transpose the European Council Environmental Impact Assessment Directive on the assessment of the effects of certain public and private projects on the environment (85/337/EC) in relation to the following “Marine Works” activities:

- activities regulated under Part 2 of the Food and Environment Protection Act 1985 i.e. for the deposit of substances into the sea;
- activities regulated under section 34 of the Coast Protection Act 1949 (which does not apply to Northern Ireland) i.e. affecting navigation;
- harbour works requiring approval or consent in accordance with a local Act; a local Act read together with a notice given and published under section 9 of the Harbours Transfer Act 1862; or an order made under sections 14 or 16 of the Harbours Act 1964. This does not apply in Northern Ireland.

2.2.3 Since the Marine Works Regulations were implemented in June 2007, a regulatory gap became apparent in the transposition of the Environmental Impact Assessment Directive to the extraction of minerals by marine dredging in harbours in England, Wales and Scotland.

2.2.4 Three options for closing the regulatory gap were proposed in the consultation. The preferred option (option b)), also means that the Welsh Ministers would be the Appropriate Authority for the extraction of minerals by marine dredging in harbours in Wales for the purposes of the regulations.

2.2.1 Consultation questions

- Q1.** Are you happy that the option we have identified is the most appropriate way to rectify the regulatory gap?
- Q2.** Is there any reason why we should not close this regulatory gap?
- Q3.** Do you have any comments on the impact that the proposed amendment might have on small businesses, and on how they might affect competition in the industry?
- Q4.** Do you have any comments on the environmental impact of the proposed amendment?
- Q5.** Do you have any comments on the social impact of the proposed amendment?
- Q6.** Do you have any comments on the economic costs and benefits of the proposed amendment?

## Responses

2.2.5 22 of the respondents commented on whether option b) to amend the Marine Works regulations to cover the extraction of minerals by marine dredging in harbours was the most appropriate option. About three-quarters of these respondents favoured option b. A concern was raised that there would be three different EIA regimes for marine minerals dredging - one for English waters, for Welsh waters and one for harbours in England and Wales. Of the others commenting on this question, two doubted the existence of a regulatory gap and two agreed it should be closed but did not wish to comment on which option was chosen to achieve this.

2.2.6 No reasons were put forward for not closing the regulatory gap.

2.2.7 About a quarter of respondents commented on whether the proposal would have an impact on small businesses. Two respondents thought there would be little or no impact on port costs and operations. Three others were concerned that costs should be kept as low as possible for harbour authorities so reducing the 'knock-on' effects on operators, though another considered the environmental protection offered was an over-riding consideration. One respondent suggested the delay had already had an impact. One respondent expressed concern, with reference to competition, a possible lack of clarity on whether extraction of marine sediment was for 'aggregate' purposes or 'waste' from dredging for navigation purposes.

2.2.8 Comments were received from 12 respondents on the environmental impact of the proposed amendment and the beneficial effect for the environment was welcomed. A number of points were made:

- Concern to see a robust and consistent approach to EIAs.

- Department for Culture media and Sport welcomed the duty for harbour authorities to comply with the EIA Directive when authorising dredging, particularly in relation to schedule 3 of the Marine Works regulations, which would build on the existing statutory requirement under the Harbours Act 1964 to conduct a fuller consideration of the mitigation of the harmful effects on cultural heritage.
- the use of thresholds or exemptions to the requirement to undertake EIA under the amendment was suggested for some locations and small scale works.

2.2.9 There were few comments on the social impact or on the economic costs and benefits of the proposed amendment and these generally expressed the view that an EIA would assess the social and community impact, including any marine heritage assets and navigational issues, of a proposed development and help protect against adverse effects.

Welsh Ministers as Appropriate Authority

2.2.10 One respondent raised questions on the way an application to extract minerals by marine dredging in a harbour would be treated where the application area crossed the Welsh/English boundary when an EIA might be required by more than one Appropriate Authority, and if an application was made for a permission by the local Planning Authority for an area above the mean low water mark.

## 2.3 Port of London Authority

2.3.1 The consultation document requested comments on whether the Port of London Authority (PLA) should be an appropriate authority under the Marine Works Regulations for marine works within its jurisdiction. This would enable it to make EIA consent decisions for proposals within its jurisdiction, in accordance with those Regulations.

**Q7.** Is there any reason why the PLA should not be considered as an appropriate authority?

**Q8.** Do you see there being an issue with the PLA being both a regulator and appropriate authority?

**Q9.** Do you have any further comments on the PLA becoming an appropriate authority?

### Responses

2.3.2 Consultation responses were divided. Some of those who saw no objection also made comments of support, for example, that PLA has a good track record as regulator and has set up mechanisms to engage effectively with stakeholders, and has a clear and effective system of licensing third

party activities in a transparent environmentally responsible manner.

