

## **Explanatory Memorandum to**

The Marine Licensing (Exempted Activities) (Wales) Order 2011

### **WSI 2011 NO.559 (W.81)**

This Explanatory Memorandum has been prepared by the Department for Environment and Sustainability of the Welsh Assembly Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

#### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Marine Licensing (Exempted Activities) (Wales) Order 2011. I am satisfied that the benefits outweigh any costs.

*Jane Davidson AM*

Minister for Environment, Sustainability and Housing

25 February 2011

## **1. Description**

This instrument exempts certain activities from the need to have a marine licence under Part 4 of the Marine and Coastal Access Act 2009 (the Act). It applies in relation to activities for which the Welsh Ministers are the appropriate licensing authority under section 113 of that Act.

## **2. Matters of special interest to the Constitutional Affairs Committee**

None.

## **3. Legislative background**

Part 4 of the Act makes provision for a new marine licensing system. Section 66 of the Act sets out a number of 'licensable marine activities', including certain deposits at sea, the use of vehicles, vessels etc for removal of objects from the seabed, dredging and construction works. The Act makes it an offence to carry out a licensable marine activity without a licence (unless the activity is exempted from the need for such a licence). Licences, known as "marine licences" are granted by the 'appropriate licensing authority', defined in section 113. In relation to Wales and the Welsh inshore region, the appropriate licensing authority is the Welsh Ministers, apart from in relation to certain matters (primarily petroleum and defence activities), which are reserved to the Secretary of State. This instrument is being made by the Welsh Ministers as appropriate licensing authority (it is understood that the Secretary of State and the other devolved administrations intend to make their own regulations relating to exempted activities for which they are the appropriate licensing authority). Part 4 will replace Part 2 of the Food and Environment Protection Act 1985 and Part 2 of the Coast Protection Act 1949. It will also regulate minerals extraction which is currently regulated under a number of sets of regulations around the United Kingdom and will also remove the need for a separate consent under the Electronic Communications Code.

Section 74 of the Act enables the Welsh Ministers as the appropriate licensing authority to make orders exempting, with or without conditions, specified activities from the need to have a marine licence under Part 4 of the Act. In deciding whether to make an Order under section 74, the licensing authority must consider the need to protect the environment, the need to protect human health, the need to prevent interference with other legitimate uses of the sea and any other factor that the licensing authority considers relevant.

Marine licences will be the main way in which the UK complies with the EU Waste Framework Directive (Directive 2008/98/EC of the European Parliament and of the Council on waste) in respect of offshore waste activities, and this instrument reflects the need to ensure that where appropriate, exemptions comply with that Directive.

This Order is made under the negative resolution procedure.

## **4. Purpose & intended effect of the legislation**

The marine licensing system in Part 4 of the Act has a broad scope covering deposits, dredging, construction works as well as removals from the seabed and other activities. This allows for consistent decision-making about what activities may be carried out at sea. However, this broad scope also means that the system covers some activities that are already regulated under other legislation or are low risk.

The proposed exemptions fall into several groups:

- (i) activities that are regulated under other legislation (for example shipping pollution is regulated under Part 6 of the Merchant Shipping Act 1995; fishing is regulated under the Common Fisheries Policy and relevant UK legislation;
- (ii) activities for the safety of vessels or human lives (such as fire-fighting, Coastguard activities, deposit of items such as flares and smoke floats, certain salvage activities and, subject to Welsh Assembly Government approval, certain emergency works. This group also includes air accident investigations where time is critical to finding out the reasons for the loss of an aircraft.);
- (iii) activities taken to prevent pollution. This group includes, for example, the deposit of approved oil pollution treatments (including dispersants), chemical treatment substances and antifouling substances. Conditions may be imposed on the use of such substances. This group of exemptions also includes the deposit of equipment to contain, recover or control oil and other forms of pollution);
- (iv) certain types of maintenance by relevant bodies – for example the maintenance of harbour works by harbour authorities (within the boundaries of existing works); the maintenance of coastal protection work by the Environment Agency and local authorities with coastal protection responsibilities;
- (v) routine low risk activities such as the deposit and removal of scientific equipment, trails for divers on protected wrecks, markers for designated conservation sites. This group includes licensable activities carried out by vessels etc in the normal course of navigation or maintenance or the discharge of waters from aggregate dredgers to maintain the stability of the vessel.

Where waste is concerned, the exemptions in the instrument would only apply if the activity involved disposal of the non-hazardous waste at the place of production or recovery of waste. For example, a fishing vessel that discards fish at sea as part of fishing operation is considered to be disposing of waste at the place of production. The instrument specifies conditions to ensure that the exemptions comply with the requirements of the EU Waste Framework Directive – the requirements include keeping a register of exempt waste activities. The instrument contains a specific exemption in relation to the dismantling of ships. This is designed to ensure that ship dismantling is regulated under Environmental Permitting rather than under Part 4 of the Act.

The Welsh Assembly Government will publish guidance on the content of this Statutory Instrument and the other legislation needed to bring Part 4 of the Act into effect.

The Instrument applies wherever the Welsh Ministers are the appropriate licensing authority under Part 4 of the Act (as defined by section 113 of the Act).

## **5. Consultation**

The Welsh Assembly Government carried out a public consultation from 27<sup>th</sup> September to 20<sup>th</sup> December 2010 on the suite of secondary legislation which is needed to commence Part 4 of the Act. Consultees included statutory advisers, potential applicants and licence holders, other stakeholders and the wider public.

There was general support from the consultation responses for this instrument and the draft instrument has been amended wherever appropriate to take on board suggestions and comments. A detailed analysis of the responses to the consultation can be obtained from the Marine Consents Unit, Welsh Assembly Government, Cathays Park, Cardiff, CF10 3NQ.

## 6. Regulatory Impact Assessment (RIA)

The assessment of the impacts of this instrument forms part of the overall Impact Assessment of the effect that the marine licensing system introduced under Part 4 of the Act (of which this instrument forms part) will have on the costs of business, the voluntary sector and the public sector. The RIA that follows refers to the package of instruments required to implement the marine licensing system, some of which will follow the negative procedure and some will follow the affirmative procedure:

<b>Title:</b> <b>Marine Licensing and Enforcement (Civil Sanctions and Appeals)</b>  <b>Lead department or agency:</b> Welsh Assembly Government  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> WAG
	<b>Date:</b> 20/09/2010
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
	<b>Contact for enquiries:</b> Julia Williams – 029 2080 1333

### Summary: Intervention and Options

#### What is the problem under consideration? Why is government intervention necessary?

The existing marine licensing system in Wales is complex, with applicants facing several different stages for alternative consenting regimes. There also exists a lack of both transparency and clarity in the process, with applicants often facing uncertainty regarding both the status of their application and the means via which to appeal against licensing decisions. Enforcement tools available to the Welsh Assembly Government for non-compliance are also disproportionate and limited in capacity. A new marine licensing system in Wales - facilitated under Part 4 of the Marine and Coastal Access Act 2009 - will encompass a new application and decision-making process, along with a new enforcement and appeals system.

#### What are the policy objectives and the intended effects?

The overall objective of a marine licensing system is to regulate sustainable development in the marine environment in a way that minimises adverse impacts on the environment, human health and legitimate uses of the sea. In Wales, a new marine licensing system is intended to facilitate a more streamlined application process and hence generate greater efficiency and cost-savings. A new enforcement and appeals regime is intended to make the process more transparent and to provide more proportionate tools for sanctions against non-compliance.

#### What policy options have been considered? Please justify preferred option (further details in Evidence Base)

The following three policy options were considered in the Impact Assessment (IA):

- Option 1: 'Do Nothing', i.e. continue with the existing marine licensing system in Wales;
- Option 2: Introduce a new marine licensing system in Wales;
- Option 3: Introduce a new marine licensing, enforcement and appeals system in Wales.

The preferred option is Option 3, based on the overall objectives of marine policy. This option is estimated to generate a net benefit to both WAG and Industry and is intended to make the marine licensing system more transparent and efficient.

**When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?**

It will be reviewed  
04/2014

**Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?**

Yes

**Ministerial Sign-off** For consultation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister: ..... Date: .....

**Summary: Analysis and Evidence**

Policy Option 1

**Description:** 'Do Nothing'

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: -7.1

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
<b>Best Estimate</b>	<b>0</b>	<b>-0.8</b>	<b>-0.7</b>

**Description and scale of key monetised costs by 'main affected groups'**

Annual costs arise to the Welsh Assembly Government and to Industry through the administration of marine licence applications. Annual costs to Industry also arise from having to complete Environmental Impact Assessments where required. These are baseline costs and will arise annually even where no policy action is undertaken.

