

Local Government Association/ LGA Special Interest Group on Coastal Issues (SIG)

Response to “A Marine Bill” Consultation by DEFRA

June 2006

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Prepared by the LGA Special Interest Group on Coastal Issues (SIG) with the assistance of
Water and Environment Division, Atkins on behalf of the LGA

1. Introductory remarks

The Local Government Association (LGA) represents around 500 local authorities in England and Wales, who in turn represent over 50 million people. Our comments therefore concern primarily the English and Welsh chapters of the consultation document rather than the chapters dedicated to arrangements in Scotland and Northern Ireland.

We thank Government for good engagement with LGA on this document. A series of meetings at officer level and seminar events have allowed for a productive dialogue. We look forward to further meetings with officials of DEFRA and Ministers to discuss our response.

2. Local authorities and the marine environment

As an island nation with the longest coastline of any EU member state, the effectiveness of our marine stewardship in the UK contributes substantially to the quality of life, identity and economic well-being of the nation as a whole. Local authorities have a strong and legitimate interest in supporting the highest quality of planning and management in this area.

- Local authorities on or near the coast in England are the democratic voice of a third of the total population. In their day-to-day operations they are charged to maintain the highest standards of democratic accountability and transparency. The same high standards of accountability and transparency are sought in the adjoining marine environment.
- Local authorities have a wide range of coastal and marine functions ranging from coast protection and emergency planning, to recreation and safety, ports and harbours, regeneration and tourism, sea fisheries, permitting and bye-laws, plus others. In addition coastal local authorities are substantial coastal land owners and port operators in their own right.
- Coastal local authorities have been innovators and long-term supporters of a partnership approach the management of critical coastal waters, helping pioneer the ICZM approach in the UK and leading the debate in Europe. Local authorities have built up, or have access to, a considerable body of knowledge and information about the coastal and marine environment. The local authorities are therefore important partners in the management of the marine environment with a high level of existing expertise in a wide range of relevant fields.
- Coastal local authorities are in the “front-line” of dealing with complex marine issues such as the impact of climate change, the management of sea fisheries, maintaining the quality of our inshore waters etc. More particularly, the development of technologies for the exploitation of the marine environment means that the aspirations and concerns of the coastal community are increasingly dependent on the stewardship of our adjoining marine waters.

Our views are based therefore on a wealth of accumulated expertise and in an effort to secure the highest standard of governance.

This response has been produced based on discussions and consultations with a wide range of stakeholders. The position was discussed and agreed by members of the following:

LGA Coastal Special Interest Group (SIG) June 2006
Leaders of the Environment Board June 2006

All members of these bodies are democratically and directly elected local politicians.

3. The local authority vision

Local authorities recognise that the proposed Marine Act represents an historic opportunity to secure the sustainable use and exploitation of our coastal and marine environment. The LGA's '*On the Edge – a coastal strategy*' published in 2001 and subsequently reviewed and updated provides the basis of the local authority viewpoint.

Our vision as set out in '*On the Edge*' is simple, but suitably ambitious for a maritime nation:

“... to establish improved governance, management and community well being...to ensure that the UK has the best managed coast in Europe.”

4. Key local authority principles

In responding to the consultation on the draft Marine Bill the LGA's Coastal Special Interest Group (SIG) has therefore agreed a number of key principles

The Marine Bill should:

- *recognise the land/sea interrelationship of effects and impacts*
- *ensure consistency and compatibility between the spatial planning of the marine and terrestrial environment*
- *create the capacity to deliver (through skills, information, knowledge and finance)*
- *enshrine transparency and democratic accountability in decision making*
- *empower and oblige the key partners to deliver the sustainable development of the marine environment*
- *establish financial and legal means of sustaining local partnerships for coastal planning and management*
- *ensure the highest quality of decision-making in the marine environment.*

In a number of areas these are close to the 'Principles' set out in the consultation document.

However, the LGA considers that the Consultation Document is critically deficient in recognising the principles of 'Democratic Accountability' and 'Quality' in decision making. Without the thorough application of these two fundamental principles the proposals lack legitimacy.

When measured against the key local authority principles set out above, the consultation proposals are generally deficient, reflecting the primarily 'marine-centric' process in which the proposals were prepared - failing to recognise

fully the degree and complexity of the natural, social and economic interrelationships of land and sea.

In addition therefore to the detailed response to the questions in the consultation document, the "*LGA Alternative – a vision for the effective and accountable planning and management of the marine environment*" has been prepared. This sets out a clear, constructive and practical agenda to meet the local authority concerns.

5. The LGA Alternative – a vision for the effective and accountable planning and management of the marine environment

The proposals in this consultation document fall short of the central principles set both by DEFRA and the LGA in the areas of accountability, transparency, consistency and quality, and in dealing with the critical interrelationships of land and sea.

This is particularly important within coastal waters and estuaries where development pressures are often at their greatest and the interrelationship of land and sea is most sensitive. The proposals in the consultation are little more than a rearrangement of existing administrative arrangements and a centralisation of decision-making away from the communities most affected. There is little in the proposals to reassure that the all-important quality and accountability of decision-making in marine environment will be improved.

In addition to the detailed response to the questions in the consultation, the LGA propose a simple, 5 point plan to deliver the effective and accountable planning and management of the marine and coastal environment. This LGA Alternative reflects international best-practice models.

The LGA Alternative

An integrated hierarchy of statutory marine and terrestrial plans

The DEFRA proposals for marine spatial planning risk the creation of a two tier system, with potentially conflicting ministerial responsibilities. There is little to reassure coastal communities that their legitimate concerns and aspirations will be met. The consultation proposals create a new planning 'frontier' between land and sea.

The LGA Alternative effectively transcends the land-sea interface within national and regional policy frameworks (figure 1 below). The LGA Alternative proposes:

- Sub-regional marine spatial plans are produced within the RSS and LDF framework within the coastal zone to the 12 mile limit.
- Only beyond the 12 mile limit would the proposed MMO have the primary responsibility for marine spatial planning.
- Delivery of sub regional marine spatial plans within the coastal zone would require a coordinated approach between local authorities, harbour authorities and the new MMO.
- Strengthened and more consistent partnership working would deliver the coordination necessary to implement the plans.
- The National Strategy for ICZM should confirm a framework for sub regional coastal forums, with clear linkage to the Community Strategies prepared through Local Strategic Partnerships. Government and the new MMO would need to be active partners in a national system of sub-regional ICZM partnerships, and co-funders.

An integrated, one-stop shop for all development permitting and licensing

The existing system lacks consistency, is sectoral and confusing, and lacks accountability. The proposals in the consultation document do little to overcome these weaknesses.

The LGA Alternative proposes:

- An integrated 'one-stop' shop at the local authority level extending out to the 12 mile limit in which all decisions are subject to local scrutiny and decision by local authorities and statutory harbours, and simplify the consultation and decision process.
- Precise arrangements for delivering the functions relating to permitting and licensing should be determined by the local authority in collaboration with neighbouring districts, the county council, the MMO, and other relevant stakeholders. Depending on its history of partnership working, and its current capacity, the local authority may choose to retain or delegate the delivery of some or all of its functions up to the 12 mile limit. The local authority will retain the overall governance and strategic oversight of the functions regardless of whether delivery is retained or not.
- Only beyond the 12 mile limit would the proposed MMO have the primary responsibility for licensing.

A well-resourced Marine Management Organisation (MMO) is welcomed

However, the proposed MMO is responsible for policy, regulation, advice and enforcement, again with no accountability below that of its parent Department.

The LGA Alternative proposes:

- A well-resourced organisation that *supports and enhances* the quality of decision-making in the marine environment based on the model of the National Oceanic and Atmospheric Administration (NOAA)¹ in the USA.
- Within the 12 mile limit the responsibility for policy, regulation and enforcement should lie with existing national, regional and local bodies.
- Only beyond the 12 mile limit would the MMO have responsibility for marine spatial planning and integrated licensing.

¹ NOAA (National Oceanic & Atmospheric Administration) is a United States federal agency focused on the condition of the oceans and the atmosphere. It is:

- A Supplier of Environmental Information Products.
- A Provider of Environmental Stewardship Services.
- A Leader in Applied Scientific Research.

NOAA's Vision

"An informed society that uses a comprehensive understanding of the role of the oceans, coasts and atmosphere in the global ecosystem to make the best social and economic decisions"

NOAA's Mission

"To understand and predict changes in the Earth's environment and conserve and manage coastal and marine resources to meet our nation's economic, social and environmental needs"

A statutory duty to cooperate in ICZM

Integrated Coastal Zone Management (ICZM) has demonstrated its effectiveness and value in delivering sustainable development through local partnerships in some of the UK's most important coastal waters.

The LGA Alternative proposes:

- A statutory duty on all relevant bodies to cooperate in the production and delivery of ICZM strategies for key areas. Such strategies would encompass the sub-regional elements of Marine Spatial Planning, but ensure integration and coordination with other coastal plans, such as Shoreline Management Plans and River Basin Management Plans

An enhanced role for Sea Fisheries Committees

The LGA Alternative proposes:

- An important and enhanced role for Sea Fisheries Committees (SFCs), building on the local expertise of the fishing industry and partners, and accountable to local communities. SFCs have capability, although inadequate resources, for enforcement in marine areas and have a potential role in future regulation of any new system of MSP.
- The future retention of the 6 and 12 mile fisheries limits as a derogation from the Common Fisheries Policy is vital, as this is critical in enabling local management and conservation.

Figure 1. The LGA Alternative Marine Planning and Management Framework

	←MHWM		
		←12m Territorial Limit	
			←200m EEZ
Land	National waters		International
MHWM→	National Marine Policy		→
MHWM→	MMO advisory, research & monitoring		→
MHWM→	Regional Seas Plans by MMO & Regional Seas Fora		←200m EEZ
	RSS & LDFs	←12m Territorial Limit	
MHWM→	Sub-Regional Seas Plans within RSS framework & partnerships	←12m Territorial Limit	
MHWM→	ICZM Duty on all	←12m Territorial Limit	
	Development Permitting & Licensing by LAs – one-stop shop	←12m Territorial Limit	
	12m Territorial Limit→	Development Permitting & Licensing by MMO	←200m EEZ

6. LGA Response to individual questions

LGA Response to individual questions - Marine Spatial Planning

Local authorities to play a pivotal role in the creation and delivery of Marine Spatial Plans within the 12 mile Territorial Limit following the principles of ICZM. LAs to provide a one-stop-shop for planning and licensing to 12mile limit.

The LGA seeks the development of marine spatial planning to deliver the following:

- Provide local authorities and relevant bodies with duties and powers to promote integrated planning and management across our coasts and nearshore waters
- Enshrine community involvement through the extension of regional spatial planning local authority jurisdiction into inshore waters.
- Ensure that statutory marine spatial planning is fully integrated with the terrestrial spatial planning system and the proposals for continued modernisation of Government.
- Ensure the principles of and plans for ICZM are fully enshrined into the Marine Bill at all levels.
- The support for prioritisation of coastal and marine areas of national, regional and local importance and the framework for their sustainable management
- Provide the funding to support regulators and relevant bodies in the sustainable management of the coastal and marine environment.

