

<b>Title:</b> Public Bodies Reform Bill - Marine Management Organisation charges <b>IA No:</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> 01/04/2012			
	<b>Stage:</b> Consultation			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Secondary legislation			
<b>Contact for enquiries:</b> Neeta Parmar 0207 238 3221				

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> RPC Opinion Status
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£0m	£-2.8m	£0.325m	No
			NA

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

The Marine and Coastal Access Act 2009 provided for a new streamlined licensing system for most developments at sea that will reduce the regulatory burden on business. However, the charging powers in the 2009 Act were not as extensive as under the licensing system it replaced - Part 2 of the Food and Environment Protection Act (FEPA) 1985. FEPA allowed for the recovery of the costs of varying licences and of post-licence monitoring which the MCA Act does not. Government Intervention is needed to avoid the taxpayer subsidising some licence applicants.

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

The Government's objective is that those who benefit from obtaining a marine licence should bear the full cost of obtaining that licence. The effects of the Order will be reviewed at least insofar as the MMO will keep on reviewing the level of its fees and charges.

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

The two options considered were (a) to do nothing (i.e. leave the MMO's charging powers unchanged) and (b) to changing the MMO's charging powers in the Public Bodies Reform Bill and to adjust the fee structure.

The preferred option is Option (b) because it would achieve the goal of full cost recovery and avoid the unintended consequence of shorter licences and fewer licence variations - both of which would add to the overall cost of licensing.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 04/2013					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<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> N/A	<b>Non-traded:</b> N/A	

***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 SELECT SIGNATORY: \_\_\_\_\_ Date: \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

Description: Amend MMO's Charging Powers

## FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	£0.300m	£2.6m
High	0	£0.350m	£3.0m
Best Estimate	0	£0.325m	£2.8m

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

The main impact of this option is a cost transfer from the MMO to industry. Under this option, there would be no change for most applicants, particularly those who apply for licences for small and medium-sized projects. There would be some additional costs for those who needed to vary their licences. There would be higher fees for those projects involving the disposal of [contaminated] sediments reflecting the recovery of monitoring costs.

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

None

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	£0.300m	£2.6m
High	0	£0.350m	£3.0m
Best Estimate	0	£0.325m	£2.8m

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

The benefits are the costs that MMO would otherwise face which but, under this proposal, would be recovered. In other words, the benefits are the cost saving to the MMO and by extension to the Exchequer and the taxpayer.

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

None

### Key assumptions/sensitivities/risks

Discount rate (%)

3.5

The overall costs of monitoring and variations have been calculated on the basis of single year of observations of number of cases. The assumption is that the number of licence applications for disposal of dredged material to maintain safe navigation is relatively stable. The need for maintenance dredging is constant and MMO have 20+ years of data on application numbers. Likely to be no risk on SMEs but there is emphasis on mitigation consideration.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0.325m	Benefits: 0	Net: £0.325m	No	NA

# Evidence Base (for summary sheets)

## References

No.	Legislation or publication
1	Marine and Coastal Access Act 2009 <a href="http://www.legislation.gov.uk/ukpga/2009/23/pdfs/ukpga_20090023_en.pdf">http://www.legislation.gov.uk/ukpga/2009/23/pdfs/ukpga_20090023_en.pdf</a>
2	Draft Public Bodies Bill <a href="http://www.publications.parliament.uk/pa/bills/cbill/2010-2012/0188/cbill_2010-20120188_en_1.htm">http://www.publications.parliament.uk/pa/bills/cbill/2010-2012/0188/cbill_2010-20120188_en_1.htm</a>
3	<a href="http://www.legislation.gov.uk/uksi/2011/409/pdfs/uksiem_20110409_en.pdf">http://www.legislation.gov.uk/uksi/2011/409/pdfs/uksiem_20110409_en.pdf</a>
4	Marine Licensing Application Fees – Explanatory Memorandum and Impact Assessment <a href="http://www.legislation.gov.uk/uksi/2011/564/pdfs/uksiem_20110564_en.pdf">http://www.legislation.gov.uk/uksi/2011/564/pdfs/uksiem_20110564_en.pdf</a>