**Other key non-monetised costs by 'main affected groups'**

None identified.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
<b>Best Estimate</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Description and scale of key monetised benefits by 'main affected groups'**

There are no monetised benefits arising from doing nothing.

**Other key non-monetised benefits by 'main affected groups'**

The existence of a marine licensing system itself might generate environmental benefits compared with having no licensing system, although it has not been possible to quantify this for the purpose of this IA. Any benefits arising are part of the baseline NPV and are not additional.

**Key assumptions/sensitivities/risks**

**Discount rate (%)** 3.5

Costs to WAG and Industry are based on a specified number of marine licence applications, which in turn is a forecast of anticipated applications per annum from 2011 onwards. Actual costs will depend on the number of applications made in a given year. The number of Environmental Impact Assessments (EIA) required per annum is an estimated average and will also affect the total cost to Industry per annum.

<b>Impact on admin burden (AB) (£m):</b>		<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>
<b>New AB:</b>	<b>AB savings:</b>	<b>Policy cost savings:</b>	<b>Net:</b>	No

**Summary: Analysis and Evidence**

Policy Option 2

**Description:** Introduce a new marine licensing system in Wales

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 2.5

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
<b>Best Estimate</b>	<b>-0.02</b>	<b>-0.01</b>	<b>-0.03</b>

**Description and scale of key monetised costs by ‘main affected groups’**

Transition costs to WAG would arise from introducing a new application and decision-making process, in developing new guidance and templates. Annual costs would arise to WAG from administering appeals against licensing decisions and new maintenance dredging licences. Annual costs to Industry would arise from applying for new maintenance dredging licences and appealing against licensing decisions. Annual costs to the Planning Inspectorate arise through appeals against licensing decisions.

**Other key non-monetised costs by ‘main affected groups’**

There are no anticipated non-monetised costs arising under Option 2.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
<b>Best Estimate</b>	<b>0</b>	<b>1.14</b>	<b>0.97</b>

**Description and scale of key monetised benefits by ‘main affected groups’**

Cost-savings would arise to Industry where applicants requiring an EIA use the pre-application stage and therefore have a better indication of the informational requirements for an EIA. This is estimated to save around £75k per annum. Cost-savings also arise to Industry through reduced effort in determining applications. This is estimated to save around £1m per annum over the 10-year forecast period.

**Other key non-monetised benefits by ‘main affected groups’**

Consolidation of licences is estimated to generate cost savings to WAG and to Industry, although the time savings are unclear and therefore not quantifiable for the purpose of this IA. Time savings also arise to Industry from having the necessary guidance in one place and through increased transparency in the applications and appeals process.

**Key assumptions/sensitivities/risks**

**Discount rate (%)** 3.5

Costs to WAG and Industry are based on a specified number of marine licence applications, derived from a forecast of anticipated applications per annum from 2011 onwards. Actual costs will depend on the number of applications made in a given year. The number of Environmental Impact Assessments (EIA) required per annum is an estimated average and will also affect the total cost to Industry per annum. Cost-saving resulting from using the pre-application process is 5% of the EIA cost per annum – this could be higher or lower and could differ between operators. The cost of application determination is assumed to be £52,000, based on the same assumption used in the Defra licensing IA. This could also be higher or lower and could differ between operators.

<b>Impact on admin burden (AB) (£m):</b>		<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>
<b>New AB:</b>	<b>AB savings:</b>	<b>Net:</b>	<b>Policy cost savings:</b>	No

**Summary: Analysis and Evidence**

Policy Option 3

**Description:** Introduce a new marine licensing, enforcement and appeals system in Wales

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 1.6

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
<b>Best Estimate</b>	<b>-0.02</b>	<b>-0.12</b>	<b>-0.12</b>

**Description and scale of key monetised costs by ‘main affected groups’**

The same costs arise under Option 3 as under Option 2. In addition, transition costs would arise to WAG through setting up a new enforcement regime, estimated at around £15k. Estimated transition costs of around £2k arise to Industry from familiarisation with new guidance. Annual costs to WAG of around £13k arise from administering and issuing statutory notices and monetary penalties. Annual cost to Industry of statutory notices, monetary penalties and appeals is estimated at £100k.

**Other key non-monetised costs by ‘main affected groups’**

None identified.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
<b>Best Estimate</b>	<b>0</b>	<b>1.14</b>	<b>0.97</b>

**Description and scale of key monetised benefits by ‘main affected groups’**

Since Option 3 is an extension of Option 2, it is assumed the same benefits arise under both options. However, Option 3 will generate minor cost-savings to WAG from no longer having to carry out administration associated with the existing enforcement regime – a new enforcement regime will be in place which in turn generates its own costs (accounted for in the ‘Costs’ figures above).

**Other key non-monetised benefits by ‘main affected groups’**

The same non-monetised benefits arise under Option 3 as outlined under Option 2. In addition, it is anticipated Option 3 will increase the rate of compliance with marine policy, estimated to reduce the administrative burden on WAG and also generate environmental benefits from increased compliance.

**Key assumptions/sensitivities/risks**

**Discount rate (%)** 3.5

The same assumptions and sensitivities apply as outlined under Option 2. In addition, the number of statutory notices issued per annum could be higher or lower, as could the number of monetary penalties. The number of appeals made against such notices and penalties could also differ on an annual basis.

<b>Impact on admin burden (AB) (£m):</b>		<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>
<b>New AB:</b>	<b>AB savings:</b>	<b>Policy cost savings:</b>	<b>Net:</b>	No



## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	Wales				
From what date will the policy be implemented?	01/04/2011				
Which organisation(s) will enforce the policy?	Welsh Assembly Government				
What is the annual change in enforcement cost (£m)?	£0.01m				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	N/A				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> N/A		<b>Non-traded:</b> N/A		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	<b>Costs:</b> N/A		<b>Benefits:</b> N/A		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b>	<b>&lt; 20</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>1</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	Yes	23
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	22
Small firms <a href="#">Small Firms Impact Test guidance</a>	Yes	22
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	Yes	22
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	Yes	23
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	Yes	23
Human rights <a href="#">Human Rights Impact Test guidance</a>	Yes	23
Justice system <a href="#">Justice Impact Test guidance</a>	Yes	23
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	Yes	23
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	Yes	23

<sup>1</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Joint Defra/WAG Consultation on Marine Licensing, 2009. Available at: <a href="http://www.defra.gov.uk/environment/marine/legislation/license.htm">http://www.defra.gov.uk/environment/marine/legislation/license.htm</a> and <a href="http://wales.gov.uk/consultations/environmentandcountryside/marinelicensing/?lang=en&amp;status=closed">http://wales.gov.uk/consultations/environmentandcountryside/marinelicensing/?lang=en&amp;status=closed</a>
2	Defra Consultation on Marine Licensing Enforcement ('Defra Enforcement IA'), 2010. Available at: <a href="http://www.defra.gov.uk/corporate/consult/marine-licensing/index.htm">http://www.defra.gov.uk/corporate/consult/marine-licensing/index.htm</a>
3	Defra Consultation on Marine Licensing ('Defra Licensing IA'), 2010. Available at: <a href="http://www.defra.gov.uk/corporate/consult/marine-licensing-system/index.htm">http://www.defra.gov.uk/corporate/consult/marine-licensing-system/index.htm</a>

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>	0.03	0	0	0	0	0	0	0	0	0
<b>Annual recurring cost</b>	0	0.15	0.12	0.12	0.15	0.12	0.12	0.15	0.12	0.12
<b>Total annual costs</b>	0.03	0.15	0.12	0.12	0.15	0.12	0.12	0.15	0.12	0.12
<b>Transition benefits</b>	0	0	0	0	0	0	0	0	0	0
<b>Annual recurring benefits</b>	0.86	1.01	1.17	1.22	1.17	1.17	1.22	1.17	1.17	1.22
<b>Total annual benefits</b>	0.86	1.01	1.17	1.22	1.17	1.17	1.22	1.17	1.17	1.22

\* For non-monetised benefits please see summary pages and main evidence base section

## **Evidence Base (for Summary sheets)**

### **Background**

1. Part 4 of the UK Marine and Coastal Access Act 2009 ('The Act') set out a new regulatory framework enabling a review of marine licensing systems, which will contribute to a more sustainable approach to marine activities across the UK. The existing licensing system in Wales is complex in its approach to applications and limited in its capacity to take action against non-compliant offenders. Hence, a more streamlined and proportionate marine licensing system is required in order to provide a more efficient, transparent and cost-effective approach.
2. A new marine licensing system is therefore proposed, to be established in Wales in April 2011. The Welsh Ministers will be both the Licensing Authority – for Welsh inshore waters out to 12 nautical miles - and the Enforcement Authority. The Marine Management Organisation ('MMO' – established by The Act) will be responsible for carrying out licensing and enforcement functions on behalf of the Secretary of State in respect of all waters adjacent to England and all English, Welsh and Northern Ireland offshore waters.
3. Under the new marine licensing system, the following consenting regimes will be consolidated in order to remove the complexity and overlap in the existing system:
  - A licence under Part 2 of the Food and Environment Protection Act 1985 ("FEPA");
  - Consent under Part 2 of the Coast Protection Act 1949 ("CPA");
  - Permission under the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Wales) Regulations 2007; and
  - Approval under the Electronic Communications Code (covering certain submarine cables).

