



## Annex B – Marine Management Organisation

### Introduction

This is annex B to advice note eleven: Working with public bodies in the infrastructure planning process. Advice note 11 covers many of the generic points of interaction relevant to the Planning Inspectorate and the Marine Management Organisation (MMO). However, there are some specific points that are not addressed in the advice note which require clarification and these are dealt with in this annex, including:

- Specific roles to be played by the Planning Inspectorate and the relevant public body
- Specific high level agreements or arrangements and relevant contact points
- A list of relevant consents, licences or authorisations that apply, and considerations relating to how those interact with the development consent process.

The framework for the working relationship between the Planning Inspectorate and MMO is formed by relevant primary and secondary legislation as well as government guidance<sup>1</sup> from the responsible Secretaries of State.

This document will be updated periodically to ensure the information remains relevant in view of organisational or legislative changes affecting the Planning Inspectorate and the MMO.

The Planning Inspectorate welcomes feedback on the content of this annex.

### The functions of the MMO

The MMO was established under the Marine and Coastal Access Act 2009 (MCAA) and it carries out a range of functions in accordance with its '*general objective*' of making a contribution to the achievement of sustainable development in the UK marine area<sup>2</sup>.

The UK Government's Marine Policy Statement (MPS) forms the framework for the MMO's management of the marine area which is available [here](#). The MMO is in the process of preparing marine plans which will set out how the MPS will be implemented in specific geographic areas.

The responsibilities of the MMO include delivery and enforcement of a new system of marine licensing under part 4 of the MCAA. This covers a large number of activities and developments in the marine environment<sup>3</sup>.

The MMO also has delegated responsibility for harbour orders under the Harbours Act 1964 as well as marine nature conservation responsibilities including for the protection of wildlife.

---

<sup>1</sup> 'Government guidance to the Marine Management Organisation (MMO) on its role in relation to applications, and proposed applications, to the Infrastructure Planning Commission for development consent under the Planning Act 2008'. <http://www.defra.gov.uk/environment/marine/documents/legislation/mmo-pdf>

<sup>2</sup> Section 2(1), MCAA.

<sup>3</sup> Section 66(1), MCAA.



The MMO works closely with other national and sub national bodies who have responsibility for marine licences and other types of consents in the UK marine area. A series of memoranda of understanding have been agreed to establish the respective responsibilities of those bodies and the general principles for cooperation between them.

## The geographical extent of MMO responsibilities

The licensing and enforcement functions of the MMO cover the English inshore region as well as offshore regions of England, Wales and Northern Ireland. The MMO has responsibility for harbour orders in England and Wales, with the exception of Welsh fishery harbours<sup>4</sup>. In addition, the MMO has responsibility for marine plan making in English inshore and offshore regions<sup>5</sup>.

## The Planning Act 2008 regime

The 2008 Act, as amended by the Localism Act 2011, provides the statutory framework for applying for, and if applications are accepted, examining, and determining applications for development consent for nationally significant infrastructure projects (NSIPs)<sup>6</sup> both on land and at sea.

The MMO is the UK Government's expert body on marine management and as such it has important roles to play under the 2008 Act regime in relation to proposed NSIPs in the marine area.

NSIP categories include large generating stations, including off-shore renewable energy projects of over 100 megawatts (off-shore wind farms mainly) as well as large harbour development projects. Such projects are likely to require a marine licence because they will involve activities which are licensable under part 4 of the MCAA.

## The MMO's roles under the 2008 Act regime

The MMO's primary roles under the 2008 Act regime are:

- as a statutory consultee at the pre-application stage under s.42(1)(aa) of the 2008 Act and as an interested party during the examination stage, and
- as a licensing and consenting body.

The MMO's responsibilities in relation to marine licences are dealt with in greater detail below. Provisions for the creation of a harbour authority or changes to its powers or duties may be included in a development consent order (DCO)<sup>7</sup>. This is also dealt with in greater detail below.

The need for separate nature conservation and other consents for which the MMO is responsible may potentially be removed provided that the MMO is in agreement<sup>8</sup>.

It would be preferable for applications for marine licences, wildlife licences or harbour orders not be made directly to the MMO where provision in relation to the same matters

---

<sup>4</sup> The Harbours Act 1964 (Delegation of Functions) Order 2010 (SI 2010 no.674).

