

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL IMPACT ASSESSMENT AND NATURAL HABITATS
(EXTRACTION OF MINERALS BY MARINE DREDGING) (ENGLAND AND
NORTHERN IRELAND) REGULATIONS 2007

2007 No.1067

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 These Regulations are being made in order to establish a scheme of regulation for marine minerals dredging in English and Northern Ireland territorial waters, on the continental shelf around England and Northern Ireland and also in some outer marine areas around Scotland and Wales.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 There has been no previous UK legislation regulating marine minerals dredging in the waters to which these Regulations apply. Dredging is licensed on a commercial basis by the owner of the seabed, in most cases the Crown Estate. Licences are dependant on a “Government View” (“GV”) of the environmental acceptability of dredging proposals under informal procedures which have been in operation since 1968. (see paragraphs 7.3-7.5 below). The Regulations implement EC Directive 85/337/EC as amended¹, (the “Environmental Impact Assessment” (EIA) Directive), and EC Directive 92/43/EEC, as amended² (the “Habitats Directive”) insofar as they relate to marine minerals dredging in English and Northern Ireland territorial waters, on the continental shelf around England and Northern Ireland and also in some outer marine areas around Scotland and Wales. These areas collectively are referred to in the regulations as “marine waters”.

4.2 The EIA and Habitats Directives and their respective amending Directives can be viewed on the following website: <http://eur-lex.europa.eu>. The Official Journal references to the EIA Directive and its amending Directives and to the Habitats Directive (to which there are amendments not relevant to these Regulations) are as follows:

¹ The Directive was amended by Directives 97/11/EC and 2003/35/EC.

² The Directive was amended by the Act of Accession to the European Union of Austria, Finland and Sweden, by Council Directive 97/62/EC and by the Act of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded.

EIA Directive:

Directive 85/337/EEC (OJ No L 175, 05.07.85, p.40); amended by Directive 97/11/EC (OJ No L 73, 14.03.97, p.5); and by Directive 2003/35/EC (OJ No L 156, 25.06.03, p.17)

Habitats Directive:

Directive 92/43/EEC (OJ No L 206, 22.07.92, p.7)

4.3 The EIA Directive requires that projects which are likely to have significant effects on the environment are made subject to a requirement for development consent and an assessment with regard to their effects (known as environmental impact assessment or EIA). Some projects are specified in the Directive as subject to mandatory EIA. Others are subject to a requirement that member states must determine, either on a case by case basis or by means of thresholds or criteria, whether EIA should apply. The Secretary of State has decided that in the case of marine dredging such assessment should be done on a case by case basis. This Directive was to be implemented by 3rd July 1988. It was implemented in respect of most activities to which it applies within this time limit, or subsequently. The requirements of the Directive have, since 1989, been incorporated in the existing non-legislative procedures for consenting to marine dredging, known as the “GV” procedures. However, statutory implementation of the Directive in respect of marine minerals dredging has been delayed while, first, consideration was given to the form of regulatory system to replace the GV procedures, in particular the impact of the Human Rights Act 1998; secondly, two major and one supplementary consultation exercises (see paragraphs 7.7-7.14 below) were conducted on proposed Regulations to establish a legislative regulatory regime and transpose the EIA and Habitats Directives to this activity (see paragraph 4.5 below); and, finally, consideration was given to the scope of the Regulations in accordance with the wishes of the Devolved Administrations. There are pending infraction proceedings in relation to the implementation of the Directive in respect of marine dredging and various other activities.

4.4 The Habitats Directive provides for the establishment of a list of Special Areas of Conservation within the EU, by negotiation between the Commission and member states and for special controls to apply to activities which may affect those areas. It also incorporates provisions in Directive 79/409/EEC (the Wild Birds Directive) which establish Special Protection Areas and subject them to the same restrictions. The Regulations describe both these categories of site as “European sites”. Procedures for the designation of European sites in UK territorial waters are contained in the Conservation (Natural Habitats, &c) Regulations 1994. Procedures for the designation of European offshore marine sites and protection of European protected species beyond UK territorial waters will be set out in regulations to be made by the Department for Environment, Food and Rural Affairs (DEFRA) entitled the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 which are expected to be made shortly, but after the Regulations which are the subject of this memorandum.

4.5 This Directive was to be implemented by 10 June 1994. Its requirements have been incorporated into the GV procedures since that time (see paragraph 4.3 above). The main legislation which implements the Directive in the UK and UK territorial waters is the Conservation (Natural Habitats, &c) Regulations 1994, but this does not apply specific procedures to marine dredging projects. There are pending infraction proceedings relating to the implementation of this Directive, for, amongst other reasons, failure to implement on the UK

share of the continental shelf. DEFRA has lead responsibility for implementing the Directive and is preparing regulations intended to remedy these failures, except so far as they relate to marine minerals dredging.

4.6 In so far as it is relevant to marine dredging, the Directive requires that:

(a) any plan or project which is not directly connected with or necessary to the management of any European site, but which is likely to have a significant effect on such a site (which is likely to include many proposals for dredging within or near to such sites) must be subject to appropriate assessment of its implications for the site. The appropriate national authority may not agree to such a plan or project unless it has ascertained that it will not adversely affect the integrity of the site concerned; and

(b) member states must take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species and the disturbance of the species for which the areas have been designated if that disturbance could be significant in relation to the objectives of the Directive.

4.7 The Regulations are made under the power in section 2(2) of the European Communities Act 1972. In so far as the Regulations provide for the payment of fees for providing pre-application advice, for the determination of various types of application that may be made under the Regulations, and for monitoring compliance with permissions, they are also made under the power in section 56 of the Finance Act 1972, with the consent of the Treasury.

4.8 Transposition notes are attached.

4.9 The draft EIA Directive was first considered by the Select Committee on European Scrutiny on 25 February 1981 (12th Report of Session 1980-81) and cleared on 9 November 1983 (4th Report of Session 1983-84).

4.10 The draft Habitats Directive was first considered by the Select Committee on European Scrutiny on 9 November 1988 (39th Report of Session 1987-88) and cleared on 25 March 1991 (16th Report of Session 1990-91).

4.11 These Regulations implement the relevant provisions of the Directives by:

(a) establishing a regulatory regime for marine dredging activities, which will be operated by a regulator who will be the Secretary of State for dredging in English waters and some outer marine areas around Northern Ireland, Scotland and Wales, and the Department of the Environment in Northern Ireland (“DOE”) for waters around Northern Ireland to the 12 mile territorial limit;

(b) providing that dredging without permission, where that is required, is an offence;

(c) providing an optional screening process to enable operators to obtain a determination as to whether their proposals require EIA and whether they require appropriate assessment;

(d) creating an exemption from the EIA Directive for national defence projects as permitted by that Directive;

(e) requiring that applications for dredging permission be accompanied by an environmental statement, to enable EIA to be carried out unless there has been a negative screening determination or the exemption applies;

(f) providing for appropriate consultation on, and publicity for, applications and for representations made by bodies with environmental responsibilities and the public to be taken into account;

(g) providing that a dredging permission may not be granted unless an appropriate assessment indicates that the proposals will not adversely affect the integrity of a European site;

(h) establishing mechanisms for the revocation, suspension, variation and transfer of dredging permissions;

(i) providing for the review of existing dredging licences which may affect European sites;

(j) creating offences relating to false statements made during the application process, and failure to comply with the conditions of a permission or a transfer; and

(k) making various associated provisions such as for dredging proposals to be considered by an independent person prior to the regulator making a decision, and the maintenance of a register of dredging applications and permissions and decisions and information related to other regulatory functions.

