

Improving collaboration between ALBs to deliver marine priorities

Paper by Cefas, Environment Agency, JNCC, MMO and Natural England

1. Background

- 1.1 In January the Marine Programme Board agreed to add a new risk to the programme risk register, merging two existing risks. The new risk is defined as:

A shortfall of skilled capacity across the network to deliver marine programmes

- 1.2 Countermeasures for this risk emphasise the importance of collaborative working across the Defra network, building on existing good practice. Specific actions include joint planning of likely future demand and working together to make best use of capability and resources.
- 1.3 Defra and its ALBs already collaborate effectively in many areas but there remain possibilities for closer joint working. Discussions between ALBs have provisionally identified four priorities where enhanced collaboration is likely to generate significant efficiencies and/or help government to meet new policy requirements.

2. Priorities for enhanced collaboration

2.1 *Marine consenting*

2.1.1 Working through the Marine Delivery Group (MDG), ALBs have identified ways of working together more effectively on marine consenting, with the aim of realising internal efficiencies and providing a better service to business (see report to the Programme Board in November 2012). Noticeable improvements have already been achieved.

2.1.2 There is an urgent need to further improve the process for marine consenting. Actions previously considered by the MDG include establishing an actual or virtual hub with shared access to data and systems and introducing joint charging for casework. Progress now needs to be accelerated.

2.1.3 Annex 1 to this paper sets out in some detail how the ALBs intend to work together to achieve better co-ordination of marine regulation in English waters.

2.2 *Monitoring and evidence*

2.2.1 Within the Defra network there are several initiatives relating to evidence collection in the marine and wider environment (e.g. the Consolidated Evidence workstream under the Strategic Alignment programme; the Marine Evidence Group charged with taking forward recommendations from the Nature Directives Implementation Review;

R&D to develop options for marine biodiversity monitoring). Drivers for this work include increasing demands to improve the marine evidence base (e.g. to meet MSFD requirements) and severe anticipated budgetary pressures in future years.

2.2.2 Good partnerships between ALBs already exist (e.g. through an operational group that plans cruises to make best use of vessels). The priority now is for ALBs to work with Defra and others to develop, cost and begin to implement integrated approaches to marine environment monitoring that meet multiple needs in a cost-effective manner.

2.3 *Marine data*

2.3.1 All ALBs are accumulating substantial quantities of data relating to the marine environment, e.g. as a result of recent surveys. There is a pressing need to more effectively manage and share data assets across ALBs, and ensure that information is readily accessible to users (e.g. through web-based portals).

2.4 *Fisheries management measures for Natura sites*

2.4.1 Defra have adopted a revised approach to managing commercial fisheries within marine Natura sites (SACs and SPAs) in English inshore and offshore waters. This involves a risk-based, phased approach. Management measures will be identified for high-risk features by December 2013, and any additional management measures for SACs and SPAs are scheduled to be in place by 2016.

2.4.2 Achieving this policy goal will require co-ordinated input from ALBs. In the short term, the priority is to clarify roles and responsibilities and agree ways of working. A meeting is being arranged with all the parties agree roles and responsibilities, particularly for offshore sites

3. **Next steps**

3.1 If the Programme Board endorses these priorities the next step will be to agree specific actions, identify a lead body, and establish a delivery network of individuals from each ALB. Annex 1 provides an example of how this is being achieved for marine consenting.

3.2 Other organisations will need to be engaged for certain work areas. For example, IFCAs will have a keen interest in some of the priorities proposed, and collaboration with devolved bodies to develop UK partnerships is likely to be beneficial especially for work on marine evidence and data.

3.3 Any actions must be mindful of current (NE/EA and JNCC) and future (MMO) Triennial Reviews, which may reshape the marine delivery landscape.

3.4 Progress reports can be provided to future meetings of the Programme Board.

Annex 1. A coordinated approach to marine regulation in England

1. Introduction

- 1.1 This paper provides the Marine Programme Board with an update on the approach taken by the Defra ALBs to provide a coordinated Marine England Regulatory Service (MERS) for the licensing of complex projects under the Marine and Coastal Access Act 2009 (MCAA) and to contribute effectively to the work being undertaken by the Consents Services Unit (CSU) of the Planning Inspectorate (PINs) with regards to the determination of a Development Consent Order (DCO) under the Planning Act 2008.
- 1.2 This paper outlines a proposed approach for coordinating marine regulation in England. This is primarily focused on improving coordination between the parties involved rather than directly producing cost saving efficiencies, although such efficiencies may become apparent as any approach is implemented. In short, the Defra ALBs are focused on providing the best customer service possible and ensuring that any regulatory process is as streamlined and efficient as it can be. It is intended that this paper provides the starting point to develop the six deliverables that have been identified. This work will be taken forward in 2013/14 by the Marine Arms Length Body Delivery Group.

