

Guidance note for marine licensing of diving activities

1. Introduction

This guidance from the Marine Management Organisation (MMO) is to raise awareness of the requirement under the Marine and Coastal Access Act 2009 (MCAA) for a marine licence for certain activities and how those licensing requirements might affect the broad types of diving that occur within the UK. It describes;

- Diving related activities likely to require a marine licence;
- Diving related activities unlikely to require a marine licence; and
- Diving related activities that are licensable but are exempted and therefore do not require a marine licence.

The guidance only applies to England and relates solely to the MCAA. Users of this guidance should be aware that their activities should be compliant with any other relevant legislation, including environmental and health and safety (e.g. The Conservation of Habitats and Species Regulations 2010; the Countryside and Rights of Way Act 2000; the Offshore Marine Conservation (Natural Habitats & c.) Regulations 2007; the Protection of Wrecks Act 1973 amongst others). Permissions may also need to be sought from seabed owners (e.g. The Crown Estate, [Duchy of Cornwall](#)) and/or other relevant persons or bodies ([such as Harbour Authorities](#)).

Comment [A1]: We have added in some further illustrations which may give an indication of potential bodies whose consent is required

The MMO would expect that all those carrying out any activity in the UK marine area would follow industry best practice and any appropriate Health and Safety guidance.

Please note that this guidance is not fully comprehensive nor applicable in all cases and the MMO reserves the right to make decisions based on the facts of individual cases, in line with its statutory functions.

2. Marine licensing

The marine licensing system under the [Marine and Coastal Access Act 2009 \(MCAA\)](#) has been in force since 6 April 2011.

A marine licence is required for many activities involving a deposit or removal of a substance or object in the UK Marine Area, as defined in Section 42 of the Marine and Coastal Access Act.

Broadly ~~The~~ [the "UK marine area" consists of the area from below the mean high water springs mark \(or in any tidal river from the extent of tidal influence\) out to and including the UK Exclusive Economic Zone and UK Continental Shelf.](#)

Comment [A2]: We found the original explanation a little difficult to follow. Is this amendment helpful?

~~to~~. Furthermore in some cases a marine licence will be required for activities outside UK waters, for example, where the activity takes place from a British vessel or where the vessel was loaded in UK waters.

Where appropriate, marine licenses can;

- cover multiple sites or activities;
- be issued for several years at a time, e.g. for the life of a project;
- be varied and extended; and
- be issued to enable activities to be carried out with a degree of flexibility.

It is not possible to provide a definitive list of activities that will and will not require a marine licence. However, to provide a guide, those types of diving related activities that are likely and unlikely to require a marine licence are given below. Activities that are exempted from the requirement for a licence either within the Marine and Coastal Act itself or through the Marine Licensing (Exempted Activities) Order 2011 and the Marine Licence (Exempted Activities) (Amendment) Order 2013 and also given below. The case studies given in annex A are intended to illustrate how the Marine and Coastal Access Act might be applied in hypothetical situations.

The MMO marine licensing team encourage early engagement in the marine licensing process. We would be happy to talk to you about whether the activity you are planning requires a marine licence or exemptions notification. You can call us on 0300 123 1032 or you can email marine.consents@marinemangement.org.uk

3. Diving related activities likely to require a marine licence

Section 66 of the Marine and Coastal Access Act lists the types of activity that are licensable. We consider activities related to deposits and removals are of most relevance to the diving sector. In this regard the MCCA states;

Under section 66(1)(3) it is a licensable activity;

To deposit any substance or object within the UK marine licensing area, either in the sea or on or under the sea bed, from –

- a) any vehicle, vessel, aircraft or marine structure,*
- b) any container floating in the sea*
- c) any structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea.*

Under section 66(1)(8) it is a licensable activity;

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

Under section 66(9) it is a licensable activity;

To carry out any form of dredging within the UK marine licensing area (whether or not involving the removal of any material from the sea or sea bed). "Dredging" includes using any device to move any material (whether or not suspended in water) from one part of the sea or sea bed to another part.

Comment [A3]: Would it be helpful to give web references to these to aid readers ?

Comment [A4]: Would it be useful to mention no charge is made for such initial discussions ? There are many rumours circulating about the high financial cost of engagement with the MMO and this uncertainty may discourage early engagement..

