

**Explanatory Memorandum:
The Environmental Impact Assessment And Natural Habitats (Extraction Of
Minerals By Marine Dredging) (Wales) Regulations 2007**

PART ONE

This Explanatory Memorandum has been prepared by the Environment, Sustainability and Housing (ESH) Department and is laid before the National Assembly of Wales.

(i) Description

The Regulations will provide a statutory basis for the control of the extraction of minerals by marine dredging in Welsh waters, replacing the current informal Government View (GV) procedure¹. They will transpose into UK law in seas adjacent to Wales the requirements of the European Community Directives (as amended) on the assessment of the effects of certain public and private projects on the environment (the Environmental Impact Assessment (EIA) Directive) and the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) with respect to the extraction of minerals by marine dredging.

(ii) Matters of special interest to the Subordinate Legislation Committee

The UK is subject to dual infraction proceedings for failure to transpose the EIA and Habitats Directives in relation to marine minerals dredging.

The Regulations provide for the full recovery of the Welsh Minister's costs. Whilst fully acknowledging the level of the fees, the Minister for ESH has concluded they are justified. 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.

(iii) Legislative Background

The Regulations are to be 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 to be made under the power in section 56 of the Finance Act 1972, with the consent of the Treasury.

¹ The Crown Estate owns most of the seabed around the UK out to the 12-mile territorial limit. It licences marine minerals dredging on a commercial basis but will only issue such licences if the Government first issues a favourable "Government View" (GV) on the environmental acceptability of the proposed dredging operations. The GV procedure, which is non-statutory, was introduced in 1968. Since 1989, all new applications for a GV have been subject to non-statutory Environmental Impact Assessment (EIA) and the provisions of the Habitats Directive have also been taken into account since 1993.

The National Assembly for Wales has been designated under section 2(2) of the European Communities Act 1972 to make regulations for the purpose of implementing Community requirements for the environmental impact assessment of projects likely to have a significant effect on the environment (European Communities (Designation) (No. 3) Order 2000 (SI 2000/2812) and for the conservation of natural habitats and of wild fauna and flora (European Communities (Designation) Order 2002 (SI 2002/248), both as amended by the European Communities (Designation) (Amendment) Order 2006 (SI 2006/3329). Functions conferred on the National Assembly for Wales by these designations are now exercisable by the Welsh Ministers (sections 59(1) and 162 of, and Schedule 11 to, the Government of Wales Act 2006).

The European Communities (Designation) (Amendment) Order 2006 was made on the 14 December and came into force on 11 January 2007. The Order amends certain designation orders so as to clarify that the territorial scope of the designations includes the sea adjacent to Wales, and it puts the power of the Assembly to make the regulations beyond doubt.

The Regulations mirror, in most respects, the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007 (the England and Northern Ireland Regulations) which provides uniformity in transposition of the Directives within the UK and consistency for applicants.

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). In the case of marine dredging such assessment will be done on a case by case basis.

The Habitats Directive provides for the establishment of a list of Special Areas of Conservation and Special Protection Areas within the EU, described as "European sites". Procedures for the designation of European sites in UK territorial waters are contained in the Conservation (Natural Habitats, &c) Regulations 1994, and for the designation of European offshore marine sites and protection of European protected species beyond UK territorial waters in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007. This Directive was to be implemented by 10 June 1994. Its requirements have been incorporated into the GV procedures since that time.

There are pending infraction proceedings in relation to the implementation of both Directives in respect of marine dredging.

These Regulations implement the relevant provisions of the Directives by:

- (a) establishing a regulatory regime for marine dredging activities, which will be operated by Welsh Ministers for waters around Wales 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 an 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 Welsh Ministers making a decision, and the maintenance of a register of dredging applications and permissions and decisions and information related to other regulatory functions.

Other types of marine dredging, for example, for navigation or environmental purposes, are subject to other legislation, or may be in the future. Any dredging above mean low water would usually come under the statutory planning controls of local authorities. In order to avoid duplication with these other types of dredging and controls over them, the Regulations will not apply to the extraction

of minerals described in or authorised to be carried out by other legislation, which may be general or local in application. The Regulations do not cover dredging within the jurisdiction of a harbour authority.

The England and Northern Ireland Regulations apply to marine minerals dredging on the UK share of the Continental Shelf beyond Welsh territorial waters.

