



Department  
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Innovation & Skills

**FOCUS ON ENFORCEMENT  
REGULATORY REVIEWS**

Review of Coastal Projects and  
Investments

FEBRUARY 2013



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# Introduction

1. This paper summarises the findings of the Focus on Enforcement (FoE) Review of enforcement as it affects coastal projects and investments. FoE reviews examine the impact of regulatory delivery and enforcement in particular sectors or areas of the economy. Each review is a short, sharp investigation of stakeholder experiences and evidence; they are carried out by a small review team and typically involve a six to eight week fieldwork phase.

## Evidence underlying the review

2. We have taken evidence from 19 bodies, including a selection of individual businesses and trade associations along with the regulators and Government Departments concerned. We are grateful to all of them for their openness, candour and willingness to give us their time.
3. The purpose of this paper is to present the findings and evidence that the review team heard. The aim of the review is not to make specific recommendations for reform but to identify the impact and consequences of current enforcement practice, enabling relevant regulators to be invited to consider and respond.
4. We have reflected the weight of evidence received in our analysis below, and in the formulation of our findings which reflect the views expressed to us rather than detailed documentary evidence.
5. A separate exercise – the Red Tape Challenge theme on Water and Marine regulations – has been undertaken in parallel, and a number of the comments submitted as part of that work, where they related to enforcement, have also been taken into account in this FoE review.

## Economic significance of developments on the coast

6. The range of projects and investments covered by the scope of this review do not constitute neatly an economic sector for the purposes of data collection by the ONS or others. No estimates therefore exist of the total economic or employment contribution made by coastal businesses. However there are some very significant elements. For instance:
  - The ports sector contributes £7.7 billion to UK GDP. Ports are important to many other parts of the economy, too, as they move 75% of UK imports and exports by value. Their importance is recognised in the National Infrastructure Plan<sup>1</sup>.
  - The UK has more than 50% of global offshore wind generation capacity. The industry is set to grow fivefold by 2020, the largest offshore wind growth plan in

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<sup>1</sup> [http://www.hm-treasury.gov.uk/infrastructure\\_easy\\_read.htm](http://www.hm-treasury.gov.uk/infrastructure_easy_read.htm)

the world. Specialised port facilities are essential to support both construction activity and longer term operations and maintenance. Construction port activity for UK offshore wind farms is expected to be worth £171 million in 2020.

- GVA for the core coastal marinas sector was in the range £500-700 million.

## The regulatory regimes

7. This review is mainly concerned with the interaction between
  - the land-use planning regime, operated by local planning authorities with appeals to CLG's Planning Inspectorate Agency; and
  - the marine licensing regime, operated by the Marine Management Organisation (MMO). Both the marine licensing regime and MMO are relatively new, having been created by the Marine and Coastal Access Act 2009<sup>2</sup>. Both are still evolving. Much of the evidence we heard was rooted in the early stages of that evolution.
8. Parliament has created a deliberate overlap between these regimes: land-use planning applies down to the low-water mark; marine licensing applies up to the high-water mark. Both regimes therefore apply to most coastal developments.
9. Both the land-use planning and marine licensing applications may require Environmental Impact Assessments. Both systems also require consultation in many cases with statutory advisors. The key advisors are
  - Natural England, which advises on nature issues, notably the application of the Habitats and Birds Directives;
  - The Environment Agency, which advises on issues such as flood defence and water quality. It issues environmental permits, flood defence consents and other licences which are generally considered as part of the same process as marine licences or terrestrial planning permissions.
10. Natural England and the Environment Agency are NDPBs of DEFRA. The MMO is an Executive NDPB sponsored jointly by Defra, DECC, DCLG, DfT and MoD.
11. There are other regimes relevant to coastal development, including
  - Major infrastructure projects, which are dealt with by the Planning Inspectorate's National Infrastructure Directorate, with input from MMO, local authorities and the statutory advisors;
  - Harbour Orders granted by MMO. Among other things, these give harbour authorities "permitted development rights" (which effectively exclude some of their developments from the land-use planning system); and
  - DECC controls of infrastructure such as pipelines under the Petroleum Act.