A more streamlined approach under a new licensing system therefore aims to facilitate greater efficiency and improved transparency.

4. The Act also provides for a broader capacity for enforcement via the use of statutory notices and civil sanctions, offering the Welsh Assembly Government (WAG) a more proportionate approach to non-compliance and providing a more level playing field for fully compliant businesses. A new appeals mechanism – a legal requirement under The Act – is intended to provide Industry with an adequate and transparent platform to appeal against statutory notices and monetary penalties issued in the context of enforcement.

### **Problem Under Consideration**

5. The existing marine licensing system in Wales is complex, with applicants facing several different stages for alternative consenting regimes and often having to obtain consents from both Defra and WAG. There also exists a lack of both transparency and clarity in the process, with applicants often facing uncertainty regarding both the status of their application and the means via which to appeal against licensing decisions.
6. The Welsh Assembly Government also lacks the necessary tools to provide a proportionate approach to enforcement against non-compliance, currently only able to issue advisory or warning letters or, in the most extreme cases, to pursue prosecution.
7. A proposed new marine licensing system under The Act – encompassing a new application and decision-making process, a new enforcement regime and a new appeals mechanism – therefore aims to reduce uncertainty and to equip both WAG and Industry with the necessary tools for the marine licensing process. A more detailed description of the proposed marine licensing system can be found in the Consultation Document.

### **Rationale for Intervention**

8. Activities carried out in the marine environment need to be regulated due to the existence of negative environmental 'externalities', or unfavourable side-effects. These arise as a result of an action being undertaken by an individual or firm which has adverse consequences for the surrounding environment. The existence of externalities leads to market failure because resources are allocated inefficiently. In the case of the marine environment this means that, due to the competing needs of activities in the sea and other marine areas, there results a less than optimal level of use for all those interested parties.
9. In order to reduce the negative impacts of marine activities on the surrounding environment, economic theory suggests that 'property rights' should be assigned to all interested parties so that marine resources will be allocated efficiently to produce a socially desirable outcome. The allocation of these rights currently exists in

the form of the marine licensing system, whereby any interested party is required to apply for a licence in order to undertake specific marine activities.

10. However, the existing licensing system is complex and inefficient and involves a high level of uncertainty with regard to the application and decision-making process. Government intervention is therefore required in order to reduce uncertainty and to simplify the licensing system; in doing so it is intended that costs will be reduced through improved efficiency and transparency and the process will be fairer for applicants.

### Policy Objectives

11. The overall objective of the new marine licensing system is to regulate sustainable development in the marine environment in a way that minimises adverse impacts on the environment, human health and legitimate uses of the sea. The new system aims to be:
- Transparent
  - Efficient
  - Fair
  - Effective.
12. The framework for a new marine licensing system is intended to enable marine authorities to make better informed decisions relating to marine activity applications, in the context of a more sustainable approach to the marine environment. In Wales, the creation of the Marine Consents Unit within WAG is intended to facilitate a more streamlined application process and hence generate greater efficiency and cost-savings.
13. The new licensing system is intended to be fairer, with the aim of meeting improved expectations of transparency and accountability. At the same time, it is intended that low-risk activities should be allowed to continue without unnecessary administrative or legislative burdens.

### Policy Options Considered

14. The July 2009 joint consultation by WAG and Defra (see Reference 1) on secondary legislation relating to marine licensing set out proposals for changes to the marine licensing system. Responses to the consultation indicated that the options presented for the new process were generally favourable. Under the regulatory framework for a new marine licensing system, facilitated by The Act and supported by the results of the 2009 consultation, the following three policy options are therefore considered in this Impact Assessment (IA):
- **Option 1:** 'Do Nothing', i.e. continue with the existing marine licensing system in Wales;
  - **Option 2:** Introduce a new marine licensing system in Wales;
  - **Option 3:** Introduce a new marine licensing, enforcement and appeals system in Wales.
15. **Option 1 is the baseline, or counterfactual option**, whereby relevant costs and benefits (e.g. to WAG and to Industry) for options 2 and 3 are evaluated relative to this 'do nothing' option. There are **no additional costs or benefits arising from doing nothing**; costs associated with this option will arise whether or not policy action is undertaken. The analysis of the costs and benefits for each policy option is based on a 10-year forecast period; for comparative purposes, this is in line with the timeframe used in Defra's IA for marine licensing in England. It is assumed that 2011 is the year of implementation of the policy, i.e. the year in which the 'one-off' costs will arise.
16. In line with the 'Green Book'<sup>2</sup> recommendation, the discount rate used in the analysis is 3.5%.
17. The net present value of each policy option therefore represents the present value of the stream of costs and benefits over the 10-year period, and is used to determine whether or not Government intervention can be justified. In general the higher the NPV, the better the expected outcome of the policy. NPVs are given **relative to the do nothing option**; i.e. the present value of the stream of costs and benefits arising **in addition to those incurred under Option 1**.

### Option 1: 'Do Nothing'

18. Doing nothing would mean that the existing system of marine licensing in Wales would remain unchanged, such that the applications process would continue as normal and there would be a very simplistic and disproportionate approach to sanctions for non-compliance.

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<sup>2</sup> [http://www.hm-treasury.gov.uk/data\\_greenbook\\_index.htm](http://www.hm-treasury.gov.uk/data_greenbook_index.htm)

19. Doing nothing is estimated to generate an overall net present value (NPV) over a 10-year forecast period of around **-£7.1 million**. A negative NPV indicates that the 'do nothing' option generates **ongoing costs** over the 10-year forecast period. Hence, a new approach to the marine licensing system is preferable in order to reduce the ongoing costs incurred by both Industry and WAG.
20. Doing nothing would also mean that the marine licensing system in Wales would be inconsistent with that of the rest of the UK from April 2011. This goes against the desire to bring in a new licensing system that is consistent and streamlined across the UK, at the same time. The new system is due to come into force from April 2011 across the UK.

### **Option 2: Introduce a New Marine Licensing System in Wales**

21. The proposal under Option 2 is for a new marine licensing system in Wales, with a new application and decision-making process and a mechanism for appeals against licensing decisions. Unlike the proposed policy under Option 3, there would be no new enforcement regime for non-compliance and, therefore, no new appeals mechanism for statutory notices and monetary penalties. Instead, Option 2 would focus on the introduction of new licence application and decision-making procedures in order to make the process more efficient and cost-effective. A detailed description of the proposals under Option 2 can be found at Annex 3.
22. Under Option 2 a new voluntary, non-statutory pre-application stage would be introduced for the more complex marine projects in Welsh waters. This would encourage early and effective engagement between regulator, operator and primary advisory organisations, before a formal application is submitted. It is intended that this would save time and effort later on in the application process, whilst at the same time improving transparency.
23. It is also intended that under Option 2 all the necessary licensing application information will be available on the internet in one place. This will simplify the application procedure and could generate cost-savings to Industry through time saved. Consolidation of licences and consenting regimes is also estimated to generate cost-savings and improve efficiency.
24. A new appeals mechanism would also be established whereby applicants can appeal against licensing decisions made by the licensing authority.
25. Option 2 is estimated to generate an overall net present value (NPV) over a 10-year forecast period of around **£2.5 million**. This is an **additional overall benefit**, relative to the 'do nothing' option, of around £9.6 million. Since the overall NPV for Option 2 is positive, this indicates that Option 2 generates additional benefits over the 10-year forecast period relative to doing nothing. Hence, undertaking this policy action is therefore considered preferable relative to Option 1.