Question 1: Is it appropriate for the UK Government to consider creating a new system of marine spatial planning?

It is appropriate for UK Government to be considering a system for the delivery of transparent, accountable and quality decision-making in the marine environment based on the principles of sustainable development and engagement.

Question 2: If so, should Government consider statutory provisions within the Marine Bill in order to implement a new system of marine spatial planning, or should alternative methods be considered?

The provisions of the Marine Bill have to be statutory to provide the drivers and funding to support the relevant organisations to deliver.

ICZM is being promoted by government as the non-statutory mechanism to deliver effective management. Where there is support (resource and political) by local organisations for ICZM it has proven highly effective. However ICZM has failed to fully deliver across the UK because there is a lack of long term funding to secure its delivery and no duty to participate. Without statutory provisions there is a high risk of similar failure with any new system.

Question 3: Do you have any views on the broad objectives of marine spatial planning laid out above?

The broad objectives for MSP do not fully implement the requirements for accountability

and transparency in decision making. There is no reference to local democratic accountability; objective j refers simply to 'opportunities to influence' rather than engagement of stakeholders in the process of planning and licensing.

Furthermore, the problem of complex management of the marine environment manifests itself at the land/sea interface; the focus of the Bill on offshore marine resource management does not target this problem. Therefore the proposals for MSP do not meet three of the five principles of 'good regulation' (Cabinet Office, 2005). The proposals also do not meet the additional principal put forward by the LGA 'ensure the highest quality of decision-making in the marine environment' as the proposals are centralised and marine resource focused.

Question 4: What are your views on marine spatial planning as a context or framework for decision-making?

The LGA welcomes the concept of MSP as a framework for more effective decision-making. However, current proposals for MSP are concerned with marine resource management and will therefore not provide a robust framework for sustainable decision-making which takes account of all uses of marine and nearshore activities, and in particular, full regard to adjacent land-based activities.

Question 5: To what extent, if at all, should plans be "binding" on decision-makers and decision-making?

The MSP should be a statutory system, however, the plans must allow for some flexibility in light of climate change, new technologies or new information.

Regional Spatial Strategies and Local Development Frameworks have this element of flexibility.

As it is likely to be concluded that MSP should be statutory to ensure effective delivery, the LGA calls for greater support for ICZM plans which have been highlighted as important for the effective delivery of MSP by UK Government but have yet to receive any formal support. The LGA recommends that the AONB approach is adopted for the development and implementation of ICZM.

Quality decision-making has to be based on sound science and therefore option 2 – information collation - should be included in the statutory planning framework. Furthermore, the LGA proposes that any such organisation with the remit of marine information provision should follow the model of the National Oceanic and Atmospheric Administration (NOAA).

Question 6: Do you have any views on the broad principles for marine special planning, as laid out above?

Refer to response to question 3 above and the list of LGA principles outlined in the introduction to this document. The proposals put forward in the document do not illustrate how MSP and any revised licensing and management structure will meet the principles of transparency, accountability, proportionality or targeting, therefore does not illustrate how the proposals will meet four of the five principles of good government. The framework also does not meet the principles put forward by the LGA.

The LGA is also concerned that there is no reference to the quality of decision-making and seeks the inclusion of an additional principle 'ensure the highest quality of decision-making'.

Question 7: Do you have any views on the potential increase or reduction of regulatory burden on Government or business, at either the planning stage or during subsequent licensing stages, as a result of a system of marine spatial planning?

The Marine Bill does not include sufficient recognition of the problems and complexity of the coastal zone. As such, in the majority of cases, there will be no reduction in the regulatory burden for activities and development in near-shore zones, especially for the small to medium size developments.

Currently the CPA and FEPA licences are already 'streamlined' through a single MCEU application form. As the other coastal consents are excluded from any new streamlining of consents (planning, land drainage, abstractions, discharges and CRoW Act) there is unlikely to be any significant improvement in the current situation.

The provision of a MSP will provide greater security for those large scale developments that have been identified within the MSP, however, the retention of a centralised licensing authority will not reduce levels of consultation or improve transparency and accountability.

The LGA recommendation of extending LA jurisdiction and extending planning controls to provide a one-stop-shop for licensing will allow more localised consultation and debate and therefore streamline the process. It is anticipated that the extension of LA jurisdiction would require similar resources to the costs outlined in the RIA.

Question 8: Do you have any views on the geographical application of any new system of marine spatial planning?

Any MSP and licensing controls have to fully integrate with the terrestrial planning system and ICZM. The LGA queries DEFRA's statement that 'only in a small number of cases will require both terrestrial and marine consents' a recent Review of Marine Consents (Atkins 2006) has identified that nearly all works within the estuarine, harbour and nearshore coastal zones require a plethora of marine and terrestrial consents. Therefore the integration of the land/sea interface is paramount and needs to be managed efficiently and effectively. Furthermore, section 8.54 goes on to state that the overlap of jurisdictions in the intertidal zone ...'ensures that the impacts of a development on land and at sea are considered fully'. It should be noted that LAs are not consulted on marine applications and vice versa with the MCEU and therefore there is no system for such consideration of within the current system and a cause of considerable concern to the LGA and other organisations.

At this stage the LGA agrees to the MSP boundary being mean high water mark to ensure that LAs are made aware of intertidal developments and proposals within the intertidal zone. However, the LGA seeks full engagement into the plan and licensing regime to ensure integrated planning across the land/sea interface at a minimum and calls for the extension of LA jurisdiction to the 12 mile limit with a one-stop-shop for licensing, with the strategic lead held by LAs, to fully overcome these issues.

The information in the consultation document is insufficient to understand the government's proposals to address the complexity of the land/sea interface.

Question 9: Do you have any views on ways in which regulatory efficiency could be improved in the inter-tidal zone, if a new system of marine spatial planning were created?

An integrated, one-stop shop for all development permitting and licensing. The existing system lacks consistency, is sectoral and confusing, and lacks accountability. The proposals in the consultation document do little to overcome these weaknesses.

An integrated 'one-stop' shop is proposed at the LA level extending out to the 12 mile Territorial Limit in which all decisions are subject to local scrutiny and decision, and simplify the consultation and decision process. This would include a single 'coastal consents' application form which would include planning, land drainage, harbour works licenses and CRoW Act consent. For the marine consenting element the LA would undertake the same coordination role as the MCEU thereby using the existing government bodies and regulators who have greatest technical expertise in the marine environment. Refer to the recent Review of Marine Consents report produced by Atkins for Hampshire County Council and the section on licensing below.

Formalise liaison between consultees and regulators within the terrestrial and marine licensing process to minimise duplication of consultation and conflicts, refer to questions on licensing below.

Question 10: Is this overall approach, involving a strategic marine planning policy statement, followed by special plans, appropriate?

The approach is correct if the process of plan development and implementation through the consenting process follows the principles of good governance and fully incorporates the LGA principles listed above.

The hierarchy of plans and their links to existing RSS, LDF, ICZM and other relevant plans such as those produced within the shoreline management process need to be carefully defined to avoid duplication, conflict and wasted government resources.

Question 11: Are there particular aspects of, or experience gained from the terrestrial or any other planning system, which should be considered when developing a marine planning system?

The terrestrial planning system is a proven system of plan development and implementation based upon good governance and democratic accountability. The system is based around strict procedures and timescales, retains an element of flexibility and is open to public scrutiny and accountability. Any MSP should be developed in full liaison with the Department for Communities and Local Government (DCLG) and best practice adopted.

MSP should also review the process of SEA and EIA to identify best practice in consultation procedures.

Question 12: Do you have any views on the elements of a strategic marine planning policy framework statement laid out in this section?

Section 8.63 refers to a strategic marine policy statement that would be developed and agreed across Government Departments. The policy statement needs to be developed with full engagement of all Non-Departmental Public Bodies such as Natural England, Environment Agency and the LGA representing local government interests as well as other key stakeholders.

The LGA is uncertain how a single statement for the marine area as a whole can also reflect the coastal and estuarine requirements.

8.64 b includes the provision of sectoral policy statements but there is no reference to the development of priorities for coastal communities which could be severely affected by the proposals developed in the MSP.

Question 13: Do you have any views on the way in which a strategic marine planning policy framework statement should be developed and the timeframe it should cover?

The statement should be developed following the principles of ICZM and stakeholder engagement. There are a number of existing coastal and marine organisations and forums which should be consulted and an official sign-up to the statement by all government organisations and sectors which will benefit from the plan (including oil and gas industry).

The policy statement should be reviewed every 5-10 years depending upon the need but have a time horizon of 100 years to ensure that resources are managed for future generations.

Question 14: What are your views on the nature and role of the planning body which would undertake the development of spatial plans?

A well-resourced Marine Management Organisation (MMO) is welcomed. However, the proposed MMO is responsible for policy, regulation, advice and enforcement, again with no accountability below that of its parent Department. It appears that this is against general government policy which is to split policy development and delivery, thereby increasing accountability.

The LGA seeks a well-resourced organisation that supports and enhances the quality of decision-making in the marine environment through the collection and collation of information and research, based on the model of the National Oceanic and Atmospheric Administration (NOAA) in the USA. Within Territorial Limits the responsibility for policy, regulation and enforcement should lie with LAs and other existing national, regional and local bodies. Only beyond that limit would the MMO have responsibility for marine spatial planning and integrated licensing.

It is recognised that any body set up to manage marine spatial planning will need to ensure that it is representative of those with an interest in the marine environment, such as Sea Fisheries Committees, Environment Agency, Natural England, Harbour Authorities and others as well as including land-based organisations such as local authorities. Whilst, therefore, the Marine Management Organisation can exist as a body and undertake the development of spatial plans approval of these plans and decisions taken in association with them will need to be made by some form of overseeing Board or Committee. The Body and Board or Committee would work within the RSS and LDF framework but would consist of those relevant marine and coastal interests. It will be necessary for the Body to be seen to be accountable if it is to gain the support of users, those with an interest in the marine environment and the public.

Question 15: What are your views on the scale, location and possible boundaries of the areas for spatial plans?

The DEFRA proposals for marine spatial planning put forward risk the creation of a two tier system, with potentially conflicting ministerial responsibilities and little to reassure the coastal population that their legitimate concerns and aspirations will be met. The proposals risk the creation of a planning 'frontier' between land and sea.

The LGA alternative effectively transcends the land-sea interface within national and regional policy frameworks (figure 1). The LGA proposes that sub-regional marine spatial plans are produced within the RSS and LDF framework within the 12 mile limit. The partnership principle, so ably demonstrated by existing coastal forums, would deliver these plans.

The exact locations and boundaries of these plans would need closer investigation depending upon the nature of activities to be managed and local need, but should be clearly tied into an agreed framework for sub-regional coastal forums, and with clear linkages to regional structures and to the Community Strategies prepared through Local Strategic Partnerships.