Some examples of diving related activities likely to require a marine licence are given below;

- Use of a tool powered by a surface compressor or air tanks mounted on a dive boat or other vessel to remove any substance or object from the seabed;
- Using a winch or other mechanical means to remove an object or substance from the seabed. This includes the use of lifting bags, which constitute a 'floating container' within the meaning of the legislation; and
- Moving material with a device powered from a vessel.

Comment [A5]: It is not immediately obvious why lifting bags fall within the provision and this may aid a reader's understanding ?

To further illustrate how marine licensing might apply to diving related activities some case studies are given at annex A.

4. Diving related activities unlikely to require a marine licence

If an activity does not fall within the types listed in Section 66 of the Marine and Coastal Access Act it will not require a marine licence.

It is not possible however to provide a definitive list of all activities that would fall outside of the definition of what is licensable and to do so would imply that activities that are not listed are licensable. However, as a guide, our view is that activities with the following characteristics may not require a marine licence:

- Activities that do not involve a deposit or removal from a vessel or various other types of marine structure. For example, washing mud from slipways, deposit and subsequent removal of survey lines or grids and datums by hand and the use of unpowered hand tools.
- Using a hand tool or 'hand fanning' to move material (whether or not suspended in water) from one part of the seabed to another.

Comment [A6]: Sometime rigid survey 'lines' e.g. scaffold or plastic poles are utilised rather than flexible lines. We assume that if these are deposited and removed by hand then this does not require a licence ? Also survey is sometimes effected by placing datums by hand into seabed rock or remaining wreck structure. Such datums are normally very small plastic discs held by a metal pin in their centre which is knocked by hand into a surface. Again we assume this does not require a licence ? Perhaps all these methods could be confirmed explicitly as probably not requiring a licence please ?

5. Exempted activities

Certain specific activities are exempted from the requirement for a licence either within the Act itself or through the Marine Licensing (Exempted Activities) Order 2011 and the Marine Licence (Exempted Activities) (Amendment) Order 2013. The purpose of the Exemptions Orders is to ensure that the regulatory burden is proportionate where otherwise licensable activities are considered to be low risk or adequately managed through other means. In some cases where an activity is exempt there is a requirement to notify the MMO prior to the activity being undertaken-undertaken? Diving related activities that are exempt are given below;

- Navigational dredging of less than 1500m³ per annum at a location where previous dredging has taken place in the last 10 years, and that the dredging is less than 500m³ per campaign. Notification to the MMO is required prior to the activity being undertaken.

Comment [A7]: General comment: Would it be better to produce separate guidance for commercial and recreational diving ? There is some overlap but many differences between the two sectors. Separate guidance might achieve better 'targeting' of the educational message ?

- Sediment and other scientific (including archaeological) sampling for testing or analysis where each sample is less than 1m³. Notification to the MMO is required prior to the activity being undertaken.
- Using a vessel, floating container (e.g. a lifting bag) etc. To Remove a- of objects accidentally deposited on the seabed (e.g. items lost overboard and recovered within 12 months). Notification to the MMO is required. This can be done once the item has been removed.
- Temporary markers (deployed for up to 28 days). Notification of the placement and the removal must be made to the MMO prior to the activity being undertaken¹. Notifications can cover multiple locations and multiple deployments.
- Using a vessel, floating container etc to deposit or remove scientific equipment. Notification of either activity to the MMO is required.
- A deposit activity using a vessel, floating container etc carried on for the purpose of recovering any substance or object as part of an investigation into any accident involving a civilian aircraft.

Comment [A8]: It is unclear what the expression "and other scientific (including archaeological) sampling" encompasses. Archaeological sampling can include sediments but can also encompass the recovery of cultural material to establish dating and / or identification. The limitation of 1m³ suggests that the exemption for sampling is confined to sea bed material i.e. sediments, but if so this needs to be made explicit. If not, this should also be made explicit.

Comment [A9]: Presumably if the object can be removed by hand e.g. or boat keys, then no notification is required. Notification would only apply where a vessel or floating container is used? If that is the case it might be worth reminding readers of that here as it is a lot to take in for a lay person.

Comment [A10]: Please see comments in relation to shot lines below at Case Study 5.

