Submission from the Association of Protected Wreck Licensees in response to DEFRA's consultation on a revision to marine licencing fees and charges (September 2013)

Background to the Association's submission

The Association of Protected Wreck Licensees (APWL - www.protectedwrecks.org.uk) represents the teams of archaeological divers who are licensed by the Secretary of State at the Department for Culture, Media and Sport (DCMS) to undertake archaeological work on the 46 wrecks sites in English territorial waters that have statutory protection under Part 1 of the Protection of Wrecks Act (1973) (PoWA). These sites are the most significant known and nationally-important shipwrecks around the English coastline and are designated individually by Parliament on account of their archaeological, historic or artistic importance. In terms of their heritage value, they are of equivalent status to scheduled ancient monuments and highly graded listed buildings.

> *Where a protected wreck site is within local authority boundaries then it will be considered a designated heritage asset for the purpose of the NPPF and offered the same level of protection in planning decisions as is afforded to scheduled monuments and highly graded listed buildings*
> *(http://www.english-heritage.org.uk/professional/advice/hpg/has/protectedwrecks/)*

Designation of a site under the PoWA affords specific legal protection to the site and an exclusion zone around it (usually circular, occasionally rectangular – see appendix 1). Within this zone it is a criminal offence to:

- Tamper with, damage or remove any part of a vessel lying wrecked on or in the seabed or any object formerly contained in such a vessel.
- Carry out diving or salvage operations directed to the exploration of any wreck or to removing objects from it or from the seabed, or use equipment constructed or adapted for any purpose of diving or salvage operations.
- Deposit anything including anchors and fishing gear which, if it were to fall on the site, would obliterate, obstruct access to, or damage any part of the site.

without a license granted by the Secretary of State.

Bathing, angling (not commercial fishing) and navigation are not expressly restricted within a protected area and will not require a license provided there is no likelihood of, or intention to, damage the wreck or obstruct work on it. Anchoring on the site is only permitted for licensed activities or in cases of maritime distress.

Licenses are granted on an annual basis by the Secretary of State, and are administered by English Heritage (EH). The license team responsible for each specific site submits an annual proposal which details the work that they wish to carry out on that site during the following year. This proposal is assessed by EH and its advisory Wreck Panel), modified if deemed appropriate and if satisfactory a license is then granted for any approved work within the proposal. Annual reports are submitted to EH by the teams to document the work carried out and to provide the factual justification for the

proposed work. No work can be carried out within the designated area unless that specific work is covered by a license from the Secretary of State at DCMS.

Four types of license may be issued:

- Visitor license – to access the site on a look but don't touch basis (to encourage access and appreciation of heritage)
- Survey – to conduct measured, photographic, video and geophysical surveys within the designated area (the majority of the licenses issued are for survey)
- Surface Recovery – to recover, for safety and preservation, artefacts that become exposed by natural seabed movements and are at risk of loss or damage – this type of license will only be issued to teams with resources, facilities and expertise for artefact storage and conservation
- Excavation – to allow proactive intrusion on the site, involving the controlled removal / displacement of sediment to uncover, record and possibly recover archaeological material. Very few of the sites hold an excavation license; they are only issued in cases where there is a clearly identified and demonstrated need for site disturbance to address specific site preservation or investigative needs. In this context it is very important to recognise (1)
    - that the *Mary Rose* project, involving the raising of the majority of the known wreck was a one-off; no project on anything like this scale is ever likely to occur again in UK waters
    - any licensed excavation is likely to involve only a few cubic metres of sediment (a few 10s *in extremis*)
    - much (and likely all) of any sediment displaced in the excavation process has accumulated through natural sediment movement and will represent overburden rather than archaeologically sensitive context.
    - the volumes of material that would be excavated are minute compared to the annual amount of natural seabed movement on many of the sites and minute compared to the volume of seabed disturbed on a single commercial trawl deployment

The Secretary of State at DCMS is obliged to grant licenses only to those people who are considered to be competent and properly equipped to carry out operations in a manner appropriate to the importance and heritage status of the site and of any objects contained or formerly contained within it.