4.12 Policy responsibility for marine minerals dredging currently rests with the Department for Communities and Local Government (Communities and Local Government) which also has responsibility for managed aggregate supply from both the land and sea. The former Department of the Environment, Transport and the Regions and its predecessor departments had responsibility also for environmental matters and the construction industry. Given the current strategic priorities of Communities and Local Government and DEFRA's responsibility for environmental, including marine environmental, policy, Ministers in both Departments have agreed that marine minerals dredging policy and casework will transfer from Communities and Local Government to DEFRA. Communities and Local Government have finalised the Regulations and the responsibility for implementing them will pass to DEFRA's executive agency, the Marine Fisheries Agency (to be re-named the Marine and Fisheries Agency from 1 April 2007).

5. Territorial Extent and Application

5.1 Except for regulation 32, this instrument applies to marine waters. They are defined in regulation 2(1) as English and Northern Ireland territorial waters, the continental shelf around England and Northern Ireland and some outer marine areas around Scotland and Wales (namely the parts of the continental shelf adjacent to Scotland which do not fall within the Scottish zone (as defined in the Scotland Act 1998) and the continental shelf adjacent to Wales). Regulations 32(1) and (2) apply to England, because they make consequential amendments effective in England to legislation which extends to England and Wales. Regulations 32(3) and (4) apply to Northern Ireland, because they make consequential amendments to legislation which extends to Northern Ireland.

5.2 The Regulations set up a system of regulation to apply in marine waters. The Welsh Assembly and the Scottish Parliament are expected to make separate legislation applying in Wales and Scotland respectively. However, the competence of the Welsh Assembly extends only to territorial waters and that of the Scottish Parliament to the limits of the Scottish zone as defined in the Scotland Act 1998. In each case there are areas of the continental shelf which are outside the area of competence of the devolved administration, to which these Regulations will consequently apply.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The objectives of the Regulations are to establish a statutory procedure for regulating marine minerals dredging within English and Northern Ireland waters and some outer marine areas around Scotland and Wales and to formally transpose the EIA and Habitats Directives to marine minerals dredging in these waters. The Regulations will affect dredging companies already operating in these waters and those proposing to dredge in these waters in the future.

7.2 Marine minerals dredging is a significant source of construction aggregates, especially in London and the South East and East of England, and of materials for beach replenishment. Around 21 million tonnes of sand and gravel are dredged from the seabed around England and Wales each year. However marine dredging has the potential to cause adverse impacts on the marine environment and in particular, habitats, species, fisheries and marine archaeological sites if it were to be undertaken without due precautions.

7.3 The Crown Estate (CE) owns most of the seabed out to the 12 mile territorial limit around the UK and has rights to all the non-energy minerals within the rest of the UK share of the continental shelf. It licences marine minerals dredging on a commercial basis to minerals dredging companies but only if a favourable GV is issued on the environmental acceptability of each proposal. Under the GV procedures, applicants produce an Environmental Statement (ES), undertake extensive publicity and consultation and produce a report on consultation for each new application for a GV. Communities and Local Government in England and DOE in Northern Ireland (which is now dealing with its first application) consider the application along with the ES and report on consultation and, if necessary, convene either a hearing or inquiry into contentious cases that informs the decision on the GV. Communities and Local Government and, potentially, DOE notifies CE, the applicant and other interested parties of the decision that is made.

7.4. All favourable GVs are subject to conditions to mitigate potential adverse environmental effects of the proposed dredging and, protect the marine environment. CE then issues a dredging licence that includes the GV conditions. CE also benefits commercially from royalties under the same licence. When the GV is unfavourable, CE will not issue a licence to dredge.

7.5. The GV procedure is a voluntary, informal process. Although it incorporates the various requirements of the EIA and Habitats Directives, the Directives have not been formally transposed in respect of marine minerals dredging. In addition, it is generally acknowledged that the existing GV procedure is cumbersome, slow and could be more open and accessible to parties not directly engaged in the process.

7.6 Under the Regulations, DEFRA, through its executive agency, the Marine and Fisheries Agency in England and DOE in Northern Ireland will undertake all required public consultation and manage the decision-making process to stated timescales. There will be formal provision for disputed cases to be considered by a person appointed by the regulator, usually a Planning Inspector in relation to marine minerals dredging in English waters and the outer marine areas around Northern Ireland, Scotland and Wales, and a Committee in relation to marine minerals dredging in waters around Northern Ireland out to the 12 mile territorial limit, and for the decisions on those cases to take account of the Inspector's or the Committee's recommendations.

7.7 The former Department of the Environment, Transport and the Regions carried out a full public consultation on an initial draft of the Regulations in September 1998. The draft was subsequently extensively revised to take account of the implications of human rights legislation and amendments to the EIA Directive. In addition, the scope of the Regulations was altered to reflect the wishes of the Scottish, Welsh and Northern Ireland administrations.

7.8 In view of these significant changes and the length of time since the initial consultation, a further consultation on revised draft Regulations and accompanying guidance was carried out between June and the end of August 2006 with the British Marine Aggregate Producers Association (BMAPA, representing 9 of the 10 companies dredging aggregates from English waters), individual dredging companies, coastal local authorities, national and local fishing organisations, environmental and amenity groups, research and scientific institutions and other interested organisations and members of the public. The consultation paper invited comments on all aspects of the proposed Regulations and guidance, including a draft Regulatory Impact Assessment. It sought specific comments on:

- the scope of the Regulations;
- the necessity for pre-application discussions;
- the adequacy of the proposed procedures and the timescales for decision-making;
- controls on dredging of less than 5000 tonnes;
- the circumstances and procedures for putting marine dredging applications to an Inspector and the award of costs for unreasonable behaviour at public inquiries; and
- the costs of implementing the procedures.

There were 44 responses to the 2006 consultation in England from BMAPA, CE, other Government Departments and their agencies and NDPBs which currently comment on dredging proposals and will continue to do so under the new regulatory regime, local and harbour authorities and environmental and other interest groups. Three substantive responses were received in response to parallel consultation in Northern Ireland which reflects the limited activity in this area to date.

7.9 The consultation revealed a broad welcome for the proposed statutory regime. The majority of respondents to the specific question felt that the proposed procedures were adequate to control marine minerals dredging. However, many respondents expressed detailed comments on, or asked for clarification of, the scope of the proposed Regulations or procedures. Many of

those made by CE, BMAPA and Government organisations were resolved in meetings with them and others have been addressed in the final Regulations and guidance, where appropriate.

7.10 Adequate resourcing of the new regulatory system was raised as a particular issue by many respondents, including BMAPA. Increased resources were seen as the only way of delivering a quicker decision making and avoiding the delays endemic in the informal GV procedures. Amongst other things, the draft Regulations consulted upon in 2006 proposed fees for applications for, and variations to, dredging permissions. There were three proposed fees: £29,000 for a new dredging permission, £15,000 for a major variation to a dredging permission (involving an environmental impact assessment or appropriate assessment) and £4,000 for a minor variation to a dredging permission (not involving an environmental impact assessment or appropriate assessment). These proposed fees were calculated to recover the administrative costs of the team in Communities and Local Government (and, in the absence of any dredging consents having been issued in respect of Northern Ireland waters, the potential costs of DOE in Northern Ireland) responsible for processing both the applications for full permission and variations of permissions and also the scrutiny of the written monitoring reports required by the conditions of permissions.