This instrument is to be made using the negative resolution procedure.

(iv) Purpose and intended effect of the legislation

The intended effect of the Instrument is the implementation in waters around Wales of:

- Council Directive 85/337/EEC (OJ No. L175, 05.07.85, p.40) on the assessment of the effects of certain public and private projects on the environment (as amended by Directive 97/11/EC, OJ No. L73, 14.03.97, p.5 and by Directive 2003/35/EC, OJ No. L156, 25.06.03, p.17), and
- Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (OJ No. L206, 22.07.92, p.7).

in so far as they relate to the extraction of minerals by marine dredging.

Policy background

Marine aggregates are of particular importance in South Wales, where they provide the majority of fine aggregates for construction purposes, and are even more vital in South East Wales where there is currently no land-based extraction of sand and gravel resources. Interim Marine Aggregates Dredging Policy (IMADP) – South Wales was published by the National Assembly for Wales in November 2004. It sets out the approach to dredging in the Severn Estuary and Bristol Channel, and provides guidance for marine dredging in Welsh waters generally. The policy was identified as interim, pending the introduction of these Regulations.

IMADP plans for dredged aggregate supplies to meet society's needs by making provision to:

- *Identify areas where dredging for marine aggregates is likely to be acceptable;*
- *Protect the marine and coastal environment – landscape, habitats, ecology and heritage;*
- *Control the impacts of marine dredging to acceptable levels;*
- *Encourage efficient and appropriate use of dredged aggregates;*
- *Safeguard resources from sterilisation; and*
- *Protect the interests of other users of the area.*

The Regulations will provide for the formal implementation of bullets 2, 3 and 6.

The policy and guidance in IMADP will be supplemented with Marine Minerals Technical Advice Note 1 (MMTAN1) The Control of Marine Minerals Dredging from the Welsh Seabed. This provides procedural guidance, which supersedes that contained in IMADP, and also contains supplementary policy guidance on marine minerals dredging. Draft guidance, to accompany the Regulations was issued as part of the 2006 consultation and has been revised to reflect those consultation comments. MMTAN1 sets out the principles and the procedures as to:

- whether a marine minerals dredging proposal will require permission;
- whether a dredging proposal is likely to have significant effects on the environment and/or a significant effect on an European site;
- the information to be included within the Environmental Statement that will be required to accompany a dredging application which is likely to have significant effects on the environment;
- preparing and submitting dredging applications;
- the steps the Assembly will take, in processing and deciding applications, including whether to put the matter before an Inspector;
- the procedures for the transfer, variation or revocation of dredging permissions;
- the setting up of a public register, penalties for offences and the holding of local inquiries.

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.

An Annex sets out the fees to be charged.

(v) Implementation

These Regulations were made on 6 September 2007 and are intended to come into force on 28 September 2007.

(vi) Consultation

Approval to consult on the scope of the proposed regulations and the draft guidance, which have been discussed with a wide variety of agencies and administrations, was given by the Minister for the Environment, Planning and Countryside (October 2006). The former Department of the Environment, Transport and the Regions carried out a full public consultation for England and

Wales on an earlier draft of the Regulations in September 1998. Since then, the scope has been extensively revised to take account of the implications of Human Rights legislation and amendments to the EIA Directive. In view of these significant changes and the length of time since the last consultation, a further consultation was necessary.

Public consultation on the scope and main provisions of the proposed Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Wales) Regulations 2007 and accompanying draft guidance took place in Wales between 31 October 2006 and 5 January 2007.

Amongst other things, the consultation in 2006/7 proposed fees for applications for, and variations to, dredging permissions. In accord with the England and Northern Ireland proposals, change was subsequently proposed to the mechanism for determining the application fees to be charged and in the structure and initial level of application fees for dredging proposals in Welsh waters. A supplementary consultation, with the approval of the Minister for Sustainability and Rural Development and the consent of the Treasury, sought comments on these proposed changes. Because of the very specific focus, a three-week, technical consultation with the dredging companies operating in Welsh waters and their trade association, the British Marine Aggregates Producers Association (BMAPA) was held, ending 25 July 2007.

Details of the responses to the consultations are included in the Regulatory Impact Assessment.