The range of seabed activities that could be carried out under license within the designated area may include any or all of the following, depending on the type of license granted for that site at any one time

- installing metal posts into the seabed around the archaeological material to act as markers for measured survey procedures and as monitoring points for seabed movement studies
- installing identification / numbering tags on wreck structure for survey and erosion monitoring purposes
- laying lines and cables across and around the site to facilitate efficient orientation and location finding by licensed divers (including but not exclusively diver trails for visiting divers (installation and maintenance of diver trails on protected wrecks are exempt).

(potentially all categorised as “deposits”). Given that a survey of a complex site may take several years to complete and that regular monitoring of natural destructive change is an ongoing process thereafter, any such deposits are required to be durable and installed for the life of the project (sometimes decades).

- using lifting bags or cranes for controlled recovery to surface – reflecting both good archaeological practice for the protection of fragile items and diver safety, irrespective of the size / mass of the recovered items and the physical size of lifting bags used for the task (potentially categorised as “removals”)
- using water dredges or airlifts for controlled excavation of small amounts of sediment (potentially categorised as “dredging”)

The vast majority of work on protected wreck sites is performed by highly trained and dedicated avocational teams – licenses would not be issued to them by DCMS otherwise. These teams of volunteers spend a very considerable amount of their own time (100s of hours per year) and money on these projects to record some of our Nation’s most important and most at risk heritage before it disappears; running, insuring, servicing and fuelling boats, marina berth or slipway charges, air fill costs, survey and diving equipment costs, equipment servicing costs, travel to site, accommodation and training costs etc. etc.. The cost of running a season’s work on a single site can easily run to £1,000’s, sometimes to £10,000s – virtually all of this expense, committed on the Nation’s behalf, is met from those individual’s own pockets. If they did not do this vital work in their own time and at their own expense, no one would and the heritage would be lost without a trace and without a record. If Stonehenge or St Paul’s Cathedral were be abandoned there would be a national outcry. These wrecks are of comparable national status and importance – they would not have been designated if this were not the case

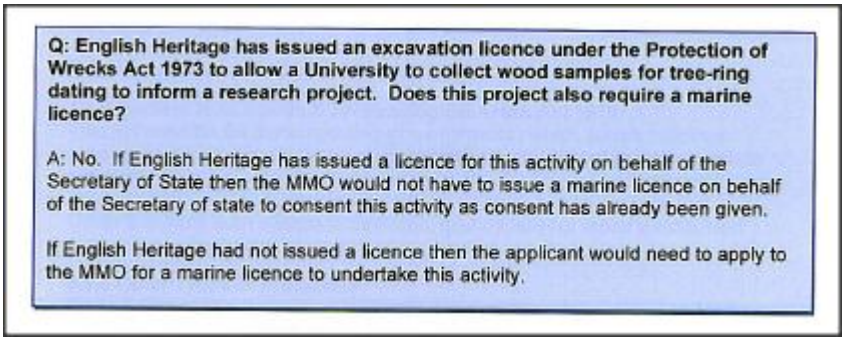
The MMO was established to license and thereby control large scale industrial projects at sea. However, as a consequence of:

- the very poorly defined definitions and intended scope of “licensable” activities like “dredging” in the primary legislation
- the introduction of charged marine licensing by MMO
- MMO’s complete lack of in house expertise in underwater archaeological practice in the UK

the legislation has been interpreted in the absolute broadest possible context and procedures which were likely never intended to be licensing have been “swept up” in the process.

Of particular note is the fact that the Heritage Bill was supposed to mitigate any adverse effects of the MCAA on heritage management, but in the run up to the last election, the MCAA was rushed through and the Heritage Bill dropped, leaving an unbalanced situation.

We note especially that the MMO’s Marine Licensing Guidance #2 Construction (including renewables) and removals (April 2011) specifically stated



But this section of text was later removed from the guidance and license teams have been required to apply for MMO licenses; further expense and time out of their own pocket. Furthermore, in pre-application discussions, MMO officers have been unable to advise license teams whether a license is needed for proposed activities or not and our Members have been told to submit a license application and to make upfront payment to determine if it is the case or not.