<sup>5</sup> S.50 MCAA.

<sup>6</sup> Part 3, 2008 Act.

<sup>7</sup> S.145 2008 Act.

<sup>8</sup> S.150 2008 Act.



is included (whether 'deemed' or not) in a DCO application to the Planning Inspectorate (see text below concerning orders under the Harbours Act 1964).

The roles of the MMO during the various stages under the 2008 Act regime are set out in more detail below.

## **The 2008 Act regime – the MMO as statutory consultee and interested party**

The pre-application stage under the 2008 Act regime allows a developer to identify relevant issues, consult on, publicise and refine their scheme and hopefully resolve any outstanding issues before an application is submitted to the Planning Inspectorate.

The MMO must be consulted on any prospective applications for development consent where it would affect, or would be likely to affect the marine environment<sup>9</sup>.

The MMO would wish to receive the following information at the pre-application stage as part of developers' s.42 consultation: -

- a map and/or chart of sufficient size and scale together with coordinates in an appropriate format so that the proposed location(s) for development can be identified
- a high level description of the type and size of the project
- an outline of any project options, including any alternatives to those options already considered;
- sufficient information to enable the impacts of the proposals on its areas of interest to be assessed;
- detail of any hazardous materials which may be associated with the construction or subsequent use of the development
- information regarding any compulsory purchase of land that may be needed, and where relevant, any land to be given in exchange
- information on whether or not an environmental impact assessment (EIA) is being, or will be carried out
- the deadline by which responses must be received
- information on when an application is intended to be submitted to the Planning Inspectorate.

Developers must give the MMO not less than 28 days in which to respond to such consultation<sup>10</sup> and developers are required to have regard to any 'relevant response' that MMO may make<sup>11</sup>. Developers are not bound to take account of any responses received from the MMO after the deadline has passed.

Sufficiently early pre-application consultation of MMO by developers, whether under s.42 or informally, should allow for proper discussions so as to enable if possible the MMO (as a body responsible for post-consent monitoring, variation, enforcement and revocation of marine licences) to support an application once made to the Planning Inspectorate.

---

<sup>9</sup> Section 42(1)(aa), 2008 Act.

<sup>10</sup> Section 45, 2008 Act

<sup>11</sup> Section 49, 2008 Act.



Such consultation should also minimise the risk of additional information being required once an application has been made to the Planning Inspectorate, which could otherwise result in delays in the examination of the application. All relevant issues should if possible have been resolved at the pre-application stage.

Developers should consider the MPS during pre-application consultations with the MMO as well as any relevant marine plans for the area in question. Licensing decisions will be made in accordance with the MPS and any draft or adopted marine plans.

Developers are expected to engage with all relevant bodies where a project crosses over one or more national borders, is in close proximity to a national border or it is likely to have an impact on another Member State of the European Union or European Economic Area. Further advice on where proposed developments are likely to have significant transboundary impacts is set out in Planning Inspectorate advice note 12.

If the Secretary of State decides to accept an application, developers must inform the MMO where the proposed development takes place either wholly or partially in the marine environment.

The MMO's status is as a 'statutory party' in respect of the examination of applications for development consent<sup>12</sup>. Further advice on the examination of development consent applications is set out in Planning Inspectorate advice note 8.

The responsibility of the MMO at the post-consent stage under the 2008 Act regime is dealt with below.

## The MMO as a consenting body

### Marine licences

The 2008 Act enables DCOs for projects which affect the marine environment to include provisions which deem marine licences<sup>13</sup>. Alternatively, developers may wish to separately seek consent for a marine licence directly from the MMO rather than having it deemed by a DCO.

Where developers choose to have a marine licence deemed by a DCO, it is envisaged that developers will seek to agree the draft marine licence with the MMO prior to submitting their DCO application to the Planning Inspectorate. The conditions included in a marine licence should be enforceable, clear and sufficiently detailed to allow for monitoring and

enforcement. The MMO will seek to ensure wherever possible that any deemed licence is generally consistent with those issued independently by the MMO.

The MMO is responsible for enforcing marine licences regardless of whether these are 'deemed' by DCOs or are consented independently by the MMO. The MMO may vary, suspend or revoke a marine licence if it appears that any of its provisions have been breached. The circumstances in which the MMO may take enforcement action are set out under s.72 of the MCAA. The MMO is also responsible for ensuring the discharge of conditions under independently consented and deemed marine licences.

