

Department for Environment, Food and Rural Affairs

Marine licensing Applications: charges for monitoring and for varying licences

Summary of responses

February 2014

Contents

Introduction	1
Overview of responses	1
Summary of responses to consultation questions.....	3
The way forward	6
Annex A: List of respondents to the consultation	8

Introduction

1. This document contains the summary of responses and Government response to the consultation¹ on proposals to extend the Marine Management Organisation's (MMO) ability to recover the costs it incurs in dealing with marine licence applications under Part 4 of the Marine and Coastal Access Act 2009 (MCAA). The consultation was held between 12 July and 5 September 2013.
2. Section 67 of the MCAA contains powers to charge for marine licensing applications, but the powers within the Act do not allow the MMO to recover certain costs incurred in monitoring sites where licensable activities take place, reviewing monitoring reports required from licensing holders and varying existing licences. These activities were recoverable under the former licensing system, i.e. under Part 2 of the Food and Environment Protection Act (FEPA) 1985.
3. The consultation set out proposals to enable the Secretary of State to change the MMO's funding arrangements using powers contained in the Public Bodies Act 2011. The Government proposed to make an Order under section 4 of that Act to modify the MMO's charging powers to allow recovery of costs associated with monitoring and varying marine licences. The level of fee for these activities would be included in the Order and mainly be based on the MMO's revised hourly charge for marine licensing work (the calculation of which was the subject of a separate consultation²) but with maximum ceilings, or caps, for simple administrative changes or routine casework. Fees for monitoring associated with licences for dredged material disposal would be based on annual tonnage of material disposed (rate £0.01 per tonne capped at maximum amount of £15k each year). The Government also invited views on whether there were better alternatives that would achieve the goal of full cost recovery.

Overview of responses

4. A total of 26 responses to the consultation were received from a range of sectors including business, recreational, regulatory and non-government organisations. Each respondent provided comments on either the consultation questions or on more general issues. See Annex A for the list of respondents and table 1 below for a breakdown of respondents.

¹ Consultation dated 12 July 2013.

² Consultation on changes to marine licensing fees and charges (dated 24 September 2013). Hourly rate proposed to be £94.

6. The sections below provide more detail on the responses to the Government's consultation. In general, the responses acknowledge the need for the MMO to recover its costs in administering marine licences while highlighting the importance of demonstrating value for money for business and other marine users. The rationale and basis for calculating fees needs to be clearly explained and communicated to applicants. Monitoring needs to be proportionate to the risks and focused on ensuring compliance with licence conditions. Data that are collected should be open and publicly accessible.

Table 1 – Breakdown of responses to consultation

Name of Organisation	Number of responses
Commercial Fishermen's Organisation	1
Government Department / Agency	3
Industry (marine)	2
Industry (other)	8
Local Government	3
Ports and Harbour Authority	5
Recreational and Leisure Organisation	4
Total	26

Summary of responses to consultation questions:

(1) Do you have comments on whether the Government should extend the MMO's ability to recover costs associated with marine licensing by charging applications fees for:

(a) Monitoring costs?

(b) The costs of varying licences?

6. A total of 17 responses were received to question a, and 15 responses to question b. Most respondents agreed the overall principle and recognised the need to recover costs.

(a) Monitoring costs

7. While the need to recover monitoring costs was generally appreciated, some respondents commented that unnecessary or excessive monitoring should be avoided. The MMO needed to provide justification for the monitoring of any activities which had previously been carried out without the need for monitoring. One respondent argued that monitoring should be paid for by the taxpayer if the function of monitoring was to meet environmental requirements, e.g. for European Marine Sites (EMS) and Marine Conservation Zones (MCZs).
8. There were a number of comments on the method of charging for monitoring. Some respondents argued that monitoring should be charged according to the scale of the project and associated risks to the environment or that costs should be recovered from large or complex dredging projects only. Clarity was needed on how fees would be calculated when a disposal site was being used by several operators or where an operator used more than one disposal site, and on whether the proposed £15k cap would apply at the level of the operator or to each site being used. A few welcomed the proposed cap on disposal monitoring but thought £15k was too high.
9. Some industry representatives commented that monitoring should be more transparent and give applicants some value in return, for example being offered better access to monitoring data held by Cefas.
10. Other respondents sought clarification on whether or not the review of monitoring reports constituted an enforcement activity and hence should not be chargeable. There was also a need to clarify when the powers to recover monitoring costs would come into effect and whether they would apply to on-going monitoring activities. One respondent asked if an applicant could appeal over conditions related to monitoring.