Comment [A11]: Ditto

¹ Given their primary function as a safety device, the use of delayed surface marker buoys (dSMBs) does not require a notification to be made. Conventional surface marker buoys will require notification. The Society is very concerned that a distinction appears to have been drawn between a conventional surface marker buoy (SMB) and a deployable SMB (dSMB) and that conventional SMB's appear to be equated with other temporary surface markers such as Shot Lines. Both conventional SMB's and dSMB's are diver safety devices. Where divers are to remain in a relatively static area, e.g. on a wreck, a dSMB would be used. Where divers are likely to range over a larger area during the dive, e.g. on a drift or reef dive, a conventional SMB is used in order that the dive boat can track the divers' progress. The conventional SMB would be deployed at the surface before the divers descend and would be towed along by the divers during the dive. The failure to utilise a conventional SMB on drift dives has been the cause of many lifeboat and / or helicopter searches for 'missing divers', where the dive boat has failed to successfully follow the divers. Hence it is an important safety message that divers should use a conventional SMB where appropriate. Moreover, unlike a Shot Line, which marks a given geographical location on the seabed, a conventional SMB is not in contact with the seabed and moves with the diver(s). Furthermore, since most dives in the UK waters rarely last more than 50 minutes and are accompanied usually by a dive boat displaying an 'A' flag of the International Code of Signals (which means "I have divers down keep clear at slow speed") it is difficult to see what navigational hazard can be created by the use of a conventional SMB. The Society feels that the requirement of notification is logistically impractical for both divers and the MMO. The Society appreciates that the notification process can be very flexible and a dive club could notify the MMO at the beginning of the dive season of the areas it is likely to deploy conventional SMB's during that season. However, this does beg the question of what utility is it knowing that, say, Guildford dive club is going to visit Newquay, Plymouth, the Farne Islands and Pembroke in the coming season? The Society is of the opinion that drawing a distinction between conventional SMB's and dSMB's is neither rational nor proportional, since both are an essential personal safety device for divers. Much time, effort and expense has been incurred over years in encouraging their use and requiring what will be seen as an excessive regulatory requirement will not only bring the marine licensing framework into disrepute but will also tend to discourage the use of conventional SMB's. In turn this will lead to additional public expenditure as a result of an increased incidence of unlocated divers. We would strongly urge the MMO to reconsider and put conventional and dSMB's on the same footing as an exempt and non-notifiable activity.

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- The deposit or use of any distress flare, smoke float or similar pyrotechnic substance or object for the purpose of (a) Securing the safety of a vessel, aircraft or marine structure; (b) Saving life; or training for any purpose referred in (a) or (b).

Notifications can be provided via the online form on the MMO website
<http://www.marinemangement.org.uk/licensing/marine/activities/exemptions.htm>.

6. Principles guiding our decision-making

In considering an application for a marine licence, we will act in accordance with government policy statements and guidance and with the principles of sustainable development, namely:

- achieving a sustainable marine economy;
- ensuring a strong, healthy and just society;
- living within environmental limits;
- promoting good governance; and
- using sound science responsibly.

We will also follow the principles of better regulation and aim to be transparent, accountable, proportionate, consistent and targeted in our actions.

7. Working with advisory bodies

The MMO will consult those bodies that it considers appropriate, such as the Health and Safety Executive, English Heritage and the Maritime and Coastguard Agency amongst others, to fully assess applications. The MMO will take account of responses, and will make the final decision based on the evidence available, taking a risk-based **approach**.

8. Other issues to be aware of

The Government's aim is for the MMO marine licensing function to operate on a 100% cost recoverable basis. Our system of fees and charges applies to all applications and the statutory provisions do not permit the MMEO to depart from this policy.

Monitoring and enforcement - the MMO has a compliance and enforcement strategy which is available on our website.

The MMO will consider any applications for emergency licences on a case by case basis. This could potentially include the securing of any site (including any site comprising, or comprising the remains of, any vessel, aircraft or marine **structure**).

Comment [A12]: It is unclear to the Society whether the MMO means statutory consultees, which it understands these bodies are or a wider range of advisory bodies. If a wider range of advisory bodies is contemplated then the Society would suggest that this should encompass those organisations which the MMO has entered into consultation with over the issues surrounding marine licensing and diving activities.

Comment [A13]: We are aware that there is a strong feeling amongst some sea user groups that certain activities of the public interest or charitable in nature should be exempt. We also appreciate that the statutory provisions do not allow the MMO to depart from this position. Therefore we feel a full explanation needs to be given so that sea users are informed that it is not simply a matter of administrative inflexibility.

Comment [A14]: Is there an emergency contact address or telephone number? If so this could helpfully be set out here?

