

**Marine Minerals Guidance Note 2  
Northern Ireland**

**The Control of Marine Minerals Dredging from the  
Northern Ireland Seabed**

**April 2008**

# Preface

- i) Marine Minerals Guidance Notes (Northern Ireland) (MMG (NI) s) set out the Department's procedures, policies and advice on the extraction of minerals by dredging from the seabed in Northern Ireland marine waters.
- ii) This guidance note, Marine Minerals Guidance Note 2 (Northern Ireland): *The Control of Marine Minerals Dredging from the Northern Ireland Seabed* (MMG2(NI)) explains the statutory procedures for the control of certain dredging activities introduced by the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007 (the Regulations). It sets out the procedures that the Department of the Environment will follow when considering and deciding any marine minerals dredging matter that comes to it for decision under the Regulations and also contains some supplementary policy guidance on marine minerals dredging.
- iii) Overall policy for marine minerals dredging is set out in Marine Minerals Guidance Note 1 (Northern Ireland): *Guidance on the Extraction by Dredging of Sand, Gravel and Other Minerals from the Northern Ireland Seabed* (MMG1 (NI)) published by the Department, which should be read in conjunction with MMG2 (NI) and which explains in detail how such extraction should be undertaken so that it is consistent with the principles of sustainable development. MMG 1(NI) can be found on the Department's website at [www.ni-environment.gov.uk](http://www.ni-environment.gov.uk)
- iv) This guidance should be used by all parties when considering marine minerals dredging matters and especially by the industry when preparing and submitting any application for dredging permission. It will be of interest to all Consultees involved in the decision-making process, local authorities, other statutory bodies, organisations representing the fishing industry, non-government bodies promoting environmental protection and members of the general public.
- v) The policy content of this note is likely to be a material consideration in respect of dredging matters that come to the Department for decision. The guidance in this note should be read alongside the Regulations and is not a definitive statement of the statutory procedures: any authoritative interpretation of the law can only be made by the courts.
- vi) Procedural guidance for use in respect of English waters has been produced. Separate Regulations for Scottish and Welsh waters came into force on 23 November and 28 September 2007 respectively. Guidance on this legislation is being prepared by the Scottish Executive and the Welsh Assembly Government.

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# 1. INTRODUCTION

## Purpose of this note

- 1.1 This Note provides guidance on the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007 (the Regulations) in so far as they apply to the extraction of marine minerals by dredging in Northern Ireland waters. Guidance is provided, in particular, on the procedures for making an application for dredging permission and the powers available to the Department of the Environment (the Department) to control marine minerals dredging activities in the public interest. In Northern Ireland the Northern Ireland Environment Agency (NIEA), an Agency of the Department, is responsible for exercising these powers.
- 1.2 A glossary of the terms used in this Guidance Note is provided at Annex A.

## Background

- 1.3 The Regulations came into force on 1 May 2007. They transpose into UK law<sup>1</sup> the requirements of the European Community (EC) Directives on the assessment of the effects of certain public and private projects on the environment<sup>2</sup> ('The EIA Directive'), and the conservation of natural habitats and of wild fauna and flora ('The Habitats Directive')<sup>3</sup> with respect to the extraction of minerals by marine dredging. In general terms, they provide a statutory basis for the control of the extraction of minerals by dredging in marine waters.
- 1.4 The EIA Directive requires that all new proposals which are likely to have significant effects on the environment are made subject to a requirement for development consent and an assessment of their effects on the environment by a process known as environmental impact assessment (EIA).
- 1.5 The Habitats Directive requires the conservation of natural habitats and/or wild fauna and flora and provides for the establishment of Special Areas of Conservation and for activities which affect them to be controlled. The site protection provisions of the Habitats Directive also apply to Special Protection Areas for birds classified under the Wild Birds Directive. The Regulations describe both these categories of site as European sites. A plan or project which is likely to have a significant effect on a European site but which is not directly connected with, or necessary to, its management, must be subject to an appropriate assessment of its implications for the site in view of its conservation objectives.

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<sup>1</sup> With the exception of Scotland and Wales where separate Regulations have been produced.