Response:

11. As explained in the consultation letter, it is Government policy to recover licensing costs where practicable. However, the Government recognises that it is essential that the licensing process operates in an efficient manner and minimises the burden on operators as far as it is consistent with the need to protect the environment and other sea users.
12. In general, monitoring costs reflect the scale of potential impacts of projects. Monitoring is limited to ensuring that the conditions of a licence are being complied with, and the MMO will not charge for other sorts of monitoring done for wider public benefit. Minor projects will often not require monitoring. The method of charging for disposal is designed to achieve full recovery of Cefas and MMO costs. The charging methodology is based on overall monitoring of all sites divided by tonnage of material deposited. The £15k limit applies per licence and no operator will pay more than the £15k per annual licensed disposal. If the MMO is not able to recover its costs, the shortfall would have to be made up from public subsidy.
13. The results of all compliance monitoring will be published in the MMO's public register in line with existing MMO commitments. Cefas monitoring data are published on the Cefas website and forms part of the Cefas service charter. The MMO will do more to publicise the availability of these reports and can supply underlying data if requested by applicants.
14. Monitoring compliance is taken as being monitoring whether a licensee is carrying out a licensable activity in the manner set out in the licence. Applicants have right of appeal against licence decisions, including setting of monitoring conditions.
15. Subject to parliamentary clearances, the Government anticipates that the proposed changes should come into effect in autumn 2014. This would apply to on-going monitoring activity for licensing projects, but would not have any retrospective effect. The MMO will contact and provide guidance to affected marine licence holders before the proposals come into force.

(b) The costs of varying licences

16. Some respondents considered that marine licence variations are more efficient than requiring new licences, and charging will lead to a better service. However, some respondents questioned the justification for charging for simple administrative changes and argued that any costs should be minimal and factored into the original licence fee. Some asked for reassurance that no costs fall to applicants when variations are requested or required by the MMO or MMO's statutory consultees.
17. There were also suggestions for variations to only apply to projects that require major changes. Some respondents would like to see a cap on charges for complex variations, i.e. this should be a proportion of the original cost. A few thought variably charged fees could be expensive to administer compared to a fixed fee.

Response

18. The MMO would only be able to charge for variations made at the request of applicants and not for changes required by the MMO or its advisors. The definition of administrative changes (and hence those variations that would be subject to a cap of £50) will be clarified by listing the specific activities (e.g. changes in vessel name). However, the cost of making basic administrative changes still needs to be recovered by the MMO. Incorporating a standard amount in the original licence fee would in effect mean asking many applicants to pay for a service they would never need. The MMO will have a strong incentive to minimise time spent on administrative changes given that they will be subject to a cap.
19. The MMO advises that it is difficult to predict costs for complex variations and hence any predetermined cap would be arbitrary and expose the MMO to potentially significant unrecoverable costs, as opposed to providing licensees with tailored estimates. Furthermore, few if any projects are expected by the MMO to fall into the second of the types of “routine” projects described in the consultation letter (i.e. projects that are “routine” but would require consultation). The Order will therefore simplify matters by having just one category of activity for those variations that require consultation, with the fee calculated by reference to the MMO’s hourly rate.

(2) Do you have comments on the approach to the fees structure?

(3) Are there better alternatives that would achieve the Government’s goal of fully recovering the costs of dealing with licence applications?

(4) Do you have any other comments?

