ENGLISH HERITAGE

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5th September 2013

Dear Mr Stamp,

Consultation on Marine Licensing Application – charges for monitoring and varying licences

Thank you for your letter, received via email of 12th July 2013, inviting us to comment on proposals to extend the Marine Management Organisation's (MMO) ability to recover certain costs in dealing with licensing under Part 4 of the Marine and Coastal Access Act 2009. Please consider this letter as the corporate response of English Heritage and its content is not considered confidential.

English Heritage is an Executive Non-Departmental Public Body sponsored by the Department for Culture, Media and Sport (DCMS) and we report to Parliament through the Secretary of State for DCMS. It is our responsibility to provide advice to the Government on all aspects of the historic environment in England. The National Heritage Act (2002) gave English Heritage responsibility for maritime archaeology in the English area of the UK Territorial Sea, modifying our functions to include securing the preservation of monuments in, on, or under the seabed, and promoting the public's enjoyment of, and advancing their knowledge of such monuments. We therefore act as the primary advisor to the MMO for projects requiring a marine licence, as required by the Marine and Coastal Access Act 2009, which might affect the historic environment. Further information about our role and responsibilities in the marine environment is appended to this letter.

The detail of this consultation response

We understand that the Government wishes to address charging powers under the Marine and Coastal Access Act 2009 which are not as extensive as previously provided under Part 2 of the Food and Environment Protection Act (FEPA) 1985. From the information provided to us in the accompanying consultation Impact Assessment, we are aware that FEPA allowed for the

recovery of the costs of varying licences and of post-licence monitoring. We also noted in the Impact Assessment that particular attention is directed at dredging programmes that are not part of a project within the scope of the EIA Directive and therefore, at present, it is not possible to recover monitoring costs incurred by the MMO and their scientific advisors.

We noted the statement made in the Impact Assessment (IA) under "main affected groups" that "…there would be no change for most applicants, particularly those who apply for licences for small and medium-sized projects. There would be some additional costs for those who needed to vary their licences. There would be higher fees for those projects involving the disposal of [contaminated] sediments reflecting the recovery of monitoring costs." However, it is important that full consideration is given to the full range of activities that are now subject to licence under Part 4 of the Marine and Coastal Access Act 2009 that were not subject previously to FEPA.

The following part of this letter will address the questions detailed in this consultation exercise.

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

a. Monitoring costs? The ability to recover these costs must be made explicit in any Order made under Section 2 of the Public Bodies Act 2011, so that cost should only be recovered from large-size or "complex" dredging projects only. It is therefore essential that Government directs attention to the Marine Licensing (Application Fees) Regulations 2011 to ensure that the MMO, and their scientific advisors, correctly identify those projects from which monitoring costs should be recovered, as necessary to ensure compliance with legal regimes such as the EU Waste Framework Directive.

b. The costs of varying licences? We noted in the IA that clear reference is made in Policy Option 1 (summary analysis and evidence) that the "…main impact of this option is a cost transfer from the MMO to industry." However, we are concerned by the comments made in the IA that small and medium-sized projects might be affected and that they may incur additional costs should they need to vary their licences. We therefore considered it essential that a key criterion in the levelling of charges for varying licences is to differentiate between commercial activities (i.e. "industry") and agreed non commercial projects in recognition of the limited resources available to the latter.

2. Do you have comments on the approach to the fee structure? We consider it essential that while the Policy Objective (as described in IA Evidence Base, paragraph 14) is to enable the MMO to fully recover the costs of licensing and that those "…costs should be no more than necessary for the purposes of environmental protection/requirements", we must receive reassurance that those costs are proportionate. In particular, we ask for revision of Table 1 in Annex A (Fee structure chargeable for Marine License Variations and Transfers under Section 72 of the Marine and Coastal Access Act 2009) so that the descriptions provided in rows (a) and (b) take adequate account of publically support projects e.g. programmes of work delivered through the English Heritage National Heritage Protection Plan or other public funding mechanism. Therefore any marine licence held by a public body or other recognised charitable institution which requires variation of a type that may be described as an "administrative change" or "a routine change" should not subject to cost recovery by the MMO.

3. Are there better alternatives that would achieve the Government's goal of fully recovering the costs of dealing with licence applications? We are not in a position to offer any alternative mechanism, but we must stress that any system proposed to recover costs must be able to identify commercial and industrial projects best placed to absorb costs associated with satisfying monitoring requirements and securing any necessary licence variations. It must not be an unintended consequence of any cost recovery mechanisms to discourage, or in any other way limit or stop, projects that are enabled and delivered through public support.