We know that several license teams who have an outstanding record of contribution over many years have stopped all work on their sites because they feel so strongly that the current licensing system is both a grossly unfair tax on their voluntary contribution (requiring a paid for license to undertake activities already licensed (that license not being charged for)) and a complex, unnecessary, bureaucratic and burdensome process. We know of another team which started and failed to complete an online application because it found the procedure so difficult – especially the requirement to identify all wildlife protection areas around its area of activity – why is this information not simply made available to all applicants by MMO though a GIS interface rather than each individual applicant having to spend hours (in one known case about 2 weeks worth of evenings) trying to locate, understand and collate the information?

The specifics of the consultation document are addressed below. However, because of the nature and content of the document, it needs to be addressed and commented on paragraph by paragraph, rather than through answering generic questions. Specific conclusions and recommendations are proposed at the end of this document.

Section 2.1

Because the Marine and Coastal Access Act (MCAA) contains very poorly defined definitions of "licensable" activities like deposits, removals and dredging, it has become clear than many activities with effectively zero detrimental impact have become unnecessarily "swept up" by the MMO's licensing schemes. This has been compounded by the MMO's complete lack of in house expertise in underwater archaeology practice, with the effect that MMO officers have been unable to advise license teams if a license is needed for proposed activities in any the pre application discussions, requiring a license application and upfront payment to be made (our Members have had direct experience of this).

Section 3.1

The MCAA is designed to help the UK achieve clean, healthy, safe, productive and diverse oceans and seas. It was not designed to impede lawful activities carried out under license from another Government Department and its agents, but that is the effect of the MMO's current implementation. Especially as the April 2011 guidance was changed.

Minimising negative environmental effects….
The UK inshore areas cover approximately 54,200 square km

Area	Area (sq km)
North East Inshore	6,033
East Inshore	10,211
South East Inshore	3,921
South Inshore	10,531
South West Inshore	16,231
North West Inshore	7,282
Total	**54,209**

Area of inshore areas from MMO's Strategic Scoping Report for Marine Planning in England (August 2013) Table 14 (NW Inshore area estimated *de novo* from high resolution version of area map

The total area included within the exclusion zones of all 46 protected wreck sites in those waters is under 5 square km (< 1/10,000th of the total). The areas of archaeological deposit within the exclusion zones is but a very small fraction of the overall designated area and the scale of any licensed activities involves but a tiny fraction of that. The combined effects on the marine environment of all of the activity ever licensed under the PoWA through its entire 40 year period on the Statute is so infinitesimally and unquantifiably small as to be effectively zero. Zero effect should equate to zero requirement for additional licensing (see **Recommendations** at end)

Section 3.2

The appropriate licensing authority for work under the PoWA is the Secretary of State at DCMS. It should not be for another Government Department or quango to interfere with the instructions and authorisation issued by that appropriate and competent authority, which a PoWA license confers.

Section 3.3

These types of activity are not properly and strictly defined / scoped in the MCAA so other activities have been "swept up" and trapped by loose and poor definitions.

Where and what is the MMO's evidence that activities licensed under the PoWA have greater than minimal risks to the environment, necessitating that they require licensing? It should not be for our members to prove the negative but for MMO to prove that there is a risk to be mitigated through licensing - we do not believe that any such case can be made.

Section 3.4

Work licensed under the PoWA has been assessed by the competent authority as being the minimally intrusive activity required for vital heritage management.

Section 3.5

Any single act of navigational dredging of < 5000 cubic metres, performed 3 times a year has been exempted. This volume is 100s or 1000s of times greater than the total archaeological excavation undertaken in any year under license under the PoWA (estimated total of 0 to 20 cubic metres per year across all sites).

Section 3.6

We note that the MMO states here that Tier 1 activities are relatively less complex than Tier 2 activities (see below)

Section 3.7

We reject the notion of subsidy. As detailed above, license teams fund their own work to the tune of £1000s per year. They are subsidising the delivery of government heritage management. To charge anything for licenses for work on protected wrecks is a tax on the voluntary sector, not a subsidy.