## Problem under consideration

1. This Impact Assessment deals with the costs that the Marine Management Organisation (MMO) may include in the application fees it charges for marine licences.
2. Part 4 of the Marine and Coastal Access (M&CA) Act 2009 (Reference 1) provided for a new licensing system for marine activities for most developments at sea (developments subject to licensing range from buoys installation or construction of small jetties to major harbour or wind farm developments. This system started to operate in April 2011.
3. However, the scope of the charging powers in section 67 of the Marine and Coastal Access Act is insufficient to allow the recovery of costs incurred:-
  - a. In monitoring sites where licensable activity is taking place, (i.e. aggregate dredgers is undertaken within the boundary of the dredge site),
  - b. For reviewing monitoring reports required from licence holders, (i.e. typical monitoring reports could be surveys of sea floor deposits, suspended solids assessment (for non-aggregate dredging projects),
  - c. Varying existing licences, (i.e. change of vessel name on issued licence or significant variation including assessment).
4. This is an unintended change from the 'old' licensing system under the Food and Environment Protection Act 1985, which contained different charging powers which were sufficient to cover these activities.
5. Clause 4 and Schedule 4 of the draft Public Bodies Bill (Reference 2) would allow the Secretary of State to modify the funding arrangements of specified public bodies. The MMO was included in Clause 4 specifically to enable the funding gap for monitoring and variations to be tackled. Such activities relate to recovery of licence compliance monitoring costs (monitoring relating to non Environmental Impact Assessment (EIA) cases, and marine licence variations for complex projects (e.g. wind farm licences).

## Rationale for Government intervention

6. The rationale for licensing marine activity is addressed in the IA that Defra produced on the new licensing system (Reference 3). Briefly the economic case for regulation is that otherwise the cost of such activities would not reflect the effects that the activities have on the environment and human health nor the disruption to other legitimate uses of the sea.
7. Part of the cost of regulation is the cost of obtaining consent. In keeping with the Government's policy that those who carry out an activity should bear its full cost, the Government aims to recover the full costs of licensing marine activities. This is not the case at present because MMO cannot fully recover its costs under its current legislative powers.

## Background

8. The Secretary of State is one of several 'licensing authorities' under Part 4 of the M&CA Act. The Secretary of State's licensing functions have been delegated to the Marine Management Organisation under Section 98 of the M&CA Act (except for some oil and gas related activities which are licensed by the Department of Energy and Climate Change).
9. The licensing authorities have the power under section 67(1)(b) and (2) of the M&CA Act to charge for marine licence applications. The fees that MMO apply were set in the Marine Licensing (Application Fees) Regulations 2011. The fees set were fixed for small and medium size applications. For more complex cases, the fee is based on the time that the MMO and their scientific advisers, the Centre for Environment, Fisheries and Aquaculture Science (Cefas) spend on an application.
10. Historically, even though there were wider charging powers, the Government did not fully recover the costs of issuing licences under Part 2 of the Food and Environment Protection Act 1985. The Government has begun to move towards full cost recovery. The fees set out in the Marine Licensing (Application Fees) Regulation 2011 aimed to recover 90% of the costs for which MMO can charge in 2011/12 and 100% in 2012/13. This did not include monitoring and variation costs because of the lack of the necessary powers to charge for these activities.
11. The MMO is conducting a review of its fees for licensing at the end of 2011 based on its experience of cost recovery under the new licensing system<sup>1</sup>. This is likely to lead to changes in fees. These changes will apply from April 2012 and may, subject to Parliamentary approval of the Public Bodies Bill, include the costs of monitoring and variations.
12. The MMO does not and will not in the future include the costs of enforcement in its licensing fees. It is Government policy that fees should not include such costs.
13. The Government has proposed a new power to the Public Bodies Bill to allow us to modify the current charging powers for licences granted under Part 4 of the Marine and Coastal Access Act 2009 to allow recovery of monitoring costs and marine licensing variations. Without this change, the MMO would be left with a substantial financial deficit which the taxpayer would need to meet. Option 1 would enable cost recovery for new applications/variations in the future.