4. Do you have any other comments? Yes we wish to be kept fully informed and party to any further negotiation regarding costs or cost recovery as might be directed at projects requiring consent under Part 4 of the Marine and Coastal Access Act 2009.

Yours sincerely,

Christopher Pater
Head of Marine Planning

cc. Vince Holyoak (Head of National Rural and Environmental Advice – English Heritage)
Ian Oxley (Historic Environment Intelligence Analyst (Marine) – English Heritage)

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APPENDIX – English Heritage and our work in the marine environment

Our responsibility under the Protection of Wrecks Act 1973 (section 1: Historic Shipwrecks), within the English area of the UK Territorial Sea, is to consider applications and recommendations for designation, re-designation and de-designation of shipwreck sites. On the basis of our advice the Secretary of State (DCMS) is responsible for designating restricted areas around sites which are, or may be, shipwrecks (and associated contents) of historic, archaeological or artistic importance. The Secretary of State is also responsible for the issuing of licences to authorise certain activities in restricted areas that otherwise constitute a criminal offence. As of August 2013 there are 48 sites designated within the English area of the UK Territorial Sea and we direct you attention to our Heritage at Risk programme and in particular to the Protected Wrecks at Risk: Risk Management Handbook (http://www.english-heritage.org.uk/publications/protected-wreck-sites-at-risk-handbook/),

The number of protected historic shipwrecks is very small (ranging from possible prehistoric seafaring craft with associated cargos through to prototype submarines) and they are only one aspect of English Heritage's interests in promoting the understanding, management and public enjoyment of the historic environment. It is therefore important for us to describe the marine historic environment as also comprising submerged and often buried prehistoric landscape areas and elements, together with archaeological sites and remains of coastal activities (e.g. fish traps) dating from all eras of history. However, we consider it essential to ensure the management and use of the full range of the historic environment, is conducted in a manner that best serves the public understanding and enjoyment of the whole, and not just of the designated and protected sites. To support this objective we work in partnership with central government departments, local authorities, voluntary bodies and the private sector within the framework of our *Conservation Principles* (published 2008) which can be summarised as follows:

- the historic environment is a shared resource and activities directed at it should not compromise the ability of future generations to do the same;
- everyone should be able to participate in sustaining the historic environment as it informs and encourages active participation in caring for the historic environment;
- understanding the significance of places is vital and how any significance includes a diverse set of values that people associate with it and which are likely to change over time;
- significant places should be managed to sustain their values through conservation by all concerned in ways that that support understanding of those values now and in the future;
- decisions about change must be reasonable, transparent and consistent with the weight given to heritage values proportionate to the significance of the place and the impact of the proposed change; and
- documenting and learning from decisions is essential which is best demonstrated by keeping accessible records including an account of actions that follow so that a cumulative account of what has happened is maintained.

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The importance of our *Conservation Principles* is how they support an understanding about a particular place through consideration of its distinct identity. The term place, in this regard, should be considered as inclusive of all aspects of a particular site. For example, for a shipwreck the determination of interest is inclusive of the vessel, any cargo or other contents, the manner of its loss and what has subsequently happened to the site. It is of particular relevance to understand what heritage values exist as so few sites as sea have any formal protection.

English Heritage and Marine Licensing

The marine licensing system covers a broad range of activities, inclusive of projects directed at historic or archaeological sites, as described in section 66 of the Marine and Coastal Access Act 2009 (MCAA 2009), inclusive of:

> "To use a vehicle, vessel, aircraft, marine structure or floating container to remove any substance or object from the sea bed within the UK marine licensing area"

Section 69 of MCAA 2009 details how the appropriate licensing authority (the MMO) in determining an application must have regard to "the need to protect the marine environment" which is defined in section 115(2) as inclusive of "any site (including any site comprising, or comprising the remains of, any vessel, aircraft or marine structure) which is of historic or archaeological interest".

We therefore acknowledge that projects (as described in section 66 and not subject to any exemption order) directed at seabed historic or archaeological sites will require a licence from the MMO regardless of any designated status under legislation such as Protection of Wrecks Act 1973, Ancient Monuments and Archaeological Areas Act 1979 or Protection of Military Remains Act 1986. In consideration of this matter, it is relevant that we direct your attention to the UK Marine Policy Statement (section 2.6.6) with regard to the protection that should be afforded to the historic environment that is proportionate to its significance.

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