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<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2009/23/section/2>

12. We did not receive substantial evidence about these latter regimes, and so we have not reached findings about them.

## Good Practice

13. **Amongst much good professional regulatory work we have identified three areas of particularly good practice:**
  - **MMO's approach to gathering customer feedback;**
  - **DECC-led work to plan ahead for the regulation of wave energy;**
  - **Innovative resourcing by the aggregates sector via the Crown Estate of Natural England and JNCC capacity building and provision of pre-application advice.**

### Customer feedback

14. MMO and Natural England both undertake customer satisfaction surveys, open to all customers to complete. The surveys ask for views on a range of performance indicators. Results are published on the agencies' websites.

### Cooperation in planning ahead for the regulation of wave energy

15. We heard a number of examples of good joint working between regulators and developers to identify ways of delivering sustainable development. For example, Renewables UK said that the first wave-power arrays were likely to be deployed in 2016-17. They told us that DECC had established a working group with regulators, which was working to prepare the regulatory environment. This is an excellent example of how regulators can work with novel businesses to make innovation quicker and less difficult.

### Funding for pre-application advice

16. Paragraph 89 below notes an innovative arrangement to ensure appropriate industry funding of pre-application advice. Other sectors expressed a desire to give such funding. There is potential for other sectors to adopt or adapt the scheme by which the aggregates industry funds pre-application advice through the Crown Estate.

# Our findings

17. The scope of this review deliberately cuts across regulatory regimes. In practice, the concerns we heard were generally more about marine licensing, or about its interactions with terrestrial planning, than about the terrestrial planning regime itself. We were also very aware of a variety of ongoing existing work to speed up terrestrial planning currently being led by the Department for Communities and Local Government (DCLG). Our findings are therefore mainly focussed on the work of MMO and its advisors, and on the way that they and local authorities interact. Amongst those advisors the focus of attention was on the Environment Agency and Natural England, as they are the most regularly involved in development at the coast.
18. There is already considerable work underway that should meet some of the needs identified by the findings in this report. Defra, on behalf of MMO, Natural and England and Environment Agency, is separately publishing an action plan that sets out this work as well as new action to respond directly to these findings.
19. This review interacts with several other current or recent reviews, including the recent review of implementation of the Habitats Regulations, current work by DCLG to speed up the terrestrial planning regime, and the triennial review of the Environment Agency and Natural England, which is underway. We have sought to avoid duplicating the work of these reviews. The Water and Marine Red Tape Challenge (RTC) ran in parallel with our review and both exercises have shared evidence.
20. We have grouped our findings under five headings:
  - Balance between growth and the environment;
  - Overlaps between regulators;
  - Timescales;
  - The applicant's experience of the system;
  - The regulators.

## Balance between growth and the environment

### Findings

21. **The relative weights given to growth and environmental concerns will never please everyone, and so it is not surprising that we have found that some of the actors in the system think that they should be adjusted.**
22. **Business told us for the largest projects all parties know that decisions potentially face Judicial Review, whether by applicants, their competitors or NGOs. This inevitably affects regulators' behaviour. (A review of Judicial Review processes has been announced since the end of our fieldwork). However, relationships between regulators and developers are generally positive and professional.**
23. **The way the balance is set for marine licensing can be regarded as the product of three factors:**
  - **The terms of the legislation, which are outside the scope of this review.**
  - **The approaches and cultures of the Environment Agency and Natural England, the key expert advisors in the system, informed by Government guidance setting a presumption in favour of sustainable development.**
  - **The way in which the MMO takes account of the advisors' input and its own expertise in coming to marine licensing decisions.**
24. These points are considered in turn in the following sections.

## Policy approach and culture of the advisors

### Findings

25. **Natural England ‘object’ to less than 0.5% of development proposals on Habitats Regulations grounds. Most of these objections are successfully addressed at the planning stage. Nonetheless the general view of businesses we spoke to was that NE took an unduly precautionary stance in interpreting the legislation.**
26. **Several developers told us that they regarded it as essential that the concerns of Natural England and the Environment Agency were met in full before they submitted an application. This means that the Environment Agency and Natural England have much more influence than their formal role of “advisors” would suggest.**
27. Earlier in 2012 the Government reviewed the implementation of the Habitats Regulations<sup>3</sup>. After analysing a number of case studies, including coastal developments, the Review found “that in the large majority of cases the implementation of the Directives is working well, allowing both development of key infrastructure and ensuring that a high level of environmental protection is maintained”. It also noted “differences of opinion on whether current guidance was leading to an over-precautionary approach by regulators” and instigated a number of actions to address this.
28. Our evidence comes from business views and reinforces the finding of the previous review. One port and harbour authority described how Natural England had consulted on a proposed zone to protect reefs, which would have affected the harbour. The harbour instigated research which proved that there were no reefs in that area. Natural England then agreed to take the harbour out of the proposed zone. The proposal to designate based on limited evidence created uncertainty, and the research had to be funded by the harbour.
29. We also heard that local authority advisors’ concerns about, for instance, piling works often seemed to include many or all elements of the standard pro-forma rather than selecting issues based on any specific evidence about harm which the proposed development might cause. We heard the view that the system does not seem to allow professional judgements to be made – for example, bird counts being required even for the smallest projects. Developers often saw it as easier, less time-consuming and safer to submit to associated conditions rather than to challenge an advisor’s evidence base.
30. Businesses suggested that Natural England were unduly risk-averse, constantly motivated by the risk of Judicial Review from NGOs. Natural England told us that they were not driven by the risk of Judicial Review: they said that they sought to make evidence-based input in all cases.