## Policy Objective

14. The policy objective is that MMO should be able to recover fully the costs of licensing. The work associated with these costs should be no more than necessary for the purposes of environmental protection/requirements. A consultation will be undertaken with stakeholders. The information on data for cost/time taken will be updated at the final IA stage if required.

## Options considered

15. The option of making the changes to the MMO's charging powers has been compared to the baseline where the changes are not made.

## Baseline

16. The MMO has the power to charge application fees for licensing. They will continue to do so. Table 1 shows the predicted recoverable costs that MMO and Cefas will incur in 2011/12. The Fees Impact Assessment (Reference 4) set out the evidence that underpinned the fees that MMO charge for licence applications. The Government made a commitment to review the charges and how far the objectives of transparency of costs, efficiency, certainty for applications and limits on new burdens had been achieved. This review will take place at the end of 2011<sup>2</sup>.

**Table: MMO Marine Licensing forecast recoverable cost [extract from Table 2 in Defra IA 1141]**

Cost category	2011-12
	£ constant prices
Salaries and allowances	855,000

<sup>1</sup> The review was delayed to 2012. Marine licensing fees are expected to be subject of a separate consultation in 2013.

<sup>2</sup> As footnote 1.

ERNIC	73,000
Superannuation	161,000
MMO other specialist staff overhead	102,000
Accommodation overhead	107,000
General overhead	397,000
IT	132,000
Cefas case-related costs	1,825,000
<b>Total</b>	<b>3,652,000</b>

17. In some cases – especially construction projects – the MMO will also be able to recover monitoring costs. This is because such projects will be subject to Environmental Impact Assessment and require a consent under the Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended). The purpose of monitoring in such cases is to verify conditions in the EIA consent. The MMO is able to recover monitoring costs in those cases where an Environmental Impact Assessment is required.
18. In many cases, the monitoring will be carried out at the expense of the licence applicant. MMO's costs will be the work that they and their scientific advisers (mostly Cefas) incur in reviewing the information provided.
19. However, the baseline scenario does not include the costs of post-licence monitoring for all projects nor of varying contracts. The consequence of this will be that the taxpayer will face additional costs.
20. It is necessary to consider whether the work is needed and whether it is done in the most efficient way. In particular, Environmental Impact Assessment (EIA) Regulations do not apply to dredging unless the dredging is part of a project which is within the scope of the EIA Directive. The regular dredging of ports and harbours to keep navigation channels open – which may involve millions of tonnes of material – is not generally subject to EIA. The disposal of this dredged material can, however, have significant environmental effects. We have international obligations to monitor such effects. The costs of monitoring the effects dredged material is the main cost that MMO cannot currently recover under the charging powers in the M&CA Act.
21. Monitoring of disposal sites is carried out by Cefas who agree annually a risk-based monitoring programme with the MMO. This ensures that – instead of monitoring every site annually – the MMO and Cefas can produce a cost-effective and efficient programme which reduces costs to the taxpayer (or if the proposals under Option 1 are introduced) the applicants.
22. Under the baseline option, there are equity issues between those applicants where the activity is within the scope of the Marine Works (Environmental Impact Assessment) Regulations and those that are outside. The former will be subject to monitoring costs, the latter will not. We are required under the international treaty and the EU Waste Framework Directive to monitor the disposal of dredged material but the activity is not within the scope of EIA and MMO will not therefore be able to recover such monitoring costs.

### **Option 1: Amend MMO Charging Powers**

23. Under this option, the MMO would be able to recover the costs of monitoring associated with issuing marine licences. The MMO would also be able to recover the costs it incurs in varying licences at the licence holder's request. The main impact of this option is therefore a cost transfer from the MMO to industry. These costs are estimated below. A charge out rate of £80/hour is assumed for all recovered costs<sup>3</sup>.
24. It is assumed that the changes in charging would not impact on the number of licenses applied for or the number of variations applied for. Variations are completely separate to new applications and the number of new applications coming into the MMO in future years is not determined by the number of variations. As variations are only undertaken for a genuine reason – if something with the project changes, the applicant will need to vary their licence – no change in the number of variations is expected from the proposal.