7.11 In the light of the decision to transfer responsibility for the regulation of marine minerals dredging (see paragraph 4.12 above) and the comments made during the 2006 consultation on the application fees proposed in the draft Regulations and the need for adequate resources to deliver service improvements, a further supplementary written consultation was undertaken with dredging operators and their trade associations and CE between 7 and 28 February 2007. A meeting was also held with BMAPA to discuss the revised fees proposals.

7.12 The supplementary consultation paper proposed that application fees be determined administratively, with the consent of the Treasury and following consultation with the industry, and not be specified in the Regulations. It also proposed increased fees to recover the administrative and scientific costs of DEFRA/Marine and Fisheries Agency as regulator of marine minerals dredging in English waters and some outer marine areas around Northern Ireland, Scotland and Wales. The supplementary consultation further proposed that a fairer and more transparent way of recovering these costs would be to charge separate fees in relation to full applications for dredging permission, for the three main stages of work, which are: providing pre-application advice in relation to dredging proposals, processing applications for dredging permission and monitoring dredging permissions. Finally, it described the service improvements expected to be delivered once the regulator's full costs were recovered through the proposed increased fees. DOE in Northern Ireland has considered the structure and level of fees proposed to apply to dredging proposals and permissions within Northern Ireland territorial waters and will shortly be carrying out a separate supplementary consultation on their proposals.

7.13 There were 5 responses to the supplementary consultation in respect of proposed fees in English waters and the outer marine areas around Northern Ireland, Scotland and Wales. One of the respondents submitted a nil response. Only BMAPA and CE responded to the proposal to determine fees administratively and both were content. Regulation 25 provides the powers to do this. Both BMAPA and CE were content with the proposed revised structure and level of fees for major and minor variations, pre application advice and processing of applications for dredging permission. BMAPA had some comments on the proposed annual monitoring fee of £18,000 and as a result of these comments two different annual monitoring fees have been approved (see paragraph 7.14 below) to apply, respectively, to the pre and post dredge monitoring stages, and monitoring during dredging. One of BMAPA's member companies responded separately to the supplementary consultation and expressed concern that the revised fee levels were too high and

may stifle competition by acting as a potential barrier to companies wishing to enter the marine minerals dredging sector but dredging only relatively small amounts of aggregate. Concern about the level of fees was shared by the one company proposing to dredge for aggregate in Northern Ireland.

7.14 Ministers have carefully considered the responses and, while fully acknowledging the scale of the fees, have concluded they are justified in order to recover the regulator's costs. By themselves, the fees should not have a significant impact on dredging operators or on competition in an industry where capital costs on entry to the sector are very high and the costs of preparing dredging proposals and monitoring consents are also substantial. Ministers in Communities and Local Government and DEFRA have approved the following fees:

- For full applications for dredging permission:
£47,000 for pre-application advice, and
£29,500 for the processing of a dredging application.
- For monitoring dredging permissions:
£6,500 per annum for monitoring during the pre and post dredging stages of a dredging permission, and
£18,000 per annum for monitoring during dredging.
- For variations to dredging permissions:
£21,500 for a major variation to a dredging permission (involving an environmental impact assessment or appropriate assessment), and
£6,000 for a minor variation to a dredging permission (not involving an environmental impact assessment or appropriate assessment).

These fees will apply to dredging proposals and permissions in English waters and the outer marine areas around Northern Ireland, Scotland and Wales from the commencement of the Regulations. Communities and Local Government will formally notify these fees to CE, operators liable or potentially liable to pay them and their trade associations and a formal fee determination will be made. The fees will be published on the Marine and Fisheries Agency website. DOE in Northern Ireland will shortly be carrying out a separate supplementary consultation on its fee proposals (see paragraph 7.12 above).

7.15 Draft guidance, to accompany the Regulations and help their implementation in English waters and the outer marine areas around Northern Ireland, Scotland and Wales, was issued as part of the 2006 consultation and has been revised to reflect those consultation comments, the responses to the supplementary consultation on fees and the final fee levels, and the final Regulations. The guidance provides a detailed step by step description of the procedures for advising on and processing dredging applications and monitoring dredging permissions. It contains a number of target timescales for the different stages in the regulatory process, advises extensively on the process for putting disputed applications to a Planning Inspector and provides model conditions to be applied flexibly to dredging permissions. Copies of the final guidance will be sent to CE and each of the operators currently dredging in English waters and their trade associations. A copy will be published on the Marine and Fisheries Agency website

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum. The Assessment includes consideration of the impact of the Regulations on the public sector.

9. Contact

Mary Dyer at the Department for Communities and Local Government Tel: 0207 944 3878 or e-mail: mary.dyer@communities.gsi.gov.uk can answer any queries regarding the instrument.

FINAL REGULATORY IMPACT ASSESSMENT (RIA)

The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007

Purpose and Intended Effect of Measure

Objectives

1. The objectives of the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007 (the proposed Regulations) are, with the minimum burden on business, to: -

- a) transpose and implement EC Directive 85/337/EC, as amended by Directives 97/11/EC and 2003/35/EC (the “Environmental Impact Assessment” (EIA) Directive), and EC Directive 92/43/EEC, as amended by the Act of Accession to the European Union of Austria, Finland and Sweden, by Council Directive 97/62/EC and by the Act of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (the “Habitats Directive”) insofar as they relate to marine minerals dredging in the waters of England and Northern Ireland and some outer marine areas around Northern Ireland, Scotland and Wales (see paragraph 13 below). The scope of the Regulations is by common agreement with the administration in Northern Ireland. Separate regulations are in preparation by the Scottish Executive and the National Assembly for Wales for, respectively, waters in the Scottish zone and Welsh territorial waters;
- b) define the Secretary of State for England (in practice, the Secretary of State for Environment, Food and Rural Affairs) and the Department of the Environment in Northern Ireland (DOE) as regulators with responsibility for the statutory control of marine minerals dredging within, respectively, English waters and some outer marine areas around Northern Ireland, Scotland and Wales (see paragraph 13 below) and Northern Ireland territorial waters; and
- c) specify the scheme of regulation for marine minerals dredging in such waters.

2. This RIA considers the implications of the proposed Regulations as they will apply to English and Northern Ireland waters and some outer marine areas around Northern Ireland, Scotland and Wales, and the accompanying non-statutory guidance as it applies to English waters and the outer marine areas around Northern Ireland, Scotland and Wales (referred to below as the outer marine areas). No marine dredging licences have to date been issued in Northern Ireland, therefore a separate RIA has not been prepared. It is considered that the information contained in this RIA would be illustrative of the broad balance of potential costs and benefits that would be applicable in Northern Ireland. However, paragraph 45 below acknowledges the views of the one company, whose first application for consent to dredging is currently being considered by DOE, on the fees proposed to be charged in relation to English waters and the outer marine areas. The Northern Ireland administration is currently considering its own costs of advising on dredging

proposals, processing dredging applications and monitoring dredging permissions. These costs may be different to those described in paragraph 47 below. The fees proposed in Northern Ireland to recover these costs will be subject to consultation in the near future.

Background

3. Marine minerals dredging is a significant source of construction aggregates, especially in London and the South East and East of England, and of materials for beach replenishment. However the extraction of these materials has the potential to cause adverse impacts on the marine environment and in particular, habitats, species, fisheries and marine archaeological sites if it were to be undertaken without due precautions.

4. The EIA and Habitats Directives require Member States to legislate to make environmental impact assessment and the assessment of the effects on specified habitats and species a statutory requirement in considering the environmental acceptability of certain development proposals which include marine minerals dredging.