ANNEX A - MARINE LICENSING GUIDANCE FOR THE DIVING SECTOR – CASE STUDIES

The case studies described below are hypothetical examples of activities that divers may undertake. They have been included to illustrate how the Marine and Coastal Access Act ~~(2009)~~ 2009 may apply to those activities in the context of marine licensing. The MMO reserves the right to make decisions based on the facts of individual cases, in line with its statutory functions.

- **Case study 1 - Conducting surveys or maintenance / repairs of structures**

Background

Section 66 of the Marine and Coastal Access Act (MCAA) 2009 sets out the requirement for a marine licence within the UK marine licensing area and the activities that require a marine licence. There are certain exemptions to the requirement for a marine licence and Article 23 of the Marine Licensing (Exempted Activities) Order 2011 (as amended) relates to maintenance of harbour works. This exemption only applies to a deposit, removal activity or works carried on by or behalf of a harbour authority for the purposes of maintaining any harbour works.

The MMO has defined these exempted maintenance activities as the upkeep, repair or reasonable improvement of the works. Any such activity must take place within the physical footprint of the said works, and must not constitute a significant alteration to the works. The determination of what constitutes a reasonable improvement or a significant alteration is assessed on a case by case basis. For maintenance activities not by or on behalf of a harbour authority, these are licensable activities under section 66(1) of the MCAA if the works involve the deposit of a substance or object below Mean High Water Springs and are from any vehicle, vessel, aircraft, marine structure, container floating in the sea or structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea.

Where an operator is able to provide a programme of planned future maintenance activities/works in support of a marine licence application, the MMO can consider a marine licence to cover entire programme of works for such activities over an extended period, for example five years.

Scenario 1

A professional diving organisation has been requested to inspect and repair a sheet piled wall by a marina. This involves cleaning the structure of biological growth and rust, removing accumulated silt by water jetting for inspection, removal of part of the structure for repair and possible reinstatement. The biological growth and possible rust is being discarded at the site of the works. The accumulated silts is being 'agitated' by water injection and moved by tidal action away from the site of works. The exact quantity of silt to be moved is not known. Part of the sheet piled wall needs to be removed by using a cutting tool and lifted to the surface using a flotation bag. A replacement section will then be installed.

Comment [A15]: The convention is not to have brackets around the year of an Act.

Comment [A16]: We are concerned that attempting to have one guidance for commercial & recreational activities will deter some (many?) recreational sea users from reading all the guidance. We would suggest that separate guidance is produced for each, although certain text would be common to both.

Some of the individual activities being undertaken in this scenario do not require a marine licence and some are exempt. However, some elements are likely to require a marine licence. One marine licence can be issued to cover all of those. The application should be described as 'repairs to a sheet piled wall', and the accompanying method of works statement should include all details of how this will be carried out, such as using a water jet to move silt, flotation bags, etc. The method of works should also include any mitigation proposed to limit potential impacts such as how the biological growth and potential rust will be collected to prevent it impacting the environment. If this operation was going to be done on an annual basis a single licence could be issued to cover the operation over several years.

Comment [A17]: The Society has comment on these matters relating to commercial diving

Scenario 2

If the same type of operation was carried out for, or on behalf of, a harbour authority within the existing boundaries of the works to be maintained, a marine licence is not likely to be required. We would expect good working practices to be used to prevent impacting the environment.

Comment [A18]: The Society has comment on these matters relating to commercial diving

Scenario 3

If similar operations on coast protection, drainage or flood defence works were being undertaken for, or on behalf of, the Environment Agency or coast defence authority within the existing boundaries of the works to be maintained, a marine licence is not likely to be required. We would expect good working practices to be used to prevent impacting the environment.

Comment [A19]: The Society has comment on these matters relating to commercial diving

- **Case study 2 – moving sediments**

Background

Dredging is defined as 'using any device to move material (whether or not suspended in water) from one part of the sea or sea bed to another part'. The MCAA 2009 section 42(4) clearly defines 'sea' to include waters in any area –

- (a) which is closed, whether permanently or intermittently, by a lock or other artificial means against the regular action of the tide, but
- (b) into which seawater is caused or permitted to flow, whether continuously or from time to time, and
- (c) from which seawater is caused or permitted to flow, whether continuously or from time to time.

Scenario 1

The operation is to use a water jet to clear accumulated sediments from within the tidal chambers of lock gates to maintain safe operation of the locks. This would liquidise the sediments washing them through each chamber until they are dispersed into the lock/dock area.