#### *Costs of monitoring*

<sup>3</sup> Source: The Marine Licensing (Application Fees) Reg 2011

25. Based on data collected during April to September 2011 (the MMO has only had a robust time recording tool since April 2011), it is estimated that number of project applications received per annum is 500, of which 300 will need a monitoring report. The MMO advise that the time required for monitoring for simple or fast-track (Tier 1) applications is 4 hours of MMO time, while more substantive (Tier 2) applications will take 6 hours to process for typical applications and 8-10 hours for more complex applications. Whilst this is based on limited data set this represents the best available information at this time. Assumption can be tested during the consultation and the final IA will be updated to use what will by then be a larger data set.
26. There is no data on the proportions of changes which are Tier 1 and Tier 2. In the absence of this, it is assumed that half of all changes are substantive, which the MMO advise is a reasonable assumption. Tier 1 and Tier 2 cases are categorised as follows:

Tier 1 (fast-track or simple applications)

Band A

- Simple moorings (swinging and trot only)
- Burial at sea
- Scaffolding
- Meteorological masts
- Buoys

Band B

- Boreholes or minor ground investigations
- Tracers
- Emergency works
- Outfalls or pipeline stabilisation (minor works less than £10,000)
- Jetties (minor works less than £10,000)
- Like for like works (minor works less than £10,000)

Tier 2 (routine applications)

Band A (activities that cannot meet fast track criteria plus small projects such as berthing pontoons, slipways and small jetties)

- Construction (minor below £1 million)

Band B (outfalls, works on tidal river banks, beach recharge)

- Construction (£1 million to £4,999,999)

Band C (medium sized construction projects, maintenance dredges)

- Construction (£5 million to £10 million)

27. A further cost arises from the requirement for MMO case officers to review electronic monitoring system data (EMS). Aggregate dredgers are fitted with an electronic monitoring system (EMS) to check dredging is undertaken within the boundary of the dredge site. The MMO estimate that two hours of MMO case officer time is required to process each report. The number of reports per annum is estimated at 20-30.

*Costs of variations*

28. The cost to the MMO and Cefas of processing variations depends upon the type of project. These are categorised as Tier 2 or Tier 3 projects. On the basis of a review of Marine Consents Management System (MCMS) 2010 data, MMO advise that they receive approximately 150 minor Tier 2 variations – such as a change of vessel name on issued licence – and 100 on complex Tier 2 variations. These are estimated to take 2 hours of a case officer's time for minor cases and 7 hours for complex cases.
29. Cefas also assist in some variations (notably where complex issues arise and scientific assessment is required). It is anticipated that Cefas spend the same amount of time spent on the case by a MMO case officer.

30. MMO estimate that for Tier 3 variations such as wind farm licenses each of the three MMO case officers will each spend one day (seven hrs) per month. Again the same amount of time is assumed for Cefas scientific advice on cases.
31. Table 2 summarises the estimated monitoring costs that the MMO incur for monitoring and varying licenses which could be recovered under Option 1:

	Process	Expected number of cases	Average time taken to process	Cost
<b>Monitoring (Non-EIA cases)</b>	Minor applications	150	4 hours	£48,000
	Complex applications	150	6-10 hours	£72,000 - £120,000
<b>EMS monitoring</b>	All applications	20-30	2 hours	£3,200 - £4,800
<b>License variations: Tier 2</b>	Minor applications	150	2 hours	£24,000
	Complex applications	100	7 hours	£56,000
	Cefas Assessment	100	7 hours	£56,000
<b>License variations: Tier 3</b>	All applications	N/A	21 hours/month	£20,160
	Cefas Assessment	N/A	21 hours/month	£20,160
<b>Total</b>				£300,000 - £350,000

32. Total costs to industry are estimated at between £0.3 million and £0.35 million per year in current prices, and we expect these costs would continue under this option on an annual basis in real terms. Our current best estimate is mid way in this range, or £0.325 million per year. Costs are first incurred in FY 2012-13.
33. Under Option 1 the MMO would fully be able to recover the costs of monitoring in all cases [except where moratorium on regulations affecting small businesses applies], not just those where an EIA is required. This would provide equal treatment for applicants and avoid additional burdens on the tax payer.