5. The Crown Estate (CE) owns most of the seabed out to the 12 mile territorial limit and has rights to all the non-energy minerals within the rest of the UK share of the European Continental Shelf. It licences marine minerals dredging on a commercial basis to minerals dredging companies but only if a favourable Government View (GV) is issued on the environmental acceptability of each proposal. Under the GV procedures, applicants produce an Environmental Statement (ES), undertake extensive publicity and consultation and produce a Report on Consultation for each new application for a GV. The Department for Communities and Local Government (Communities and Local Government) in England and DOE in Northern Ireland (which is now dealing with its first application) consider the application along with the ES and Report on Consultation and, if necessary, convene either a hearing or inquiry into contentious cases that informs the decision on the GV (although there have been no cases dealt with in this way to date). Communities and Local Government and, potentially, DOE notify the CE, the applicant and other interested parties of the decision that is made.

6. When the GV is favourable, it is issued subject to conditions which are intended to overcome any potential adverse environmental effects of the proposed dredging and, otherwise, to protect the marine environment. CE then issues a dredging licence that includes the GV conditions. CE also benefits commercially from royalties under the same licence. When the GV is unfavourable, CE will not issue a licence to dredge.

7. The GV procedure is a voluntary, informal process. Although it incorporates the various requirements of the EIA and Habitats Directives, the Directives have not been formally transposed in respect of marine minerals dredging.

8. In addition, it is generally acknowledged that the existing GV procedure is cumbersome, slow and could be more open and accessible to parties not directly engaged in the process.

9. The proposed Regulations have been prepared to transpose the EIA and Habitats Directives and introduce a more efficient, effective and open regulatory process. Under the proposed Regulations, the Marine Fisheries Agency (to be re-named from 1 April 2007 the Marine and Fisheries Agency- M&FA), an executive agency of the Department for Environment, Food and Rural Affairs (Defra), in England and DOE in Northern Ireland, pending any structural reform emerging from the Marine Bill proposals outlined further below, will undertake all required public consultation and manage the decision-making process to timescales stated in the

Regulations and guidance. There will be formal provision for disputed cases to be considered by a person appointed by the regulator, usually a Planning Inspector in England and the outer marine areas, and a Committee in Northern Ireland, and for the decisions on those cases to take account of the Inspector's or the Committee's recommendations.

Rationale for government intervention

10. Failure to statutorily transpose EC Directives is likely to lead to proceedings in the European Court of Justice and an increased risk of challenges within the UK courts. The UK Government received an Article 226 letter from the European Commission in October 2003 as the first step in infraction proceedings in respect of inadequate transposition of the EIA Directive insofar as it relates to marine minerals dredging. This was followed by a Reasoned Opinion from the European Commission in December 2005 expressing concern about the continuing failure to transpose the EIA Directive in relation to marine minerals dredging.

11. Separately, Article 228 proceedings are likely to impose fines unless the UK inter alia transposes the Habitats Directive to UK waters beyond the 12 mile territorial limit. This objective will be achieved through the following routes:

- a) Proposed development will be controlled by the proposed Offshore Marine Conservation (Natural Habitats &c) Regulations 2007, to be made by Defra, which are expected to be implemented in April 2007;*
- b) Oil and gas is subject to separate regulations (the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001); and*
- c) Marine minerals dredging will be controlled by the Regulations now proposed to be implemented in respect of English and Northern Ireland waters and some outer marine areas around Northern Ireland, Scotland and Wales and the separate regulations proposed for waters around Scotland and Wales (see paragraph 13 below).*

The UK Government has told the European Commission that it anticipates that the Regulations in respect of English and Northern Ireland waters will be in place in the Spring of 2007.

Consultation

Within Government

12. Approval to consult the public in 2006 on drafts of the Regulations and accompanying procedural guidance, which were discussed with a wide variety of Government Departments, agencies and Devolved administrations, was given by the Domestic Affairs, Energy and Environment and European Policy Cabinet committees.

Public consultation

13. The former Department of the Environment, Transport and the Regions carried out a full public consultation on an initial draft of the Regulations in September 1998. The draft was subsequently extensively revised to take account of the implications of Human Rights legislation and amendments to the EIA Directive. In addition, the scope of the draft Regulations was altered to reflect the position of the Scottish, Welsh and Northern Ireland administrations. The draft Regulations were revised to apply to English and Northern Ireland waters, with some residual jurisdiction for the Secretary of State in respect of those waters towards the outer limits of the Continental Shelf around Scotland that are beyond the Scottish zone as defined in the Scotland Act 1998. The Secretary of State, as well as being regulator of marine minerals dredging outside the 12 mile territorial limit around Northern Ireland, will also retain residual jurisdiction for any marine minerals dredging between the 12 mile limit and the outer limit of the Continental Shelf around Wales. Separate regulations are being prepared by the Scottish Executive and the Welsh Assembly Government in respect of marine minerals dredging in, respectively, waters in the Scottish zone and Welsh territorial waters.

14. In view of these significant changes and the length of time since the initial consultation, a further consultation on revised draft Regulations and accompanying guidance was carried out between June and the end of August 2006 with the British Marine Aggregate Producers Association (BMAPA, representing 9 of the 10 companies dredging aggregates from English waters), individual dredging companies, coastal local authorities, national and local fishing organisations, environmental and amenity groups, research and scientific institutions and other interested organisations and members of the public. The consultation paper invited comments on all aspects of the proposed Regulations and guidance, including the draft RIA (at Appendix 2 to the paper) but sought specific comments on:

- The scope of the regulations;
- The necessity for pre-application discussions;
- The adequacy of the proposed procedures and the timescales for decision-making;
- Controls on dredging of less than 5000 tonnes;
- The circumstances and procedures for putting marine dredging applications to an Inspector and the award of costs for unreasonable behaviour at public inquiries; and
- The costs of implementing the procedures.

A summary of the 44 responses to the 2006 consultation is on the Communities and Local Government website at: [http://](http://www.communities.gov.uk/pub/826/DraftMarineMineralsDredgingRegulationsandProceduralGuidanceSummaryofResponseston_id1504826.pdf)

www.communities.gov.uk/pub/826/DraftMarineMineralsDredgingRegulationsandProceduralGuidanceSummaryofResponseston_id1504826.pdf

Northern Ireland consulted separately and concurrently with their stakeholders. Three substantive responses were received which reflects the limited activity in this area to date.

15. There were relatively few written comments on the draft RIA. However, adequate resourcing of the new regulatory system was raised as a particular issue. Many respondents were anxious to see quicker decision-making on applications but several, including BMAPA and some of the Government's statutory environmental advisers, felt that this could not be achieved without an increase in resources to the Government's statutory advisors and that, unless these resources could be found, the new Regulations would not avoid the delays in decision-making endemic in the existing informal GV procedures.

16. It was suggested that applicants should pay a dredging application fee that reflected the true cost to Government of advising on and processing their applications and monitoring any permissions (a figure of £100,000 was suggested rather than the £29,000 proposed in the consultation paper for a dredging application). BMAPA said that its members would be prepared to pay an increased dredging application fee provided it led to quicker decision-making.

17. In addition, meetings were held with BMAPA and the main advisory bodies to be consulted on proposals for dredging permission to discuss their comments on the draft Regulations and guidance, including the comments on adequate resourcing of the new regulatory system. The comments made in writing and during these meetings are being taken into account in finalising the Regulations and guidance and have been taken into account in preparing this RIA.

