



ENGLISH HERITAGE

Marine Licensing Team
DEFRA
Area 2C Nobel House
17 Smith Square
London
SW1P 3JR

12th October 2010

Dear Sir/Madam,

Consultation on new marine licensing system under Part 4 of the Marine and Coastal Access Act 2009

Thank you for your invitation of 21st July 2010 to comment on the new marine licensing system as set out in Part 4 of the Marine and Coastal Access Act 2009. This response represents the collective view of English Heritage.

Our approach to marine licensing

We appreciate the attention given to how the new marine licensing system will function and we support effort to design a system that will optimise the use of our advice in the decision-making process. We have provided responses to specific consultation questions, but we have also provided a set of additional comments about which we would welcome further discussion. For example:

- We are keen to discuss further the proposed 'pre-application service' (as described in paragraph 5.8) and how such a service might best include the historic environment;
- A crucial matter to encompass in the new marine licensing system is an understanding that impacts to the historic environment (known and yet to be discovered) are not directly related to the spatial scale of a licensable activity, but to the specific impact that an activity may have on historic environment features;

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- We are keen to discuss further how fees may be applied to different categories of marine licence and how projects directed at the historic environment may be liable to any such fees, should a marine licence be required.
- The detail provided in the consultation document regarding the appeals process (e.g. objection to licence conditions) highlights to us that the licensing authority may require a point of contact with English Heritage to support the preparation of evidence to address historic environment matters.
- We are prompted to recommend that the scientific equipment licensing class is expanded, or a new class added, to encompass 'diver trails' (i.e. the placement of weighted ropes with information points to guide divers around a site of particular sensitivity). The use of a diver trail within the designated area of a historic shipwreck site will necessitate the award of visitor licence under section 1 of the Protection of Wrecks Act 1973, so a mechanism exists for enforcement action to be taken should the site be damaged. We consider that the case for marine licence exemption is also supported by the rigorous approach that English Heritage will adopt whereby any diver trail will only be implemented if it can be shown that the integrity of the site will not be jeopardised.

The role of English Heritage

English Heritage is the UK Government's statutory adviser on all aspects of the historic environment, including the English area of the UK Territorial Sea, as provided for under the National Heritage Act 2002. English Heritage is an Executive Non-Departmental Public Body sponsored by the Department for Culture, Media and Sport (DCMS) and we report to Parliament through the Secretary of State for Culture, Media and Sport. In the delivery of our duties we work in partnership with central government departments, local authorities, voluntary bodies and the private sector and we aim to carry out our duties within the framework of a set of *Conservation Principles*. These principles can be summarised as follows:

- The historic environment is a shared resource;
- Everyone should be able to participate in sustaining the historic environment;
- Understanding the significance of places is vital;
- Significant places should be managed to sustain their values;
- Decisions about change must be reasonable, transparent and consistent; and
- Documenting and learning from decisions is essential.

In consideration that this consultation addresses planning matters within UK marine area adjacent to England any advice we offer is given without prejudice and we therefore advise you to contact us and DCMS should you wish to discuss such matters further.

Our responsibility under the Protection of Wrecks Act 1973, within the English area of the UK Territorial Sea, is to consider applications and recommendations for designation, re-

designation and de-designation of shipwreck sites. On the basis of our advice the Secretary of State is responsible for designating areas around sites which are, or may be, shipwrecks (and associated contents) of historic, archaeological or artistic importance. The Secretary of State is also responsible for the issuing of licences to authorise certain activities in areas covered by a designation that would otherwise constitute a criminal offence. In March 2010 there were 46 sites designated within the English area of the UK Territorial Sea; this total includes possible prehistoric seafaring craft with associated cargos through to prototype submarines.

Part 4 of the Marine and Coastal Access Act 2009 and the marine historic environment

The new marine licensing system, as demonstrated by section 66(8), has great potential to support the sustainable management of the historic environment through introducing a system of licensing activities. We appreciate the important clarification provided in section 115(2) with regard to 'the need to protect the environment' which is defined as inclusive of 'any site (including any site comprising, or comprising the remains of, any vessel, aircraft or marine structure) which is of historic or archaeological interest.' It is important to state that these measures, and the terms used, will make an important contribution to how marine historic environment interests (especially non-designated sites) are managed effectively within the English area of the UK Territorial Sea.

We look forward to working further with the Government to help ensure effective delivery of the proposed new marine licensing system.

Please see the appended tabulated response to the consultation questions.