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<sup>3</sup> <http://www.defra.gov.uk/publications/files/pb13724-habitats-review-report.pdf>

## Work already in hand

31. A package of 28 measures was agreed in response to the Habitats Review. They focus on facilitating nationally significant infrastructure projects and improving implementation processes, guidance, data and the overall customer experience.
32. DEFRA and relevant arms length bodies are taking forward these actions. For example:
  - The review has led to the creation of a Major Infrastructure & Environment Unit which provides a means to identify environmental issues with nationally significant infrastructure projects and establish a common position on how they can work together to address them at the pre-application stage.
  - The Marine Evidence Group has been established to improve the quality and quantity of evidence relevant to protected sites and species and to ensure proportionality in evidence standards.
  - The Habitats Review encourages a shared culture of co-operation, openness, transparency and delivery and expects lead Government agencies to commit to this in their Corporate Plans.
33. Natural England has made changes to bring executive accountability for the organisation's statutory functions, including advice on land and sea and licensing, into one place, together with ownership of a strategic change programme designed to ensure consistency and coherence of approach. It has published a comprehensive improvement plan<sup>4</sup>.
34. To improve understanding of the customer perspective, Natural England has worked with its Developer Industry Group to pilot a staff interchange scheme between Statutory Nature Conservation Bodies and developers. The pilot will be reviewed in the coming months to look at feasibility of rolling it out more widely in the next financial year.
35. The Environment Agency told us that it aims to take a positive, proactive and helpful approach to all of its work. This means that it seeks feedback and responds to its customers' needs, ensures that it focuses on solutions and engages early to ensure that its advice is risk based and proportionate. It has a number of initiatives underway (or recently completed) which, while not specifically targeted at marine licensing, will nevertheless benefit many customers working on marine / coastal developments.

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<sup>4</sup> <http://www.naturalengland.org.uk/ourwork/regulation/betterregulation/default.aspx>

## MMO use of the advisors' input

### Findings

36. **We heard that MMO's desire was to be more proactive in decision-making. Businesses welcomed this promised approach, and wanted to see it implemented more quickly.**
37. MMO told us that their predecessors had tended to act as a "postbox" for the advisors' concerns, translating those concerns into conditions without considering whether the environmental harm justified the constraint on business. Businesses confirmed this. MMO said their aim was to be a more positive decision-maker, taking full account of the advisors' input and using it to come to their own independent decisions. MMO said they were en route to that objective. One of the top five themes in their corporate strategy is removing barriers to growth.
38. The businesses we spoke to welcomed MMO's objective, but were generally less confident than MMO about how much had been achieved to date. Some thought there had been little progress. All thought there was still a good amount still to be done. They felt that in the meantime, the overall stance of regulation was unduly restrictive. As one told us, "MMO needs time to sort things out. But our business can't afford that".
39. One trade association commented on the importance of judgement and understanding in the marine environment, and felt that the MMO's starting position was always a precautionary one. They said that MMO translated objections into licensing conditions too freely, even when they resulted in conflicting requirements, instead of interpreting them and weighing them against each other. In one case this had resulted in the applicant rewriting the licensing conditions himself to remove the conflicting requirements (with subsequent speedy approval from MMO). They contrasted this approach with the terrestrial planning system where they had found thought given to whether objections were valid and where relevant bodies might be brought around a table to come up with a workable solution.
40. As noted above, in considering licences for large projects. MMO is at risk of challenge from NGOs or developers' competitors. Judicial Review of the grant of permission can cause significant delay and uncertainty for developers.
41. In one case we heard that the threat, and then the actuality, of Judicial Review proceedings against grant of a permission caused MMO to communicate more formally with the applicant. Decisions on the approach to the review were taken so as to minimise the risk of successful challenge to an MMO decision. The applicant suggested that the risk to its own commercial future was more significant than the risk to MMO's reputation. It suggested that MMO should have been prepared to discuss how to deal with the possibility of Judicial Review.