### **Option 3: Introduce a New Marine Licensing, Enforcement and Appeals System in Wales**

26. It is proposed under Option 3 that, as with Option 2, a new application and decision-making process will be introduced; however, this will be alongside a new enforcement regime and a new appeals mechanism for statutory notices and monetary penalties. The application and decision-making process, along with appeals against licensing decisions, is assumed to be the same as for Option 2. Hence, the costs and benefits arising for the applications and decisions part of Option 3 (including appeals against licensing decisions) will be the same as for Option 2.
27. A new enforcement regime is intended to equip WAG with a broader range of tools for managing non-compliance in relation to marine licensing. At present, the only means available to WAG for sanctioning offenders are warning letters or prosecutions – tools at opposite ends of the enforcement spectrum with little else in between. A new system of monetary penalties and statutory notices is therefore proposed under Option 3, to be introduced alongside a new application and decision-making process. Monetary penalties available will be either fixed or variable, depending on the nature of the offence. A detailed description of the penalties can be found at Annex 3.
28. A new mechanism for appealing against statutory notices and monetary penalties issued in relation to breaches of the marine licensing system is intended to make the system more transparent. The appeals mechanism is intended to offer Industry an accessible platform for voicing their response to notices and penalties issued, with a means for resolving outstanding issues promptly and satisfactorily.
29. Option 3 is estimated to generate an overall net present value (NPV) over a 10-year forecast period of around **£1.6 million**. This is also an **additional overall benefit**, relative to the 'do nothing' option, of around £8.7 million. The overall NPV for Option 3, as with Option 2, is positive, indicating that Option 3 generates additional benefits over the 10-year forecast period relative to Option 1. Undertaking this policy action is therefore also considered preferable relative to doing nothing.

## Costs and Benefits by Policy Option

### Costs arising under Option 1

30. The existing licensing system is complex and costly, with uncertainty often surrounding the application and decision-making process. There are currently numerous consenting requirements for marine licensing, which can lead to duplication and inefficiency in the application process. **Costs arising under Option 1 are the baseline figures already arising under the existing system and will be incurred whether or not policy action is undertaken; they are not additional costs.**
31. Table 1 sets out the costs to WAG and to Industry of the relevant marine licence applications (excluding licence fees) per annum under the **existing system** in Wales. The current total annual cost to WAG of administering licence applications is estimated to be around £0.16 million; the total cost to Industry is estimated to be around £2.2 million. However, these costs ultimately depend upon the number of licence applications made per annum.
32. The estimated average number of licence applications per annum is derived from WAG forecasts for applications in 2011/12. A more detailed breakdown of the four main licence types – including licence tiers and average cost to WAG and to Industry per licence – is included at Annex 2 (Table A).

**Table 1: Costs to the Welsh Assembly Government and to Industry of the Existing Licensing System in Wales**

Licence Type	Average no. of Licence Applications per annum	Total Cost to WAG (£ per annum)	Total Cost to Industry (£ per annum)
<b>Construction and Beneficial Use Licences</b>	<b>50</b>	<b>48,000</b>	<b>231,000</b>
- Construction Licence Band	44	44,000	185,000
- Beneficial Use Licence Band	6	4,000	46,000
<b>Disposal Licences</b>	<b>17</b>	<b>117,000</b>	<b>425,000</b>
- Maintenance Dredging	9	70,000	81,000
- Capital Dredging	7	45,000	344,000
- Fish Waste	1	2,000	0
<b>Minor Works, Pipelines, Misc. Licences</b>	<b>2</b>	<b>0*</b>	<b>0*</b>
<b>Marine Minerals</b>	<b>1</b>	<b>0*</b>	<b>0*</b>
<b>TOTAL (excl. EIA costs)</b>	<b>70</b>	<b>165,000</b>	<b>656,000</b>
<b>Cost to Industry of producing an EIA (£)</b>			<b>50,000</b>
<b>No. of applications per annum requiring an EIA</b>			<b>30</b>
<b>TOTAL (incl. EIA costs)</b>			<b>2,156,000</b>

*Note: Costs are rounded to the nearest thousand. \*Figures round down to zero, although minor costs are present. The average number of marine licence applications made per annum is derived from Welsh Assembly Government forecasts for 2011/12.*

33. The licence fee charged by WAG for each marine application made is estimated to cover 66 per cent of the average direct cost to WAG of processing each application. This assumption is based on information contained in Defra's Impact Assessment (IA) on Marine Licensing (see Reference 3; hereafter 'Defra Licensing IA') which indicates that the Marine Management Organisation (MMO) – responsible for marine licensing in England - is able to recover 66 per cent of the direct costs associated with licensing applications in England under the current system. Since the licence fee in Wales is simply a monetary transfer from Industry to WAG (i.e. a cost to Industry and an equivalent benefit to WAG) it is not a net cost; it is therefore not included in the 'Total Cost'

columns in Table 1 since it will not have any impact on the overall NPV for Option 2. Under a new marine licensing system WAG would be required to recoup 100 per cent of its associated costs through the licence fee, resulting in a lower annual administrative cost to WAG but an equivalent higher annual cost to Industry. A detailed breakdown of marine licence fees in Wales can be found at Annex 2.

34. The total estimated costs to Industry are based on assumptions of costs used in the Defra Licensing IA in order to form a consistent approach across England and Wales. The Defra Licensing IA assumes that the average cost of producing an Environmental Impact Assessment (EIA) is £50,000 and is based on findings from CLG<sup>3</sup>. It is estimated that there are between 20 and 40 marine licence applications each year in Wales which require an EIA. For the purpose of this IA we have assumed that an average of 30 licences per annum will require an EIA in Wales, the total cost of which is estimated to be around £1.5 million (included in the total cost to industry shown in the bottom row of Table 1).
35. Costs to WAG also arise from enforcement, in having to administer advisory or warning letters in relation to breaches of marine licensing. It is assumed that WAG currently issues one advisory letter and one warning letter each year, at a total cost of around £500 per annum. It is also anticipated that there are likely to be no prosecutions over the 10-year forecast period.

## Costs arising under Option 2

### One-Off Costs to WAG

36. The development of a new licensing system in Wales – namely a new application and decision-making process with a mechanism for appealing against licensing decisions - will involve the Welsh Assembly Government incurring one-off transition costs, either through amending and updating existing procedures and processes or through the creation of new ones. In order to support a more streamlined approach to the licensing application process in Wales a new application form will need to be developed, along with new guidance for industry which outlines the process in depth. Existing IT systems and websites will also need to be updated in order to support the new application process.
37. A new appeals mechanism that would allow applicants to appeal against licensing decisions will also be set up under Option 2, with transition costs arising to WAG through the development of new guidance and appeals forms and through the training of enforcement officers.
38. Table 2 sets out the estimated additional one-off costs WAG will incur as a result of introducing a new system for marine licensing applications, including a new appeals mechanism.

**Table 2: Estimated Transition Costs to WAG of Introducing New Marine Licensing System**

Type	Staff Days Required	Total Cost (£)
<b>Application and Decision-Making Procedures</b>		
Developing new guidance for Industry	25	4,000
Developing new application forms	14	2,000
IT / Website Development	18	3,000
<b>TOTAL</b>	<b>57</b>	<b>9,000</b>
<b>Appeals Mechanism</b>		
Developing new guidance for Industry	25	3,000
Developing new appeals forms	14	2,000
Training Enforcement Officers	11.5	1,000
<b>TOTAL</b>	<b>50.5</b>	<b>7,000</b>

*Note: Costs are rounded to nearest thousand. Figures may not sum due to rounding.*

<sup>3</sup> CLG impact assessment from Defra IA

## Annual Costs to WAG

39. The Defra Licensing IA indicated that a new marine licensing system in England would involve more input from both Industry and the MMO at the pre-application stage (i.e. an increased cost), but this would ultimately reduce the level of input needed at the actual application stage (i.e. a cost saving). This is also assumed to be true for a new licensing system in Wales. Since the cost of processing applications is essentially just being brought forward the increased cost at the pre-application stage is assumed to cancel out the cost saving at the application stage, making the overall effect cost-neutral.
40. Additional annual costs to WAG are expected to arise from having to administer new maintenance dredging licences, which will come into force under Option 2 for previously unregulated maintenance dredging operations. It is estimated that there are currently between one and five unregulated operations in Wales which would need licences, although licences would not have to be applied for until 2012/13 under the new marine licensing system (as in England). It is assumed that licences would need to be re-applied for every three years. It is estimated that the total cost to WAG of administering these licences (based on an approximation of three unregulated operations) is around £21,000 (£7,000 per licence). This cost would arise every three years, i.e. three occurrences over the 10-year forecast period.
41. Annual costs would also be incurred by WAG under Option 2 through the new licensing appeals mechanism, involving time taken to administer the appeals against licensing decisions and costs arising from legal advice sought. However, it is anticipated that there would only be one appeal arising over the 10-year forecast period, likely to be a written procedure, with an estimated cost to WAG of around £2,000. For the purpose of analysis, this would result in an estimated annual cost of around £200.