20. A total of 47 responses were received on these three questions, but in most cases the responses are not specifically attributable to any one question.
21. Most respondents expressed concerns about the overall level of fees for marine licensing and some questioned the impacts on smaller businesses, organisations and individuals, including where people were delivering a public good or where environmental and other risks are low. One agreed that a standard, structured fee mechanism would be a better alternative to the current model of recovering costs – setting a standard and realistic cost would provide applicants with confidence and a clear idea of the final expected charge.
22. A few respondents thought the costs need to be proportionate to the level and amount of work required by MMO caseworkers and the service they provide to the customer. Regular review of MMO procedures should be carried out to ensure the process of processing licenses is as efficient as possible and keep fees to a minimum. One respondent suggested that the licensing system should have timeframes in place for

managing applications – currently they felt the service level ambitions do not fulfil this requirement.

Response

23. Several issues mentioned in paragraphs 21 and 22 are also relevant to a separate consultation³ on the MMO's overall fees structure since they raise questions of wider concern than the powers of the MMO to charge for certain functions. These will be picked up in the Government's response to that consultation. However, in response to this consultation the Government recognises that there is a need for the MMO to communicate clearly the basis for charging on both monitoring and variations and to ensure consistency in processing times between caseworkers, allowing stakeholders the opportunity to review and provide feedback on the MMO's performance.
24. The MMO will evaluate its performance through its Stakeholder Focus Group (SFG), Customer Satisfaction Survey and Key Performance indicators. The SFG brings together key social, economic and environmental bodies, who between them bring in over £1.4bn to the UK economy each year. It acts as a sounding board for MMO delivery, with a particular focus on marine licensing and planning. The Group meets quarterly and provides an excellent opportunity to recognise and act upon the views of the people most affected by the MMO's decisions.

The way forward

25. In view of the consultation responses the Government intends, subject to the necessary parliamentary clearances, to proceed with the proposed Order. This is anticipated to come into effect in autumn 2014.
26. The Order will clarify the definition of basic administrative changes for licence variations, while for more complex variations the MMO will provide estimates. The MMO will apply the maximum ceilings, or caps, to defined categories of monitoring and variations. The cost of processing variations and the time spent monitoring post consent reports (for non-EIA projects) will be charged principally on a casework hourly basis and will be consistent with the rate determined following the fees and charges consultation.
27. The impact of the changes will be reviewed in June 2016. It should be noted, however, that it is unlikely to be possible to come forward with any further Orders under the specific power in the Public Bodies Act given that this Order-making power

³ Consultation on Revision to marine licensing fees and charges
<https://www.gov.uk/government/consultations/revision-to-marine-licensing-fees-and-charges>

effectively lapses in 2016. The Government intends instead to find an appropriate opportunity to amend the MCAA so that in the longer run the power to charge for monitoring and variations is integrated with the other marine licensing charging powers.

Annex A: List of respondents to the consultation

Associated British Ports

Axe Yacht Club

British Marine Aggregates Producers Association

British Ports Association

Combe Martin Parish Council

DP Energy

English Heritage

Independent Ecologist

Institute for Archaeologists

Local Government Association

Malvern Archaeological Diving Unit

Maritime & Coastguard Agency

National Federation of Fishermen's Organisation (NFFO)

Northumberland IFCA

Peel Ports Groups Ltd

Port of Dover

Royal Yachting Association

RWE Npower Renewables Ltd

Scarborough Borough Council

ScottishPower Renewables

Sea Trust

South Holderness Internal Drainage Board (Frank Hill & Son (Auctioneers & Valuers) Ltd)

Southern Water

University of Bangor

Whitby & Scarborough Harbours

York Consortium of Internal Drainage Boards

© Crown copyright 2013

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: psi@nationalarchives.gsi.gov.uk

This document/publication is also available on our website at:

<https://www.gov.uk/government/policies/protecting-and-sustainably-using-the-marine-environment>

Any enquiries regarding this document/publication should be sent to us at:

Department for Environment, Food and Rural Affairs

Marine Licensing Team

Area 8B Millbank

c/o Nobel House

17 Smith Square

London, SW1P 3JR

Marinelicensing.Consultation@defra.gsi.gov.uk