In our view this is considered maintaining the navigational capability of the locks by moving silt, and as such would be considered dredging. Although this operation is licensable, as the accumulated sediments are being cleared to maintain the safe operation/navigational integrity of the lock system, the exemption for small scale navigational operations could be applicable. If that were the case a marine licence would not be required, but the MMO would need to be notified using the Notification of Exempted Activities form on our website.

We would recommend that advice is sought from the MMO licensing team prior to the operation commencing.

Comment [A20]: The Society has comment on these matters relating to commercial diving

Scenario 2

A similar process is being used to remove accumulated sediments from the inside of water intake chambers, with the sediments being dispersed into a tidal river.

This would also be considered by the MMO to be a form of dredging. However the exemption for navigational dredging would not be applicable as the dredging is not for navigational purposes. This should be considered a licensable activity on its own. However, if the works were to include further maintenance of the structure/outfall the dredging element should be included in the method of work accompanying the application.

Comment [A21]: The Society has comment on these matters relating to commercial diving

Scenario 3

A contract diver has been commissioned to replace an outfall flap valve over which there had been an accumulation of sediment. The diver intends to use a powered hand tool to remove the sediment build-up.

It is likely that this activity would require a marine license if replacing the flap valve or mobilising the sediments involves equipment powered from a vessel. The individual components of the operation (e.g. replacing the valve and moving the sediment) would not require separate licenses – the whole operation would be included on the same licence. If the contractor foresaw that they would need to carry out this type of operation multiple times over the course of, for example, a year, a single licence could cover all of those. The contractor could include all the methodologies they might encounter in the course of their work on that licence.

Comment [A22]: The Society has comment on these matters relating to commercial diving

- **Case study 3 – Diving on protected wrecks**

Background

Access to Protected Wreck Sites is enabled by a licensing system administered by English Heritage on behalf of the Department for Culture, Media and Sport (DCMS). Authorisation to access a Protected Wreck Site is at the discretion of the Secretary of State for Culture, Media and Sport. There are four types of licence available which can cover the following activities as set out in the following table:

| Licence Type | Permitted Activities |
|------------------|---|
| Visit | Site visit Photography Videography Visual monitoring |
| Survey | Measured survey Compilation of site plans Recording of seabed topography Ecological survey Remote sensing using towed sensors Installation of dive trail stations (if resting on seabed) |
| Surface recovery | Recovery of high risk items exposed on the seabed |
| Excavation | Controlled removal of sediments Collection of samples for research Installation of dive trail stations (if disturbing the seabed) |

More detail on these can be found at: <http://www.englishheritage.org.uk/professional/advice/our-planning-role/consent/protected-wreck-sites/>. More detail on applying for a licence can be found in the document 'Accessing England's Protected Wreck Sites: Guidance Notes for Divers and Archaeologists': <http://www.englishheritage.org.uk/publications/guidance-for-divers/>.

Even if a licence has been obtained from English Heritage, a marine licence is also required from the MMO for any activity listed in section 66(1) of the MCAA, unless a specific exemption applies. The application process for each licence can proceed in parallel.

Comment [A23]: Is it worth pointing out that a fee will be chargeable for the marine licence application but not for the EH licence application? Otherwise there may be confusion?

Scenario

A diving club is proposing to dive at a protected wreck site. The club has obtained a licence from English Heritage that allows them to carry out certain activities at the site, which may include the removal of items for assessment. Even though approval has been granted to dive at the site by English Heritage, a marine licence may also be required by virtue of section 69(1) of the MCAA. A key consideration in this regard is the method by which objects are being removed. If a floating container (e.g. a lifting bag) is used to remove an object or a vessel is used (e.g. by hauling the object up or by winching it up to the surface) then a marine licence will be required. However, if an object is removed by hand by a diver then a marine licence will not be required.

Comment [A24]: It may be useful to remind readers of which activities require a marine licence and which do not? All this information is a 'steep learning curve' for sea users.

To apply for a marine licence all the operations that are to be undertaken at the site should be included in a detailed methodology statement. This should include a consideration of the impact on the site and potentially any buffer zone around it. Details of each deployment of equipment would not be required, it would be sufficient to include the need to deploy shot lines, buoys etc. in the licence area (these could be moved within the licensed area as required). Any of the activities associated with the project may have specific licence conditions attached. We would require reporting and this would need to be agreed with

English Heritage. We would consider that as long as sufficient information was supplied, applications would be processed quickly.