2. Background

- 2.1 Over the last 24 months there has been an increasing focus within central government on achieving more efficient, coordinated regulation; this has resulted in several initiatives being driven forward by different parts of government, all which have common aims. These include commitment to the Better Regulation Executive that Defra ALBs would look to achieve closer coordination and increased efficiency within the regulatory process, particularly those associated with marine licensing under the Marine and Coastal Access Act (MCAA) and the Planning Act (PA).
- 2.2 The MERS approach being taken forward is seen as being complementary to three streams of work currently being developed in government to provide coordination that is mainly focused on the terrestrial regime, namely:
 - the Defra Single Voice initiative which looks to provide a coordinated approach to engagement with Local Government from the Environment Agency, Natural England and the Forestry Commission;
 - the Defra offer to City Deals and Local Enterprise Partnerships; and
 - the proposed approach to coordinating the consenting process put forward by PINs within the CSU.
- 2.3 It is important to note that this work will address the current issues surrounding the marine regulatory system, and the intention is that

this work will fit alongside the other three workstreams mentioned to provide a coherent regulatory system across the both terrestrial and marine.

- 2.4 This work is based in part upon lessons learnt from a similar approach that has been successfully piloted in the aggregates industry, led by the MMO in partnership with Natural England, JNCC and the Environment Agency.

3. The MERS approach

- 3.1 Within the marine licensing process, the Defra ALBs have different statutory responsibilities. Under the MCAA, the MMO is the main regulatory authority (the decision maker) and Natural England, the Environment Agency and the JNCC are advisory bodies, although it should be noted that the Environment Agency may also have regulatory responsibilities with regards to environmental permitting and flood and coastal risk management. Under the PA 2008 all Defra ALBs are advisory bodies to the Planning Inspectorate, and the relevant Secretary of State, although the MMO are the main enforcement body for the marine environment via the deemed marine licence. In both these processes, Cefas provide scientific advisory services.
- 3.2 There are several existing governance arrangements into which Defra ALBs report on regulatory matters, including the Marine Programme Board, the Major Infrastructure and Environment Unit and the new Consents Service Unit in the Planning Inspectorate (PINs). A new governance structure to oversee the decision making and advice undertaken by the marine ALBs within the marine licensing process is not considered to be necessary nor appropriate.
- 3.3 What is required is a set of working principles and practices that all marine ALBs and their advisors can commit to, and that Defra can support, which will further streamline and align the working practices of all involved. With these principles and practices agreed and in place, the individual ALBs can maintain their individual roles within the decision making process whilst ensuring coordination on the 500+ licence applications that are determined every year. The development of these working principles will be supplemented by a biannual meeting between all the Marine ALBs to discuss key delivery issues and provide a clear strategic focus to the work being carried out on the ground.
- 3.4 In time, the Marine ALB Delivery Group will look to see if these principles can be applied to more strategic areas such as marine spatial planning. In the first instance there is a pressing need, and indeed a commitment to government, to apply this approach to marine licensing.
- 3.5 The approach proposed by the Defra ALBs to marine licensing responsibilities under the MCAA and the PA will be in line with the following principles:

- The approach will initially apply for all MMO Tier 3 Complex Projects¹ licensed under the MCAA and all projects considered to be Nationally Significant Infrastructure Projects under the Planning Act 2009 with relevant marine components and will not be voluntary.
- All work will be cost recovered where possible under the relevant charging regimes that apply to different ALBs. Within each deliverable set out below, how charging is undertaken will need to be a key consideration.
- The Defra ALBs will operate a coordinated approach whereby if one ALB is consulted during any stage of the pre-application or application process, they will inform the other ALBs.
- Where possible, the relevant regulatory (decision making) authorities will identify one lead regulatory authority for relevant regulatory consenting and licensing regimes where appropriate. Where appropriate and legally possible, decision making will be formally deferred to that lead regulatory authority. Where formal deferral is not possible, the lead regulatory body will take the administrative lead throughout the process² so that the evidence submission and consultation processes are streamlined. This administrative process will not remove any of the decision making responsibilities of individual bodies, but will ensure a better customer experience.
- Information will be submitted and consulted upon once for assessment under all relevant regulatory regimes.
- The Defra ALBs will provide a single point of contact to both the applicant and the lead regulator (if not a Defra ALB) with regards to advisory services and will not enter into discussions with an applicant without advising the regulatory authority that they are doing so.
- Defra ALBs will put in place agreements with each other and with other appropriate bodies (e.g. Local Planning Authorities (LPA), certain Harbour Authorities) to ensure that the process is delivered in an efficient manner.