Consultation with Subject Committee

These Regulations were notified to the Environment, Planning and Countryside Subject Committee, via the list of forthcoming legislation, as The Environmental Impact Assessment and Habitats (Extraction of Minerals by Marine Dredging) Regulations (Wales) on 4 February 2004.

Consequent changes to the Regulations

A number of changes have been made since the 2006/7 consultation on the scope and main provision of the Regulations. In particular:

- the definition of consultation bodies includes the Countryside Council for Wales and, in specified circumstances, the Secretary of State and Department of Environment in Northern Ireland;
- the definition of dredging excludes dredging in any waters within the jurisdiction of a harbour authority (mirroring the England and Northern Ireland Regulations).

- the national defence project determination is made by the Secretary of State, defence being a reserved matter ;
- Regulation 8 imposes a requirement on Government departments to provide information;
- Regulation 13 provides that the Welsh Ministers may grant permission for the project only after having ascertained that it will not, either alone or in combination with other plans or projects adversely affect the integrity of the European site;
- Regulation 21 (revocation, suspension or variation of permission otherwise than on application) reflects the UK Parliament's Joint Committee on Statutory Instruments' report on the England and Northern Ireland Regulations.
- fees are to be set administratively, subject to the consent of the Treasury following consultation with the industry (as opposed to having fees set out on the face of the Regulations);
- transitional provisions will only apply to pending applications for a GV that would fall within the scope of the Regulations;
- Schedule 3 (Natural Habitats) makes it clear that a review of an existing agreement will take place when a site has been proposed for designation as an European site.

(vii) Regulatory Impact Assessment

A Regulatory Impact Assessment (RIA) would not normally be prepared where the Welsh Ministers have, under article 226 of the Treaty establishing the European Community, been given an opportunity by the European Commission to submit observations as to why it has not implemented or complied with an EC Directive. However, an RIA has been prepared in relation to this instrument and forms Part Two of the EM. A draft Regulatory Appraisal was included in the public consultation and covers the impact of the legislation on business and the public sector.

There are financial implications for the applicants. Administrative costs for the control of marine minerals dredging, currently borne by the Assembly, will be met as a result of implementing these Regulations. This will enable the Assembly to provide service improvements with target timescales assigned for each stage in the processing of applications. The intention is to set these fees administratively, with the costs set out in the guidance.

PART TWO

REGULATORY IMPACT ASSESSMENT (RIA)

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

1. Options for achieving the policy objective as set out in paragraph (iv) of Part 1 of the Explanatory Memorandum

Two options have been identified with respect of the transposition of the Environmental Impact Assessment Directive and the Habitats Directive:

Option 1 – do nothing

The Welsh Assembly Government could continue to consider applications to dredge under the non-statutory Government View (GV) procedures, but would not therefore transpose the Directives and would be open to further infraction proceedings and fines. The potential cost of such fines, which would be on a daily basis and could be made retrospective, is so high that this option is not considered further.

Option 2 – to implement the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Wales) Regulations 2007 from 28 September 2007. The recovery of costs, identified but not specified in the Regulations, is covered below.

2. Sectors and groups affected

The following organisations and individuals will be affected:

The marine minerals dredging industry

The fishing industry

The shipping industry

The construction industry

Environmental and amenity organisations

Government Departments

Government Agencies

Local Authorities

Local interest groups and the general public.

3. Equality and fairness including Race Equality assessment

The Race Relations (Amendment) Act 2000 came into effect in April 2001, amending the Race Relations Act 1976 to impose a general duty and a series of specific duties on specified public bodies in Britain. The general duty requires that, in carrying out its functions, the Welsh Ministers shall have due regard to the need to eliminate unlawful racial discrimination, promote equality of opportunity, and promote good relations between persons of different racial groups. A preliminary screening exercise for the Racial Equality Impact Assessment found these Regulations to be of Low Relevance and a full REIA is not required. The charges are limited to the cost of the service provided and do not discriminate.

4. Health impact assessment

The proposed Regulations have no direct health impacts, but will confer indirect general health benefits by their contribution to the protection of the marine environment.

5. Rural considerations

The proposed Regulations have no specific consequences for rural areas. Some local environmental groups 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 and system of monitoring within which such issues can continue to be fully addressed.