In this scenario the marine licence could be issued on an annual basis or, if sufficient evidence is supplied with the initial application, for longer.

- **Case study 4 – Diving on non-protected wrecks**

Background

Concern has been raised from a range of stakeholders concerning diving on non protected wrecks. This is in the context of loss to the maritime archaeological environment.

Under section 236 of the Merchant Shipping Act (1995) a report must be made to the Receiver of Wreck of any article removed from a wreck.

Section 115(2) of the Marine and Coastal Access Act 2009 (MCAA) allows for the MMO to include any site (including any site comprising the remains of, any vessel, aircraft or marine structure) which is of historic or archaeological interest in its definition of 'environment' in marine license decision making.

Scenario

A diving club or individual has identified a wreck that is not protected under the Protection of Wrecks Act 1973 and wishes to carry out survey and investigation work of the wreck. This may include the removal of items to facilitate the identification of the wreck. The diving club, or individual may also be deploying shot lines, markers etc. as part of their activities.

The removal of objects from the sea bed using a floating container (~~flotation lifting bag~~) requires a marine licence by virtue of section 66(8) of the MCAA. The use of temporary markers such as shot lines is exempt if they are removed within 28 days (see case Study 5). In determining a licence application for the relevant activities under this scenario (e.g. removals) the MMO would consider sections 69 and 115 of the MCAA, and in doing so include a consideration of the impact of the whole project **on the historic environment sensitivity of the site**. Completion of a Historic Environment Sensitivity Analysis as part of a detailed methodology of the activities being undertaken in the specific area would be recommended in this circumstance. Applying for a marine licence for this type of diving activity should therefore be considered at the planning stage. We would expect that any licence that may be issued would contain conditions on the reporting of any artefacts removed, photographic surveys etc.

Comment [A25]: The term 'lifting bag' is more commonly used by divers.

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Comment [A26]: The end of this sentence does not seem to read correctly. Are there some words missing towards the end ?

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- **Case study 5 – use of temporary markers**

Background

The Marine Licensing (Exempted Activities) (Amendment) Order 2013 exempted the deployment and removal of temporary markers if the deployment is less than 28 days, subject to notification to the MMO. Diving clubs (or individuals) can notify the MMO if they are proposing to deploy temporary markers to facilitate their diving operations – these must be removed within 28 days and a further notification of the removal made to the MMO.

Scenario 1 – Shot lines

A dive club are using shot lines in multiple locations to facilitate the safe descent and ascent of divers during a diving season. None of the shot lines are being left in place for longer than 28 days although shot lines may be deployed at the same location more than once over the season.

This activity is exempt and does not require a marine licence. However, there is a requirement for the dive club to notify the MMO of the deployment and removal of the shot lines. One notification can be used for all the locations and for the duration of the dive season.

Comment:

Shot Lines — Shot Lines are safety devices for divers, facilitating a safe descent and ascent. Therefore the Society would concur in their being an exempted activity. However, the duration of their the use of a shot line varies enormously from as little as the duration of a single dive (less than one hour) to as much as the entire diving season (up to 8 months). The Society is of the opinion that a 'one size fits all' approach to the notification of deposition of shot lines is inappropriate and that a greater degree of flexibility is necessary in relation to notification. There seems little point in notification of a deposition of a shot line for, say, less than one hour. Given that the Society is not aware of any navigational difficulties that have been caused over the many decades of deployment of short duration shot lines, it has to question what useful purpose could be served by such notification and whether the MMO logistically could handle the volume of such notifications. The Society suggests that the deployment of shot lines for less than 28 days remains an exempted activity and that notification of such deposition is only required where it is intended that the shot line remains in place for longer than, say, 48 hours.

Scenario 2 – Seasonal markers

A dive club are using marker buoys to mark a dive site for the duration of a diving season. Noting the 28 day limit on the exemption, the club are deploying the markers for 27 days, removing them and then replacing them again after a few days.

This activity would be exempt provided the marker was removed within 28 days and the MMO notified. However the MMO would consider the need for a marine licence for subsequent deployments under the MCAA section 69(1);

- the need to protect the environment;
- the need to protect human health; and
- the need to prevent interference with legitimate uses of the sea.