**Table 3: Estimated Annual Costs to WAG of Introducing New Appeals Mechanism Against Licensing Decisions**

Type	Staff Days Required	Total Cost Per Appeal	Total Cost Per Annum
Written Procedure Appeals	12	2,000	200

## Annual Costs to Industry

42. As indicated in paragraph 39 the pre-application stage in Option 2 will mean that more input is required earlier on in the licence application process; however, this will be offset by a reduction in input in the later stages of the process. As with the costs to WAG, the cost to Industry of this reallocation of time will be zero (i.e. cost-neutral).
43. Under a new marine licensing system WAG could be required to recoup 100 per cent of its associated costs through the licence fee, resulting in a lower annual administrative cost to WAG but an equivalent higher annual cost to Industry. However, this would essentially be a 'transfer' of cost, from WAG to Industry, and would therefore not affect the overall NPV for Option 2 (i.e. it would not generate any additional overall costs). It is anticipated that a new fully cost-recovered regime will be introduced over a two- to three-year period under Option 2, with a new fee structure phased in over time.
44. As is the case for WAG, Industry will face additional annual costs from having to apply for new maintenance dredging licences for dredging operations that are currently unregulated. Again, applications would not need to be applied for until 2012/13, so costs would not arise before that time. It is estimated that there are currently between one and five unregulated dredging operations in Wales. Approximating three unregulated operations, and assuming that one licence is made for each of the licence bands 1, 2 and 3, the total cost to Industry of applying for these licences is estimated to amount to around £14,000. This cost would be incurred upon re-application every three years (i.e. arising three times in the 10-year forecast period). For the purpose of analysis this would equate to an estimated £1,000 per annum. For consistency, the costs to Industry of applying for marine licences are based on estimates used in the Defra Licensing IA for England, scaled to a Wales basis according to the number of applications made.



**Table 4: Estimated Additional Cost to Industry of Applying for New Maintenance Dredging Licences**

Type	Cost to Industry per Licence	Total Cost Per Annum (£)
Band 1 (< 10,000 tonnes)	1,500	0*
Band 2 (10,000 to < 50,000 tonnes)	1,500	0*
Band 3 (50,000 to < 100,000 tonnes)	11,000	1,000
<b>TOTAL</b>	<b>14,000</b>	<b>1,000</b>

Note: Costs are rounded to nearest thousand. Figures may not sum due to rounding.

\*Figures round down to zero, although minor costs are present.

45. Annual costs would also be incurred by Industry through the new appeals mechanism for appeals against licensing decisions - involving time taken to understand the appeals process, submit the relevant documentation and review and respond to the outcome of the appeal decision. The estimated cost arising to Industry for each appeal is around £3,000. This is based on estimates of both the number of working days required to administer each appeal and the wage rates of the relevant Industry workers. Since it is anticipated there is only likely to be one appeal arising over the 10-year forecast period in Wales, the total cost to Industry is estimated to be £3,000 (or around £300 per annum).

#### Annual Costs to the Planning Inspectorate

46. It is proposed that the Planning Inspectorate, which is independent of the licensing authority, will be the appellate body for appeals against licensing decisions. For consistency, costs to the Planning Inspectorate are based on estimates used in the Defra Licensing IA for England, scaled down to a Wales basis according to the number of appeals per annum as outlined in paragraph 45. The estimated cost arising to the Planning Inspectorate for each appeal is around £4,000, based on 4 working days to administer an appeal.

#### Costs arising under Option 3

47. Option 3 involves setting up a more defined enforcement regime, along with a new appeals mechanism for statutory notices and monetary penalties. This will be introduced alongside a new application and decision-making process, the costs of which will be the same as under Option 2. The costs and benefits of introducing a new enforcement and appeals regime under Option 3 will therefore be **in addition to those arising under Option 2**.

#### Set-Up Costs to WAG

48. At present in Wales the enforcement regime is disproportionate, with WAG only having the option of either sending an advisory or warning letter or pursuing prosecution. Option 3 thus aims to equip the Welsh Assembly Government with a broader range of options for enforcement, including issuing statutory notices and monetary penalties for breaches in relation to the marine licensing system. The introduction of a new monetary penalties system will involve set-up costs to WAG, the estimates of which are shown in Table 5.

**Table 5: Estimated Set-Up Costs to WAG of Introducing Civil Sanctions and Appeals under Option 3**

Type	Cost arising in 2011/12 (£)
Training	4,000
Developing New Systems	6,000
Developing Guidance	5,000
<b>TOTAL</b>	<b>15,000</b>

Note: Costs are rounded to nearest thousand. Figures may not sum due to rounding.

49. It is estimated that training 22 enforcement staff will take 0.5 days, with training of legal support anticipated to take one day, at a total cost of around £3,000 in 2011/12. In addition, administrative costs associated with such training are estimated to equate to around £1,000.

50. Development of new templates for statutory notices is anticipated to take around 16 staff days, at an estimated cost of around £3,000 in 2011/12. Establishing a new monetary penalties scheme is anticipated to take around 21 staff days in 2011/12, at an estimated cost of just over £3,000. Development of these 'new systems' (statutory notices and monetary penalties) is therefore estimated to cost £6,000 in total per annum.
51. Developing new guidance for Industry relating to the new licensing and enforcement regime is anticipated to take 21 staff days, at an estimated cost of around £4,000 in 2011/12. Reviewing the revised guidance is anticipated to require 11 staff days, at an estimated cost of just over £1,000 in 2011/12.

### Annual Costs to WAG

52. Ongoing costs to WAG are estimated to arise from issuing notices of intent and undertaking civil sanctions – i.e. administering and issuing both fixed and monetary penalties – in response to non-compliance. Costs will also arise from having to consider any representations made to WAG by Industry in respect of the notices of intent issued each year. The costs of administering fixed monetary penalties (FMPs) will be borne by WAG, whereas it is anticipated that 100% of the costs associated with variable monetary penalties (VMPs) will be recovered from the offending parties.
53. Costs to WAG will arise on an annual basis from administering and issuing statutory notices, and will depend upon the number of notices issued in each year. The total cost to WAG of issuing these notices is estimated at around £5,000 per annum and is based on the number of staff days required to administer the notices (approximately one day per notice, allowing six days for inspection of compliance). Table 6 sets out the number of statutory notices and variations anticipated per annum in Wales.

**Table 6: Number of Statutory Notices and Variations Anticipated per annum in Wales**

Type	Number
Suspension notices	1
Revocation notices	1
Variations	20
Compliance notices	1
Remediation notices	1
Emergency safety notices	1
Stop notices	1
<b>TOTAL</b>	<b>26</b>

54. Table 7 sets out the total estimated annual costs WAG will incur as a result of introducing a new civil sanctions and appeals regime under Option 3.

**Table 7: Estimated Annual Costs to WAG of Civil Sanctions and Appeals under Option 3**

Type	Annual Cost from 2012/13 to 2020/21 (£)
Administer and Issue Notices	5,000
Fixed Monetary Penalties (FMPs)	1,000
Variable Monetary Penalties (VMPs)	1,000**
Appeals	6,000
Collecting Fines	0*
<b>TOTAL</b>	<b>13,000</b>

*Note: Costs are rounded to nearest thousand. Figures may not sum due to rounding.*

*\*Figures round down to zero, although minor costs are present.*

*\*\*It is anticipated that 100% of the costs for VMPs will be recovered from the relevant parties.*

55. In line with the assumptions made in Defra's Impact Assessment on enforcement (see Reference 2; hereafter 'Defra Enforcement IA'), it is anticipated that 10% of statutory notices issued in Wales per annum will be appealed against. In addition, it is estimated that 10% of FMPs are likely to be appealed per annum. It is anticipated that there is only likely to be one VMP issued per annum and that only one VMP will be appealed

over the 10-year forecast period. However, it is anticipated that WAG will be able to recover 100% of the costs associated with issuing variable monetary penalties.

### Set-Up Costs to Industry

56. It is anticipated that the only additional set-up cost arising to Industry under Option 3 will be the familiarisation with the revised guidance relating to the new monetary penalties and appeals regime. It is anticipated that around 20% of operators will take time to read and understand the new guidance, averaging 3 hours per operator at a rate of around £300 per day, i.e. an estimated total one-off cost of around £2,000.