The LGA also seeks a duty for all organizations to deliver ICZM, therefore providing greater support to the ICZM planning process and greater integration between the management of natural resources and human activities.

Special arrangements would be required in the Severn Estuary and Solway Firth to address the issues of management across devolved administrations. Liaison arrangements would also need to be developed with neighbouring Member States in areas such as the Irish Sea and central South Coast.

Question 16: Do you think that marine spatial planning should apply in the same way in all parts of the UK waters?

The concept and overall process of MSP should be applied to all UK waters. However, the level of detail required will depend upon the location and the type/combination of activities taking place in that area. MSP therefore has to be tailored to the needs of the local area, especially for those complex sites such as the Solent, Severn Estuary and other near-shore and estuarine areas which host a number of competing activities. The exact outputs of the plans and the composition of the steering groups and committees should vary. However, key stakeholders such as Natural England and LAs should be represented on all.

Question 17: What are your views on the need for planning and sub-regional or local level?

As discussed in the introduction to this response and question 15 above, the LGA proposes the concept of a planning hierarchy, following the terrestrial planning process within the 12 mile limit and MSP led by the MMO at a larger scale (regional seas). Figure 1 outlines the LGA proposals, which identifies spatial overlap between the different plans to ensure integration.

Figure 1. The LGA Alternative Marine Planning and Management Framework

	←MHWM	
	←12m Territorial Limit	
		←200m EEZ
Land	National waters	International
MHWM→	National Marine Policy	→
MHWM→	MMO advisory, research & monitoring	→
MHWM→	Regional Seas Plans by MMO & Regional Seas Fora	←200m EEZ
	RSS & LDFs	←12m Territorial Limit
MHWM→	Sub-Regional Seas Plans within RSS framework & partnerships	←12m Territorial Limit
MHWM→	ICZM Duty on all	←12m Territorial Limit
	Development Permitting & Licensing by LAs – one-stop shop	←12m Territorial Limit
	12m Territorial Limit→	Development Permitting & Licensing by MMO
		←200m EEZ

Question 18: What are your views on the activities, development and resources within the marine area, which might be considered within spatial plans?

Section 8.75 lists a wide variety of activities which the MSP may address. However, the description of the MSP process relates to marine resource planning rather than activities and therefore the plan will be unable to ‘manage’ sectors such as shipping, navigation and marine recreation. The LGA therefore assumes that these coastal and maritime activities will be only a material consideration in marine resource management rather than sectors which the MSP seeks to actively intervene.

As discussed previously, there has been little information with regard to how MSP will be implemented in the coastal zone. The LGA strongly opposes any change in regulatory authority from existing organisations to the MMO (refer to LGA concerns about MMO).

Question 19: Are there any anticipated future types of marine use or technological advances which you think the UK Government should consider when developing the strategic marine planning policy statement or in the marine spatial plans?

At this time the LGA feels it is more important to consider the interactions between the land/sea interface, the integration with the terrestrial planning system and the effective delivery of ICZM on the coast.

Question 20: What are your views on data and information on availability in relation to marine spatial planning?

In the main data held by public bodies is available for use in the marine spatial planning system. However, the UK Government has been reducing the funding available for marine monitoring over a number of years and the monitoring station coverage is now inadequate. Furthermore, previous experience in the North Sea

area has shown that certain data held in particular by mineral extraction and energy companies is regarded as commercially sensitive even when it does not relate directly to the company's prime area of activity; e.g. gas companies are reluctant to release information about sea bed material or forms. For any marine spatial planning system to work effectively this data should be available as without it the decision-making process is inevitably flawed.

Option 2 in section 8.10 discusses the development of a single information system. The LGA supports this approach and call for further action with the role of the MMO to follow the globally recognised and respected NOAA. Data which is currently collected is likely to be on an incorrect scale for MSP or the EIAs associated with the implementation of the MSP. Any programme of targeted research should review the scale and nature of the data or information collected to ensure that it is fit for purpose.

Question 21: What are your views on the plan making process?

There is currently not enough information on the plan making process for the LGA to fully comment. However, the LGA is concerned that the principles of good governance, in particular, accountability, transparency and quality will not be achieved under the current proposals. The LGA believes that the MSP should follow the tried and tested land-use planning process through the RSS and LDF to ensure a democratically accountable and transparent plan making process, benefiting from the good practice of ICZM.

Furthermore, there is no reference to the making and enforcement of byelaws and zoning as elements of the MSP (only reference within section on nature conservation). As such the MSP does not identify if it will be addressing issues that are outside of the current marine licensing system.

Question 22: How should conflicting demands on marine space be addressed in the development of spatial plans?

The LGA calls for a statutory duty for organisations to deliver ICZM which has been developed to address conflicting and often difficult issues through a variety of statutory and non-statutory mechanisms. Therefore the LGA believes that the principles of ICZM should be followed, supported by a statutory ICZM duty to deliver MSP. LAs have proven to be the honest broker in ICZM and the LGA therefore calls for LAs to take a lead role in partnership development and conflict resolution, and be resourced accordingly to this expanded role.

This will be supported by the checks and balances within the RSS and the LDF. Examination in public would appear to offer the best solution with the ultimate decision in cases where the resolution of conflict has not been possible.

Question 23: What are your views on the allocation of referred areas for certain activities, future development or protection of resources.

The process is supported in principle if the decision-making process is transparent, accountable and the proposals enforced. The MSP should follow the precautionary principle but take full account of the needs of the local communities and their sustainable development. Identification and management should follow a risk based approach with full reference to current and proposed land use activities and infrastructure. Regular review of these areas are required as part of the regular cycle of plan review.

Question 24: What are your views on the process of developing maps or charts as part of the marine spatial planning process?

Mapping would appear to be essential if the process is to have any credibility or demonstrable use. It is essential that any mapping is consistent: current mapping uses a variety of formats, datums and grids which make comparisons all but impossible when assessing nearshore and coastal proposals.

Question 25: Do you have any views on the need to consider the sustainability and environmental impact for spatial plans, including the use of SEA in the process?

Both sustainability appraisals (SA) and SEA (Strategic Environmental Assessment) are vital to support the MSP to ensure sustainable development in the marine environment. It is recommended that MSP develops combined SA/SEA methodology to ensure development proposals are sustainable in economic terms as well as environmental impact. This is especially important in the marine environment where very little information is available and impacts uncertain.

The recent European Court of Justice Ruling on the need for Appropriate Assessments for land-use and water abstraction plans should also be noted, especially with DEFRA's current proposals to expand the marine component of the Natura2000 network. The LGA recommends the promotion of Appropriate Assessments for MSPs which are likely to have a significant effect on marine Natura2000 sites to ensure compliance with the Habitats Regulations (proposed amendments to which are currently out for consultation by DEFRA).

Question 26: In what ways could the Government ensure that marine spatial planning could be open, transparent and inclusive?

- Follow the terrestrial land use planning system to develop MSP and follow the engagement and consultation procedures set out in the framework.
- Ensure all key stakeholders are involved in the MSP working groups and the development of the policies
- Use LAs as the key organisations to drive and deliver MSP within the 12 mile limit and include as key stakeholders for those plans further offshore.
- Use the statutory duty for organisations to participate in ICZM and the delivery of plans and projects

Question 27: What are your views on the way in which the rights of individuals or organisations may be affected by the planning process?

Coastal communities could be significantly adversely affected if MSP does not take sufficient account of coastal infrastructure, tourism and economic development as well as landscape and noise impacts from offshore developments. This could impact (positively and negatively) the economy of coastal and estuarine villages, towns and cities. Existing users of the marine environment could be restricted access to marine space or resources (such as fishermen, marine industries and recreation).

Question 28: What are your views on establishing a forum or scrutiny process to test the soundness of the plans?

As stated previously the MMO should be overseeing by a Board and Committee of representatives of those potentially affected by the plans. A scrutiny process should be set up following the RSS/LDF framework with referrals to the Secretary of State or Public enquiry where necessary.

Question 29: Do you have any views on the implementation, monitoring and review of the plans?

The time horizon for the plan should follow the shoreline management planning timescales of 100 years. This should ensure that resources such as fish stocks, aggregates and energy are maintained for future generations.

Question 30: Do you have any views on how the duration of time for which plans should apply, and how often plans should be formally reviewed or modified outside of such reviews?

The process of review should follow the RSS/LDF timescales.

Question 31: Do you have any views on how you UK Government can ensure marine spatial planning works effectively with other planning systems, particularly in the coastal zone, in order to achieve the aim of integrated local coastal management?

- LAs and other coastal stakeholders should be fully involved in the development of MSP and not just consulted on draft documentation (refer to section 8.101c);
- LAs to be given the capacity and resources to take a lead role in the development of MSP;
- A statutory duty for ICZM; and
- LAs take a lead role in both ICZM and MSP.

LGA Response to individual questions - Licensing Marine Activities

Marine management has historically been highly sectoral, run by Government departments with no consultation with coastal communities or transparency in decision-making. The results have been distrust and alienation by local communities, ill-thought out decisions and suspicion.

Furthermore, the burdens of the complex consenting regime may be so onerous that potential investors and developers are discouraged from investing. This makes it especially difficult for new entrants in the market, but seasoned applicants can also fall foul of the legal ambiguities in the system. Consequently, the current requirements are a barrier to development into marine sectors and to potentially innovative uses of marine resources. This may be particularly true for smaller businesses or where innovation has yet to be trialled. The relative cost to smaller developers of licence fees and providing the information required under law, including environmental impact statements, is greater than that for larger developments, and could thus be suppressing valuable future economic activity. The costs of licensing requirements in the UK could result in businesses re-locating to other European countries or beyond.

- The LGA seeks a system that provides clarity and consistency.
- A streamlined system, coordinated by LAs where a single application can meet the information needs of different legislative/consultee requirements.
- A streamlined system that includes all licenses and consents applicable to intertidal and nearshore developments and proposals
- A system that provides expert guidance and transparency to applicants and consultees.
- A system that ensures local authorities be fully involved where decisions could affect coastal communities either directly or indirectly.
- A transparent decision-framework

Question 32: Do you have any views on whether it is appropriate to use the Marine Bill to simplify and streamline the licensing system for marine activities?

It is appropriate for the Marine Bill to simply the system. However, streamlining should not mean short-cutting the system or reducing the robustness of the system. The Marine Bill should aim to ensure that the licensing of the many and varied activities in the marine environment are treated uniformly, transparently, with full accountability and the decisions should be of a high quality. The present multiplicity of arrangements creates confusion and lends credence to the view that decisions are taken behind closed doors.

However, the current proposals for streamlining the system do not follow the principles of good governance set out in section 4.6. The current proposals for marine only consents will not target the problem or address proportionality of consenting in the coastal and near-shore zone. Furthermore, there is no discussion on the need to bring LAs and other terrestrial stakeholders into the consultation for marine consents and as such there will be no improvement in transparency or accountability.

Therefore the LGA believes that the current proposals will not meet four of the five principals of good regulation.

Question 33: Are there any particular emerging trends, new technologies or novel types of activity, which any future licensing system should address?