3.6 It is anticipated that, upon agreement from the Defra Marine Programme Board, the Marine Delivery Group will put in place a programme of work to deliver the following:

- i. an agreement between MMO, Natural England, Environment Agency and JNCC on Defra ALB coordination;
- ii. a coastal concordat between the Local Government Association and Defra ALBs as agreed in the Better Regulation Review of Coastal Enforcement. This concordat must be in place by September, following which it will be used to as the

¹ Complex projects are defined as those projects that are not Nationally Significant Infrastructure Projects but have been screened as requiring Environmental Impact Assessment (EIA) under relevant EIA regulation or are considered likely to have a significant effect on the integrity of a European designated site under the Habitats Regulations.

² There will be instances where a particular consenting regime cannot be treated in this manner due to legal constraints or technical expertise being sited within a particular organisation, for example the environmental permitting regime administered by the EA. Where this is the case, clear processes will be put in place to show how any such consents can be administered in parallel.

basis for an agreed approach across as coastal Local Authorities;

- iii. an agreed approach for marine licensing on the tidal Thames with the Port of London Authority as agreed in the Better Regulation Review of Coastal Enforcement;
- iv. an agreed approach for working with Devolved Authorities on marine licensing matters;
- v. an agreed approach to the licensing of oil and gas infrastructure with DECC in England;
- vi. a biannual meeting of the Defra Marine ALBs and Cefas to discuss key delivery issues and provide a clear strategic focus to working practices.

3.7 Annex A sets out the detail of a proposed basis for developing these agreements. It should be noted that the detail proposed in Annex A is for discussion and will form the basis of further work with the Defra ALBs and others.

Annex A

The table below further sets out some of the roles of the various bodies within the two processes and the government initiatives relating to them. This paper will propose a coordinated approach that should meet the needs of all the initiatives detailed below.

	Marine Licensing	Development Consent Order
Regulatory Authorities	Marine Management Organisation Environment Agency (for water quality and flood and coastal risk management) Local Planning Authority (if consent under Town and Country Planning Act is needed) Harbour Authority (if relevant consent exists under local Harbour Act)	Planning Inspectorate Secretary of State
Advisory Bodies	Natural England JNCC Environment Agency (inshore fisheries, water quality, flood and coastal defence, WFD) Cefas Other non Defra advisory bodies	Natural England JNCC Environment Agency Marine Management Organisation
Enforcement Bodies	Marine Management Organisation for marine aspects Environment Agency for relevant consents Local Planning Authority for terrestrial aspects Harbour Authority for relevant consents	Marine Management Organisation for marine aspects Environment Agency for relevant consents Local Planning Authority for terrestrial aspects Harbour Authority for relevant consents
Government / ALB initiatives	Marine Programme Board Arms Length Bodies Delivery Group Major Infrastructure and Environment Unit Habitat and Wild Birds Implementation Review Red Tape Challenge Marine Theme Better Regulation Executive Review of Coastal Development Defra / CLG coordination on Local Enterprise Partnerships Defra Network Single Voice Initiative Defra Network Single Voice offer to City Deals DCLG initiative on statutory consultees Proposed concordat with Local Planning Authorities	Marine Programme Board Arms Length Bodies Delivery Group PINS Consents Service Unit Defra / CLG coordination on Local Enterprise Partnerships Defra Single Voice Initiative Defra Single Voice offer to Wave 2 City Deals

A1 Marine Licensing

A1.1 Introduction

The marine licensing process for complex projects can be split into several different pre-application stages, which broadly can be characterised as screening, scoping and environmental statement / appropriate assessment production and review. Within the streamlined marine licensing process the majority of work needed to deliver a complete submission is done in the pre-application stage.

Within this process, of the Defra ALBs, the MMO is the regulatory and enforcement authority under the MCAA (the decision maker), the Environment Agency is both a regulatory authority and an advisory body and Natural England and the JNCC are advisory bodies. There are also other, non-Defra regulatory authorities and advisory bodies that may be involved. Cefas provide scientific advice to the process.