<sup>2</sup> Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ No L 175, 5.7.85, p 40) as amended by Council Directive 97/11/EC (OJ No L 73, 14.3.97, p.5) and Directive 2003/35/EC (OJ No L 156, 25.6.03, p17) of the European Parliament and of the Council.

<http://europa.eu.int/comm/environment/eia/eia-legalcontext.htm>

<sup>3</sup> Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (OJ No L206, 22.7.92 p.7) as amended by Council Directive 97/62/EC (OJ No L 305, 8.11.97, p42).

[http://europa.eu.int/comm/environment/nature/nature\\_conservation/eu\\_nature\\_legislation/habitats\\_directive/index\\_en.htm](http://europa.eu.int/comm/environment/nature/nature_conservation/eu_nature_legislation/habitats_directive/index_en.htm)

- 1.6 There are at present no European sites beyond the 12 mile territorial limit but new regulations made by the Department for Environment Food and Rural Affairs (Defra), the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007, which came into force on 1 August, provide for their designation beyond this limit (within British Fishery limits and the rest of the UK share of the European Continental shelf). Once potential sites have been identified consultation on the scientific basis for their selection will be undertaken.
- 1.7 Through the non-statutory "Government View" (GV) procedure, as set out in *Government View: Interim Arrangements for the Licensing of Marine Minerals Dredging in Northern Ireland*, DOE 2006 (available on the NIEA website at [www.ni-environment.gov.uk](http://www.ni-environment.gov.uk)), the Government expressed a view on the environmental acceptability of all applications made to the owner of the seabed, in most cases the Crown Estate (CE), for agreements to dredge for minerals offshore (dredging agreements). Applications for a GV have been subject to non-statutory EIA. The Regulations replace the GV procedures. They apply to the seabed in any ownership, as defined in regulation 2 (see paragraph 1.8 below).

### Scope of the Regulations

- 1.8 The Regulations apply to the extraction of minerals by marine dredging in:

the tidal waters and parts of the sea adjacent to the United Kingdom from the mean high water mark out to the seaward limits of territorial waters; and

waters in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964 (designation of areas of continental shelf),

but do not apply to waters in the Scottish zone or waters in Wales. NIEA has powers to regulate marine dredging only within Northern Ireland's territorial waters (out to 12 nautical miles).

To ensure complete transposition of the Directives, the Regulations provide a residual jurisdiction to be exercised by the Secretary of State in relation to any marine mineral dredging within the United Kingdom share of the continental shelf beyond Northern Ireland's territorial waters.

- 1.9 The Regulations **do not** apply to:

- i. extraction of minerals described in or authorised to be carried out by any other legislation; including in particular
  - projects that are regulated by the Department for Regional Development under procedures in the Harbour Works Act (Northern Ireland) 1970 or the Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2003;
- ii. the removal of material from above the mean low water mark and from other areas of the seabed that fall under the jurisdiction of Planning Service;
- iii. dredging carried out pursuant to dredging agreements entered into prior to the introduction of the Regulations except where the operator proposes a change

to such an agreement or it is considered that dredging in accordance with the agreement is likely to have a significant effect on a European site of nature conservation importance and is not connected to the management of such a site (as no dredging agreements have been entered into in Northern Ireland this provision will only have effect in England).

- 1.10 NIEA may also determine that specific types of dredging are entirely or largely exempt from the Regulations, as explained in paragraphs 3.2. to 3.7.

### **Dredging fees**

- 1.11 The Regulations provide (in regulation 25) for NIEA to charge fees to recover the costs incurred in providing pre-application information to prospective applicants; considering and processing submitted dredging applications; and interpreting and assessing the results of the monitoring of permitted dredging operations.
- 1.12 The levels of the fees are not set out in the Regulations, nor are they repeated in this guidance. The fees are determined administratively by NIEA with the consent of the Department of Finance and Personnel and following consultation with the dredging industry which will pay them. Setting fees in this way enables NIEA to revise them as necessary without having to amend the Regulations.