New technologies such as new dredging methodologies and renewable tidal-stream and wave energy are likely to require consenting. There may be new recreational activities which may require future licensing but these are not identified currently.

Question 34: Do you have any views on the inclusion or exclusion of certain regimes on the scope of the proposed licensing reforms in this consultation?

The review should focus on bringing in existing coastal licensing (land drainage, planning, CRoW Act) and the oil and gas industry to a single application process.

Licences within the 12 mile limit should also be coordinated by LAs for the decision to be made locally in consultation with existing consultees (following a similar process to MCEU). In some cases Coast Protection Act consent and Harbour Works powers should be delegated to LAs.

Question 35: Do you have any views on improvements that might be made to the process and administrative aspects of marine licensing, which the UK Government could consider throughout the development proposals for the Marine Bill?

The following has been taken from the recommendations put forward within the 'Review of Marine Consents' Report undertaken by Atkins for Hampshire County Council.

Replicating the Streamlined Consents Group (SCG) (McCue J and Roberts H (2006) Review of Marine Consents: Draft document (Atkins, Epsom))

The Atkins review recommended that the consenting regime could be improved through the nomination of local Champions. In many cases ad hoc support to applicants is provided by local harbour authorities but need processes needs to be formalised and resourced. In parallel to the creation of Local Champions, the SCG is an example of best practice and should be replicated in similar areas around the country. Consultations have identified that the group provides the opportunity to discuss proposals informally with the consenting organisations and identify the likely issues associated with the proposals. It is recommended that the secretariat of such a group should also be the Local Champion, thereby maximising local knowledge and relations with the applicants and consenting organisations to encourage the flow of information between organisations during the pre-application and consultation phases of the process.

Consultation associated with this project has highlighted the importance of the informal and closed nature within which they are run. At the pre-application stage many of the developments or schemes that are brought to the meeting are yet to be finalised or are seeking advice on their suitability and as such are commercially sensitive. The success relies on the informality and closed nature of the meetings ensuring that local applicants and representatives of the consenting organisations can discuss issues openly. It is recommended that advice is sought as to the best way to undertake and record these meetings following the implementation of the Data Protection Act to ensure that trust can be retained between applicants and the Group.

The SCG is the first in the UK, has been widely welcomed locally and is recommended by the LGA for replication in other areas. However, it is believed that a few improvements can be made to further enhance the service to applicants. More direct advice to applicants is required although it is understood that there is an issue of pre-judgement which needs to be addressed.

It is recommended that something is formalised on this aspect and with this, more clarity is provided on advice towards:

- The likely opinion of the consenting authorities;
- The likely success of the applications – a preliminary view based on information provided. This could be in the form of ‘traffic light’ applications; red being extremely unlikely to be granted; green being likely to be acceptable and amber requiring more information before any advice can be given;
- Any changes to the proposal that would be beneficial to the applications.
- An audit of applications and submissions

This would enable applicants to have a better understanding of the potential outcome of the applications (and therefore avoid unnecessary expenditure) and whether there should be changes to the proposal, additional mitigation measures etc that would increase the likelihood of success. It is therefore recommended that the group provides a screening opinion on the applications.

Single Marine and Coastal Consent Form

Extension of MCEU forms to produce a single application form to cover all consents is recommended. A review of data required in support of the different applicants is required but it is anticipated that there would require only small changes to the level of information required and the new form should be very similar to existing MCEU forms. In many cases this information would have already been gathered in support of any EIA or Appropriate Assessment and would be required for the necessary consents and therefore no additional work would be required from the applicant.

One of the issues associated with the consents process has been the additional requests for information and the uncertainty associated with what information is required by different consenting authorities and consultees. It is therefore recommended that any new consents form should identify what information is required through a risk based approach and therefore include a risk assessment as part of the application form. The risk assessment will act as a screening to identify which issues should be the focus of the application and supporting evidence. This will be especially relevant for those applications without supporting EIAs and Appropriate Assessments.

The expected changes would be:

- Introductory section identifying which consents are required;
- Inclusion of methodology above mean high water (where necessary);
- Inclusion of likely environmental impacts above mean high water (where necessary);
- Explanatory text explaining how the form and associated information would be distributed to consultees and application determined;
- Supporting risk assessment;

- Consistency in the information requested. For example grid references and clear maps overlaying new developments over existing (to clearly identify changes); details on the size of development (footprint changes) and as clear description of the works and associated ongoing management (e.g. additional moorings, increased maintenance dredging requirements etc).

The form should also include reference to planning permission is also being sought and contact made with the local planning authority to identify which organisations have been consulted if LA is not the lead authority for marine licences within 12 mile limit. Those consents to include: FEPA; Coast Protection; Harbour Works Licence; Land Drainage Consent; CRoW Act Consent and those others listed in the Marine Bill.

As part of the development of the single marine consent form, a thorough review of the consultation arrangements should be undertaken following the conclusions above. It is recognised that many of the timescales are set out in legislation but it is anticipated that improvements and efficiencies can be made through more effective processing of applications and quicker dissemination of information.

A single officer should be responsible for coordinated consultation with the statutory and non-statutory organisations (the LGA recommends this be a LA officer). Each organisation will be forwarded a single copy of the application form and supporting information and reference to each consent made in the response. The officer should then combine the responses into a single report for a judgement to be made by each of the consenting authorities.

It is recommended that the initial screening of the application to identify the appropriate consultees is made available to the applicants and the final report to the consenting organisations is also made available to the applicant to improve transparency of the process.

This approach combines the consultation and application process but jurisdiction is retained by the existing regulatory authorities.

‘One-stop Shop’ for marine consents

Producing a single application form with an officer responsible for coordinating all responses and producing reports would likely result in a ‘one-stop shop’ for marine consents. The LGA calls for this to be led by LAs within the 12 mile limit and by MMO offshore of this.

It is proposed that any initiative to develop a “one-stop shop”, in whatever format this may be (extension of LA jurisdiction, new organisation/setting of a national “Champion” etc) will need to consider the following actions:

- In line with the consultation responses from the Marine Bill and any proposals for a Marine Management Organisation and recommendations on streamlining the consenting process.
- Any national coordinating body will need to be supported by local knowledge. It is recommended that the regional Streamlined Consent Groups are formally included into the consenting process to maximise linkages between national coordination and local delivery.

- Ensure that better information is submitted on application forms and more standardised advice is given.
- Ensure that staff are fully trained in both the requirements of legislation and how to deal with numerous and varied cases. Also need training on communication and liaison techniques to maximise benefits of liaison and local knowledge.
- Design appropriate FEPA fee change mechanisms (Defra 2005) that are sustainable and are compliant to marine business economies.
- Consider the suggested use of Planning Delivery Agreements as set out by the Office for the Deputy Prime Ministers' (ODPM) commitment to improving the development control process and meeting the objectives of the Sustainable Communities Plan.
- Ensure full democratic accountability by empowering LAs to take a lead role in coastal and marine licensing.

National Marine Consents Guide

The Solent Marine Consents Guide has proved a very useful document. It is recommended that this is replicated at a national level to provide consistent guidance for England. Areas for improvement for the Solent MCG have been identified and it is recommended that these are taken on board during the production of a national guide. It is recognised that it will be difficult to identify the whole range of activities that will require consents and define thresholds against which consents will be required. However there remains a need for more clarity on definitions, likely consents required and how they operate.

It has been recommended that a Single Application Form is produced to streamline the application and consultation aspects and this to include a risk assessment to identify the most important risks and issues associated with the development. To support this it is also recommended that the national guide includes guidance from each consenting authority and consultee as to their requirements in reviewing applications. This guidance could possibly include:

The remit within which the organisation is involved in marine consents - i.e. a consenting authority or consultee and should clearly set out the differences in organisational remits, for example, the Environment Agency has a wider environmental remit than English Nature which is limited to designated sites and therefore the Environment Agency may seek greater environmental protection and enhancement than English Nature;

- The criteria which the organisation will be assessing applications;
- The type of information that will be required to be submitted; and
- The format that the information will be required to be submitted.
- Supporting guidance and information for consenting organisations and applicants
- In addition to the Guide which would more clearly set out the requirements of the different consenting organisations and consultees, further guidance is recommended to support the consenting organisations, consultees and applicants. More targeted information and guidance would address the following issues:
 - Maximising use of existing information;
 - Capacity building of staff within organisations;

- Disseminating best practice;
- Assist in giving advice to applicants through the consenting forms and advice given in SCGs.

To improve the technical capability of staff within the consenting organisations it is recommended that Guidance Notes are produced which set out the requirements and principles for new staff within regulatory bodies to aid continuity during staff turnover.

To maximise the use of available data the consenting organisations could be supported by a readily accessible geographically referenced database (per region) may be one quick remedy to assist here as any gaps in knowledge for a site (or range of applications) stored in one central location should help to reduce uncertainty during periods of staff absence. Information could be extracted from the database to support the officers and circulated to consultees to support consultation.

Finally, more good practice guides and example demonstration sites would be welcomed which could assist consenting organisations when given advice to applicants at the pre-application stage and applicants when they are developing proposals.

These could include the following topics:

- Dredging methodology and beneficial use of dredging spoils;
- Environmentally sensitive designs for structures such as pontoons;
- The use of sustainable construction materials;
- The promotion of environmentally sensitive construction techniques; and
- Opportunities for environmental enhancements.

Question 36: How can we ensure that the Marine Bill reduces regulatory burdens and on business within the licensing system?

Research has shown that it is apparent that the consents process needs to be improved primarily for small to medium developments and applications (both for the applicant and the consenting organisations). The large scale developments will generally require all consents, be led by organisations with marine or coastal experience and will have commissioned consultants to undertake much of the technical work.

The issue which causes greatest confusion is what consents are required for the activity in question and appears to be a common question amongst applicants, especially those related to small, marginal projects. Local byelaws can also be confusing. There are two reasons that applicants do not know which activities require consents:

- For small scale developments such as upgrading pontoons, applicants are simply unaware of the system and the different organisations who manage the coast.
- There is confusion over terminology and therefore the implications for licensing.

For example, 'like for like' replacement requires little consenting, however if there is a slight change in the design (e.g. type or placement of pontoon piles) this does not

constitute 'like for like' development even though the structure is in the same place, and additional consents are required. There is also confusion over those activities which do not fall within the consents process. For example, it appears that "plough and water" injection dredging do not fall within the FEPA consents and therefore is not subject to FEPA licence.

The proposals set out in this consultation document do not address the issue of confusion of consents and by not including any land based consents such as land drainage will not reduce the regulatory burden faced by businesses working in the coastal and nearshore areas.

Therefore the proposals will not reduce regulatory burden, refer to the LGA proposals for improving the system outlined in question 35 above. _

Question 37: Are the objectives for a reformed licensing system laid out above sensible?

The objectives are all well and good but they cannot be achieved with the limited consents identified in the consultation document. Without the inclusion of the oil and gas industry and coastal consents, there will be limited and questionable improvement from the current system.