Set out below is an approach for how the process will be run such that it is coordinated and efficient. Whilst not the regulatory remit of the Defra ALBs, this process also considers other EIA regulations that could also apply such as the Town and Country Planning (EIA) Regulations where the LPA is the regulatory body and the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999 where the Department for Energy and Climate Change (DECC) is the regulatory body³. Issues regarding arrangement with the devolved authorities will also be proposed.

Within any such coordinated approach issues of charging must be considered. Whilst it may not be appropriate or indeed practical to have one charging system covering all Defra ALBs, better coordination of individual charging regimes will need to be explored alongside the ongoing Defra initiative on cost recovery.

A1.2 Lead authority

In the early stages of pre-application, the regulatory authorities (both Defra and non-Defra) will identify a lead regulatory authority where relevant and appropriate to administer the EIA determination and any related consents. This lead authority will either take a formal role, whereby all other authorities formally defer their decision making, or an informal role, whereby the lead authority administers parts of the process such as consultation to provide a better customer experience where possible. The arrangements will be formally set out by the lead authority in any screening opinion for relevant EIA regulations, or statement of likely significant effect under the Habitats Regulations. This screening process is a formal requirement of the EIA process. There will be instances where a particular consenting regime cannot be treated in this manner due to legal constraints or technical expertise being sited within a particular organisation, for example the environmental permitting regime administered by the EA. Where this is the case, clear processes will be put in place to show how any such consents can be administered in parallel.

Detail of how this decision will be taken is set out below.

³ The Petroleum Act 1998 (Specified Pipelines) Order 2011 came into force in April 2011 and had the effect of removing from the Petroleum Act 1998 regime and bringing within the new marine licensing system all pipelines apart from those used in relation to those, inter alia, exploring for, or exploiting petroleum. What this means in practice is that because DECC consider the Petroleum Act remit ends at the landward baseline of the territorial sea (normally Low Water Mark), any section of an oil or gas (and potentially pipelines for CCS) that fall within that limit up to the tidal level of Mean High Water Springs would be authorised by the MMO under the MCAA.

A1.2.1 Habitats Regulations

All relevant authorities will agree to follow the guidance set out by Defra on lead competent authorities under the Habitats Regulations⁴.

A1.2.2 EIA Regulations

Where possible, the lead regulatory authority will be the same as the lead competent authority under the Habitats Regulations. Where there is no single regulatory authority that has the technical expertise to cover different EIA regimes (e.g. when a project crosses over the land sea interface), or indeed there is no legal mechanism to formally defer decision making from one regulatory authority to another, one regulatory authority will be appointed as the administrative lead so that consultation and assessment at the screening and scoping stages of the process is only carried out once. The administrative lead will commit to ensuring that other relevant regulatory authorities have the opportunity to assure themselves that they are discharging their regulatory duties through the coordinated process, and indeed that they are willing and able to include the regulatory requirements of other regulators within their own assessment process.

There will be many instances, particularly at the land sea interface, where the decision regarding lead authority will need to be undertaken on a case by case basis. However, there will be instances where the lead authority can be pre-determined. The table below sets out the proposed approach for predetermining the lead authority by Defra ALBs. This approach has not formally been agreed with any of the non-Defra parties involved. Defra ALBs would ask for support from Defra to achieve agreement with DECC and the devolved authorities.

In instances where there is formal deferral of any decision under relevant EIA regulations, there is still the need for the relevant authority to issue final consents under the legislative regimes for which they are responsible for. This consent can be issued following any decision under relevant EIA regulations. The proposals for formal / administrative lead for EIA set out below do not in all instances preclude the relevant authority issuing final consents under relevant regimes.

⁴ Guidance on competent authority coordination under the Habitats Regulations
<http://www.defra.gov.uk/publications/files/pb13809-habitats-guidance.pdf>

	Regulatory Authorities	Lead Authority	Formal / administrative lead for EIA
Land Sea interface	MMO (for marine works) LPA (for terrestrial works) EA Harbour Authority	To be determined on a case by case basis	Administrative
Oil and gas (and for non-NSIP CCS)	DECC (for offshore works) MMO (for works in the intertidal zone) LPA (for terrestrial works)	DECC for marine works LPA for terrestrial works	Formal
Energy projects in Wales <100 MW	MMO (Electricity Act) Natural Resources Wales (from April 2013)	Natural Resources Wales	Formal
Licensable activities in cross border locations (except oil and gas)	MMO Natural Resources Wales Marine Scotland Department of Environment Northern Ireland	Case by case	Administrative
Licensable activities within Harbour Authority areas	Harbour Authority MMO	MMO	Administrative

The lead authority will:

- i. Provide an account management service to the applicant.
- ii. Put in place a project delivery plan with the applicant, any other regulatory authorities and other Defra ALBs that will set out the different phases of the application process and be consistent with any project delivery plan that the applicant may be working to.
- iii. Coordinate all advisory activity relating to the application (including that from both statutory advisors (JNCC, NE) and non-statutory advisors (Cefas).
- iv. Ensure that a comprehensive evidence plan is agreed at the scoping stage that covers all the necessary requirements. All Defra advisory bodies and any other regulatory authorities concerned will be required to sign up to this plan. It will be shared with all non-Defra advisors and made public on the MMO public register.
- v. Ensure that all regulatory requirements of other bodies, that have been either deferred or are being administratively led by the MMO, are met in full. This will entail close working with other regulatory authorities to ensure that all parties are satisfied their responsibilities have been discharged.

A1.3 Role of advisors

The Defra ALBs will commit to providing a coordinated approach to advice and a single point of contact for both the developer and lead authority that will apply to all Tier 3 projects. Within this coordinated approach there will need to be the ability for individual advisors to provide their own advice where agreement cannot be reached between Defra ALBs. Where agreement cannot be reached, Defra ALBs will provide clear reasoning behind any disagreement in their advice.

Given the aforementioned approach to identifying a lead authority, there are two possible scenarios within which the Defra ALBs could be providing advice:

- a) Where the MMO is the lead authority.
- b) Where another body is the lead authority.

A1.3.1 Defra ALB as lead authority

When a Defra ALB is the lead authority, the following principles will apply:

- i. The lead authority will be main point of contact between the applicant and all advisory bodies.
- ii. All Defra ALBs will commit to informing the MMO of any pre-application engagement by an applicant (the “touch one, touch all” approach).
- iii. All Defra ALBs will work with the applicant to develop and agree an evidence plan at the scoping stage.
- iv. The Defra ALBs will advise the MMO, and therefore the applicant, of any relevant regulation that may apply to their application.
- v. The Defra ALBs will provide advice to the MMO within the timeframes specified in Annex xx.
- vi. All contact between an applicant and Defra ALBs will be done with the knowledge of the MMO.
- vii. All advice will be made publically available on the MMO website.

A1.3.2 Other (non-Defra) regulatory authority as lead authority

When another regulatory authority is the lead authority, the following principles will apply:

- i. There will be a coordinated approach to engagement between the lead authority and the Defra ALBs.
- ii. All Defra ALBs will commit to informing the MMO of any pre-application engagement by an applicant (the “touch one, touch all” approach).
- iii. All Defra ALBs will work with the applicant to develop and agree an evidence plan at the scoping stage.

- iv. The Defra ALBs will provide advice to the lead authority within the appropriate timeframes specified in.
- v. All advice will be made publically available on the MMO website.

A2. Development Consent Orders

A2.1 Introduction

Within the DCO process, all Defra ALBs are advisors under the Planning Act, although the MMO is main enforcement authority for any determined DCO through the deemed marine licence. In many ways, the approach to engagement with the DCO process is simpler than that for marine licensing, because all Defra ALBs are advisors under the Planning Act. Much work has already been done concerning issues relating to the Habitats Regulations by the Major Infrastructure and Environment Unit within Defra and this good practice should be rolled out across the whole DCO process.

Unlike the Defra ALBs in other consenting regimes, the Planning Inspectorate (PINS) do not, in practice, engage at the pre-application stage. This can appear to the customer as if there is a vacuum at this important stage as the developer will engage with the Defra ALBs for pre-application advice but there is no lead authority to coordinate how this advice is given or what should be considered within an application. This approach is deliberate, as the Planning Act was put in place as a developer led process. However it can lead to difficulties if the developer chooses not to coordinate between the advisory bodies. It is understood that PINs are developing a Consents Services Unit which it is hoped will address these issues at the pre-application stage. Rather than develop a separate process for how Marine ALBs will work with the CSU, we will instead commit to working with the CSU to ensure that the aspirations of all involved for their new function can be realised.

As a minimum, the Defra Marine ALBs would want to see the following principles reflected in any CSU:

- i. The Defra ALBs will work with PINS to achieve a coordinated approach to engagement.
- ii. The Defra ALBs will work in a virtual team on marine matters. This will ensure that there is clear sight of any emerging evidence and that all ALBs are aware of the advice being developed by each other.
- iii. The Defra ALBs will work with the CSU to develop and sign up to an agreed Evidence Plan at the scoping phase of pre-application.
- iv. The Defra ALBs will submit joint Written Representations and Statements of Common Ground into the examination process.