18. Overall, the 2006 consultation exercise revealed a broad welcome for the proposed statutory regime. The majority of respondents to the specific question felt that the proposed procedures were adequate to control marine minerals dredging. However, many respondents expressed detailed comments or criticism of the scope of the proposed regulations or procedures. Many of the detailed comments, criticisms and requests for clarification that were made by Government bodies have now been resolved in meetings with them and others are being addressed in the proposed final Regulations and guidance. On the basis of the written comments and views expressed during the meetings, we have retained the options in the draft RIA and taken account of the various comments and views in the consideration of each of the options in paragraphs 21 to 60 below.

19. In the light of the 2006 consultation comments about the resourcing of the new regulatory system and the decision to transfer responsibility for the regulation of marine minerals dredging in England (see paragraph 20 below), a short supplementary consultation was carried out with Crown Estate, dredging companies operating in UK waters and their trade associations in February 2007 on a different mechanism for determining application fees and a different structure and level of fees. These fees were proposed to apply in English waters and the outer marine areas to recover the costs of the M&FA as the regulator of marine minerals dredging in those areas. The supplementary consultation also described the service improvements which are expected to be delivered by the full recovery of the regulator's costs (see paragraphs 44 to 48 below). A summary of the 5 responses to the supplementary consultation is on the Communities and Local Government website at www.communities.gov.uk Overall, respondents agreed to the administrative determination of fees (not specifying them in the regulations) and to a three part fee structure for full applications for dredging permission. There were comments about the supporting assumptions for the proposed fees and their level. Further detail of the comments is in paragraphs 44, 45 and 66 below.

Decision to transfer within Government responsibility for marine minerals dredging

20. After the close of the 2006 consultation period, Ministers in England considered and agreed the transfer of responsibility for marine minerals dredging policy and casework from Communities and Local Government to Defra (specifically, the M&FA). The decision to transfer this work reflects the changes in responsibilities of the two Departments in recent years and the nature of the Government's role in regulating this activity to reduce its environmental impact. The transfer will take place formally from 1 April 2007. Communities and Local Government are responsible for finalising the proposed Regulations and guidance and have prepared this RIA, but, as described in paragraph 1(b) above, the Secretary of State for Environment, Food and Rural Affairs will be responsible for the statutory regulation of marine minerals dredging in English waters (and some outer marine areas around Northern Ireland, Scotland and Wales-see paragraph 13 above) and the proposed Regulations will be implemented by the M&FA.

Options

Option 1 – 'Do nothing'

21. Continued non-transposition of the EIA and Habitats Directives is likely to result in the European Court imposing substantial daily fines on the UK Government until the Directives are fully transposed by statutory means. These fines would be likely to run into several million pounds. Additionally, continued non-transposition may provoke challenges in the UK courts to decisions taken under the GV procedure. If any such challenges were successful, they may interrupt the supply of marine minerals and create uncertainty within both the marine minerals dredging and the construction industries particularly within London and the South East.

Option 2 – Transpose by primary legislation

22. It had initially been the intention in 1997 to transpose the Directives by primary legislation but no Parliamentary time could be allocated to this for several years. The Government is committed to bringing forward proposals for a Marine Bill and in March 2007 Defra issued a White Paper seeking comments on detailed proposals for the content of that Bill, which include proposals for a system of marine planning, a proposed streamlined system for licensing marine developments and greater protection of marine natural resources. Even if the Marine Bill or some other suitable proposed legislative vehicle was ready to be presented to Parliament, primary legislation introduced now will not enable the Directives to be transposed before substantial fines are likely to be imposed on the UK Government because of their non-transposition.

Option 3 – Transpose by Regulations

23. The implementation of legislation in the proposed Regulations will fully transpose the EC Directives, provide for a more efficient, effective and straightforward control system and is intended to be Human Rights Act-compliant. The proposed Regulations will formalise the essential procedures of the existing informal GV system that has functioned since 1968 and that has included voluntary EIA since 1989. The proposed Regulations will in fact lessen the administrative burden on dredging operators in that they will no longer have to publicise applications and comments on them. With the minimum burden necessary on the marine minerals dredging industry, the proposed Regulations should make for speedier decision-making. The industry has been fully consulted on both drafts of the Regulations and has urged that the Regulations should be put in place speedily.

Preferred option

24. The European Court proceedings requiring the transposition of the Habitats Directive and those which could follow in relation to the EIA Directive if the Directive is not promptly transposed in relation to marine minerals dredging mean that the only practical option is to implement the new Regulations as soon as possible by option 3. Pursuing option 1, 'do nothing', or option 2, transposition by primary legislation, will result in, respectively, the non-transposition of EC Directives or a further long delay before the Directives are transposed. Either of these options will result in the continued use of the existing voluntary GV procedures for controlling marine minerals dredging which will undoubtedly result in further action by the EC, the potential imposition of substantial daily fines and the possibility of legal challenges.

25. Options 1 and 2 cannot, therefore, be contemplated.

Costs and Benefits

Sectors and groups affected

26. The following organisations and individuals will be affected:

- The marine minerals dredging industry
- The fishing industry
- The shipping industry
- Environmental and amenity organisations
- Government Departments
- Government Agencies and Non Departmental Public Bodies
- Local Authorities
- Local interest groups and the general public

Race equality assessment-England

27. The proposed Regulations have no race equality impacts.

Equality Impact Assessment – Northern Ireland

28. Under section 75 of the Northern Ireland Act 1998, DOE is required to have due regard to the need to promote equality of opportunity:

- between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- between men and women generally;
- between persons with a disability and persons without; and
- between persons with dependants and persons without.

A preliminary screening exercise of the proposed Regulations and guidance was undertaken and there was no evidence that the proposed measures will have any impact on equality issues. Therefore, DOE does not consider a full Equality Impact Assessment to be necessary.

Health impact assessment

29. The proposed Regulations have no health impacts.

Rural considerations

30. The proposed Regulations have no specific consequences for rural areas. Some local environmental groups, however, claim that marine minerals dredging causes and increases coastal erosion but there is at present no scientific evidence to justify such claims. Nevertheless, the new Regulations will provide a more effective and efficient decision-making process within which such issues can continue to be fully addressed.

Assessment of costs and benefits of Options 1 and 2

Economic benefits

31. The only benefit would be for the dredging industry which would not have to pay dredging application fees if Option 1 were implemented.

Economic costs

32. The European Court is likely to impose substantial fines on the UK Government for continued non-transposition of EC Directives and it is possible that there may be legal challenges to GV decisions because of non-transposition. Any challenges which were successful may cause disruption to supplies of marine aggregates, particularly to the South East, and create uncertainty within both the marine minerals dredging and construction industries that may adversely affect the whole UK economy. The current costs to operators of the delays inherent in the GV procedure would remain.

Environmental benefits

33. None have been identified.

Environmental costs

34. Marine minerals dredging can potentially have adverse impacts on the marine environment. Despite the good will and responsible attitude of the minerals dredging industry, there remains the possibility that the slow and cumbersome voluntary GV procedures with few penalties may not deal as comprehensively or as expeditiously as the proposed Regulations with any marine minerals dredging matters that could harm the environment.

Social benefits

35. None have been identified.

Social costs

36. The existing GV procedures lack transparency and the public may as a result feel excluded from having any real say in decision-making. This makes for public disquiet and disillusionment with government.

Assessment of costs and benefits of Options 3

Economic benefits

37. The main benefits will be to the marine minerals dredging industry because the proposed Regulations will provide a clearer, more efficient and effective decision-making process that will replace the cumbersome and lengthy GV procedures. The Regulations will enable statutory decisions on dredging proposals based on procedures which formally transpose the Directives and will be Human Rights Act compliant.