## Overlaps between regulators

### Findings

42. **The system creates overlaps between regulators. In principle, these are dealt with by having a “lead” regulator for each case. However businesses gave us several examples where a lead regulator had been identified only after long delay, or not at all. Once a lead regulator is identified, businesses wanted them to set information requirements and a timetable in discussion with the others, and then all stick to it.**
43. A marina developer told us that the guiding principles of the marine licensing regime were to create a streamlined and evidence based consenting framework – “one project: one licence”. In his view “there is no evidence that improvements are being made” in that direction.
44. There are Memoranda of Understanding governing the choice of lead regulator. Despite these, we heard of a number of cases in which the choice of lead regulator had taken a long time, or when there was no effective decision and an applicant was left dealing with more than one regulator. Problems arose because the guidance was not clear and because there was no dispute resolution procedure which could produce rapid and binding decisions in cases of doubt. For instance:
- An RTC submission described a case where MMO and county council Environmental Health teams had each sought different conditions to control noise from piling. Although MMO consulted the local authority, the response to consultation did not come from the officer dealing with the terrestrial noise control issues, and so advice was different.
  - Green Port Hull is an ABP/Siemens project to create an offshore wind turbine manufacture and export facility. A DEFRA-led “lessons learned” document on the project notes that “there was confusion over roles, most notably in relation to the responsibilities of the competent authorities involved, the scope of their assessments, and their ability to coordinate their work”. The document suggests a common timetable and information requirements – effectively a joint project plan – agreed in advance between the developer and all the regulatory bodies. Such an agreed plan would have considerable potential to reduce cost, delay and frustration, and not just in Habitats Directive cases.
45. Separate Environmental Impact Assessments may be required to evidence terrestrial planning consent and marine licensing for the same project. Irritants such as this can be avoided with sufficient pre-application discussion, but this does not always happen. MMO note that local planning authorities do not always inform them early enough that an application is likely to have a marine component, by which time the EIA has not been able to capture the requirements of the marine licence.

## Marine licensing of low risk activities (Red Tape Challenge)

### Findings

46. **There were concerns that licences should not be required for low risk activities such as small-scale maintenance dredging and mud-washing, taking of samples, maintenance activities for non-statutory authorities; and other minor activities (e.g. pontoons that are already consented by a Harbour Authority). Concerns were also raised regarding the proportionality of some of the conditions placed upon the licences for low risk activities and that the process was over-complex for smaller operations.**
47. The Red Tape Challenge received 69 responses on the crowd-sourcing website and numerous inbox comments on the conservation and use of marine environment regulations, within which the 15 marine licensing regulations sit. To support this 10 people were consulted directly via a small business panel and telephone interviews.
48. Respondents called for exemptions for small-scale and emergency activities, such as small-scale maintenance dredging and mud-washing, taking of samples, elver tidal flaps, and like-for-like replacements. One County Council told the Focus on Enforcement review that they had to apply for full licenses even for exploratory works. This was time-consuming and costly.
49. Red Tape Challenge respondents also called for exemptions for work licensed by other authorities such as the Port of London Authority and exempting responsible coastal authorities who work under the Coast Protection Act undertaking small-scale maintenance, for example taking a JCB onto a beach to aid with seawall repairs. Respondents also called for an extension to the length of licences to cover all basic maintenance works in a set geographic area, for example to coastal defences.
50. Respondents also raised concerns over the requirements for advertising for licence applications, which have increased from 2 to 4 notices (typically costing £1,000).
51. One coastal District Council gave the Focus on Enforcement review a relevant instance of good practice. Natural England had written to the council to confirm that that beach based activities such as coastal management although technically inside a special protection area for red-throated divers are not assessed as a risk. This provision of assured advice avoided the need for the Council to ask for approval of individual projects.