Yours faithfully,



Christopher Pater
Marine Planning Unit

Cc Humphrey Welfare (Territory Director, English Heritage)
Adrian Olivier (Strategy Director, English Heritage)
Ian Oxley (English Heritage, Head of Maritime Archaeology)
Beth Harries (Legal Advisor, English Heritage)
John Tallantyre (Department for Culture, Media and Sport)

Tabulated response to consultation questions

Question	Comment
1	<p><i>Do you agree that the average cost to undertake an Environmental Impact Assessment or Appropriate Assessment is £50,000?</i></p> <p>We have no specific comment to offer on this matter.</p>
2	<p><i>Do you agree that by front-loading much of the work on marine licence applications, savings could be made to the length of time the MMO takes to determine a licence?</i></p> <p>It is important to consider how any time saving by the MMO might be counter balanced by additional time spent by other public bodies in advising applicants during any pre-application phase of project development.</p>
3	<p><i>What monetary value would you place on being able to obtain your marine licence sooner?</i></p> <p>We have no specific comment to offer on this matter.</p>
4	<p><i>Do you agree with the overall costs and savings identified in the Impact Assessment? If not, why not?</i></p> <p>We have no specific comment to offer on this matter.</p>
5	<p><i>Do you agree with the proposals outlined above for a pre-application service? Is there anything else that you think would provide extra support to potential applicants during this stage?</i></p> <p>We are interested in discussing how any 'voluntary service' to support a pre-application process offered by the MMO could include the historic environment and if any 'voluntary service' will include non-EIA projects that although small scale (i.e. seabed development of limited spatial extent) may affect historic</p>

	<p>environment features (e.g. the placement of a pile through a wreck of archaeological interest). We must also direct your attention to a statement made in the Marine Planning System for England consultation document (see footnote 41) which acknowledges that marine planners should take account of the principles set out in the Annex to the UNESCO Convention on the Protection of the Underwater Cultural Heritage 2001, although the UK is not a signatory to this convention. However, the relevance of the annex is equally directed at licensing functions in the way it sets out good practice for underwater cultural heritage. Please note that English Heritage applies these principles to designated wrecks within the English area of the UK Territorial Sea. Wherever possible we will utilise this approach along with other management tools such as Conservation Principles, Protected Wrecks at Risk, and individual site management plans, all of which align with the Annex. We therefore consider this important recommendation to be equally important to marine licensing (at least within the English area of the UK Territorial Sea) and that the historic environment should be considered to be a component of any 'voluntary service' offered by the MMO.</p>
6	<p><i>Do you agree with the proposals outlined above for the marine licence application process? Is there anything else that you think would provide extra support to applicants during this stage?</i></p> <p>We stand by our response as provided in our previous consultation response, dated 21st September 2009: 'The applicant must be given confidence that the licensing authority will co-ordinate the participation of all relevant parties. The importance of this co-ordination is that it will also give confidence to the consultees in terms of how their advice is used through the licensing process.'</p>
7	<p><i>Do you foresee any difficulties with our proposed approach for updating and repealing existing EIA Regulations and updating Conservation Regulations?</i></p> <p>We have no specific comment to offer on this matter.</p>
8	<p><i>Do you foresee any difficulties with this approach?</i></p> <p>We have no specific comment to offer on this matter.</p>
9	<p><i>Do you think that the intended approach is appropriate? If not, why not?</i></p> <p>We have a concern regarding the statements made about fees and charges and we require acknowledgement that other parties, such as DCMS, do not charge for the administration of licences by English Heritage (within the English area of the UK Territorial Sea) under section 1 of the Protection of Wrecks Act 1973. It is necessary to point out that English Heritage supports projects that facilitate access to such nationally important sites through the establishment of 'diver trails' and such projects should not be considered a commercial operation and consequently not subject to the same economic model for cost recovery purposes.</p>
10	<p><i>Do you agree that eight weeks is sufficient time for an appellant to lodge an appeal?</i></p> <p>We have no specific comment to offer on this matter.</p>
11	<p><i>Do you agree with this approach?</i></p>