## 2. SUMMARY OF THE MAIN FEATURES OF THE REGULATIONS

- 2.1 This chapter summarises the main provisions in the Regulations. It is intended as a brief overview to the more detailed advice in the subsequent chapters. Dredging operators are strongly advised to read the more detailed advice in preparing applications for dredging permission or variations to such permissions.
- 2.2 The Regulations define the Department of the Environment (NIEA) as the regulator controlling marine dredging for minerals within Northern Ireland waters. NIEA is responsible for deciding applications for permission to dredge for minerals (dredging applications) and for making all other decisions on dredging matters that are required under the Regulations, including determinations as to whether a dredging proposal is exempt from the Regulations.
- 2.3 **Dredging of marine minerals without permission or failure to comply with the conditions attached to dredging permissions are criminal offences punishable by the courts** (regulations 4, 14 and 27).
- 2.4 Under regulation 5, NIEA may determine that some proposals for marine minerals dredging are either entirely or partially exempt from the Regulations. There are three such categories. First, the Regulations do not apply to proposed dredging which NIEA determines is not likely to have significant effects on the environment and would not significantly affect a European site.
- 2.5 Secondly, NIEA may determine that the proposed dredging is an exceptional case for which provision is made under Article 2(3) of the EIA Directive and is therefore partially exempt from the Regulations.
- 2.6 Thirdly, the Secretary of State may determine that the proposal comprises or forms part of a project serving national defence purposes and that the application of the Regulations would have an adverse effect on those purposes. If such a determination is made, NIEA will then have to decide whether the proposal is likely to have a significant effect on a European site and if so, will require the submission of a dredging application with sufficient supporting environmental information to enable NIEA to undertake an appropriate assessment of its implications for the conservation objectives of the European site. A more detailed explanation of the exemptions is in paragraphs 3.2 to 3.7<sup>4</sup>.
- 2.7 The Regulations define (in regulation 2) relevant projects as those dredging proposals which will have a significant effect on the environment. Dredging proposals which will have a significant effect on a European site are defined as habitats projects in the Regulations.
- 2.8 Potential applicants for dredging permission may request (in accordance with regulation 6) a determination from NIEA, a procedure known as 'screening', as to whether their proposal is likely to have a significant effect on either:
- i) the environment and, therefore, require the submission of a dredging application supported by an Environmental Statement (ES); or

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<sup>4</sup> In relation to exceptional cases there are some additional requirements and the arrangements for transboundary consultation in regulation 15 apply.

- ii) a European site and, therefore, require the submission of a dredging application with sufficient supporting environmental information to enable NIEA to undertake an appropriate assessment of its implications for the site in view of its conservation objectives.

More detail on the screening of dredging proposals is in paragraphs 3.8 to 3.20.

- 2.8 If an ES is required, prospective applicants may request the opinion of NIEA on what it should cover, a procedure known as 'scoping'. More detail on 'scoping' is contained in regulations 7 and 8 and paragraphs 3.23.
- 2.10 Regulations 10-12 and 15 describe the information and publicity requirements for applications for dredging permission. NIEA will consider these applications in the light of the findings of an EIA and, whenever a European site is concerned, an appropriate assessment. Detailed information about the preparation of dredging applications and the information required for EIA and appropriate assessment is contained in chapter 4.
- 2.11 Part 6 and Schedule 3 of the Regulations implement, for English and Northern Ireland waters, the Habitats Directive in respect of marine dredging for minerals by providing legal protection to European sites (see paragraph 1.5) and generally to ensure the integrity of the *Natura 2000* network of sites. Paragraphs 2 to 4 of Schedule 3 deal with the protection of European sites in three different circumstances:
  - i) paragraph 2 of the Schedule deals with the assessment of the effect of proposed new dredging on existing European sites. See paragraphs 4.23 to 4.26 of this guidance;
  - ii) paragraph 3 of the Schedule deals with the review of the effects of existing dredging permissions on sites which become European sites after those permissions have been granted. See paragraphs 6.5 to 6.13 of this guidance; and
  - iii) paragraph 4 of the Schedule deals with the review of the effect on European sites of existing dredging agreements which were entered into before the coming into force of the Regulations (no dredging agreements were entered into in Northern Ireland prior to the Regulations coming into force, therefore this paragraph has no effect in Northern Ireland).
- 2.12 Regulations 18 to 20 provide for variations to existing dredging permissions as a result of applications by a dredging operator. Applications for variations may or may not be relevant or habitats projects (see paragraph 2.7 above). Regulations 21 and 22 allow NIEA to propose variations to existing dredging permissions or the suspension or revocation of permissions in order to protect the environment. The procedures for varying, and where necessary, suspending or revoking existing permissions are described in more detail in chapter 7.
- 2.13 Whenever there are disagreements between the interested parties about a dredging application or any other marine minerals dredging matter or if there are, otherwise, any unresolved unfavourable representations, the Regulations provide a discretion for NIEA to put the matters in dispute before a Committee (see chapters 4 and 7 and Annex B).