On what basis is the figure of £80 or £94 per hour calculated and justified? It seems vastly in excess of actual Officer salary plus NI, pensions and necessary IT and infrastructure, and well above what Universities (for example) may charge as overheads on FEC costed academic work

Section 3.9

The MMO states that for tier 1a applications*, the average amount of caseworker time is greater than was expected.*

This statement perfectly exemplifies what is so wrong with the entire current system. Section 3.6 clearly states that Tier 1 activities are relatively less complex, yet officers are spending proportionally more time on them! WHY AND HOW? This proves, by MMO's own admission, that the licensing scheme for small projects is unnecessarily complex and burdensome, requiring far more information

from applicants than is justified by the impact (if any) of the proposed activities, necessitating excess officer time being spent wading through irrelevant documentation (let alone the administrative burden on the applicant to compile it n the first place).

Section 3.10

We note that you state that larger projects are more complex. This reinforces our comments for Section 3.9.

Section 3.11

What evidence does MMO offer to prove that the Environmental Statements and Habitat Regulations assessments which it has been requiring are actually needed? What proportion of these are then shown, on analysis to show minimal impact and so to have been an unnecessary waste of time?

Section 3.14

Concerning the red tape challenge. All activity on protected wreck sites is already licensed and deemed necessary by the competent and relevant Authority (the Secretary of State at DCMS). Further licensing interferes with that authority and greatly adds to the red tape required. We note that licenses granted under the PoWA are issued free of charge. MMO is effectively double licencing and charging for a license to operate a license issued by another Government department for free!

Section 3.15

How exactly is MMO going to monitor the environmental impacts of archaeological work under the PoWA (or any other underwater work for that matter?). What expertise does it have to undertake this monitoring or to assess the accuracy of monitoring reports from the license holder and how will it decide what needs monitoring?

As general principles (1) for work on protected wreck sites we submit that any licenses should automatically be for the life of the project as licensed by the competent authority (DCMS / EH) (2) we are concerned that blanket charging for variation will be effectively treated as a simple revenue generation scheme. Natural seabed changes are unpredictable and may require a rapid, pro-active response by license teams to protect, preserve or record rapidly exposed areas of archaeology. That is not compatible with a license application and necessary variation required due to unexpected but natural changes in the environment / force of nature should not be charged for.

Section 4.1 / 4.2

We submit that much of any claimed shortfall is of the MMO's own masking through overzealous interpretation of the MCAA and an unnecessarily bureaucratic application process requiring vastly more information than is actually justifiable for smaller projects and a disproportionate amount of time to process.

There are already excessive burdens for smaller projects as, by MMO's own admission, these are less complex but MMO spends proportionally more time on them. This shows the entire system to be faulty and in need of complete restructuring.

We reject the notion that MMO / other activities are subsidising applications for work on protected wreck sites. MMO is taxing the voluntary sector.

Given that work on protected wreck sites is already licensed by the competent authority (DCMS / EH), the cost of processing applications should zero; simply filing an electronic copy of that DCMS license.

Section 4.3

Given the miniscule scale and unquantifiably small scale of archaeological work on protected wreck sites, why has it not been already included in fast track procedures? It is not acceptable for MMO to say in a consultation document that it is working with its primary advisors to identify more activities – those need to be spelled out now. Why was EH not included as a primary advisor as it is the MMO's primary advisor for all heritage matters?

The FAQ's need to be available before consultation and before restriction of pre-assessment advice in order to assess whether they are fit for purpose / address all foreseeable needs. It has been our members' experience (and MMO's own admission) that MMO staff have no expertise in underwater archaeology and are unable to say if a license is needed or not, so how can they wrire FAQs with a zero knowledge base?

Section 4.4

Part of the problem is a very poorly written piece of legislation (MCAA) and MMO should be actively lobbying for its rapid amendment to make it fit for purpose.

Section 4.6

Efficiency can be increased by not requiring and needing to process excessive and unnecessary information.

MMO claims it wants to reduce fees, but it is proposing a blanket increase, the exact opposite!

Section 4.8

MMO's charging structure set out in April 2011 was to achieve 90% cost recovery (Section 3.7). This has crept hereto 96%. WHY? What justification is made for increased charging, in direct contradiction to stated aims in Section 4.6?

Section 4.10

On what basis is the figure of £94 per hour calculated and justified? It seems vastly in excess of actual Officer salary plus NI, pensions and necessary IT and infrastructure.

As it is an hourly charge then the number of chargeable hours is irrelevant in its calculation.