## Timescales

### Findings

52. **Performance statistics show that the consideration of formal applications takes about the same time for marine licences as it does for terrestrial planning. But in both regimes, pre-application discussions are often the longer part of the process, especially in major cases. We heard that these tended to take longer in marine licensing. Most are dealt with relatively speedily. But in a few major cases (which were all legacies from the previous regime) they have been very protracted indeed, causing severe issues for the prospective developer and its customers.**
53. Many developers will look to get near-total agreement to their proposals before submitting a formal application – so the pre-application phase often represents the majority of the time taken to reach a decision. Evidence suggests that the pre-application phase for marine licensing is often significantly slower than local authorities' pre-application planning phase, especially for larger cases, although in some cases this reflects additional environmental sensitivities associated with certain coastal projects.
54. The right of the applicant to appeal against local authority failure to reach a decision within eight or thirteen weeks of submission reinforces authorities' natural desire to expedite applications which could bring jobs and income to their areas. We heard good evidence of positive and constructive local authority support for several major projects. However authorities' stance towards more minor developments was more variable.
55. The largest cases are too few in number to influence statistics significantly. We looked at several cases with long decision times, including new berths for the largest container ships at the Port of Southampton.
56. MMO has processes for reporting to senior management on long-running and sensitive cases. However the processes did not manage the flow of information in the Port of Southampton case in a way which was acceptable to ABP. Discussions with the two parties suggest that each had a very different perspective on the case as it was progressing. MMO's internal progress reports on cases are not shown to the regulated business; nor is the business invited to contribute its view of progress.

## The applicant's experience of the system

### Smaller projects

#### Findings

57. **Businesses told us that small companies are often unaware of how to engage the marine licensing system: they may not even know that it exists. They found the system unduly complex for small projects adding to the time taken, the cost and the commercial risk. Because of this complexity, many applicants need professional advice, which can be disproportionately expensive for smaller projects.**
58. We heard that regulatory processes are applied in the same way to small or replacement works as to large projects, with the result that costs and delay impact disproportionately at the lower end of the scale.
59. Outside designated areas, we heard from both port and marina sectors that very low risk projects such as the replacement of like-for-like piling or temporary safety-related works such as the erection of a temporary pontoon for navigational purposes were subject to disproportionate scrutiny and therefore cost. In 2012, 15 out of the 294 licences processed were for like for like works. Maintenance dredging and the replacement, repair or reconfiguration of structures on the land and in the water are all subject to full marine licensing processes.
60. An RTC submission gave an example of a project to extend a marina from 400 to 450 berths. This triggered an EIA not because it was a substantial change but because a threshold of 230 berths had been exceeded. (The threshold is set by the EIA regulations).
61. An application for a modest capital dredge and pontoon reconfiguration at a south-coast marina required nearly 60 hours of professional input, including detailed pre-application consultation with all key statutory stakeholders to secure their agreement at an early stage.
62. When coupled with the restrictions of a designated site, development costs can make smaller projects unaffordable. For example, we were told that the cost and uncertainty created by regulatory processes had rendered uneconomic the extension of one jetty in a harbour to accommodate growth in its aggregates dredging interests despite the best efforts of a willing and capable advisor from Natural England.
63. The marina industry told us that largely because of regulatory complexity and uncertainty, developers were very reluctant to propose wholly new marina facilities. The resulting limitation of marina capacity had not only affected marina companies. Boatbuilders were unable to make sales until they had helped their prospective customers to find a mooring for their new craft. This had been a real constraint on the boat-building industry prior to the recession, and would be likely to recur once economic recovery was fully under way.

## Consistency between and within regulators

### Findings

64. **Businesses gave us examples of inconsistencies between and within regulators, over time and from place to place.**
65. Industry told us advice from a single regulator could be inconsistent. We heard that conflicting opinions across both the Environment Agency and Natural England could sometimes result in additional burdens on and delay for applicants.
66. Advice could be inconsistent over time. One Harbour Authority told us that in the course of their application to dredge the approach to their docks, Natural England had retreated from being minded to conclude no adverse impact on integrity to concluding in June 2011 that there was no like-for-like compensation possible that would satisfy the requirements of the Habitats Regulations, and that the project could not therefore be progressed. Natural England told us that their change of view was due to changes in project design and further scientific evidence becoming available: this was not the understanding of the Harbour Authority. Marina developers raised similar concerns.
67. The Red Tape Challenge heard from an organisation which had ironed out issues with NE over their EIA to NE's satisfaction but then after the 28 day consultation, NE raised new concerns 'rendering all previous meetings a waste of time and money'. Natural England told us that they would only change their advice if there was a change in the project or the scientific evidence.
68. Natural England told us that following the Habitats Regulations implementation review they are promoting a process for agreeing evidence requirements for major infrastructure cases at the start of discussions and a process for dealing with project changes. They also offer a "letter of comfort" to license applicants for nationally significant infrastructure projects which is contingent on no relevant changes as well as on planning permission.
69. A marina developer argued that a body offering pre-application advice should be bound by it in post-application consultation unless something material had changed in the application.