38. The industry will be relieved of the cost of advertising its dredging proposals and carrying out public consultation on them as these activities will, under the Regulations, become the responsibility of the regulator. Through the proposed Regulations, accompanying guidance and a service level agreement between M&FA and its scientific adviser, the Centre for Environment, Fisheries and Aquaculture Science (Cefas), statutory and administrative target timescales will be established for all stages in the handling of dredging proposals and the monitoring of dredging permissions in order to ensure quicker handling and decision-making. For example, there is a target of 17 weeks from receipt of a full and complete application for dredging permission to the issue of a decision if the application does not need to be referred to an Inspector or be the subject of consultation with another EEA state.

39. Currently the consideration and processing of GV applications can take several years because of the need to resolve issues raised by consultation bodies and there can be delays in the consideration of monitoring reports following the granting of a positive GV. These delays are a real and continuing concern to the industry, as indicated in the consultation comments on the draft Regulations and guidance (see paragraphs 15-17 above). The delays have a significant cost to industry in that they have contributed to a significant reduction in its reserve base. The delays associated with gaining replacement reserves and the associated lack of confidence in the long-term future of the business have meant that the industry has held back making significant investment decisions in new vessels. The current dredging fleet of 25 vessels represents investment of over £500 million at modern prices. Each vessel has a working life of approximately 25 years and to maintain the industry's capacity to supply, over half of the current fleet will need to be replaced within the next 10 years at a likely cost of over £300 million. This is a significant investment which requires confidence and certainty in the future of the business – something that is not possible under the informal GV system

40. Overall, the marine minerals dredging industry, the construction industry and the economy as a whole will benefit from more efficient, effective and speedier decision-making on marine minerals dredging proposals.

Economic costs

Costs to the marine minerals dredging industry

41. The main costs associated with the proposed Regulations will fall upon the marine minerals dredging operators. However, only the fees to be charged for handling dredging proposals and monitoring and varying dredging permissions (see paragraph 47 below) will represent an *additional* burden to the costs to the operators of the current informal GV procedures. The fees need to be viewed alongside the economic benefit of the reduction in current delays in processing dredging applications outlined in paragraph 39 above. The proposed Regulations will, in essence, replicate and formalise the existing informal GV procedures that were introduced in 1968 - albeit with legislative and administrative timescales to speed up the determination process and formal provision for independent consideration in disputed cases. The GV procedures have

included voluntary EIA since 1989 and the industry has willingly complied with this. Therefore, there will be no additional cost to business arising from the preparation of Environmental Statements or the consideration that needs to be given, through appropriate assessment, to the protection of European sites. Although GV applications have not so far been referred to an Inspector for consideration through either an exchange of written statements, hearings or local inquiries, the formal provision in the proposed Regulations of procedures for independent consideration of unfavourable representations about applications for dredging permission by an Inspector or, in Northern Ireland, a Committee will not, of itself, be an additional cost to business.

42. The draft Regulations which were the subject of consultation in 2006 included the payment to Communities and Local Government or DOE, as proposed regulators of marine minerals dredging, of a £29,000 dredging application fee for every full dredging application submitted, £15,000 for every major variation application ie an application to vary an existing dredging permission which requires EIA under the EIA Directive or appropriate assessment under the Habitats Directive and £4,000 for all other applications to vary existing dredging permissions (minor variations).

43. The purpose of these fees was to defray the administrative costs to Communities and Local Government and, potentially, DOE in maintaining statutory control over marine minerals dredging operations. It was anticipated that these fees would result, taking one year with another, in total cost recovery for Communities and Local Government and DOE in processing and determining dredging applications.

44. The decision to transfer marine minerals dredging work from Communities and Local Government to Defra/M&FA (see paragraph 20 above) and the comments made in the 2006 consultation about the importance of adequately resourcing the new regulatory system, have resulted in three major changes to the application fees proposed in the 2006 consultation exercise to apply to dredging proposals regulated by the Secretary of State. The changes have been approved by Treasury and agreed by CE and BMAPA, although one of the Association's member companies responded separately to the supplementary consultation on revised application fees (see paragraph 19 above) and expressed concern that the revised fee levels were too high and may stifle competition by acting as a potential barrier to companies wishing to enter the marine minerals dredging sector but dredging only relatively small amounts of aggregate.

45. The competition aspects of the revised fees are considered in paragraph 66 below. We have carefully considered the response of this company and fully acknowledge the scale of the fees now to be charged. However, the same work is required to consider and process applications for, and then monitor, dredging permissions for the extraction of a few hundred tonnes of aggregate as for several million tonnes. In addition, a similar high level of capital investment and costs to prepare dredging proposals is needed whatever the scale of the dredging (see paragraph 39 above and paragraph 52 below). Concern about the level of fees was shared by the one company proposing to dredge for aggregate in Northern Ireland, although the revised fees will only apply in Northern Ireland waters beyond the 12 mile limit. There will be a separate consultation in the near future on fees to apply in Northern Ireland territorial waters.

46. The first of the three major changes to the fees to apply to dredging proposals in English waters and the outer marine areas results from the decision to transfer marine minerals work to Defra/M&FA. The proposed fees have been increased to recover the administrative and scientific costs of Defra/M&FA, as regulator of marine minerals dredging in English waters and the outer marine areas, of all stages in the handling of dredging proposals and permissions. The fees will

cover the administrative and scientific costs of pre-application advice, the processing of dredging applications and the monitoring and variation of dredging permissions.

47. Secondly, as a fairer and more transparent means of recovering costs, there will be separate fees to recover, at the time the services are provided, the costs of the three main stages of work in considering dredging proposals, processing applications and monitoring dredging permissions. The fees for pre-application advice and processing of applications will be £47,000 and £29,500 respectively. Estimated monitoring costs will be recovered through an annual fee, to be set at two different levels. The first level will be £6,500, which will be charged annually for monitoring in the pre and post dredging phases. Conditions attached to dredging permissions will usually require surveys of various aspects of the environment of the dredging site and the production of reports, in order to define the baseline position before dredging commences. Similarly, surveys and reports are required following the completion of dredging to assess the impact of the dredging and compare that to the predictions made in the environmental statement submitted with the dredging application. The second level of fees will be £18,000 pa which will be charged annually during the period of operational dredging. These annual fees will be charged from the time of submission of the first monitoring report following the grant of dredging permission to the completion of the post dredging monitoring phase. Spreading costs in this way will reduce the burden on industry over time. Fees for major and minor variations to dredging permissions remain as single charges and, to recover the estimated Defra/M&FA costs, are now £21,500 and £6,000, respectively.

48. Thirdly, the fees will be set administratively and not be specified in the proposed Regulations. The fees will therefore be easier to amend. This is particularly useful bearing in mind that this will be a new charging regime and it will be desirable to review the fee levels and the assumptions on which the fees are based in the light of experience. Setting the fee levels administratively enables DOE (Northern Ireland) to consult on and set fees at levels which recover its own costs of advising on dredging proposals, processing applications and monitoring permissions. DOE is currently estimating the appropriate level of application fees for Northern Ireland for which Department of Finance and Personnel approval will be sought prior to consultation. Fee provisions for Wales and Scotland will be a matter for the respective regulators.

49. At present, the submission of a GV application is free but applicants are required to carry out their own public consultation and to pay for advertisements which can cost between £5,000 and £10,000 per application. All consultation and publicity on dredging applications and major variations to dredging permissions and decisions on them will, under the proposed Regulations, become the responsibility of the regulator and the estimated cost of doing this is proposed to be recovered from the fees for processing a full application and for a major variation to a dredging permission described in paragraph 47 above.