At what rate does MMO reimburse EH for the advice it requests / receives?

Section 4.11

This is perverse thinking, MMO consistently states that smaller projects are simpler so they should, by definition, be proportionally cheaper to process. The fact that they are not shows that something is fundamentally wrong with the current system and the current proposals under consultation will make a bad situation worse by charging even more for the" service".

Section 4.12

This comment is nothing to do with archaeology but a basic moral principal. As individuals who spend a significant part of our lives at sea, we find the concept of requiring a license application for burial at sea offensive and immoral. There is already strict legislation in place to determine the (very few) allowed sites and methods of corpse and "casket" preparation. Why should any license be required. How on earth can it take 3.5 hours to process a burial at sea request? If anything, a simple report of date, location and particulars to be filed after the event should be all that is ever required.

Section 4.13 / Table 2

This further proves that the current system is completely and utterly unfit for purpose. The consultation document repeatedly claims that smaller projects are proportionally simpler than more expensive ones, yet this table proves that the bureaucratic burden slope is the complete inverse. It shows that a project costing 200 times more than a £5000 one (and so by MMO's own statements must be more than 200 times more complex and greater in the requirement for documentary justification / evidence to be processed), only requires a fraction over 3 times as long to process!!!!! This proves that the size and complexity of applications for minor projects is vastly (>200 times) in excess of what should be required under normal circumstances, in direct defiance of the red tape challenge.

Why is the system not the other way round? – if a £1000000 application requires some 30 hours of casework, one costing £5000 should only require 1/200th of the casework (or less as it is admitted to be relatively less complex) - ie. 10 minutes to file a record of proposed activity, if that!

These figures also simply do not make sense

Multiplying the number of cases (col 2) by the hours per case (col 3) comes to 3485 hours. Assuming a 40 hour week, that equals 87 weeks, ie. less than 2 person years of salary per year. The claimed full cost recovery figures for these cases (col 2 multiplied by col4) totals £316,746. Even assuming a

100% overhead (a vast excess on what it would be), that means your 2 case officers processing those cases each would be earning around £75,000 per year. Sorry we don't believe that. These charges and the figures presented and the claims made on the back of them are simply not believable.

Section 4.15

Fast track processes need to be identified at this consultation stage, not after it. Is archaeological excavation classed as dredging and disposal or not?

Section 4.18

The defined categories of variation and monitoring need to be identified at this consultation stage, not after it.

Section 5.1

Why has attempted cost recovery been increased from 90% to 96%?

Section 5.3

As amply demonstrated above, there should be a vast reduction in time costs for applicants for smaller projects.

Section 5.5

If fees for processing navigation dredging applications are to be charged on a per hour basis, they will neither subsidise nor require subsidy from other applications. Therefore they should have nil impacts for costs of other applications.

Section 5.6

Applicants for smaller projects in the voluntary sector will be further penalised / taxed by these proposals.

Annex 1

If case officers require advice from experts such as CEFAS ,why is the cost of that expert advice cheaper than the cost of non expert (MMO) casework? Again this indicates that MMO is charging excessively.

Is this metric tonnes or imperial tons?

Regarding dredged material site monitoring. Archaeological excavation would appear to be classed as dredging under MMO's interpretation of the MCAA. Since any single licensed excavation is likely to involve a few cubic metres of removal and disposal at very most, it follows that:

- 1 cubic m of sand is approx. 2 metric tonnes
- a 10 cubic metre excavation would represent 20 metric tonnes
- this will generate £0.20 in monitoring fees. That doesn't buy MMO a lot of monitoring expertise at £94 per hour (about 8 seconds worth!)!

Conclusion and Recommendations

Our submission clearly demonstrates:
(1) the NIL adverse impact that underwater archaeology licensed under the PoWA has on the marine environment - it should therefore all be removed from MMO licensing with immediate effect as was originally stated by MMO in April 2011.
(2) The current licensing system is vastly bureaucratic, wasteful and unnecessary, imposing a huge burden and unnecessary cost on all applicants for smaller projects that have unquantifiably small, or zero, measurable impact.

Our specific recommendations follow.