### Annual Costs to Industry

57. Annual costs to Industry are likely to be incurred under Option 3 through the receipt of civil sanctions for non-compliance. Costs are estimated to arise through the time taken to administer and pay monetary penalties and to make representations to WAG in respect of the penalties issued. Time will also be taken to meet with WAG in order to discuss statutory notices issued and to attend compliance inspections.

58. The introduction of a more effective enforcement regime is anticipated to encourage those who are non-compliant to take necessary action to become compliant. It is anticipated that 26 businesses will be issued with statutory notices or variations each year, as indicated in Table 6; the total estimated cost of these businesses becoming compliant is around £2,000 per annum.

59. Loss of turnover is also estimated to be incurred by those issued with a stop notice. Based on one stop notice being issued per annum, the total estimated cost to Industry is around £75,000 per annum. This is based on estimates used in the Defra Enforcement IA, whereby the cost to Industry of lost turnover is £5,000 per day, with an average stop notice lasting for 15 days. However, costs to Industry in Wales could differ to those in England; more information is therefore needed in order to fully quantify the average loss of turnover per day relating to a stop notice. For comparative purposes the analysis in this IA uses the same costs to Industry as given in the Defra Enforcement IA, scaled to a Welsh basis according to the number of notices issued per annum.

60. Annual costs are also likely to arise to those parties wishing to appeal against statutory notices issued to them, or against monetary penalties issued to them.

**Table 8: Estimated Annual Costs to Industry of Civil Sanctions and Appeals under Option 3**

Type	Annual Cost from 2011/12 to 2020/21 (£)
Administration and Receipt of Notices	77,000
Fixed Monetary Penalties	2,000
Variable Monetary Penalties	8,000
Appeals	11,000
Collecting Fines	2,000
<b>TOTAL</b>	<b>100,000</b>

*Note: Costs are rounded to nearest thousand. Figures may not sum due to rounding*

### Benefits arising under Option 1

61. There are **no additional benefits** arising under Option 1. Some environmental benefits arise from having a marine licensing system in place to limit the impact on marine areas of marine activities. However, more information would be needed regarding the environmental costs associated with having *no* licensing system in place in order to be able to quantify the environmental benefits of the existing licensing system. Any quantified environmental benefits, however, would be part of the baseline NPV and would not be additional to the counterfactual.

### Benefits arising under Option 2

#### Benefits to WAG

62. The Defra Licensing IA for England indicated that the MMO would receive cost savings from consolidation of licences, for instance under Option 2 mineral dredging applications would only require one licence instead of

the two needed under the existing system (i.e. one under marine minerals regulations and one under CPA). There is currently on average only one mineral dredging application per annum in Wales and it is anticipated that this figure will remain unchanged under a new marine licensing system. Marine minerals licences in Wales are fully cost-recoverable by WAG, such that all costs associated with processing the licences are covered by the licence fee charged to Industry. In effect, the CPA consent application will be subsumed in the processing of the Marine Minerals application and, therefore, there will be a benefit to WAG of only processing one application instead of two. There will also be ongoing savings as the CPA will not need to be renewed every 3 years for the duration of the minerals dredging licence. There is likely to be an efficiency saving resulting from consolidation of licences, although this is estimated to be small.

63. Having all the relevant guidance in one place on the internet could potentially lead to a reduction in enquiries to WAG from Industry regarding the licensing process. This would result in time being saved by administrative staff who would otherwise have dealt with these enquiries. However, the extent of these possible time-savings is unclear at this stage and more information would be needed from Industry regarding the possible reduction in the number of enquiries; hence, this benefit to WAG has not been quantified in this IA.

### **Benefits to Industry**

64. As indicated in paragraph 63 it is anticipated there could be potential benefits to Industry as well as to WAG under Option 2 through time saved, resulting from having better guidance available on the internet in one place. However, more information from Industry in Wales is needed regarding the extent of time saved in order to quantify this potential saving.
65. The Defra Licensing IA for England indicated that the pre-application process with a new marine licensing system would offer a better indication of the informational requirements for an Environmental Statement, which would then reduce the cost of undertaking an Environmental Impact Assessment (EIA). Cost-savings could therefore arise for those applicants requiring EIAs who use the pre-application process. Defra assumed that this cost-reduction could be around 5%; for comparative purposes this figure has also been assumed for Wales. Based on an average of 30 applications requiring EIAs each year – at a cost of £50,000 per EIA – the annual cost saving could amount to around £75,000.
66. Those operators requiring an EIA are assumed to use the pre-application process under Option 2, leading to cost-savings through time and effort saved through being able to determine applications more quickly. The Defra Licensing IA indicates that the average cost per business arising through the application determination stage is £52,000. In the absence of data on a Wales basis it has been assumed for the purpose of this IA that the saving will be the same for applications made in Wales, and will apply to the approximately 30 applications requiring an EIA per annum. Defra have made the cautious assumption that costs could be reduced by 50% in 2011, 60% in 2012 and 70% thereafter. For comparative purposes and in the absence of robust data to support a differing assumption on a Wales basis, these percentages have also been used in the calculations for the relative cost-savings to Industry in Wales. The total estimated saving arising is therefore around £0.8m in 2011/12, £0.9m in 2012/13 and £1.1m in each year from 2013/14 onwards (over the 10-year forecast period).
67. As indicated in paragraph 62, the Defra Licensing IA suggests that Option 2 could lead to cost savings from consolidation of marine minerals dredging licences, generating time-savings at the application stage whilst also removing the need for new EIAs where licences are consolidated.
68. Under Option 2 a new mechanism for appeals against licensing decisions is intended to improve transparency in the marine licensing application process, encouraging applicants to have greater confidence in the system. This new process aims to improve communication between the applicant and WAG and could generate savings to Industry via more predictable timescales for applications. However, more information is needed from Industry on the potential time-savings in order to quantify this benefit.

### **Other Benefits**

69. Environmental benefits could arise from those activities which are newly subject to licensing, since through regulating the activities in question their overall impact on the marine environment is likely to be reduced. This is because it will become more difficult to undertake such activities, with businesses having to go through the licensing application process in order to be permitted to carry them out. The additional cost burden could thus deter certain businesses from undertaking the activities in question and, hence, reduce the impact on the environment. The extent to which such activities are likely to be reduced, however, is uncertain at this stage; the environmental benefit thus could not be quantified for this IA.

### **Benefits arising under Option 3**

70. Since Option 3 is an extension of Option 2 in terms of the new licensing application and decision-making procedures, the majority of benefits arising under Option 3 are the same as those arising under Option 2.

71. However, it is anticipated that additional benefits are likely to arise from the new enforcement regime, namely an increased likelihood of compliance with marine policy. Not only will this reduce the administrative impact on WAG arising from breaches of the marine licensing system but it is also likely to generate benefits to the environment from a reduction in non-compliance. However, the extent to which breaches of marine licensing will be reduced is unclear at this stage, such that the impact on the environment is not quantifiable for the purpose of this IA.

## Conclusion

72. 'Doing something' is considered preferable relative to 'doing nothing' in terms of amending the current marine licensing system. This is because the latter would continue to generate an unnecessary cost-burden upon Industry through having to undertake a complex application process that can sometimes result in unfavourable consequences. For instance, licence applications can be turned down on the basis of oversights or errors that are often avoidable, with both WAG and the relevant industry parties incurring costs in the process. A more streamlined approach is therefore deemed necessary in order to limit cost burdens and make the process more efficient.

73. Furthermore, a new enforcement regime along with a new appeals mechanism would mean that the marine licensing system is more transparent and would better equip those who are non-compliant to change their actions towards becoming compliant. Improving transparency and efficiency is also intended to lead to cost-savings for both WAG and Industry. Hence, undertaking policy action is considered preferable to doing nothing.

74. **The preferred proposed option is Option 3.** Although the NPV of Option 2 indicates that this option generates the highest net benefit to society, Option 3 is the preferred option **based on the overall objectives of marine policy**, specifically sustainable development and minimising the adverse impact of marine activity on the environment.

75. Option 3 still gives a **net benefit to society** and is therefore considered preferable to 'doing nothing'. Although the NPV is lower for Option 3 (£1.6m) than for Option 2 (£2.5m), as indicated in the analysis the complete benefits to society of Option 3 could not be fully quantified due to lack of available data both nationally and at the Welsh level.

76. It is anticipated that **significant environmental benefits will arise through increased compliance with marine policy**. The NPV for Option 3, therefore, is likely to be much higher than that produced for the purpose of this IA. Further evidence and analysis is therefore required in order to fully evaluate the impact of the respective options on marine policy.