Concerns were raised about:

- self- regulation/conflict of interest – some considered the Marine and Fisheries Agency the more appropriate body to assess the environmental impact of a port's own works or their contractors/ consultants undertaking works on their behalf.
- a need to ensure sufficient safeguards in place to address any conflict of interest issue arising.
- inconsistencies creeping in to what is currently a nationally applied regime.
- the PLA, in common with the majority of port/harbour authorities, lacking scientific expertise.
- commercial dis/advantage and regional differences as the PLA would be able to set their own fees for an EIA.

## **2.4 The Habitats Directive**

### Defra proposal

2.4.1 The Habitats Directive is one of the means by which the European Union meets its obligations as a signatory of the Convention on the Conservation of European Wildlife and Natural Habitats 1979 (Bern Convention).

2.4.2 The main pieces of legislation which transpose the Habitats Directive into national law are:

- the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended, with separate amendments made by Scotland) (known as the “Habitats Regulations”);
- the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended); and
- the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007.

2.4.3 Despite the general duty under Regulation 3(3) and 3(4) of the Habitats Regulations, it is considered prudent to amend the regulations in relation to England and Wales so that, as for planning permission and certain other consents, they more specifically transpose the requirements of Articles 6(3) and 6(4) of the Habitats Directive in relation to dredging in harbours and other marine works.

Consultation question

**Q10.** Do you agree that we are correct to ensure articles 6(3) and 6(4) of the Habitats regulations are implemented in relation to “marine works”?

## Responses

2.4.6 Just under half the respondents commented on whether they agreed that it was correct to ensure articles 6(3) and 6(4) of the Habitats Regulations are implemented in relation to the Marine Works Regulations. Almost all agreed, with one respondent doubting the need for the change.

### **3. The way forward**

#### **Amendment to the Marine Works (Environmental Impact Assessment) Regulations 2007**

3.1.1 The majority of respondents agreed the need to close the regulatory gap and agreed our preferred option – to amend the Marine Works (Environmental Impact Assessment) Regulations 2007 (the “Marine Works” Regulations) to ensure that the activities to which the Regulations apply include - for England and Wales – the extraction of minerals by marine dredging in harbours. In order to ensure that EIA requirements apply to the extraction of minerals by marine dredging in all harbours in England and Wales it is intended to lay amending regulations later this year. This will result in harbour works being regulated for the purposes of the EIA Directive under a single regime, regardless of whether they consist of dredging or not.

3.1.2 The Welsh Ministers will be the Appropriate Authority for the extraction of minerals by marine dredging in harbours in Wales for the purpose of the Marine Works Regulations.

3.1.3 Should an application to extract minerals relate to areas on both sides of the Welsh/English boundary in a harbour the administrative bodies for the Secretary of State and the Welsh Ministers will work together to ensure a streamlined and smooth process is achieved for the applicant.

3.1.4 There might be occasions where an application area in a harbour lies above the mean low water mark and the application is made under the Town & Country Planning Act consent regime. There is no intention to change the status quo.

#### **Port of London Authority**

3.2.1 It has been decided not to make the Port of London Authority an appropriate authority. The main consideration in this decision is the need for consistency. Under the current EIA regime the MFA and the devolved governments are the only EIA consenters. Further, the Marine and Coastal

Access Bill will be replacing the current EIA regime as part of the marine licensing reforms outlined in Part 4 of that Bill. In making those proposals it has been the intention that the MMO, as the UK Government's strategic delivery body in the marine area, will take on the majority of the Secretary of State's licensing functions under that Bill, including the replacement EIA considerations.

### **The Habitats Directive**

3.3.1 We propose applying the Habitats Directive in respect of marine works, by amending the Habitats Regulations, in order to make it explicit that the requirements of articles 6(3) and 6(4) apply to marine works, including marine minerals dredging in harbours, in England and Wales. It is intended to include these changes in a wider package of amendments to the Habitats Regulations to be laid later this year.

## ANNEX A

Aquatonics Ltd

Associated British Ports

British Marine Aggregate Producers Association

British Marine Federation and Royal Yachting Association

British Ports Association

Countryside Council for Wales

Department for Culture Media and Sport

English Heritage

Environment Agency

GE Water & Process Technologies limited

Gloucester Harbour Trustees

Institute of Archaeologists

Joint Nature Conservation Committee

MARINET and North Sea Action Groups

Natural England

Northumberland Sea Fisheries Committee

Port of London Authority

Port of Tilbury London Ltd

Private individual

Royal Yachting Association

RSPB

Scottish Natural Heritage

Snowdonia National Park

Thames Estuary Partnership

South Devon & Channel Shellfishermen

The Crown Estate

The Law Society

Trinity House

UK Major Ports Group