The document also does not discuss how the proposals will meet the objective 'facilitate public involvement in, and the transparency of the decision-making process' and the LGA is concerned with the caveat 'to the extent possible'.

Question 38: Are there any other key principles that should be considered as part of any changes to the regulatory system?

The proposals also do not meet the principles of good governance, do not cover the coastal zone and exclude the oil and gas industry. Therefore there are major gaps in the proposals which will negate any advantages of the streamlining.

The LGA questions the intension of DEFRA with regard to the Harbour works Act which '....in England, these functions are generally exercised by the Secretary of State for Transport....' Harbour Works Licences are granted by the statutory harbour authorities and represent the single marine consent which is decided at a local level, based on local knowledge and expertise. The Harbour Authorities also provide the vital link between the marine and terrestrial consenting processes and provide significant support to applicants at a local level (refer to Atkins, 2006). The LGA believes in local decision making and that any streamlining should be drawing down consent decisions to the local level and not seeking further centralisation.

The harbour authorities play a pivotal advisory role for coastal consents (i.e. FEPA/CPA/land drainage/planning and CRoW). Removing the role of the harbour authorities in the Harbour Works licence and separating the land based consents will add to local confusion and further remove marine licensing from local control, which the LGA is highly opposed.

Finally, the document refers to changes to the licensing and MSP structure would provide greater information on cumulative impacts/effects. It is recognised that cumulative impact assessments cannot be undertaken by applicants as they would have no way of knowing what other proposals and activities are taking place or being proposed that may have a cumulative impact on the proposal. However, the Marine Bill consultation document does not identify how cumulative effects are going to be

addressed and monitored as part of any changes to the licensing system. There is also no reference to the monitoring of consents.

Refer to the list of principles proposed by the LGA at the beginning of this document.

Question 39: Are these appropriate options to consider in this consultation? Are there alternatives to, or variations on the above options, which should be considered?

These are appropriate options to consider. However, it would be more beneficial to put forward different options for an 'integrated regime' at local, regional and national levels in order to initial a more detailed discussion.

Question 40: What are your views on the advantages or disadvantages of the "do nothing option"?

The advantage is that it would not cost the government any money, the disadvantage is that it doesn't improve the currently confused, sectoral and non-accountable system which does not meet the principles of good governance.

Question 41: Would option 1 address the objectives and key underlying principles for an updated licensing system, as set out in paragraphs 9.38-9.43 of this consultation document?

Option 1 would not meet the principles of good governance. Option 1 would also not reduce any burdens on business.

Question 42: What are your views on the advantages and disadvantages of option 2, to "merge the environmental and navigational controls"?

There are no advantages of option 2, from the perspective of the applicant the two consents are already 'streamlined' within a single consent form and consultation process. The disadvantages would be additional costs and resources to change legislation that is not required and does not result in the delivery of any of the principles of good governance or reduce any burden on business.

Question 43: Would option 2 address the objectives and key underlying principles for an updated licensing system, as set out in paragraphs 9.38-9.43 of this consultation document?

No, refer to above

Question 44: What are your views on the advantages or disadvantages of options 3, a simplified sectoral regime?

The advantage to central government is that individual government departments would retain their individual remits. The disadvantages to coastal and marine stakeholders and applicants are that it is still a sectoral system run by central government without any improvement in transparency, consistency or accountability.

Question 45: Would option 3 address the objectives and key underlying principles for an updated licensing system, as set out in paragraphs 9.38-9.43 of this consultation document?

Option 3 may reduce the regulatory burden by streamlining, and therefore principles of proportionality and targeting (although this is debatable without the inclusion of coastal consents) it would not address the principles of consistency, transparency and accountability. The LGA calls again for the Marine Bill to review the role of LAs in the consenting process and the extension of jurisdiction to the 12 mile limit. The LGA also seeks the retention of local Harbour Authorities in the decision-making process.

Question 46: What are your views on the advantages or disadvantages of option 4, an integrated regime?

The following advantages and disadvantages refer to the centralised regime put forward in this document. However the LGA believes that a streamlined approach, with decision-making and delivery at the local level would provide significant improvements to the current system in terms of accountability, transparency, proportionality and quality of decision-making. The LGA calls for DEFRA to revise the integrated approach put forward with the utmost urgency.

Advantages (of the centralised integrated regime), would improve the system in terms of targeting and proportionality.

However the proposal still has the following disadvantages:

- Further loss of local decision-making
- No reference to democratic accountability
- No inclusion of coastal consents and therefore limited improvement for applicants working within the coastal and nearshore zones.
- No details on improving the transparency in the decision-making process

Question 47: Would option 4 address the objectives and key underlying principles for an updated licensing system as set out in paragraphs 9.38-9.43 of this consultation document?

As above, Option 4 may reduce the regulatory burden by streamlining, and therefore principles of proportionality and targeting (although this is debatable without the inclusion of coastal consents) would be met. This option may also address the principle of consistency for marine consents. However the option would not address the principles of transparency and accountability. The LGA calls again for the Marine Bill to review the role of LAs in the consenting process and the extension of jurisdiction to the 12 mile limit.

Question 48: Do you have any views on the storage of the natural gas in sub-sea bed geological structures and the provision of storage facilities to unload gas that has been transported by ship?

It is difficult to see why we are being asked to comment on this issue when section 9.26 notes that oil and gas developments and activities under the Petroleum Act are excluded from the Bill.

Further information on any proposals associated with such developments would be required before the LGA could comment.

Question 49: Do you have any views on the proposals to create a fit for purpose licensing proposal for the storage of natural gas that has been transported from elsewhere in sub-sea bed geological structures?

As above

Question 50: Do you have any views on the capture and subsequent storage of carbon dioxide in naturally occurring sub-sea bed geological structures to alleviate the effects and impacts of climate change and ocean acidification?

This proposal would appear to be a costly solution to the issues surrounding climate change. It is the LGA's view that effort would be better directed towards energy saving initiatives or investing in renewable energy sources. Were the UK to invest in CO2 capture and storage without the other initiatives, it would appear to be mortgaging future generations to continue down the polluter route rather than attempting to achieve a more sustainable approach to energy use and production.

Question 51: Do you have any views on the creation of fit for purpose licensing provisions for the capture and storage of carbon dioxide in naturally occurring sea bed geological structures?

It would seem logical that the proposals for changing the existing licensing regime as being developed in the Marine Bill should have sufficient flexibility to ensure future activities such as this fall within the existing regime. Otherwise any proposals put forward within the Bill will not be fit for purpose within the short/medium term.

LGA Response to individual questions - Improving Marine Nature Conservation**Question 52: Which marine management regimes or processes should include the consideration of marine ecosystem objectives?**

If it is proposed that MSP objectives are used in the same manner as other plan and strategy objectives (many of which can conflict within a single plan) then the LGA sees no reason why all marine management regimes or processes should not be subject to them.

However, it should be noted that objectives can conflict within plans and strategies and therefore they should be taken as a material consideration within the option appraisal process but not taken to task if not fully met. However all MSP decisions should be taken within the confines of compliance with marine nature conservation and other national and international legislation.

Question 53: Should the consideration of objectives be required through policy guidance, changes to management regimes or a statutory duty?

Further detail is required on the nature of the 'changes required to a large number of regimes' before the LGA can comment fully. However, it is difficult to see why inclusion of marine ecosystem objectives cannot be simply included in the scoping of EIAs and SEAs required to support existing licence applications and MSP development and identified as material consideration in the determination of such licenses.

It is uncertain as to the implications for private organisations and who would be responsible if private organisations did not follow the recommendations of statutory bodies in this regard. The extension of the Natura2000 network and the proposed changes to the Conservation (Natural Habitats, &c) Regulations (1994) are likely to address many of these issues.

At this stage, the LGA recommends Option 2 but seeks further information on both option 2 and 3 before finalising its decision.

Question 54: Do you agree that a new mechanism for the designation of protected areas should be introduced in the Marine Bill?

It is agreed that there is a need to protect marine areas, in particular those offshore and the Marine Bill would be a logical mechanism.

Question 55: Should the new mechanism compliment or replace legislation on marine nature reserves?

It is believed that the current management system for marine nature reserves is non-statutory and therefore has difficulty in dealing with contentious issues and non-compliance. In the current climate of reducing complexity and streamlining existing systems it would seem illogical to add a further mechanism for marine protection. The LGA therefore recommends that the existing legislation on marine nature reserves is replaced by a single mechanism.

However the LGA seeks to highlight that the protection of a site does not necessarily preclude all activities and in many cases recreation and other non-invasive activities can be maintained within protected sites.

Question 56: Which of the purposes listed should the new mechanism cover? Are there any others that should be considered?

All of the purposes should be covered. The LGA also draws attention to the requirements of the Water Framework Directive.

Question 57: What are your views on site protection measures being used to protect interests other than those for which a site is primarily designated?

The LGA understands the need to consider a mechanism which is flexible enough to address emerging issues which may have wider impacts than the original designation. However the LGA is concerned that, in conjunction with the precautionary principal, this may be used incorrectly by nature conservation organisations to restrict activity within and around such sites.

Question 58: Do you agree that where options exist a range of factors including social and economic considerations should be taken into account in choosing between sites?

The LGA agrees with the need to take into account socio-economic issues into the designation process.

Question 59: Should we include provision for altering site boundaries, or de-designation of sites? Under what circumstances?

The provision should be included to alter site boundaries and the designation of sites. A number of unforeseen issues have arisen following the designation of the existing Natura2000 network which have been exacerbated by the issue of fixed boundaries. The issue of coastal squeeze and maintenance of coastal defences is of primary concern. Having this flexibility may reduce the risk of similar unforeseen issues arising and reduce the administrative cost of such issues to government departments. The LGA is not in a position to identify the full scenario of circumstances but would include issues such as mis-designation, where designated 'features' are no longer present or following the availability of significant new information.

Question 60: Do you agree that different marine nature conservation sites will need to have different levels of objectives?

It would seem sensible that the objectives for the site should be site specific and be dependant upon the features for which it is protected, the activities which are taking place and the associated risk to the long term protection of the site. These objectives should be developed at a local level, with relevant local stakeholders with the best use of available information.

Question 61: what are your views on a flexible site mechanism where levels of protection can be altered to meet site needs and objectives?

The LGA fully supports initiatives that promote local management based on the local situation. However, although local protection measures should take full account of the needs of the local community and economic sustainability; flexible management

should not be an excuse for downgrading environmental protection for economic gain.

Question 62: what are your views on whether marine protected areas should directly control activities managed at the national level, or provide protection through wider marine management mechanisms? What would be required to make each approach effective?

As with the Natura2000 network, management of marine sites should be indirectly through the existing licensing and management regimes.

Question 63: Are there any other mechanisms that we should consider introducing for site protection? Should we introduce a requirement for an Appropriate Assessment to be carried out where activities are likely to cause significant damage to a site?

Where there are activities which are currently outside of regulatory control, the provision of byelaw powers could provide the flexibility to manage currently unregulated activities. It is recommended that the use of byelaws (by LAs and Natural England) should be investigated further as a mechanism for flexible management.