### Risks and Assumptions

34. Under the baseline, the MMO could insist that proposals to vary licences were treated as new applications. They could also issue shorter licences potentially leading to extra costs and administrative burdens for industry because they would need to apply for licences more frequently.
35. It is assumed that this would only result if the MMO and Cefas costs cannot be recovered, mostly relating to the disposal of dredged material and would create uncertainty about future funding of the essential monitoring of disposal sites. The alternative solution would be for the MMO to issue shorter licences which would create additional costs one which is not the Government's preferred option.

### Specific impact tests

36. Since these proposals concern fees and charges, we are not expecting a direct impact on the number or type of licence applications – unless in the absence of the proposed changes MMO decide to issue shorter licences. In which case, the number of applications would increase. But there would be no change in the nature or extent of activity. We envisage no impact, therefore, on **carbon emissions; competition** or the **justice system**.
37. We also expect that the proposals will not have any effect in terms of the environment, since the proposals are only about the recovery of costs. We expect no other economic impact, and no impact as far as health or equality.
38. We do not believe that the proposals will disproportionately affect **SMEs**. Information on past licence applications suggest that it is the larger ports that apply for licences to dispose of dredged material. This may be because many smaller ports use maintenance dredging techniques that do not involve disposal (e.g. plough dredging). However, we will test the effect on SMEs with port representatives during the consultation period.

### Moratorium on regulations affecting micro-business

39. The Government announced on 18 March a general moratorium from all new domestic regulations for business of fewer than 10 employees and for genuine new start-ups – “micro-businesses”. [The Department proposes to include a provision that the new powers to charge for monitoring and for varying contracts do not apply to such businesses].
40. The monitoring costs where there is currently a funding gap largely to the major ports. Few, if any, businesses with less than 10 employees dispose of dredged material at sea. The consequence of the moratorium is that any costs which would otherwise have been paid by micro-businesses would now be distributed among other businesses or borne by the taxpayer.

**One-in, one-out**

41. Ministers decided in the Reducing Regulation Committee meeting on 14 December 2010 that cost recovery should be outside the scope of the one-in, one-out rule unless the change in cost results from a change in regulatory activity. The change in costs in this Impact Assessment as a result of adopting Option 1 would entirely be from moving to full cost recovery. Therefore the changes in this IA are considered outside the scope of the one-in, one-out rule.



## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

### Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

**Basis of the review:** [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

As noted in Defra Impact Assessment 1141, Defra and the MMO's intention is that the marine licensing fees Order would only apply in 2011/12. The two organisations are committed to a review of fees at the end of 2011 to underpin a new fees order. This will include consideration of the costs which are the subject of this IA.

**Review objective:** [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

The purpose of the review is to identify whether the policy on licensing fees is achieving the goals which were set out in the previous Impact Assessment i.e. transparency, efficiency, certainty and a limit on new burdens.

**Review approach and rationale:** [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

The Review will consider actual cost recovery in 2011/12 against the costs incurred by the MMO. This will be followed by consultation with stakeholders on any proposed changes<sup>4</sup>.

**Baseline:** [The current (baseline) position against which the change introduced by the legislation can be measured]

The baseline position is the fees that apply to licence applications under the Marine Licence (Application Fees) Regulations 2011.

**Success criteria:** [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

The policy will be considered successful if it achieves the objectives of transparency, efficiency, certainty and a limit on new burdens. If not, the fees regulations will be replaced by a new Order setting fees for licence applications.

**Monitoring information arrangements:** [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]

MMO and their scientific advisers, Cefas, have recording systems in place to capture the effort that they spend on individual applications.

**Reasons for not planning a PIR:** [If there is no plan to do a PIR please provide reasons here]

<sup>4</sup> The review was delayed to 2012. Marine licensing fees are expected to be the subject of a separate consultation in 2013.