50. The range of non-recurring costs for individual operators seeking permission to carry out a marine dredging proposal will, therefore, average between £66,500 and £71,500 per application (£76,500 less savings of £5,000 to £10,000 per application in advertising and publicity costs and presuming pre-application advice is required). The annual monitoring fees of £6,500 and £18,000 will be additional recurring costs over the lifetime of the dredging permission.

51. In recent years, on average, some 5 applications for a GV have been submitted per year in England. It is expected that a similar average number of marine dredging applications will be submitted in the immediate future, although we are aware of a likely increase in applications in the medium term as a number of existing consents come up for renewal. In addition, it is

anticipated that up to 10 applications may be submitted each year to vary the terms of an existing dredging permission. Therefore, if each applicant seeks pre-application advice, the total 'one off' fees for each full application will be £76,500 and if the majority of variations do not involve EIA or appropriate assessment, the gross annual non-recurring cost to the marine minerals dredging industry of complying with the Regulations will be no more than £485,000, but between £398,000 and £428,000 per annum net because it will no longer have to advertise and publicise applications. Again, the overall burden would be increased by the additional recurring cost of the monitoring fee.

52. The burden of the fees will also be offset by the expected significant benefit to the industry of the reduction in the current lengthy delays in handling dredging proposals (see paragraph 39 above). The proposed fees may be compared to other costs already incurred by marine mineral dredging companies. These include the average cost to applicants of surveying, researching and preparing each marine minerals dredging application which is understood to be in the region of £200,000, including £50,000 for the cost of preparing an Environmental Statement, and the cost to operators of preparing monitoring reports to comply with conditions attached to existing GV consents. The typical costs to operators of preparing monitoring reports to comply with the conditions attached to existing GV consents have been estimated to average approximately £50,000 per dredging area pa. though this can increase to >£250,000 pa for particularly sensitive sites.

53. Full recovery of the regulator's estimated costs, coupled with service improvements in accordance with statutory and administrative timescales for all stages in the handling of dredging proposals, the processing of applications and the monitoring of dredging permissions are intended to secure long awaited improvements in the handling of all aspects of marine minerals dredging cases. In particular, service improvements will reduce the current lengthy delays which impose a significant cost to industry (see paragraph 39 above).

Costs to others

54. There will be a relatively small additional administrative cost to the M&FA in charging separate fees at each stage of the process of handling dredging proposals and, subsequently, in charging an annual monitoring fee, rather than the single fees for each application for permission or variation of permission as proposed in the 2006 consultation. There may also be some additional costs to other Government Departments, agencies, local authorities and other organisations either involved with, or consulted on, marine minerals dredging matters if they provide evidence to an Inspector or a Committee through either the exchange of written statements or attendance at either a hearing or local inquiry. Any additional costs are, however, likely to be offset by the resultant speedier resolution of any disputes between parties about a marine minerals dredging matter.

55. Because no disputed GV applications have needed to be considered by an Inspector, the cost to the Planning Inspectorate (PINS) of considering any disputed applications for dredging permission will, in effect, be new costs. The costs to PINS/Defra/M&FA in England of putting cases to an Inspector and of arranging hearings and local inquiries into marine minerals dredging matters will be met by central Government. The precedent for this is that, under the land based planning system, there are no fees for planning appeals and the costs of hearings and inquiries into called-in planning applications are met centrally because there is a strong 'public good' argument that an applicant, once having paid a fee with the planning application, should be able to expect a fair decision, even if that means taking it to appeal or having it considered by the Secretary of State for Communities and Local Government. The number of marine minerals cases needing to be put before an Inspector is expected to be less than 5 a year which is very small in relation to PINS' overall workload.

56. In Northern Ireland the costs of putting cases to a Committee and of arranging hearings and local inquiries into marine minerals dredging matters will also be met by central Government.

Environmental benefits

57. The proposed Regulations will transpose EC Directives by legislative means as required by the EC but, in practice, each marine minerals dredging proposal will continue to be subject to the same rigorous environmental scrutiny through the EIA process as happens under the existing GV procedures. However, by making the decision-making process more open, transparent and speedier, the environment should benefit because matters of potential harm to the environment will be dealt with more expeditiously.

Environmental costs

58. Marine minerals dredging can potentially have adverse impacts on the marine environment but any such impacts will be mitigated as far as possible under the proposed Regulations, as they are under the existing GV procedures. The proposed Regulations establish a set of comprehensive binding procedures which will make control and enforcement easier.

Social benefits

59. The Regulations will be much more open and transparent than the existing GV procedures and there will be formal provision for disputed cases to be put to an Inspector or a Committee and possibly considered at a local inquiry. Any party wishing to express any adverse view about a marine minerals dredging proposal will, therefore, have their concerns addressed and may have them considered by an Inspector or a Committee and be satisfied that their views have been fully addressed in the decision-making process.

Social costs

60. None have been identified.

Small Firms' Impact Test (SFIT)

61. The marine minerals dredging industry comprises a very small number of dredging operators. There are 10 companies which operate in English waters (9 are members of BMAPA). Additionally, one further company has recently submitted an application for a GV in Northern Ireland waters. Two of the companies operating in English waters have interests in the two

existing GV consents in the Scottish zone and there are other companies operating exclusively in Welsh waters.

62. Of the 10 companies operating in English waters, 3 may be categorised as medium sized business in terms of numbers of employees (having between 80 and 180 staff each). The remaining companies are small businesses in terms of numbers of employees (having less than 50 staff each). However, businesses may also be classified by size of turnover. The marine minerals dredging industry turnover may be substantial compared to the numbers of staff employed.

63. Two of the medium sized businesses are marine subsidiaries of very large multi national companies. Of the remaining 8 companies operating in English waters, 2 represent small business subsidiaries of multi-national companies, 5 are joint venture organisations set up by major companies and one company operates independently. The turnover of 9 of the 10 companies dredging in English waters is included within the turnover of their respective parent organisations and cannot be separately disaggregated. However, BMAPA has estimated that turnover of the industry as a whole is in excess of £200 million pa. This gives a value of marine aggregate at the point of landing (i.e. excluding any value subsequently added by processing the product) of £10 per tonne.

64. Paragraph 47 above explains that the proposed phasing of the total fees into three constituent elements spreads the fee burden for the dredging operators over time. In addition, paragraph 49 above gives comparable figures of other costs incurred by the dredging operators in preparing dredging applications and then monitoring GV consents. The service improvements which will result from recovery of the regulator's estimated costs from the fees to be charged, will reduce the burden on industry of the current delays in handling dredging proposals. In considering the response of the one company dredging in English waters which objects to the fee levels to be charged (see paragraph 45 above) we considered whether it was reasonable to refine the fee levels according to the amount of aggregate to be dredged. However, that would not recover the regulator's costs which are the same irrespective of the amounts to be dredged.

65. In conclusion, the fees at the levels proposed are acceptable to all but one of the companies dredging in English waters. High levels of expenditure and investment, especially in vessels, are required to participate in marine minerals dredging irrespective of the amount of aggregate for which dredging permission may be sought. While we acknowledge that the fees to be charged are substantial, we believe that the service improvements to be delivered as a result will be a significant benefit to all the companies and that overall we believe that the proposed Regulations and fees are justified and by themselves should have no significant impact on firms in this sector.