6. Fees identified in the initial consultation

The proposed fees in the draft regulations on which we consulted last autumn were for three main areas. Firstly, the costs for administration by the Welsh Assembly Government were identified as £29,000 for a new dredging permission, £15,000 for a major variation to a dredging permission (involving an environmental impact assessment) and £4,000 for a minor variation to a dredging permission (not involving an environmental impact assessment) and £5,000 per year to evaluate the monitoring. These were calculated to recover the costs of the team in the Welsh Assembly Government responsible for processing the applications for full permission and variations of permissions and also scrutiny of the written monitoring reports required by the conditions of the permissions. It anticipated that these fees would result, taking one year with another, in total

cost recovery in processing and determining dredging applications, other than the costs for hearings and appeals.

A further application fee was proposed for specialist technical and scientific advice from Centre for Environment, Fisheries & Aquaculture Science (Cefas) to be provided through Defra. This was £70,000 for a new dredging permission, £35,000 for a major variation to a dredging permission (which requires EIA under the EIA Directive or appropriate assessment under the Habitats Directive) and £1,500 (later identified as £15,000) for a minor variation. Dredging permissions are implemented progressively as mineral is extracted, and can last for many years. Regular monitoring of such ongoing development to ensure compliance with conditions and thresholds is essential - as on land, where monitoring fees were introduced in 2005. Dredging operators have, in the most part, demonstrated full compliance with the requirements of permissions. Unlike land won minerals, however, dredging can involve a high degree of uncertainty when its potential impacts on the environment are evaluated, and it is critical to maintain a predictive ability where harmful impacts may occur. It can be impossible to recover once change has occurred. Regular monitoring and, if necessary, enforcement of the complex and technical conditions that govern dredging is important to ensure high environmental standards and maintain the credibility of the system. Specialist knowledge and related research are essential, and it is appropriate that the developer should bear the costs of this service.

7. Administrative setting of fees

Following consultation, it is proposed that the fees be set administratively. The proposed mechanism for determining the application fees is prescribed in the Regulations. The Regulations advise that the Welsh Ministers shall determine the fees to be paid by any applicant in respect of the administrative expenses and by the holder of any permission in respect of the expenses of monitoring. Fees shall be determined on principles settled by the Welsh Ministers with the consent of the Treasury. There will be no discretion to determine a fee or fees which recover more than or less than these costs. The determination of fees administratively has a precedent in the determination of fees for the control by Defra's Marine Consents and Environment Branch (MCEB) of substances and articles deposited in the sea, including construction works, under section 8(7) and (9) of the Food and Environment Protection Act 1985. This approach is particularly useful as 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.

The objectives of the application fees proposed in the specific consultation with the dredging industry, ending 25 July 2007, and broken down in this appraisal are:

- In accordance with Treasury guidelines, to set fees which fully recover the cost of the service to be provided;
- To ensure that the application fees are fair, transparent and deliver improvements in the service provided; and
- To keep the fee structure as simple and flexible as possible so that changes can easily be made in the light of experience of this new charging regime.

Instead of a single fee payable at the time an application for full dredging permission is submitted, there will be separate fees to recover, at the time the services are provided, the costs of the 3 main stages of the regulatory process. These stages are: the consideration of dredging proposals prior to their submission as dredging applications, the processing of dredging applications and the monitoring of dredging permissions. Phased payments keep the fee system relatively simple but spread the overall fee burden on dredging operators over time. Separate single fees will be charged for major variations and minor variations to dredging permissions.

A dredging applicant will only pay for pre-application advice if he needs that advice although, once requested, the Cefas costs would be recovered even if the dredging proposal did not subsequently proceed to an application. The dredging operator will only pay for monitoring if a dredging permission is granted. The annual monitoring fee would be charged for dredging permissions granted on applications which at the date of implementation of the Regulations remain to be determined.

The proposed application fees, to be set out in the Marine Minerals Technical Advice Note 1, are substantial. The proposals for WAG administrative costs remain as before, and PINS costs rise as set out in Subsections (2) to (5) of section 250 (power to direct inquiries) of the Local Government Act 1972.