## Risks and Assumptions

### Main Assumptions Used in the Analysis

77. Many of the assumptions used in the analysis for this IA are based on similar assumptions used in the Defra Impact Assessments on marine licensing and enforcement for England, scaled accordingly to the Welsh level. Due to lack of available data at both the national and Welsh levels the analysis is limited in scope; more information will be required from Industry in order to undertake a more detailed and comprehensive analysis of the policy options proposed.

78. The main assumption used in the calculation of costs to WAG and Industry from a new marine licensing system is the number of marine licence applications made per annum, based on a Welsh Assembly Government forecast for applications from 2011 onwards. A new marine licensing system could potentially encourage a higher number of applications to be made than that forecast by the Welsh Assembly Government. Hence, actual costs arising from a new system could be higher than those outlined in the analysis.

79. The number of Environmental Impact Assessments (EIA) required per annum is also based on an estimated average and will affect the total cost to Industry per annum. A higher number of EIAs per annum than anticipated could lead to increased costs to Industry under the 'do nothing' option. However, this could be offset by higher cost-savings under Options 2 and 3 from the application determination stage and from better specified EIAs.

80. Costs to Industry arising from processing licence applications are based on assumptions used in the Defra Licensing IA for England. However, more information is needed from operators in Wales in order to determine whether such cost estimates are appropriate at the Welsh level.

81. The number of statutory notices and monetary penalties issued per annum is based on WAG forecasts and could be higher or lower, depending on the incidence of non-compliance under a new marine policy. A higher number of notices and penalties could lead to greater associated costs per annum.
82. Wage rates for staff within WAG are based on standard rates according to a 'grade' structure and include both national insurance and pension contributions. Wage rates for Industry and external lawyers are based on the rates used in the Defra marine licensing IA.

### **Main Risks in the Analysis**

83. Although Option 3 generates a lower NPV than Option 2, i.e. it gives a lower additional benefit relative to the 'do nothing' option, it is the preferred option in the proposals for a new marine licensing system in Wales based on the main objectives of marine policy. Although the analysis produced for the purpose of this IA attempts to quantify the costs and benefits relating to a new marine policy, the calculations are largely assumption-based and several key benefits have not been quantified due to lack of available data. We anticipate that the environmental benefits arising under Option 3 - from increased compliance with marine policy stemming from an improved enforcement regime – are likely to be substantial. If all the key environmental benefits were quantified we estimate that Option 3 would generate greater additional benefits relative to the 'do nothing' option and, therefore, would give a higher NPV, than Option 2.

### **Administrative Burden and Policy Cost Savings**

84. Policy proposals sometimes place information obligations upon affected parties, whereby the policy requires information to be provided to Government. In the case of the preferred option, Option 3, applicants of marine licences will be obliged to provide the necessary information to WAG during the application process. However, the new licensing application process follows similar guidelines to the existing procedure; hence, no new information obligations are imposed under this option and the proposal therefore does not affect the admin burdens baseline. The preferred option is not anticipated to generate any policy cost savings.

### **Wider Impacts**

#### **Compliance with Hampton Principles**

85. The Hampton Review<sup>4</sup> sets out the key principles that should be consistently applied throughout the regulatory system. Hampton principles state that businesses should not have to give unnecessary information, nor give the same piece of information twice. WAG therefore aims to ensure that, under a new marine licensing system, the application and enforcement processes are transparent and efficient and that procedures are streamlined for simplification.

#### **Specific Impact Tests**

##### **Carbon Impact Assessment**

86. The preferred option (Option 3) could reduce marine activities which were previously unregulated, with the possibility of reducing carbon emissions where relevant. However, this could potentially be offset by a possible increase in other activities due to a new simplified licensing process. The overall effect is therefore likely to be neutral.

##### **Competition Assessment**

87. Option 3 is not anticipated to have any direct effect on competition for those firms who comply with the regulations. However, those firms who choose not to comply with the regulations could ultimately gain a competitive advantage from operating outside the law if it is in their interests to simply pay a monetary penalty (i.e. if the penalty is lower than the gain from operating illegally). Variable monetary penalties proposed under Option 3 therefore aim to reduce the incentive to breach regulations.

##### **Small Firms Impact Test**

88. Smaller and less complex projects should not need to use the 'pre-application' stage of the new licensing system and we are not proposing to place statutory timeframes in regulations for the application process because of the need for flexibility; some very minor works should be able to be processed far more quickly than other projects. WAG will try to ensure that its requirements for information to be supplied with applications are proportionate to the size and risk posed of the proposed activity.

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<sup>4</sup> Hampton Review: [http://www.hm-treasury.gov.uk/bud\\_bud05\\_hampton.htm](http://www.hm-treasury.gov.uk/bud_bud05_hampton.htm)

## **Legal Aid Impact Test**

89. It is anticipated that the preferred option will have little or no impact on Legal Aid, since the civil sanctions being introduced are predominantly likely to affect non-compliant businesses rather than individuals. Furthermore, it is anticipated that no prosecutions are likely to be undertaken and only one variable monetary penalty is likely to be appealed over the 10-year forecast period; hence, the legal impact on businesses overall is likely to be minimal.

## **Other Environmental Effects**

90. Environmental impacts arising under Option 3 are outlined in the Evidence Base section of this IA. In addition, there is likely to be reduced damage to marine ecosystems from increased compliance with marine policy.

## **Health Impact Assessment**

91. A more effective enforcement regime under Option 3 is anticipated to encourage a higher proportion of compliance in relation to marine activities. As a result, it is estimated there will be reduced damage to marine ecosystems under the proposals, which could have positive health impacts (e.g. through a reduction in contamination of fish stocks).

## **Sustainable Development**

92. The overall objective of the new marine licensing system is to regulate sustainable development in the marine environment in a way that minimises adverse impacts on the environment, human health and legitimate uses of the sea. The proposed new marine licensing system is intended to enable marine authorities to make better informed decisions in the context of a more sustainable approach to the marine environment. A more extensive enforcement regime will contribute to better governance and is anticipated to encourage businesses to operate within the law, at a more sustainable level of marine activity.

## **Race Equality**

93. The policy is not considered to be relevant to the Government's responsibilities under the race equality duty.

## **Disability Equality**

94. The policy is not considered to be relevant to the Government's responsibilities under the disability equality duty.

## **Gender Equality**

95. The policy is not considered to be relevant to the Government's responsibilities under the gender equality duty.

## **Human Rights**

96. The policy is considered to be compatible with the European Convention on Human Rights.

## **Rural Proofing**

97. The policy is unlikely to have any differential impact upon rural areas unless, for instance, there is a higher occurrence of non-compliance in rural than urban areas.

## Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

**Basis of the review:** The Marine and Coastal Access Act requires that its provisions are reviewed after three years, or thereafter for those provisions where that would be too early. More widely the new system will be reviewed as a matter of good practice and WAG requirements. The costs of the system also have to be reviewed by WAG to ensure that charges are appropriate and to justify any changes to the Treasury.

**Review objective:** To ensure that the licensing system is operating efficiently and the new measures are working as expected. To inform the level of charges.

**Review approach and rationale:** The focus is likely to be reviewing monitoring data and evaluating whether the system is achieving the intended objectives.

**Baseline:** The baseline is continuing with the current system of licensing, i.e. the 'do nothing' approach as outlined under Option 1 in this Impact Assessment.

**Success criteria:** In the process of being developed. They are likely to cover issues like compliance, whether licence conditions are achieving environmental objectives, timescales for licence applications and determinations and costs incurred by WAG.