Association of Protected Wreck Site Licensees - Recommendations:

In addition to the general comments and recommendations on the consultation and charging regime given above, we wish to propose the following specifically concerning the archaeological investigation of protected wreck sites.

(1) That any and all archaeological work on wreck sites in English waters designated under the Protection of Wrecks Act (Part 1)that is licensed by the Secretary of State at the Department of Culture, Media and Sport and administered through English Heritage should immediately be made totally exempt from further marine licensing by MMO. Department of Culture, Media and Sport and English Heritage are the competent licensing authority for the proposed activities and it should not be for other agencies to seek to influence those decisions and impede the lawful activities granted by said licenses, especially given that they have an unquantifiably small or nil impact.
(2) Further, that the annual reports and project proposals submitted to English Heritage by the license teams (and by any of English Heritage's designated archaeological contractors for underwater archaeology) be simply copied to, and accepted by, the MMO as the full and final required notification / reporting of said activities.
(3) Further, that any work on new sites which have been proposed to English Heritage as worthy of designation under the Protection of Wrecks Act (Part 1)and that are being investigated for that purpose, should similarly be exempt from MMO licensing during the assessment process.

(4) Failing this, that the Secretary of State at Department of Culture, Media and Sport and English Heritage should be allowed to apply to MMO for a single, fast track, level 1a MMO license to cover any and all work that is licensed by the Secretary of State at Department of Culture, Media and Sport on any and all sites that are designated under the Protection of

Wrecks Act (Part 1), said license to be time unlimited. Further, that the annual reports / project proposals submitted to English Heritage by the license teams (and by any of English Heritage's designated archaeological contractors for underwater archaeology) be simply copied to and accepted by the MMO as the full required notification / reporting of aid work. Any work on new sites which have been proposed to EH as worthy of designation under the PoWA and that are being investigated for that purpose, should similarly be included under this blanket MMO license.

Yours faithfully,

Dr David Johnston (daj1u06@soton.ac.uk)
on behalf of the Steering Committee of the Association of Protected Wreck Licensees.
www.protectedwrecks.org.uk
18th November 2013

Appendix 1 – Exclusion Zones around Wreck Sites in English Waters designated under the PoWA (part 1)

Name of Wreck	Exclusion Zone (radius or dimensions)
CATTEWATER WRECK	50m
MARY ROSE	300m
GRACE DIEU	75m
AMSTERDAM	100m
ASSURANCE/POMONE	75m
ANNE	75m
TEARING LEDGE WRECK	200m
RILL COVE WRECK	100m
SOUTH EDINBURGH CHANNEL	100m
CHURCH ROCKS WRECK	150x180m
MOOR SANDS	300m
CORONATION (No1)	150m
LANGDON BAY WRECK	150m
STIRLING CASTLE	300m
INVINCIBLE	100m
BARTHOLOMEW LEDGES WRECK	150m
RESTORATION	300m
NORTHUMBERLAND	300m
ST ANTHONY	150m
SCHIEDAM	75m
BRIGHTON MARINA WRECK	
YARMOUTH ROADS WRECK	50m
STUDLAND BAY WRECK	50m
ADMIRAL GARDNER	300m
HAZARDOUS	100m
CORONATION (No2)	100m

IONA II	50m
GULL ROCK WRECK	100m
ERME ESTUARY WRECK	250m
ROYAL ANNE GALLEY	200m
ERME INGOT SITE	100m
DUNWICH BANK WRECK	300m
HANOVER	250m
SEATON CAREW WRECK	100m
SALCOMBE CANNON WRECK	300m
HM SUBMARINE A1	300m
LOE BAR WRECK	250m
COLOSSUS (Stern section)	300m
BONHOMME RICHARD (?)	300m
SWASH SHANNEL	200x100m
HOLLAND V	200m
WEST BAY WRECK	50m
NORMAN'S BAY WRECK	100m
ROOSWIJK	150m
WHEEL WRECK	75m
HMS LONDON Site 1 Site 2	 55x45m 88x62m
Unknown vessel (GAD)	75m

Total area of designated areas = fractionally less than 5 sq km

The actual areas of archaeological significance within any designated zone is likely to be a small fraction of the overall area of that zone (a few 10s to a few 100s of square metres).