## Consultation processes

### Findings

**70. Businesses said that consultation requirements are sometimes unnecessarily duplicated, adding time, cost and risk to a development project.**

71. Several developers said that in pre-application discussions they normally aimed to resolve all issues with Natural England and the Environment Agency. Despite this, once formal applications were submitted both MMO and the local authority were obliged to consult the same bodies again. This involves additional time, cost and risk for the applicant.
72. We also heard examples where the local authority had consulted the advisors on a terrestrial planning application; MMO had then conducted a separate consultation with the same advisors on the marine licensing application for the same project. MMO told us that this was required by the legislation. Sometimes statutory consultees are consulted even where they have no apparent interest in the development concerned. For example, we understand that Network Rail was consulted on a port development where no rail connection was at stake.
73. Similarly we heard cases where public consultation had to be repeated. Re-consultation covered areas where the proposal had not changed and no new issues or evidence had arisen. As well as the delay involved in consultation itself, the additional consultation put the developer at risk of further – perhaps spurious – issues being raised, perhaps by a competitor.
74. In one case, on the south coast, we were told how an Environmental Statement was submitted dealing with the scoping requirements of both marine and terrestrial regulators and fully advertised alongside the publicity requirements for the planning application. When the planning application began to make progress, MMO asked that a further public advertisement and period of public consultation be undertaken for the Environmental Statement, despite the project not having changed. MMO told us that unless the terrestrial and marine applications were submitted together, the regulations required this separate consideration.
75. We heard that smaller organisations struggle to apply the necessary resources to review and respond to the “extensive range of consultation impacting upon their business and industry more generally.”
76. Representatives of smaller organisations told us that the costs of public notification in local newspapers could amount to as much as £1,000 i.e. 10% of the value of a £10,000 project.
77. A number of these issues also arose in the case of the extension of two berths at the Port of Southampton to accommodate very large container vessels, which has been well documented elsewhere.

## The regulators

### MMO capability

#### Findings

78. **At 2½ years old, businesses already recognise MMO as a well managed organisation. But it still faces significant capability challenges, notably around local input.**
79. The MMO has gone from very few staff at its foundation in 2010 to near its full complement now. This has taken a long time because of civil service recruitment controls.
80. While we heard criticism of MMO's performance in relation to several coastal projects – explored elsewhere in this report – we also heard several businesses offer positive views:
- Many acknowledged that the creation of MMO was a step forward, and had brought greater transparency to the system.
  - The capability of the organisation was improving, according to some. While there was still a way to go, the expertise and technical ability of MMO staff appeared to be improving, enabling them to engage more effectively with applicants and evidence.
  - A number of stakeholders said that their experience at the higher levels of MMO was very positive, and improving. Several organisations reported generally good relations with the regulator at senior levels, and found such engagement helpful in resolving local difficulties.
81. Others found MMO's capability very variable, with particular problems at the lower end over availability of advisers and firm grasp of the project details. One major developer thought that MMO staff lacked experience, especially in the commercial field. Their perception was that MMO officers had a strong environmental focus, with little experience of marine business.
82. MMO handle licensing cases centrally from their Newcastle office, with advice from their local teams. They told us that this ensures consistency across the country.
83. MMO has a systematic approach to engaging its stakeholders and measuring its performance (see paragraph 14), with a range of performance indicators and a transparent description of deficiencies and remedial action. Of the 126 applicants who completed their first customer satisfaction survey about marine licensing in April 2012, 52% were satisfied (against a target of 70%) and 28% dissatisfied.