Staff engaged in marine minerals dredging casework	Estimated costs of pre-application advice	Estimated costs of processing applications	Estimated annual costs of monitoring dredging permissions	Estimated costs of major variations	Estimated costs of minor variations
3 staff in WAG (for different percentages of time)	£3,000	£26,000 (includes £6,000 advertising costs)	£2,000	£15,000 (includes £6,000 advertising costs)	£ 4,000
3 staff in Cefas (for different percentages of time)	£44,000	£1,500	£4,500	£1,200	£400

Inspector for written representations, inquiry or hearing		£722 per day		£722 per day	
2 staff in Cefas (for different percentages of time)			£11,700		
Total estimated costs	£47,000	£27,500 plus possible £15,000 estimate for PINS	£18,200	£16,200 plus possible £15,000 estimate for PINS	£4,400

The range of non-recurring costs for individual operators seeking permission to carry out a marine dredging proposal will, therefore, be an optional but advised £47,000 pre-application fee; £27,500 application fee; plus an estimated £15,000 for PINS. The proposed annual monitoring fee of £18,200 will be an additional recurring cost over the lifetime of the dredging permission. These costs need to be viewed alongside other major investment required in the marine dredging industry, both the capital investments for dredging vessels and infrastructure, and the current costs of securing and monitoring GV consents.

Assuming an average of 1 application for dredging permission and 2 variations of permissions (of which one every 2 years may be a major variation) in any one year, would mean an overall gross annual non recurring cost to the marine minerals dredging industry of £89,200. This assumes that pre-application advice would be required. The net equivalent would be between perhaps £75,000 to take account of the savings of £5,000 to £10,000 per full application and major variation in advertising and publicity costs. The cost of a venue and time for an Inspector would be added should the application go before the Inspectorate. The overall burden would be increased by the additional recurring cost of the proposed annual monitoring fee.

8. Economic benefits

There will be benefits 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. There are target timescales for each stage in the processing of applications. The Regulations will provide statutory decisions based on procedures which formally transpose the EC Directives and will be Human Rights Act compliant. The

industry will also be relieved of the cost of advertising its dredging proposals and carrying out public consultation on them as these operations will, under the Regulations, become the responsibility of the Welsh Ministers. 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.

The fees for administration which have been identified for the Welsh Assembly Government are derived from estimates of the costs of staff carrying out the functions prescribed in the Regulations and accompanying procedural guidance, including the costs of advertisement. All consultation and publicity on dredging applications and decisions on them will, under the Regulations, become the responsibility of the Welsh Ministers and the cost of doing this is to be recovered within the dredging application fee. A sum of £29,000 is proposed, to defray the administrative costs to the Welsh Assembly Government in maintaining statutory control over marine minerals dredging operations. An annual monitoring fee of £5,000 is proposed to cover the administration costs of the Welsh Assembly Government the with respect to evaluating the monitoring and environmental indicators. At present this cost is borne by the Assembly.

Defra has carried the costs of providing detailed environmental advice to both applicants and operators, as well as to the Minister for Environment, Sustainability and Housing (previously the Minister for Environment, Planning and the Countryside) when considering applications, conditions, monitoring, and enforcement. The proposal to charge a fee to the applicant for these by means of a Service Level Agreement with the Cefas services will reduce the burden on the public purse. The total estimated costs on which the fees are based are derived from estimates of the costs of staff in Cefas carrying out the regulatory functions prescribed in the proposed Regulations and accompanying procedural guidance. Cefas will advise on scoping documents, draft environmental statements, comment on dredging proposals made by other statutory environmental advisers, on draft conditions and on the results of monitoring provided by the dredging operators. This raised an objection from one company, who considered that as the applicant pays to obtain the scientific and technical justification for its application, it should not pay for it a second time. Providing such assistance to Welsh Ministers is argued to be an integral part of Defra's role. However Cefas, as an agency, is required by Treasury to recover its costs and the fees reflect the cost of the service, with VAT where appropriate.

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 Welsh Ministers at specified periods so that any unauthorised dredging can be quickly identified and appropriate action taken. Under the GV system, the data were collected, interpreted, reported on and

enforced by the Crown Estate. Under the Regulations it will be necessary to ensure independent monitoring, and Cefas will undertake this role.