	Yes – this approach would seem appropriate to focus on matters to be resolved.
12	<i>Do you agree with the proposed time limits within the appeals process?</i> We have no specific comment to offer on this matter.
13	<i>Are there waste management activities other than ship dismantling that are better regulated under the Environmental Permitting Regulations than under marine licensing?</i> We have no specific comment to offer on this matter.
14	<i>Have we correctly identified the cases where an exemption (subject to MMO approval) for emergency action is needed</i> We have no specific comment to offer on this matter.
15	<i>We welcome your views on the proposed exemptions, in particular:-</i> <i>(a) Do you agree with the proposed exemption as drafted?</i> Under ‘Navigation’ we consider it very important that any action to remove sunk or stranded vessels (7.24) is very carefully qualified to differentiate between emergency action to safeguard life at sea and other programmes of work which may be part of a port or other navigation authority development plan (as mentioned in 3.4 in the Marine Policy Statement). It is therefore important that co-ordination occurs between marine planning and licensing functions (as alluded to in 7.27) and that any ‘voluntary service’ offered by the MMO includes an agreed risk assessment strategy to help safeguard the historic environment. Under ‘Defence’ in 7.39 it is also important to highlight responsibilities associated with sites designated under the Protection of Military Remains Act 1986 and other examples of accepted international good practice for the management of the historic environment that all government bodies should be expected to comply with. We appreciate the matters addressed in regard to activities to remove items of historic or cultural interest from the seabed outside the UK territorial sea (paragraph 7.59). Such qualification is necessary in consideration of the preparation of advice for ‘foreign monuments’ that English Heritage may offer, as enabled through the National Heritage Act 2002, and other advice that English Heritage may offer to enable compliance with the Environmental Impact Assessment Directives (85/337/EEC and 97/11/EC). <i>(b) Are there other activities that we have not included that you feel should be included?</i> Paragraph 7.47 – 7.49 describes the proposed exemptions to be applied to the deposit and recovery of ‘scientific equipment’. We are therefore prompted to recommend that this class of exemption, or a new class, is amended or introduced to include equipment placed on the seabed for the purposes of

	supporting access to sites. We offer as illustration, the English Heritage programme of facilitating diver access to statutory protected historic shipwreck sites through the establishment of 'diver trails'.
16	<p><i>Will the draft Regulations provide the right level of detail on the Public Register? If not what information should be added or removed from the requirements?</i></p> <p>We are concerned that activities that may affect the historic environment within the UK territorial sea, and which are subject to licence, should not be accorded restricted information status on the register by a claim commercial confidentiality, if any such claim had the effect of preventing an adequate supply of information to a primary advisor, such as English Heritage.</p>

Additional comments:

1. We noted that Paragraph 5.13 implies that the MMO will offer a formal EIA Screening opinion and we wish to ask specifically whether this exercise (other than the Appropriate Assessment Screening Decisions) will involve any consultation with primary advisors other than the Statutory Nature Conservation Bodies.
2. Paragraph 5.11 mentions that the MMO will 'hold' information such as environmental monitoring reports. However, it is important to be clear whether the MMO will actually constitute an archive for such material, in perpetuity, or merely direct enquires to an archive that maintains and makes available this information.
3. Paragraph 5.12 states that points of contact will be established within the MMO to provide help and guidance. We must therefore ask if a dedicated member of staff will be identified to co-ordinate the supply and dissemination of information relevant to the historic environment. This matter of co-ordination is very important with particular reference to the comment made in the Marine Planning System consultation in 3.38 were it is anticipated that '...much of the delivery of the elements of the marine planning system will be through the MMO's own licensing and enforcement regimes.'
4. In paragraph 5.19 we are keen to ensure that any determination of 'smaller or less complex projects' that go through the main application process are fully informed by archaeological considerations. For example, the flow diagram in Annex 2 should be expanded under 'investigation and preparation' to include an information gathering phase to inform any licensing proposal for operations directed at cultural/archaeological sites located within 12nm or other works as may affect the historic environment.
5. Paragraph 6.18 and 6.7 require clarification: 6.7 states that only the applicant can lodge an appeal (not third parties), but 6.18 describes how other persons 'that have submitted representations to it relating to the subject matter of the appeal (i.e. during the application process) or any other person it thinks may have an interest.' However, Table (a) states that the licensing authority will make any written representations. Presumably 6.22 should also mention that PINS will likewise notify

any party that has written directly to them (as per 6.28), which presumably are interested persons as mentioned in 6.33 (and illustrated in Annex 4).

6. Paragraph 7.57 contains an interesting initiative relating to the licensing authority approving a programme of works (e.g. repair to a harbour wall) and we wish to add that such structures might be heritage assets of national importance and so we must refer you to Marine and Coastal Access Act section 115(2) and that any such programme of works should be done in consultation with English Heritage.
7. Annex 2 and 3 included a text box that mentions licensing authority 'risk based analyses', which is a matter we are keen to discuss further particular for non-EIA projects and how the LA decision making process will encompass historic environment considerations. In particular, any risk based analyses exercise could support the ambition of 7.57 and support how programmes of works are agreed.

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