Competition Assessment

66. A competition filter test has been carried out which indicated that the proposal was likely to have little or no effect on competition. None of the options assessed affects, differently, firms in the sector concerned. While one company dredging in English waters has expressed concern that the level of fees now proposed will impact disproportionately on small companies dredging relatively small amounts of aggregate, the same costs of entry to the sector and preparing dredging proposals will apply to all companies, British and foreign, undertaking marine minerals dredging operations in English and Northern Ireland waters and, potentially, in the outer marine areas around Northern Ireland, Scotland and Wales. Separate similar regulations are intended to be applied to marine minerals dredging in waters in the Scottish zone and in Welsh territorial waters. The fees to be charged are an additional cost for companies wishing to enter the marine

minerals dredging market. However, these will be small in comparison with the very significant capital and scientific investment already needed to enter the market. Existing costs include the investment in dredging vessels (up to £25 million), and the funding of consultancy costs, as described in paragraph 52 for survey work both to support the application and, once the permission is granted, for the purposes of monitoring the impact of the dredging. Over the life of the dredging permission, these costs will amount to several million pounds.

Enforcement, Monitoring and Sanctions

Enforcement

67. Every dredging vessel will be required by the conditions of the dredging permission to operate an Electronic Monitoring System (EMS) that records the location of the dredger and indicates when it is dredging. Operators will be required to supply EMS data to Defra's executive agency, the Centre for Environment, Fisheries and Aquaculture Science/DOE at specified periods so that any unauthorised dredging can be quickly identified and appropriate action (formal or informal) taken by M&FA on behalf of the Secretary of State in respect of those waters which fall within his responsibility and DOE in respect of Northern Ireland territorial waters. In addition, M&FA/DOE and their advisors will scrutinise all required monitoring reports in order to enforce conditions attached to dredging permissions.

Implementation and Delivery Plan

68. Communities and Local Government are finalising the proposed Regulations with the aim of laying them before Parliament at the beginning of April 2007 and bringing them into effect by the end of April 2007. Once the Regulations take effect, M&FA will implement them in England on behalf of the Secretary of State for Environment, Food and Rural Affairs. They will be implemented in Northern Ireland by DOE.

Monitoring and Post Implementation Review

69. Once in place, the effectiveness and efficiency of the Regulations will be monitored by the M&FA through regular discussions, with BMAPA and other dredging companies, consultation bodies and other Government Departments. The fees are based on estimated costs and assumptions which will be reviewed in the light of experience of the new regulatory regime. The M&FA will carry out an early review of the principles on which the fees are determined, their structure and level. Any revised fees would be subject to the consent of Treasury and full consultation with the marine minerals dredging industry. The Regulations will be subject to review in 2-3 years to ensure that they continue to meet the objectives for which they were devised and in the context of proposals in the forthcoming Marine Bill for the consolidation and streamlining of marine consenting. DOE will carry out similar actions in respect of the operation of the Regulations in Northern Ireland, where the Department of Finance and Personnel has responsibility for the approval of fees.

Sanctions

70. The proposed Regulations provide for criminal offences, punishable by fines, for dredging without permission, knowingly providing incorrect information and for breach of a condition. A dredging permission would normally include a condition requiring payment of the annual monitoring fees for the period until post dredging monitoring ceases. Continued non payment of the monitoring fees could therefore be prosecuted as a breach of condition. The proposed

Regulations also provide for the revocation, suspension or variation of a dredging permission if there is a need to protect the environment from significant adverse effects caused by the dredging.

Summary and Recommendation

Summary

Option	Total cost per annum Economic, environmental, social	Total benefit per annum Economic, environmental, social
1 - Do nothing	<ul style="list-style-type: none"> - Substantial fines on the UK Government from the EC. Potential disruption of aggregate supplies and uncertainty in industry. Cost to operators and possibly environment because of continuing cumbersome procedure, delays (resulting in a reduction in the industry's reserve base and lack of confidence to make significant investment decisions in new vessels) and lack of transparency in decision-making. Consequent public disquiet about the existing GV procedures. Potential risk to the environment of relying on the voluntary GV regime with few penalties. 	<ul style="list-style-type: none"> - Operators will not have to pay dredging fees.
2 Transpose by primary legislation	<ul style="list-style-type: none"> - Substantial fines on the UK Government from the EC until such time as the Directives can be implemented by primary legislation. Potential disruption of aggregate supplies and uncertainty in industry. Cost to operators and possibly environment because of continuing cumbersome 	<ul style="list-style-type: none"> - Small benefit to operators in terms of delay before applicants have to pay dredging fees

	<p>procedure, delays (resulting in a reduction in the industry's reserve base and lack of confidence to make significant investment decisions in new vessels) and lack of transparency in decision-making. Consequent public disquiet about the existing GV procedures. Potential risk to the environment of relying on the voluntary GV regime with few penalties.</p>	
<p>3 Transpose by Regulations.</p>	<ul style="list-style-type: none"> - Payment of dredging fees by industry. The proposed fees are: for pre-application advice and processing of a full application for dredging permission £47,000 and £29,000, respectively; for the monitoring of permissions in the pre and post dredging phases £6,500 per annum and for the monitoring of permissions in the dredging phase £18,000 per annum; and for major or minor variations to a dredging permission £21,500 and £6,000, respectively. The total overall burden to the marine dredging industry as a whole of complying with the Regulations is expected to be no more than £485,000, but between £398,000 and £428,000, net per annum. This figure will be increased by the additional recurring costs of the monitoring fees. No environmental or social 	<ul style="list-style-type: none"> - More efficient, timely and effective control system will benefit industry (in terms of securing replacement reserves in a timely manner and providing increased confidence to make future investment decisions) and the UK economy. Faster decisions will benefit the environment and more effective public involvement will better inform and justify decisions.

	costs have been identified.	
--	-----------------------------	--

Recommendation

71. For the reason set out in paragraph 24 above, options 1 and 2 have been discounted. The 2006 consultation exercise showed broad support for the proposed new statutory scheme of regulation and the comments on the detail of the draft Regulations and guidance have been addressed, where appropriate, by direct clarification with the relevant consultees or are being taken into account, where appropriate, in finalising the proposed Regulations and guidance. A significant number of those who commented on the draft Regulations and guidance were concerned that there should be adequate resourcing of the decision-making process for marine minerals dredging proposals. The increases in the fees and the statutory and administrative target timescales at each stage of the Government's assessment of proposals, processing of applications and monitoring of dredging permissions in English waters and the outer marine areas will, we believe, address these concerns.

72. The recommendation therefore is to prepare Regulations to commence in April 2007 and to administratively determine application fees (as described in paragraph 48 above) to recover the costs of the regulator in England as described in paragraph 47 above. DOE is currently determining the appropriate level of application fees for Northern Ireland for which Department of Finance and Personnel approval will be sought. The Regulations will be accompanied by procedural guidance. The operation of the new statutory regulatory regime, including the level of fees, will be subject to review in the light of experience.

Declaration and publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed.....Kay Andrews.....

Date.....21st March 2007

Baroness Andrews
Parliamentary Under Secretary of State
Communities and Local Government

Contact points for enquiries and comments:

(1) Until the Regulations come into force

Mary Dyer
 Planning-Resources and Environment Policy
 Communities and Local Government
 Zone 4/C2
 Eland House
 Bressenden Place
 London SW1E 5DU

Tele: 020 7944 3878

E-mail: mary.dyer@communities.gsi.gov.uk

(2) From the commencement of the Regulations

Jonathan Lartice

Marine Environment Division

Department for Environment, Food and Rural Affairs

3-8 Whitehall Place

London SW1A 2HH

Telephone: 020 7270 8626

E-mail: jonathan.lartice@defra.gsi.gov.uk