The key difference between EIAs and Appropriate Assessments is the focus of the assessment upon the features of interest for which the site is designated. The requirements for this greater assessment on marine ecology could be provided by the screening and scoping opinions by regulators.

The question is whether the requirements of the Appropriate Assessment are directly linked to the Conservation (Natural Habitats, &c) Regulations (1994) and in particular; where a significant effect cannot be ruled out, either alone or in combination, the requirement for a) no suitable alternatives b) over-riding public interest and c) the provision of suitable habitat compensation measures. It is likely that this will be of much greater concern to regulators and developers, especially as at this stage there is no indication of the proportion of the seabed which will be covered and the location of such sites.

Question 64: Do you consider that the seaward boundary of SSSIs should be clarified?

Yes

Question 65: Which option would you prefer for the interface between the two regimes? What are the key considerations?

The boundaries should follow the features of interest for which the site is designated, where these include intertidal and sub-tidal interrelated features, the boundary should extend below MLWM and vice versa with MHWM.

Question 66: What do you consider are the best options for the landward boundary for marine protected areas and the seaward boundary for SSSIs and why?

The LGA believes that the boundaries of the site should reflect the features of interest on the ground and their likely changes over time. Therefore in light of climate change, increasing sea levels and changing habitat composition, Option 7 is

recommended. This will also provide greater flexibility in the approaches to management and will allow both the terrestrial and marine consenting process to take account of marine, intertidal and terrestrial protected features.

However, it should be noted that the extension of LA jurisdiction to the 12 mile limit would result in greater integration at the land/sea interface and more coordinated management of activities in the nearshore zone.

Question 67: Are there threats to the conservation of marine species in the offshore area or elsewhere that are not addressed by existing measures or controls? Please give examples.

Outside of the remit of the LGA

Question 68: Which option for species protection in the Marine Bill would be most compatible with the principles described in section 4? Are there any other options that should be considered?

Outline the remit of the LGA

Question 69: Do you consider that unlicensed activities currently threaten the conservation of marine eco-systems and bio-diversity? If so, which activities are of most concern and why?

Yes certain activities can threaten conservation. Recreational watercraft can for example cause damage or disturbance to both habitats and species as can bait digging. For many years Government has indicated that it intended to bring forward legislation to enable LAs to better manage the use of such potentially damaging recreational activities. The LGA would urge Government to include these measures within any ensuing marine legislation.

Question 70: What are your views on the introduction of bylaw-making powers for the control of unlicensed activities?

As outlined in the DETR review, there are a number of gaps in the coverage of coastal byelaws and the LGA supports the call for greater powers for LAs. The LGA therefore fully supports the introduction of bylaw-making powers and calls for any review to include increased powers for LAs to more effectively manage coastal activities such as those discussed above.

Question 71: Are there alternative regulatory approaches to the control of such activities that we should consider?

The Marine Bill should review the possibilities for managing sites through existing legislation, for example through the Sea Fisheries bylaw powers or shipping and navigation.

Question 72: Should any powers to control unlicensed activities be related to marine protected areas, or capable of wider application?

Any new legislation or powers should be drafted to retain flexibility to manage new activities or unforeseen impacts. However, safeguards need to be put in place to ensure consistency and proportionality in the management powers, their application and enforcement.

Question 73: what do you think are the most important improvements that the Government could make in the prevention of marine nature conservation offences and the enforcement of relevant legislation?

Clarification on the roles and responsibilities of the different organisations for enforcement and the resources and powers to monitor, catch and prosecute offenders.

Question 74: what are your views on which organisations should (or should not) carry out different stages of marine nature conservation functions arising from the Marine Bill to ensure that the principles in section 4 and those in paragraphs 11.16-11.25 are delivered?

Those organisations with the expertise in nature conservation should continue to manage nature conservation functions. At this stage it is likely that Natural England should continue to manage nature conservation. However, further investigation as to the role and remit of other organisations such as Sea Fisheries Committees, LAs, CEFAS and JNCC is required.

The LGA does not believe that marine nature conservation should be managed exclusively by central government departments which have other drivers for management and would not meet the principles of local accountability, transparency or stakeholder engagement.

Question 75: Do decisions on which organisations fulfil which roles affect any of your answers on other questions in this consultation document? If so, how?

Yes, the LGA seeks local accountability, transparency and quality decision-making. At this time it is unknown whether any new organisation would have the capacity to deliver the good governance principles and quality decision-making.

Question 76: Do you consider that any changes to function, powers and duties of delivery organisations are needed to facilitate the implementation of nature conservation legislation in the Marine Bill?

The LGA is uncertain at this stage as to whether Natural England has the necessary functions, powers and duties to deliver. However, it is believed that whatever organisation has these expanded duties for marine nature conservation would require additional resources and capacity to deliver.

LGA Response to individual questions - The potential for a new Marine Management Organisation (MMO)**A well-resourced Marine Management Organisation (MMO) is welcomed.**

However, the proposed MMO is responsible for policy, regulation, advice and enforcement, again with no accountability below that of its parent Department. The LGA seeks a well-resourced organisation that supports and enhances the quality of decision-making in the marine environment based on the model of the National Oceanic and Atmospheric Administration (NOAA) in the USA. Within Territorial Limits the responsibility for policy, regulation and enforcement should lie with LAs and other existing national, regional and local bodies. Only beyond that limit would the MMO have responsibility for marine spatial planning and integrated licensing.

As discussed above, the LGA promotes the extension of LA jurisdiction and therefore the MMO would be a key stakeholder within the 12 mile limit and have full jurisdiction seaward of the 12 mile limit.

Question 77: Have we correctly identified the functions that are core to deciding whether to create an MMO?

Recent government restructuring has focused on the separation of policy and delivery. The LGA is concerned that the MMO core functions are both the development of policies through MSP and delivery through the revised integrated licensing regime. It is also of concern to note that there is currently no organisation identified which enforces the licensing system. This is a major omission and the greatest risk to sustainable development. Furthermore, oil and gas industries should be included in any new system as should the Maritime and Coastguard Agency.

Question 78: Are there any other functions that you consider core to an MMO? Why?

As noted above, if the MMO is to undertake the role of licensing and consenting in the marine environment, it should also have a core function to enforce the conditions contained within them.

The role of the MMO as a key collector, collator and supplier of marine data and information should be expanded to that of NOAA as discussed above.

The MCA already has a co-ordinating role that is in place as well as knowledge, skills and a communications network. It would seem to be fundamental to the role of an MMO.

Question 79: Do you consider that the Marine Fisheries Agency should be merged into an MMO, if established?

Yes, the MFA should be included, however, the role of the Sea Fisheries Committees should be increased to allow greater local input and accountability.

Question 80: Do you consider that CEFAS should remain outside an MMO if established?

The regulatory role of CEFAS as consultee on marine consents should be brought into the MMO, however, it should be noted that CEFAS provide a consultancy service and therefore the organisation may have to be split.

Question 81: Have we identified the right marine organisations for potential inclusion in an MMO?

CEFAS provide significant marine expertise to support the MMO but there is no reference to the role of the maritime sections of Natural England or the role of the JNCC.

Question 82: Are there other marine organisations that we should be considering merging into an MMO?

No

Question 83: Do you wish to make any points to be included in our consideration of whether individual non-core functions should be delivered by an MMO?

Refer to the LGA's position in the introduction to this consultation response.

Question 84: Do you agree that we should exclude the potential transfer of statutory (marine) nature conservation advisory roles to the MMO from further consideration?

As the detail on the proposals has yet to be defined, the transfer of all roles and responsibilities should remain open.

Question 85: Are there any other non-core functions that we should be considering for inclusion in an MMO?

It is interesting to note that a Marine Litter Strategy is considered in paragraph 11.65 but are there not parallels with oil spillages and if so this again lends weight to the inclusion of the MCA within the MMO.

Question 86: Are there functions that you consider incompatible – i.e. they should not be undertaken in combination – whether by an MMO or another body?

As the details of the proposals and scope of the MMO and MSP are yet to be defined the LGA cannot comment.

Question 87: Are there functions that you consider should be grouped together – i.e. undertaken within the same organisation? If so, should this be the MMO or not?

As above

Question 88: Do have views on the most appropriate status for an MMO?

The LGA recommends that LA jurisdiction is extended to the 12 mile limit. As such, the MMO would have an advisory role within the 12 mile limit.

The LGA believes that for the purposes of accountability the MMO should be a Non-Departmental Public Body but it should have local/area Committees as well as a high level Board. Perhaps in the manner of the Environment Agency. Care would need to be taken to ensure that representation on these Boards or Committees was truly representative of the interests of those affected by the MMO's actions. The MMO should also ensure that the principles of good governance and ICZM are enshrined in its constitution/terms of reference.

Question 89: Do you have any views on the nature of the relationship that an MMO would need with other Bodies?

The proposals for a MMO focus on a centralised body with no evidence of a regional or local approach. This does not meet the principles of good governance and local accountability promoted by Government.

The MMO has to reflect a bottom-up approach to decision-making based upon democratic accountability and sound science with representation and engagement at all levels.

Relationships must exist at all levels; at high level with Government Departments with other National Agencies and at regional and local levels. Formal liaison and engagement with LAs and ICZM stakeholders will be vital for the effective delivery of local MSP and quality decision-making for marine licenses and consents.

Question 90: do you have any further information that would assist us in developing the RIA?

The LGA Coastal Special Interest Group holds information with respect to the costs associated with LAs undertaking existing coastal functions.

Question 91: Are there any other comments you want to make regarding the potential creation of an MMO?

As discussed above, the LGA seeks extension of LA jurisdiction to the 12 mile limit. As such the MMO should take an advisory role within this limit and have jurisdiction seaward of this.

LGA Response to individual questions - Regulatory Impact Assessment

The LGA questions why there are no questions associated with the MMO aspects of the RIA. The LGA believes that the costs set out for the organisation are far too low and the size of the organisation proposed would not be able to deliver the policy setting, licensing and enforcement services to the necessary quality with such limited resources.

The LGA believes that a combination of ICZM and extension of LA planning and licensing jurisdiction (following the terrestrial spatial planning system) to 12nm would be able to deliver the policy setting and licensing elements of the MMO. It is recommended that this is investigated along with linkages with organisations such as Natural England, CEFAS, the Sea Fisheries Committees and local harbour authorities could also effectively deliver coordinated enforcement of licensing conditions.

The LGA draws DEFRA's attention to the discussion document by Department for Transport on the Ports Policy Review. Appendix E provides likely costs for changes in the port system and the cost implications for port expansion. The document can be found at:

http://www.dft.gov.uk/stellent/groups/dft_shipping/documents/page/dft_shipping_6116_93.pdf Furthermore the LGA hopes that the Marine Bill Team are working with the DfT to ensure joined up Government. The LGA believes that there are a number of opportunities for added value with the "Opportunities for Ports in Local Authority Ownership: A REVIEW OF MUNICIPAL PORTS IN ENGLAND AND WALES" (May 2006) and extension of LA planning and consenting powers under the Marine Bill.