The Planning Inspectorate has not in the past recovered its costs for Planning Inquiries on dredging under the GV procedures, although the cost of the venue has been paid by the applicant. However, the Planning Inspectorate should aim to recover the full cost of all their rechargeable activities. They consider that the applicant should bear a proportion of the costs directly related to the decision, the cost of the venue and of the time that the application is with the inspector. This is not core-business, and the Inspectorate will need to provide specialist Inspectors or Assessors, which will call on resources allocated for elsewhere. Therefore the recovery of hearing or inquiry costs from the applicant will provide a benefit. This has precedent in, for example, compulsory purchase orders, where Section 250(4) of the Local Government Act 1972 provides the authority by which the Inspectorate recovers the costs of an inquiry from an acquiring authority. Statutory instrument 'Fees for Inquiries (Standard Daily amounts)(Wales) Regulations 2002' provides the amount charged per day. This avoids "double charging" and will apply only where an inquiry or hearing took place. The applicant is asked to bear the proportion of the costs directly related to this decision; the cost of the venue and of the time that an application is with the inspector. These costs for written representations, a hearing or inquiry, are estimated for the time before an inspector at £722 per day, estimated as £15,000 for a typical inquiry.

About half the consultation responses considered that the costs of a hearing or inquiry should be borne by the Welsh Ministers in the interest of impartiality, but such allegations have not been raised in other circumstances where PINS recover their fees. Sections of the industry requested that, given the increased costs and timescales of hearings and inquiries, MMTAN1 should make it clear they are to be used only when significant complex issues are involved, or where an application is contrary to policy. One industry response considered that this would place applicants for new licences in Wales at a disadvantage compared to competitors operating in English waters and land-based sources in England and Wales, acting as a bar to new entrants and increasing aggregate prices. However, the hearing or inquiry in the circumstances envisaged by the Regulations is to provide an independent report on the merits of the case in question; this is not an appeal, but part of the determination process. Where the merits of an application are in doubt, the alternative to an inquiry would be refusal.

9. Economic costs

The main costs associated with the proposed Regulations will fall upon the marine minerals dredging operators. However, the Regulations will, in essence, replicate and formalise the existing informal GV procedures that were introduced in 1968 – albeit with statutory 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 to the protection of European sites.

The marine dredging fees are not insignificant compared to the average cost to applicants of surveying, researching and preparing each marine minerals dredging application. This is understood to be in the region of £200,000, including £50,000 for the cost of preparing an Environmental Statement, although an industry response said that these costs were in the order of £150,000 to £400,000, rising to £600,000-£750,000 excluding base line surveys if an inquiry is required.

At present, the submission of a GV application is free but applicants are required to carry out their own wide public consultation and administration at two, or possibly more, stages. This entails distribution of some 150 hard copies of the Environmental Statement, summary of responses and any additional information, as well as advertisements, which can cost between £5,000 and £10,000 per time. A significant reduction in the number of copies of the Environmental Statement required; the obviating of the need for the applicant to summarise, reply to, and publish responses; and, in well prepared cases, the avoidance of the need to provide further information, will provide cost savings for applicants in the order of £20,000 - £25,000. One company considered that these savings were misleading, as extensive pre-application consultations would still be required. However, the Regulations should result in an overall efficiency saving both by a reduction in the number of direct consultations and a reduction in the number of iterations to reach a decision.

BMAPA, the trade association representing 95% of the British dredging industry, and 3 of the 5 companies currently operating in Wales, made the point in its consultation comments that the new regulatory system needed to be adequately resourced to secure long awaited improvements in the time taken to process decisions. It suggested increasing the levels of the proposed application fees to provide this additional resource. At the same time it, understandably and rightly, expects that an increase in fees should provide guarantees over the timescales for all stages in the handling of dredging proposals, including what is likely to be the extensive pre-application stage. The regulatory process must be administered more efficiently and effectively, with clear and public audit, and reporting of performance. The proposed Regulations and accompanying guidance include target timescales for each stage in the processing of applications. The industry are keen to have target timescales for the pre-application and monitoring work too, and a service level agreement with Cefas from the date of the Regulations coming into force will include such targets for the provision of advice on marine minerals dredging proposals both pre- and post-application. All of these targets can be monitored in the light of experience

of the new statutory system. The target timescales proposed in the Welsh Regulations and guidance are, for certain stages, longer than those identified in the English and Northern Ireland Regulations. This is in recognition of the more likely proximity to protected European sites in Welsh waters, and of the lower rate of applications, which will not support a dedicated team. The timescales also reflect the target timescales of the Planning Inspectorate and benefit from the experience in Wales of decisions which have been supported by public inquiry – England has not yet followed that process.