---

<sup>12</sup> Under s.88(3)(c) and s.102(ca) of the 2008 Act as amended .

<sup>13</sup> S.149A 2008 Act.



## Harbour provisions

Provisions for the creation of a harbour authority, for changing the powers or duties of a harbour authority, or for other purposes relating to such an authority can be included within a DCO<sup>14</sup>, unless expressly excluded by the 2008 Act.

Unless the development or the harbour itself is an NSIP, or an integral part of an NSIP, the MMO may also separately deal with harbour order applications under the Harbours Act 1964.

However, s.33(2)(a) of the 2008 Act means that (separate) harbour empowerment and harbour revision orders cannot be granted in the event that provisions in relation to the same matters are contained within a DCO.

If a separate application for a harbour revision order or a harbour empowerment order has been made to the MMO under the Harbours Act 1964 and a deemed marine licence is to be included in a draft DCO in relation to the same works, then the MMO may not be in a position to provide a draft marine licence until the harbour order the MMO is processing has been finalised.

Where harbour provisions are to be included in a draft DCO, the MMO will wish to advise developers on the scope and wording of such provisions to seek to ensure that, wherever possible, provisions contained in orders made under the Harbours Act 1964 and those made under the 2008 Act are generally consistent.

The Secretary of State will be responsible for making changes to or revoking harbour order provisions included in granted DCOs. Regulations setting out how changes to DCOs will be dealt with have been made under the 2008 Act<sup>15</sup>.

## Environmental impact assessment (EIA)

Subject to the relevant exceptions in relation to marine licences<sup>16</sup> where a marine licence or harbour order is to be sought separately rather than being deemed by or included within a draft DCO then, if such works constitute EIA development, an environmental statement (ES) may need to be submitted with any such application to the MMO. This may be in addition to any ES submitted to the Planning Inspectorate with an application for development consent where such development is EIA development. In those circumstances, any cumulative impacts arising from other relevant developments would have to be taken into account in each EIA and set out in both ES.

---

<sup>14</sup> S.145 2008 Act.

<sup>15</sup> The Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011.

<sup>16</sup> See regulation 10 of The Marine Works (Environmental Impact Assessment) Regulations 2007 as amended by the Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2011.



## Nature conservation provisions

A licence under regulation 49 of the Offshore Marine Conservation (Natural Habitats) Regulations 2007, often referred to as a 'Wildlife Licence', can be issued to authorise what would otherwise be an offence under the nature conservation legislation. A licence may only be issued in the English marine environment or the Welsh offshore environment, where the activity meets certain purposes and where there is no satisfactory alternative.

The legislation that applies is:

- [The Offshore Marine Conservation \(Natural Habitats, &c.\) Regulations 2007](#) (as amended)
- [The Conservation of Habitats and Species Regulations 2010](#)
- [The Wildlife and Countryside Act 1981](#) (as amended)
- [The Conservation of Seals Act 1970](#) (and subordinate legislation made under it)

If the MMO agrees, the requirement for such a licence to be obtained separately will be removed by virtue of s.150 of the 2008 Act and the schedule to the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010.

Developers will need to have settled the terms of any such 'waiver' with the MMO prior to submitting their application for development consent to the Planning Inspectorate. This can be achieved through pre-application consultation as set out above.

## Relevant guidance and advice

Please see the 'Marine regulation and licensing' section of the MMO website which is available via the following link:

<http://www.marinemanagement.org.uk/licensing/index.htm>

## MMO contact details

Website: [www.marinemanagement.org.uk](http://www.marinemanagement.org.uk)

Telephone: 0300 123 1032

Email: [marine.consents@marinemanagement.org.uk](mailto:marine.consents@marinemanagement.org.uk)

## Planning Inspectorate contact details

The Planning Inspectorate, National Infrastructure Directorate, Temple Quay House, Temple Quay, Bristol BS1 6PN

Email: [enquiries@infrastructure.gsi.gov.uk](mailto:enquiries@infrastructure.gsi.gov.uk)

Telephone: 0303 444 5000

Web: <http://infrastructure.planningportal.gov.uk>