



Marine
Management
Organisation

Decision Approval Document

Case Management Team

Case Manager	Andrew Watson
Case Officer	Mark Kirby
Approving Officer	Andrew Kerrigan

Application details

Applicant name	Lymington Harbour Commissioners
Reference	DC9798
Associated marine licence reference	MLA/2012/00031/1
Date received	23 September 2013
Title	The Lymington Harbour (Works) Revision Order 2014
Type	Works Order
Description	The HRO would authorise the construction and maintenance of two breakwaters

Public notices and consultation

Did notices appear in accordance with the Act?	Yes
Original notices received?	07/10/2013
Did the MMO consult? (*Applicant served documentation following direction from MMO)	Cefas
	Environment Agency*
	English Heritage*
	Royal Yachting Association*
	Trinity House*
	Maritime and Coast Guard Agency *
	The Crown Estate*
	Natural England*
	New Forest District Council*
	Highways Agency*

	Network Rail*
	Royal Society for the Protection of Birds*
	MMO (Portsmouth)*
	New Forest National Park Authority*
	Department for Transport*
	Chamber of Shipping*

Representations

Total number of objections or representations received?		10		
Name	Category	Nature of representation	Within Statutory 42 day period?	Withdrawn?
Cefas	Consultation Response	Suggested conditions for ML	Yes	N/A
Environment Agency	Consultation Response	Comments to note on WFD and FDC	Yes	N/A
English Heritage	Consultation	Suggested conditions for ML	Yes	N/A
Trinity House	Representation	Request minor drafting changes	Yes	Changes accepted by applicant
Maritime and Coastguard Agency	Representation	Request minor drafting changes	Yes	Changes accepted by applicant
The Crown Estate	Consultation Response	Supportive comments	Yes	N/A
Natural England	Consultation Response	Comments relating to future phases of project.	Yes	N/A
New Forest District Council	Consultation Response	Comments regarding Article 7	Yes	N/A
Highways Agency	Consultation Response	No comments	Yes	N/A

New Forest national Park Authority	Consultation Response	Comments regarding suitable habitat creation	Yes	N/A
Has the applicant been given opportunity to respond/resolve objections/representations?		Yes		
Objections received and not withdrawn?		N/a		

Public Inquiry

Public inquiry called?	No
Inquiry dates?	N/A
Notice of inquiry published?	N/A
Name of Inspector	N/A
Inspectors report received?	N/A

Summary of inspector's findings

Inspector's recommendation	N/A
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Environmental impact assessment (EIA)

Has the project been screened under relevant EIA regulations? Section and annex?	Yes
Scoping opinion issued?	Yes
Has EIA been conducted and environmental statement (ES) provided?	Yes
Does the ES cover everything detailed in scoping opinion?	Yes
Is there a related marine licence application?	MLA/2012/00031/1
Has the applicant request an opinion under the Marine Works (EIA) Regulations?	No (Harbours Act)
Has the MMO deferred to another set of regulations?	No
Has the project been advertised adequately with 42 days for representations?	Yes
Have copies of the notices been received?	Yes

Has the EIA consent decision been issued to interested parties?	No. No requirement under harbours Act. Decision letter to be circulated when decision announced.
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Location

Is there a cross-border element to the project?	No
Will the project have a likely significant effect (LSE) on another European Economic Area (EEA) state?	No

Habitat Regulations

Is it feasible that the plan or project could have an effect of a protected site?	Yes
Is the proposal connected with the management of the protected site?	No
Will the plan or project either alone or in combination with other plans or projects have a likely significant effect on the interest features of the site in light of the conservation objectives?	No
Has an appropriate assessment been carried out? Did the assessment ascertain that the plan or project will not adversely affect the integrity of the site?	N/A
Are there any alternative solutions?	N/A
Are there reasons of overriding public interest?	N/A

Marine conservation zone (MCZ)

Does the harbour revision order authorise an activity within or near to an area being put forward for or already designated as an MCZ?	No
Is the activity capable of affecting (other than insignificantly) either (i) the protected features of an MCZ or (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependant?	N/A
Is the MMO satisfied there is no significant risk of the activity hindering the conservation objectives stated for the MCZ?	N/A
Can the MMO exercise its functions to further the conservation objectives of the site?	NA
Are there other means of proceeding with the act which would create a substantially lower risk of hindering the achievement of those objectives? This should include proceeding with it (a) in another manner, or (b) at another location?	N/A

Does the benefit to the public of proceeding with the act clearly outweigh the risk of damage to the environment that will be created by proceeding with it?	N/A
Can the applicant satisfy the MMO that they will undertake or make arrangements for the undertaking of measures of equivalent environmental benefit to the damage which the act will or is likely to have in or on the MCZ?	N/A

Water Framework Directive (WFD)

Has the Environment Agency advised the MMO to undertake a WFD assessment?	No
Has the Applicant provided information to undertake a WFD assessment?	Yes
Is the project compliant with the WFD?	Yes
If the project is not compliant with WFD, does article 4.7 apply?	N/A

Policy

Relevant planning or policy considerations	None
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MMO consideration (the tests)

Section 14(1) – Objects for whose achievement an HRO may be made.	<p>Section 14(1) of the Act provides for an order to be made under this section (“a harbour revision order”) in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties for achieving all or any of the objects set out in Schedule 2 to the Act. The relevant objects in respect of this application are:</p> <p><i>‘Imposing or conferring on the authority, for the purpose aforesaid, duties or powers (including powers to make bylaws), either in addition to, or in substitution for, duties or powers imposed or conferred as mentioned in paragraph 3 above’</i></p> <p><i>‘Extinguishing public rights of navigation for the purposes of works described in the order or works ancillary to such works, or permitting interference with the enjoyment of such rights for the purposes of such works or for the purposes of works carried out by a person authorised by the authority to carry them out’</i></p>
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Section 14(2)(a) – Substantial interest.	By virtue of section 14(2)(a), a harbour revision order may not be made in relation to a harbour unless the MMO is satisfied that an appropriate written application has been made by the authority engaged in improving, maintaining or managing it or by a person appearing to it to have a substantial interest or body representative of persons appearing to it to have such an interest.
Section 14(2)(b) – Desirability.	By virtue of section 14(2)(b), a harbour revision order shall not be made in relation to a harbour unless the MMO is satisfied that the making of the order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner, or of facilitating the efficient and economical transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships.

Fees

Application fee	£10000
Inquiry costs	N/A

MMO decision summary

The MMO having made such modifications as it considers necessary and appropriate is satisfied that the purposes for which the Order is sought would achieve objects set out in paragraph 4 and 7B of schedule 2 to the Act.



Consequently the MMO is satisfied that the Order in its current form meets the requirements of section 14(1) and 14(2)(a) of the Act and concludes for the reasons set out by the Applicant in their statement of support that the making of the Order is desirable in respect of multiple purposes set out in section 14(2)(b) of the Act and should be made.

DfT (legal services)

Notice of intention to lay given?	yes
Coming into force date agreed?	5 February 2014

Appropriate documents finalised and sent? <ul style="list-style-type: none"> • Statutory Instrument proforma • The Order • Explanatory memorandum • Relevant legislation 	Yes – 8 January 2014
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Decision approval

Case Officer		Date	8/1/2014
Approving Officer		Date	8/1/2014