For the Welsh Ministers, the proposed phased fees would mean an increase in the administrative costs of invoicing for and receiving separate payments rather than one. There will be no significant 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 through either the exchange of written statements or attend either a hearing or local inquiry. GV applications have already been referred to an Inspector for consideration through local inquiries, and the formal provision in the Regulations of procedures for independent consideration by an Inspector will not, of itself, be an additional cost.

The Regulations will not reimburse the costs for public sector consultation bodies, such as Countryside Council for Wales, Environment Agency (Wales) and local authorities. They do, however, allow such bodies to make a reasonable charge reflecting the cost of making the relevant information available. When CCW acts in the capacity of advisor to the Assembly for Habitats issues, this is a part of its core business. 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. This will be monitored following implementation of the Regulations against the targets set out in the Regulations and in guidance.

10. Environmental benefits

The proposed Regulations will transpose EC Directives by statutory 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. The Regulations formalise the process of enforcement, with the ultimate sanction of immediate cessation of dredging. The Regulations contain provision for making dredging without permission, or the carrying out of dredging operations in breach of conditions attached to a dredging

permission, a criminal offence punishable by fines. There are no provisions for compensation to be payable in the event that significant environmental impacts require variation or revocation of a dredging permission. This is considered to provide a fair balance between the demands of the general interest of the community and the requirements of the protection of the applicant's property rights.

11. Environmental costs

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.

12. Social benefits

The new 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 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 and be satisfied that their views have been fully addressed in the decision-making process.

13. Social costs

None have been identified.

14. Small Firms' Impact Test (SFIT)

The fees have the potential to be significant to small businesses. The draft Regulatory Appraisal identified no small firms in the marine minerals dredging industry which comprises a small number of large companies and which reflects the high costs and investment, especially in vessels, required to participate in this business activity. However, the consultation identified one small firm operating in the Severn Estuary. The company is small in terms of turnover and employees as identified by the Companies Act 1985, and it currently controls less than 10% of the sector. However, it has two applications extant, one a planning review and application for uplift, and one to dredge within the area defined in the Gloucester Harbour Revision Order, which could significantly expand its sectoral role. Neither of these would fall under the Regulations. The costs for a small business of any future application within the scope of the Regulations would be a proportionately significant outlay, but if a dredging permission were to be granted, the benefits would be no less than those for a large company. A second

company claims no links to its large international parent company, arguing that any additional costs could have significant impacts on their ability to operate. This company has some 20% of the annual licensed tonnage in Welsh waters at present, equivalent to approximately 30% of the active dredging.

15. Competition Assessment

There are no competition issues as the Regulations will apply to all companies, British and foreign, undertaking marine minerals dredging operations in Welsh waters. Separate similar regulations are applied to English and Northern Ireland waters. In comparison to land won aggregates, the maximum application fee for land won minerals is £50,000 and £2,300 maximum annual monitoring fees. In South Wales, however, dredged sand does not compete with land won sand. The principal economic determinant, in this market, is the distance that the material has to travel on land. The competition filter test identifies that there is a firm with more than 20% of the market share and that three firms acting as a consortium have over 50% of the market share. However, the costs of the regulation will only marginally affect some firms more than others as the proposed fees are at a flat rate for each application. The regulation would lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet, as costs, which have been borne by Government Departments and Agencies, will now be passed to the applicant. The Regulations do lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet for a transitional period. Applications in English water would not, under the current Regulations, pay towards the costs of any hearing or inquiry, but such costs will not arise in every case and are unlikely to be significant in comparison with total outlay.

16. Monitoring and review

Once in place, the effectiveness and efficiency of the Regulations will be monitored through regular discussions with the Crown Estate, with BMAPA and with consultation bodies and other Government Departments. 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. The proposed fees are based on estimates and assumptions, which it is recognised will need to be reviewed in the light of experience of the new regulatory regime. An early review of marine minerals dredging fees would seek to confirm the structure of the fees. Consultation responses advised that the level of charges needs annual review to ensure they are not excessive or under estimated. Costs should be proportionate and reasonable. One step to meeting these concerns is the requirement for Cefas, as part of its Service Level Agreement, to provide an annual report detailing costs and services. Should this show significant deviation from the anticipated costs, by more than an agreed percentage, the fees will be reviewed.