**Monitoring information arrangements:** WAG is currently developing the systems to capture the information.

**Reasons for not planning a PIR:** N/A



## Annex 2

Table A – Costs to WAG and to Industry of the Existing Licensing System

Licence Type	Name of Licence	Tier	Annual Flow	£				
				Average Cost to WAG per Application	Licence Fee Recovered	Total Cost to WAG	Average Cost to Industry	Total Cost to Industry
Construction and beneficial use licences	Construction Licence Band	Minor Works	5	200	100	300	2,700	13,500
		Band A	18	1,600	1,000	9,500	2,700	48,600
		Band B	16	3,400	2,300	18,800	2,700	43,200
		Band C	2	6,900	4,500	4,700	16,000	32,000
		Band D	3	10,900	7,200	11,100	16,000	48,000
		Band E	0	18,200	12,000	0	23,500	0
		Band F	0	58,600	38,700	0	23,500	0
	Beneficial Use Licence Band	Band A Small	4	1,000	700	1,500	3,300	13,000
		Band B Regular	2	3,400	2,300	2,300	16,300	32,600
		Band C Large	0	6,900	4,500	0	53,700	0
Disposal licences	Maintenance Dredging	Band 1	1	5,500	3,700	1,900	1,500	1,500
		Band 2	1	10,900	7,200	3,700	1,500	1,500
		Band 3	2	15,000	10,000	10,300	10,600	21,200
		Band 4	3	24,200	16,000	24,700	10,600	31,900
		Band 5	1	33,400	22,000	11,400	12,500	12,500
		Band 6	1	52,700	34,800	17,900	12,500	12,500
	Capital Dredging	Band 1	1	6,800	4,500	2,300	49,100	49,100
		Band 2	2	13,800	9,100	9,400	49,100	98,300
		Band 3	2	19,400	12,800	13,200	49,100	98,300
		Band 4	2	30,100	19,900	20,500	49,100	98,300
		Band 5	0	43,700	28,900	0	49,100	0

		Band 6	0	65,900	43,500	0	49,100	0
	<b>Fish Waste</b>	All	1	4,500	3,000	1,500	0	0
<b>Minor works, pipelines and other miscellaneous licences</b>	<b>Submarine Pipelines etc.</b>	All	0	16,200	10,700	0	0	0
	<b>Rock dumping, mattressing etc.</b>	All	0	3,400	2,300	0	0	0
	<b>Seabed Injection</b>	All	0	3,400	2,300	0	0	0
	<b>Minor Works including Simple Moorings</b>	Up to £5,000	0	200	100	0	0	0
	<b>Tracer and Dyes</b>	All	2	100	100	100	0	0
	<b>Burial at sea</b>	All	0	0	0	0	0	0
	<b>Marine Minerals</b>	<b>Marine Aggregate</b>		1	0	0	0	0
<b>TOTAL (excl. EIAs)</b>			<b>70</b>			<b>£0.16 m</b>		<b>£0.66m</b>
<b>Cost to Industry of producing 30 Environmental Impact Assessments</b>								<b>£1.5m</b>
<b>TOTAL (incl. EIAs)</b>								<b>£2.16m</b>

*Note: Costs are rounded to the nearest 100. 'Total' costs are rounded to the nearest thousand.*

## Annex 3

### Description of the Proposals under Option 2

**Marine licence application and decision making procedures.** This includes:

- Bringing many of the consents (and permissions etc.) under the regimes mentioned above into a single system of marine licensing. In some cases this will mean consolidating licence requirements so that only one application has to be made: this will include for minerals which might previously have required a licence under both the marine minerals regulations and CPA.
- The option for applicants of a more formal and thorough pre-application procedure to give applicants the opportunity of early engagement with WAG who in turn will consult Primary Consultees including Cefas, CCW and Environment Agency Wales. This aims to help applicants determine whether to make a formal application and to identify and resolve any potential conflicts before applying.
- Comprehensive and detailed information available online to advice and guide applicants on the need or otherwise of Environmental Impact Assessment, Appropriate Assessment etc.
- A streamlined application process whereby resources are concentrated on activities that carry greater risks.

**Appeals against licensing decisions.** The Act requires us to set up an appeals mechanism through which applicants can appeal against a licensing decision made by a licensing authority. This requirement builds on and improves provisions contained in the existing legislation (the Food and Environment Protection Act 1985 (FEPA)) which sets out the “right to make representations” to a Committee against the conditions placed in a FEPA consent; refusal for FEPA consent or the variation or revocation of a FEPA licence. The new appeals process proposed will provide a way for applicants to appeal against a licensing decision to an independent body – the Planning Inspectorate (PINS). We have closely aligned our proposed processes to those of terrestrial planning appeals as we expect there to be benefits in developing a system which is consistent with current practice, for example, a familiar process should be easier to implement and for appellants to understand and follow.

**Exemptions from marine licensing.** The Act's marine licensing provisions cover various activities: deposits of substances or objects, scuttling vessels, constructing, altering and improving works, removing objects and substances from the seabed, dredging, deposit and use of explosives and incineration. This will provide for consistency across a broad range of activities. Exemptions are needed, however, to remove activities where licensing is not appropriate: for example because risks are low or because there are alternative regulatory systems in place. In many cases the effect of exemptions is to achieve a similar (though often not identical) situation to under existing arrangements. For example, some waste management activities were excluded from the need to have an Environmental Permit because they were covered by FEPA. Under the new system such activities will be within the scope of marine licensing so again will be excluded from the need to have an Environmental Permit. An exception to this is ship dismantling which will be regulated under Environmental Permitting rather than marine licensing. This may redistribute where effort is required amongst regulators but not impose a net cost. There are a couple of exemptions where the outcome is materially different:

- Removal of substances and objects was not generally regulated in the past (apart from the extraction of marine minerals). Under the Act, removals are licensable. Using vehicles to remove litter from beaches or removing items of cultural heritage from the sea<sup>5</sup> is now licensable. However, to enable proportionate regulation, it is proposed to exempt the removal of litter from beaches by or on behalf of the local authority.
- The Act makes the act of navigation dredging licensable for the first time. Previously, operators needed a licence if they were depositing dredged material or if the activity posed a risk to navigational safety. There is a year's grace after the introduction of the new licensing system before previously unregulated dredging will need a licence. WAG estimate that there might be an additional 1 – 5 applications a year but this depends on the licensing process involved and in particular the length of the licence. WAG could operate a screening process for maintenance dredging whereby low risk activities would be subject to a simplified licensing process.

### **Description of the Proposals under Option 3**

#### **The Proposals are the same as those outlined under Option 2, above, along with:**

The primary aims of our enforcement proposals under the Act are to bring people into compliance with the law and to prevent harm to the environment and human health and prevent interference to users of the sea. Under the Act, the wider range of enforcement tools will enable a more proportionate approach to enforcement to be taken, ensuring sufficient flexibility to deal appropriately with the range of cases that enforcement officers may face.

Appointed officers will inspect and gather evidence and the enforcement authority will decide the most appropriate sanction or course of action depending on the circumstances of each case. For example, in waters where the Welsh Ministers will be responsible for enforcing the licensing regime, Marine Enforcement Officers appointed by the Welsh Ministers will carry out inspections, gather evidence and, when appropriate, issue certain statutory notices. WAG will be able to review each case and take forward any further sanction or enforcement action if it decides either is appropriate.

As now, the enforcement authority will be able to give advice, issue warnings as well as revoke or vary licences if appropriate. Under the Act's provisions they will, in addition, be able to suspend a marine licence, issue notices which require the operator to take specific action and monetary penalties. Prosecution remains for use as and when appropriate. Monitoring will continue to be carried out on a risk-basis (i.e. larger and higher risk projects will be inspected or visited more often than lower-risk projects).

#### **Description of Civil Sanctions (Monetary Penalties and Statutory Notices)**

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<sup>5</sup> Generally only up to 12 nautical miles..

### **Fixed Monetary Penalties (FMPs)**

Fixed Monetary Penalties are intended for low-level, minor non-compliance of licensing conditions – for instance, not notifying commencement of works or not returning forms by the specified deadline.

It is intended that the standard FMP will be £100 for individuals and £300 for all other persons including, for example, limited companies.

### **Variable Monetary Penalties (VMPs)**

Variable Monetary Penalties offer the Welsh Assembly Government the opportunity to vary the level of fine according to the seriousness of the offence. VMPs are intended for breaches of licence conditions which are more serious than the minor offences requiring FMPs yet do not warrant prosecution. For instance, exceeding dredging and dumping limits or causing moderate damage to the environment through a licensing offence.

We are not proposing to have a statutory maximum level for a VMP. However, the enforcement authority will take into account the maximum penalty which would otherwise be awarded by a Magistrate's court if the offence were heard through the criminal system.

### **Statutory Notices**

Statutory Notices will be issued in relation to breaches of the marine licensing system. Part 4 of the Act provides a range of statutory notices which regulators can use to regulate marine licensable activities and to enforce that regulation.

These new notices fill various gaps in the existing legislation so that action can be taken where an operator is in breach of their licence and/or where there is a risk that their activity or development is causing harm to the environment or human health, or interferes with legitimate uses of the sea (i.e. navigational interference).

An enforcement authority may issue enforcement notices to order specific action to be taken:

- Compliance notice: this can be used in less serious situations to compel an operator to come back into compliance;
- Remediation notice: this may require an operator to take specific steps to put right or compensate for any harm they may have caused;
- Stop notice: this is an emergency notice which can be used to stop seriously harmful activities urgently;
- Emergency safety notice: this can be used to compel an operator to make safe a serious navigational safety hazard.

**End.**