Question 92: Do you have any views on the risks associated with the current control system?

Refer to sections above. However, it should be noted that MSP may not have resulted in the avoidance of Dibden Bay as the environmental concerns were known from the initial stages. In highly urbanised and environmentally sensitive areas such as Southampton Water it is unlikely that the MSP would be able to tackle such conflicts and needs of different stakeholders. Dibden Bay could have been avoided only if Government provided clearer guidance on its Ports Strategy at an early stage in the proposal.

Other risks include:

- Confusion in legislation and the implications for development
- No strategic decision-making (geographical and spatial)
- No transparency with regard to offshore development
- No consistency across the land-sea interface

Question 93: Do you have any evidence that either supports or contradicts the risk of the current system as laid out above?

The RIA does not fully list the risks associated with the current system

Question 94: Do you have any examples of where conflicts have arisen between different marine activities, developments or resources?

LAs have to deal with conflicts in the coastal zone on a daily basis, examples include:

- Recreation and nature conservation
- Port development and tourism
- Conflicts between different users of the coast and nearshore zone
- Development and nature conservation
- Coastal protection and nature conservation
- Coastal protection and development
- Economic development and flood risk
- Public safety and recreation/tourism requirements

Question 95: Do you have any examples or information regarding the costs to business of applying for licences that are later refused?

We have no information on costs but refer to the recent Review of Marine Consents undertaken by Atkins for Hampshire County Council.

Question 96: Do you have any views on the risks or unintended consequences of any of the proposed option for a system of marine spatial planning?

The options do not include reference to the land/sea interface and the opportunities provided by the existing terrestrial planning system. The LGA believes that extending the role of LAs could result in governmental costs savings in the consultation needs for marine and coastal consents and streamline the consultation procedure.

Question 97: Do you have any views on the potential benefits of any of the proposed options for a system of MSP?

The LGA proposes the following benefits for its proposals for LA extension of jurisdiction and coordination of consenting marine and coastal consents, namely:

- Cost savings in the formal consultation procedure
- Cost savings in the informal consultation procedures and liaison with consultees.
- Increased transparency and local accountability in decision-making
- Maximising the use of local information
- Cost saving in the monitoring and enforcement of licensing conditions

The LGA would welcome a meeting to discuss these opportunities further

Question 98: Do you have any views on how these options might offer benefits to the system for licensing marine activities?

Identified above

Question 99: do you have any views on the potential costs of collating existing available information about the marine environment or collecting additional information?

Information relating to these costs can be found through the flood management division of DEFRA. Also contact the South Coast Regional Monitoring Group which are developing and implementing DEFRA's coastal monitoring programme, tailored to local needs.

Question 100: do you have any information about the costs of existing planning systems which may be broadly useful or indicative in considering a new system?

Not available at this time

Question 101: do you have any information about the costs of the proposed options for a system of marine spatial planning?

Not available at this time

Question 102: do you have any views on the potential impacts of the proposed options for a system of SMEs?

Without the inclusion of coastal consents there will be little cost savings for SMEs, especially those working adjacent to coasts and estuaries (where the majority of marine and coastal industries are located). The centralisation of the Harbour Act licenses (and thus removing input of the local Harbour Authorities) the LGA believes would add costs as it will have centralised the only marine consent determined at a local level, therefore removing the local advisory point for the marine environment.

Coastal SMEs are also unlikely to gain sufficiently from MSP with the exception of the local plans, which should identify zones of coastal development, opportunities and constraints. However, if the MSP will not be fully addressing the land/sea interface, again there is little evidence of improvement in the current system. The LGA believes that the proportion of SMEs that work purely in the marine environment is small. It is believed that the development of ICZM would have the greatest benefit to SMEs.

Question 103: do you have any views on issues relating to competition regarding any of the proposed options for a system of MSP?

It is recognised that there are aspects of marine resource development and licence applications that are commercially or politically sensitive. It is recommended that the Atkins report Review of Marine Consents is reviewed which outlines how the local Streamlining Consents Group for the River Hamble is tackling issues of commercial sensitivity.

Question 104: Do you have any views relating to enforcement, sanctions or monitoring regarding any of the proposed options for a system of MSP?

The LGA does not believe that the costs associated with implementation, enforcement and monitoring have been suitably addressed. It is recognised that there are existing environmental monitoring arrangements but it is believed that the level of enforcement of licence conditions is poor and much greater resources should be made available.

Question 105: Do you have any general information about the costs of the current licensing system?

No

Question 106: in particular, do you have any specific evidence in relation to the applications process within the current licensing system:

a) LAs have to obtain consents primarily for coastal protection schemes. In these cases planning permission, land drainage consent, CRoW Act consent, FEPA, CPA and Harbour Works licenses are all required. The LGA requests DEFRA consults directly with operating authorities. Costs generally relate to officer time and consultants fees to prepare licenses and associated environmental assessments.

b) Length and speed of applications has a cost implication if the time for determining applications has over-run. These costs can be significant if contractors have been mobilised. In some cases delay in determination can result in works on site being delayed by 6-9months in areas where the sensitive over-wintering bird period has to be avoided. This also results in additional risk to local communities whose properties are in need of protection.

c) Consult with LA operating authorities directly

d) As above, costs primarily consultants fees and officer time. Costs likely to be in the order of £30,000 for an EIA (additional cost if Appropriate Assessment required) and a further £10-15 k for managing the consenting process (small/medium coastal protection scheme, does not include design of scheme).

The table below is a case study of the consents needed for a coastal protection scheme and the issues associated with the consenting process (taken from the recent Atkins Review of Marine Consents for Hampshire County Council).

Description of Proposal	Beach Recycling at East Head, Chichester Harbour by Chichester District Council (CDC) as coast protection authority. Involved excavation of sand and shingle from north end of spit, transport and deposit at southern end to replenish eroded breach, including maintenance until spring 2007. East Head is a dynamic sand and shingle spit situated at the east of the entrance to Chichester Harbour. The neck of East Head has already been subject to erosion and the breach in the sand dunes is now approximately 90m long,(although the widening of this gap has slowed down). The application was for a short-term solution of preventing a tidal breach at East Head, until further detailed research has been undertaken to formulate a long-term strategy. Proposals based on research undertaken by HR Wallingford and accompanied by an Appropriate Assessment. Project part funded by CHC.
Consents Applied	FEPA, Planning Permission and Harbour Works
Issues Raised	<p>Applicant was a Coast Protection Authority and therefore knowledgeable of the consents process. However, still areas of uncertainty such as the requirements of the Appropriate Assessment which was undertaken in-house.</p> <p>Applicant aware of the issues and timescales and therefore acted as the 'Champion' for the consents process. This included liaising with all the consultees and regulators during the consultation process to minimise delays.</p> <p>Process went quite smoothly as all key consultees and regulators were in agreement with the proposal prior to the consents being submitted. A Task Force Group of all key stakeholders had been set up to agree the proposal and EN and CHC worked with CDC to agree Appropriate Assessment during the process. CHC Harbour Master prepared and submitted the Harbour Works Licence on behalf of CDC.</p> <p>Despite all key regulators in agreement prior to the submission it was still a long process with the different consultees being asked to</p>

	<p>consult on the same questions. Lots of duplication occurred.</p> <p>Despite all the agreements and 20 years of knowledge of the process by the applicant it was still a long and arduous consenting process. Process started in November and finished the following May (one week prior to works starting!).</p> <p>MCEU process - OK with information in a timely manner, however, did not take on board the urgency of the consent when it was delayed two weeks awaiting sign-off.</p>
Recommendations for this Report	<p>Local "Champion" for the application, problems avoided due to applicant acting as champion and liaising with all consultees and regulators.</p> <p>All regulators and key consultees had agreed to the proposal prior to submission (pre-application). Propose regular meetings with regulators to discuss and proposals and aid applicants in the process.</p> <p>Recommendations to streamline the consultation process needed (national guidance or support towards a standard consents form).</p> <p>Review the process to identify if there can be a 'fast-track' service for applications such as this which has the prior approval of all parties and is being submitted by a regulator.</p>

Question 107: Do you have any specific examples of the compensation/mitigation aspects of the current licensing system? Can you provide evidence of how complex it was, and costs you incurred?

The mitigation and compensation aspects relate primarily to the Birds and Habitats Directives and the UK Habitat Regulations which transpose them. These regulations are requiring compensation for coastal squeeze within the economics of coastal protection schemes and making many uneconomic – resulting in greater risk to coastal communities.

Question 108: Do you have any views on the risks associated with the current licensing system? Evidence which supports or contradicts the risks laid out above or additional examples.

- Similar risks to MSP above, in addition:
- Uncoordinated consultation (duplication of effort, conflicts, gaps in information)
- Uncoordinated decision-making (marine consents do not require any information on aspects of development above MHW therefore major risks/issues can be missed)
- Work undertaken without licenses (applicants unaware that consents are needed for certain activities, particularly relevant for small operations/activities in coastal zone)

Question 109: Do you have any specific information with regard to the risks associated with the current system?

Refer to the Review of Consents Document (Atkins, 2006) produced for Hampshire County Council.

Question 110: Do you have any views on the risks or unintended consequences of any of the proposed options for a reformed licensing regime?

- New system will further reduce transparency in the marine consenting system
- Further loss of local knowledge through the removal of local Harbour Authority determination of consents.
- Reduced proportionality of decisions as local knowledge is lost (local officers can quickly and effectively determine the significance of activities in relation to the geographical local and cumulative activities).
- Further loss of democratic accountability (as Local Harbour authorities have full stakeholder representation on Committees and Boards).
- New system will further inhibit integration across the land/sea interface

Question 111: Do you have any views on the compliance with or enforcement of any of the proposed options for a reformed licensing system?

No comment on compliance or enforcement of change in system.

However, LGA is concerned about the current confusion with regard to who enforces the conditions of existing licenses and how this may change in the future.

Question 112: Are there any other sectors or groups which would be affected by a reformed licensing regime?

Local authorities are not routinely consulted on marine consents and the LGA queries where they are identified as statutory consultees under the existing marine consenting process. If LAs are found to be statutory consultees in the marine environment this is not being implemented correctly and needs to be addressed urgently.

Harbour Works and Dredging Licence does include LAs as a consultee if involved in Harbour Management. However, the removal of this licence from local to national level would further remove decision-making from LAs.

Non-statutory consultees are consulted on an ad-hoc basis, a decision based upon the MCEU officer, therefore there is a risk that non-statutory consultees are removed from any future marine consenting process and therefore the level of public accountability and transparency is reduced.

If DEFRA implemented the LGA proposal, coastal communities would be positively affected by the process.

Question 113: Do you have view on the potential benefits of any of the proposed options for reform of the licensing regime?

Refer to licensing section above and the LGA proposal for local streamlining and determination and the benefits this would bring to coastal and marine management.

Question 114: Do you have any views on the potential costs of any of the proposed options for reform of the licensing regime?

The LGA believes that the focus of the reform should be local delivery, which will achieve cost savings in terms of added value.