Comment:

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Comment [A27]: We are not convinced that this statement is sound in law. Please see Comment below the text

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As its title states s.69 relates to the determination of applications. It does not set out the circumstances which require an application. This is done in Ss.65 & 66. If one examines the wording of S.69(1) it states:..

“ 69 Determination of applications

(1)In determining an application for a marine licence (including the terms on which it is to be granted and what conditions, if any, are to be attached to it), the appropriate licensing authority must have regard to—

(a)the need to protect the environment,

(b)the need to protect human health,

(c)the need to prevent interference with legitimate uses of the sea,

and such other matters as the authority thinks relevant.”

What S.69(1) is doing is setting what the MMO may lawfully take into account when determining an application which must be made as a consequence of Ss.65 & 66. It does not stipulate when the MMO may require an application to be made nor does it give the MMO a power to require an application to be made. This is done solely under Ss.65 & 66.

We appreciate that it is frustrating to the MMO if persons can successfully circumvent the legislation by, after 28 days, recovering a buoy, moving it a short distance and putting it back, thereby obtaining a further 28 days exemption. However, what the MMO seems to be asserting is that S.69(1) gives it a power to require an application to be made for a marine licence for what is, prima facie, an exempt activity. There is nothing in the wording of S.69(1) which appears to the Society to support this statutory interpretation. We believe that if the MMO persists in this interpretation then there is a very real prospect that the MMO would be acting unlawfully outside its statutory powers (ultra vires). There may be a statutory provision in the 2009 Act which permits the MMO to require an application to be made for a marine licence where an activity, which is otherwise exempt, is repeated within a certain geographical distance and time scale, but if there is it is not within the wording of S.69(1). If there is no provision then we would suggest the lawful method of tackling such conduct would be to amend the wording of the exemption order so that the placing of a buoy within a specified distance within a specified timeframe is prohibited without a licence but we do not believe that the wording of S.69(1) can be stretched to give such a power to the MMO. We would strongly advise that the MMO consults its legal advisers before it persists in this statutory interpretation.

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In this case the environment includes the local and global environment, the natural environment and any site of historic or archaeological interest. The natural environment may include the physical, chemical and biological state of the sea, the sea-bed and the sea

shore, the ecosystems within it. Our reasoning that a licence may be required for repeated deployments is that this activity could affect the physical environment of the sea bed and may cause interference to navigation.

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Comment [A28]: See comment above

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Diving clubs (or individuals) can apply for a marine licence if they intend to deploy markers for longer than 28 days. More than one marker can be applied for in a single application and additional licensable activities can also be included in the application.

- **Case study 6 – marine litter collection**

Background

The collection of marine litter is not a licensable activity. However, if airbags or other mechanical means are being used to remove the litter then section 66 of the MCAA would apply and a marine licence would be required.

Use of a vehicle for collecting litter from beaches specifically by a local authority is exempt.

Scenario

A dive club have organised a marine litter pick from the sea bed. The divers are going to collect the litter both by hand and use lifting bags for larger items (e.g. shopping trolleys and bicycles).

Because lifting bags are being used this operation would require a marine licence. If the dive club were planning a litter pick on several weekends throughout several seasons at multiple locations this could be included on the same licence. The application should include all activities taking place in each location in the methodology, i.e. shot lines, lifting bags etc. We may require a report from each location on completion of the operation.

Comment [A29]: The Society has comment on these matters

- **Case study 7 – divers training**

Background

The Marine Licensing (Exempted Activities) Order 2011 includes specific exemptions for training the Coastguard, and in the use of flares etc. Diving activities are not included. Training for divers that include activities listed in Section 66 of the MCAA is therefore likely to require a marine licence.

Scenario

A dive club have organised several training sessions at multiple locations over the course of a season for its members. The training includes the use of lifting bags. The MMO considers all lifting bags to be a 'floating container' in the context of the MCAA and so the dive club would require a marine licence for the training sessions. In this scenario the dive club could apply for a single licence which could cover all training activities to be carried out at all the

proposed locations over several seasons. To do this they would need to supply the MMO with the methodology for the training to be carried out, approximate locations, timescales etc. Similarly, bodies such as the Professional Association of Diving Instructors (PADI), the British Sub-Aqua Club (BSAC), the Sub-Aqua Association (SAA) etc. could apply for a marine licence to cover all training activities undertaken by their members at multiple sites over a period of several years.

Comment [A30]: The Society has comment on these matters

DRAFT