## Advisors' resources

### Findings

84. **We detected an openness among larger developers to provide support for the costs of pre-application advice, including that of the statutory advisors. However developers would want real assurance that costs would not be inflated due to the potential availability of extra resource.**
85. Many businesses noted that downward pressure on resources had reduced all regulators' ability to respond quickly to requests for advice ahead of the formal submission of applications. One trade body whose members rely heavily on ports for their ability to trade said that both the Environment Agency and Natural England were now beginning to emerge from a phase of substantial cost-cutting, but that it was too early to assess the impact of these cuts.
86. Some developers argued that lack of resources contributed to a lack of good, free advice pre-application, suggesting that this would reduce the burden on developers and the need to secure independent legal opinion. Natural England offers a discretionary advice service where developers receive a set amount of advice free of charge and can pay for more if they think it is worthwhile.
87. We also heard from some trade bodies that their members were concerned not just about the availability of non-statutory advice but also about the non-standardisation of costs for this advice.
88. A couple of developers noted that major projects involving large amounts of investment, and with potentially large effects on the local economy and beyond, were dependent upon the decisions of a few relatively low-paid and hard-pressed public officials. Whilst developers wanted to keep regulators' costs to the necessary minimum, it was more important to some to get quick and competent answers.
89. Renewables UK said that they were hoping for agreement on ways to provide funding to drive up the availability of good quality pre-application advice and guidance. The Mineral Products Association told us that as a result of resourcing concerns to support the timely processing of marine aggregate casework The Crown Estate had agreed a Memorandum of Agreement with Natural England and JNCC. This funded a minimum agreed level of resource within these organisations to support the timely delivery of casework and helped to retain and develop capacity. As well as these examples we detected a more general openness among larger developers to providing support for the costs of pre-application advice, including that of the statutory advisors. However before agreeing such funding these developers said they would want mechanisms to provide assurance that amounts would not increase over time because resources were thought to be freely available. As well as these examples we detected a more general openness among larger developers to providing support for the costs of pre-application advice, including that of the statutory advisors. However, before agreeing such funding these developers said they would want mechanisms to provide assurance that amounts would not increase over time because resources were thought to be freely available.

# Annex A

## Scope

### In Scope

The review will cover regulatory activity<sup>5</sup> in England by national regulators and local authorities which affects coastal investments and larger projects on the coast. It will consider, amongst other things, the interaction between different regulatory regimes. Its main focus will be on any barriers to growth arising when developments are affected by both land- and sea-based regulation.

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<sup>5</sup> “Regulatory activity” in this context includes action taken by national regulators or officers of local authorities, including:

- The process for obtaining the range of consents, licences and assessments (including those related to environmental and safety issues) needed by companies seeking to operate on coastal areas;
- the co-ordination and timing of these licences;
- provision of advice on compliance with the law;
- inspections of locations or equipment in order to satisfy regulatory authorities of compliance with the law;
- requirements to make formal applications, or provide information, in order to obtain necessary permits;
- requirements to attend courses / obtain particular qualifications;
- enforcement proceedings taken against individuals or organisations in the event of failure to comply with regulations. The review cannot consider comments on specific cases unless all proceedings have finished, but can consider general evidence in relation to enforcement proceedings.
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The review could include, but is not limited to

- On-shore regulatory activity related to off-shore renewable energy generation infrastructure;
- Port and estuary development, including dredging;
- The impact of nature conservation regimes on coastal projects.

The review would also be interested to learn about:

- Examples of effective, tailored and easy to understand guidance and advice for businesses, and good regulatory delivery that is risk-based, focused on achieving compliance and supporting business growth.
- Any issues encountered where third parties are encouraging companies to undertake unnecessary compliance activity e.g. where regulation does not actually require something to be done, but companies are led to believe it does.

### Out of Scope

- Off-shore farming (e.g. salmon, mussels)
- We will not be looking at issues related to housing, flooding or erosion or unless specifically related to coastal development matters.
- Other regulatory activity which is not unique to developments on the coast such as employment law, company law etc.

The review will avoid duplication of effort with other recent or current reviews of similar subject matter.

# Annex B

## Organisations with whom the review team held meetings (in person and by telephone)

Able UK

Associated British Ports

British Marine Federation (round table with members)

Crown Estates

EDF Energy

Falmouth Harbour Commissioners

Mineral Products Association

Portland Harbour Authority

Renewable UK

Wave Hub

## National and Local Government and Regulators

Department for Communities and Local Government

Department for Environment, Food and Rural Affairs

Department for Transport

Environment Agency

Local Government Association – Coastal Issues Special Interest Group

Marine Management Organisation

Natural England

Southampton City Council

Wirral Council

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