Question 115: Do you have any views on the potential impacts on SMEs of any of these options for reform of the licensing regime?

The reforms do not include sufficient inclusion of coastal/terrestrial consents and therefore unlikely to benefit SMEs working in coastal and marine industries. This is because the most likely consents required by SMEs are FEPA/CPA which from the applicant perspective is already 'streamlined'. As the vast majority of proposals will cross the land/sea interface (jetties, pontoons, slipways, seawalls etc) the SMEs will still have to deal with the remainder of the consents. The removal of local harbour authorities from the marine consenting process will result in the loss to SMEs of a key supply of advice, especially during the pre-application stage.

Question 116: Do you have any views on the competition issues relating to any of the proposed options for the regime of the licensing regime?

No comment

Question 117: Do you have any views on issues relating to enforcement or sanctions regarding any of the proposed options for reform of the licensing regime?

There is currently confusion as to which organisation is responsible for enforcing the conditions on the existing consents (especially when the same conditions are outlined in different consents), this is an extremely important issue which needs to be clarified.

Any new system has to clearly set out responsibilities for enforcement and provide the necessary resources for implementation.

Question 118: what costs would business or others incur if further deterioration in marine ecosystems or significant losses in biodiversity were to occur?

No data available but loss of coastal and nearshore marine habitats, landscapes and seascapes would significantly affect coastal economies through reduction in tourism and recreational numbers with the knock-on effect on local businesses, employment and economic development. Refer to information regarding the problems associated with tourism and regeneration of coastal towns.

Question 119: What are the benefits for businesses and others associated with improvements in the state of marine biodiversity?

Converse to the above, improvements in marine and coastal biodiversity can have significant gains for the local economy through increased coastal and marine tourism and recreation. Studies carried out by the University of Plymouth Business School have demonstrated that the increase in diving activity should generate an additional £1.0 million per year in the local economy of Plymouth and South East Cornwall by the sinking of the Scylla and the resulting tourism and recreational benefits brought about by improved marine biodiversity.

(<http://www.looecornwall.com/index.cfm?articleid=1323>).

Question 120: Would businesses benefit from clearer guidance on what needs to be taken into account in Environmental Impact Assessments?

Refer to question 35 above.

The focus should not be the needs of Environmental Impact Assessment (which will differ depending upon the location, scale and nature of the proposal) but what the different consenting organisations and consultees require to determine the suitability

of applications. The following is taken from the Atkins' Review of Consents Report for Hampshire County Council.

The remit within which the organisation is involved in marine consents - i.e. a consenting authority or consultee and should clearly set out the differences in organisational remits, for example, the Environment Agency has a wider environmental remit than English Nature which is limited to designated sites and therefore the Environment Agency may seek greater environmental protection and enhancement than English Nature;

- The criteria which the organisation will be assessing applications;
- The type of information that will be required to be submitted; and
- The format that the information will be required to be submitted.
- Supporting guidance and information for consenting organisations and applicants
- In addition to the Guide which would more clearly set out the requirements of the different consenting organisations and consultees, further guidance is recommended to support the consenting organisations, consultees and applicants. More targeted information and guidance would address the following issues:
 - Maximising use of existing information;
 - Capacity building of staff within organisations;
 - Disseminating best practice;
 - Assist in giving advice to applicants though the consenting forms and advice given in SCGs.

Question 121: What are the financial costs and benefits for businesses and others associated with certainty or uncertainty over what restrictions Government might place on development or other licences (for ecological reasons)?

Not known

Question 122: To what extent do businesses currently take account of Government's ecological objectives in EIAs?

Not known

Question 123: What costs are involved in considering ecological objectives in EIA?

Quantified examples cannot be given, undertaken within the scope of EIAs for coastal protection works.

Question 124: to what extent could the costs involves in considering ecological objectives be reduced through the introduction of clearer, more coherent and accessible Government objectives and the provision of more information, data and guidance?

For works undertaken by LAs these ecological objectives are routinely considered within the EIA process, therefore not likely to make any demonstrable difference. Cannot comment on the potential benefits for SMEs where any cost saving is likely to be greatest.

Question 125: What are the costs of modifying, mitigating or compensating for development proposals, fisheries, leisure or other activities to help meet ecological objectives?

Not known. However, as there is no legislation associated with ecological objectives it would be interesting to know if any proposals have been amended to meet purely ecological objectives and not other environmental legislation.

Question 126: How far would businesses be willing to modify activities to help deliver a non-statutory set of marine ecosystem objectives?

As there are considerable commercial drivers limiting businesses, it is unlikely that they would be willing to modify their activities at all unless there was added value, political or other benefits to be gained.

Question 127: Would there be other costs associated with the implementation of marine ecosystem objectives which would be taken into account?

Not known

Question 128: How would you value the benefits to business and others in improvements in the state of marine biodiversity in marine protected areas?

Refer to question 119 above

Question 129: What are the costs of modifying, mitigating or compensating for development proposals..... to help conserve protected areas?

Consult LA operating authorities whose coastline lie within or adjacent to Natura 2000 sites to obtain relevant information.

Question 130: what are the costs of agreeing and implementing voluntary protected areas?

The LGA does not have costs available for managing MPAs, however, the following are indicative costs for implementing ICZM initiatives. There are three tiers of ICZM initiatives, national, regional and local. The following table provides examples of the different initiatives and indicative annual costs for implementation. In many cases these costs have been deflated by LAs absorbing many of the administrative costs and providing 'in kind' contributions.

The LGA also directs DEFRA to its own document Promoting and Integrated Approach to Managing the Coastal Zone in England.

<http://www.defra.gov.uk/corporate/consult/iczm-strategy/consultation.pdf>.

ICZM Level	Example Estuary	Estimate of annual costs for running an ICZM initiative.
Tier 1 – Nationally important coastal areas with many conflicting issues and complex management arrangements	Humber, Solway, Severn, Thames, Solent. Morecombe Bay	£150,000
Tier 2 - Regionally important areas with conflicting issues which can only	Medway, Tamar, Essex Estuaries, Wash, Pool	£100,000

be addressed through partnership and innovative management	Harbour etc.	
Tier 3 – Locally important areas which benefits from ICZM	Medina, Fal etc.	£80,000

The LGA requests that DEFRA refers to the proposals submitted to Government as part of the annual Standard Spending Assessment (SSA) for LAs and the estimated costs contained within this for managing coastal issues.

Question 131: to what extent would businesses be prepared to modify activities?

Refer to question 126

Question 132: How would you value the benefits to business and others of an improvement in the state of marine biodiversity in offshore areas (beyond 12nm)?

Not known

Question 133: what are the costs of agreeing and implementing voluntary or sectoral measures for the protection of important marine species?

Not known – however, likely to be a similar cost to the implementation of ICZM on the coast. Refer to question 130 above.

Question 134: to what extent would businesses be prepared to implement voluntary measures.....?

Refer to question 126 above

Question 135: what would the costs and benefits of agreeing and implementing voluntary controls on currently unlicensed activities to prevent impacts on biodiversity?

Refer to question 130 above.

Question 136: What are the costs of agreeing and implementing voluntary controls on unlicensed activities such as whale-watching?

Refer to question above

Question 137: What level of take-up would you expect to see of voluntary measures designed to prevent unlicensed activities from having significant impacts on marine biodiversity, such as voluntary restrictions on recreational activities in sensitive areas/seasons?

It is important for Defra to adhere to the findings presented in the Atkins document "Managing Recreational Activities" (2004) <http://www.defra.gov.uk/wildlife-countryside/issues/coastal/coastal-guidance.pdf>. The project also produced an independent report findings assessment. The key aspect of that report was a view on voluntary initiatives and their level of take up amongst coastal stakeholders. Copies may be attained from Atkins or through the Wildlife and Conservation section of Defra.

In many cases, voluntary or self-regulation proves a successful approach, but in reality a measure of legal backing is also important to the success of many management schemes. Powers are needed to ensure that measures can be backed up by enforcement, particularly where a minority of individuals may ignore other voluntary measures. If voluntary action or self regulation is not practicable, or has not proved effective at site level, byelaw management may be required.

The main issue relating to the level of take up inevitably refers back to enforcement of unlicensed or “un-clubbable” activities. The project highlighted a range of ideas on how any system of enforcement should work, though where possible, conflicts should be addressed out of court (i.e.: fixed penalty). Where persistent offences occur or where “un-clubbable” issues constantly arise, such matters should be referred to the courts. Nevertheless, no clear advice currently exists to help communicate these issues to LA's.

The lack of ‘back-up’ enforcement options therefore appears to be one of the major stumbling blocks with voluntary initiatives and in many cases it is the people who have caused the problems in the first place who do not adhere to such initiatives. The best combination appears to be the development of voluntary initiatives which can be enforced through byelaws, if necessary.

Question 138 and 139: refers to competitiveness of business

Not relevant to LGA

Question 140: what costs would be entailed in the effective enforcement of the proposals in this consultation document?

Enforcement of licence conditions for all existing marine licences is supposed to be undertaken at present, therefore the additional enforcement would relate to new MPAs only. However, as explained above monitoring and enforcement is not sufficiently followed and in many cases there is confusion as to which organisation is responsible.

Within the Atkins document “Managing Recreational Activities” (2004)

<http://www.defra.gov.uk/wildlife-countryside/issues/coastal/coastal-guidance.pdf>.

Atkins refer to the national penalty scale for offences as set out in section 37(2) of the Criminal Justice Act 1982 which provides for a standard scale, giving maximum fines for an adult on conviction for summary offences, as follows:

Level 1 £200

Level 2 £500

Level 3 £1,000

Level 4 £2,500

Level 5 £5,000

These figures are far too low to and certainly no deterrent being in definite need of review by Defra as part of the Marine Bill. The level of penalty should be in line with the level of potential/incurred environmental damage.

The LGA urges DEFRA to review work being undertaken in support of the Environmental Liability Directive and the approach being taken to calculate environmental damage following the polluter pays principle.

Question 141: To what extent do you think there is scope for more effective use of existing enforcement resources?

There is significant scope for using and expanding the resources of the Sea Fisheries Committees and CEFAS to support enforcement of licence constraints. The LGA is concerned that the current enforcement procedures are insufficiently implemented and a full review is required to identify how these resources can be used effectively.

For water based activities, the Maritime and Coastguard Agency's Enforcement Unit can be approached for advice on prosecutions for breaches of navigation byelaws. Local authorities should contact the police for advice on enforcement where land-based offences are involved.

The police need to be better informed of coastal and marine related issues, in certain coastal areas (Lincolnshire/Redcar) they have implemented campaigns of patrolling the dunes and warning that repeat infringements will lead to prosecution.

LGA recommend that the current approaches being taken by Local Authorities to help support beach risk assessments and enforcing Occupiers Liability Acts (see Atkins developed SaferSands initiatives – www.atkinsglobal.com/safersands) are considered further by Defra. Details on this can be provided by Rother District Council and Fylde Borough Council who are actively implementing SaferSands for their frontages.

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