- 2.14 Dredging permission will be granted subject to conditions (regulation 13) to minimise the impact of the permitted dredging on the environment. These conditions will, in nearly all cases, require appropriate monitoring of the permitted dredging to be carried out. See paragraphs 4.34 to 4.42 and Annex C of this guidance and paragraphs 34 to 47 of MMG1 (NI).
- 2.15 All dredging permissions will be personal to the owner of the seabed (in most cases, CE) who, with the prior approval of NIEA (in accordance with regulation 16) can transfer a dredging permission, either in whole or in part, to another party, usually a dredging operator. More detail on the transfer procedure is described in paragraphs 4.40 to 4.43.
- 2.16 Regulation 31 makes provision in relation to existing GVs and guidance is provided in chapters 8 on the handling of any applications in Northern Ireland waters for a GV that was lodged with NIEA before, but not decided by, 1 May 2007 when the Regulations came into force (see paragraphs 8.1 to 8.2).
- 2.17. Finally, the Regulations provide for applications, decisions etc to be communicated electronically with the recipient's consent (regulation 30) and for the establishment of a public register of all dredging applications and all other marine minerals dredging matters (regulation 26). The public register will be freely available for inspection at NIEA offices by prior appointment<sup>5</sup>.

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<sup>5</sup> Contact NIEA, Water Management Unit, 17 Antrim Road, Lisburn, BT28 3AL or [www.ni-environment.gov.uk](http://www.ni-environment.gov.uk)

### 3. SCREENING AND SCOPING

- 3.1 Any person wishing to undertake marine minerals dredging may wish to seek from NIEA either written confirmation as to whether some or all of the Regulations apply to their proposal (a screening determination) or an opinion on the information that needs to be included in an ES, if required (a scoping opinion). Alternatively the prospective applicant may wish to proceed directly to the preparation and submission of a dredging application without undertaking these steps.

#### **Dredging exempt from the Regulations**

- 3.2 In Northern Ireland, marine minerals dredging will be exempt from the Regulations (except to the extent that specific regulations will apply to enable the exemption to be made and the relevant determination to be included in the public register) where NIEA determines that a dredging proposal is unlikely to have significant effects on either the environment or on a European site.

- 3.3 In addition, dredging proposals will be partially exempt from the Regulations if:

the Secretary of State determines that:-

- (i) they comprise or form part of a project serving national defence purposes and in the opinion of the Secretary of State, the application of the Regulations would have an adverse effect on these purposes; or

the Department determines that:-

- (ii) they are, in whole or in part, an exceptional case, for which provision is made in Article 2(3) of the EIA Directive.

- 3.4 It is expected that there will be few proposals of the type described in paragraph 3.3. However, when it has been determined that a proposal falls into one of these categories, the Department will go on to determine whether it would also be a project which is likely to have a significant effect on a European site. Different procedures will apply depending upon the outcome of the two determinations.

- 3.5 If the proposed dredging is a national defence project and also a project which is likely to have a significant effect on a European site, then the Regulations will apply to the extent that they require an appropriate assessment of the implications of the dredging for the European site and a dredging application must be submitted with as much information as is necessary to enable NIEA to undertake an appropriate assessment of the proposal.

- 3.6 If the proposed dredging is a national defence project but not a project which is likely to have a significant effect on a European site then NIEA will simply enter in the public register the determination that the proposal is a national defence project and that a dredging application is not required (see paragraphs 9.1 to 9.3).

- 3.7 If the proposed dredging is an exceptional case and not a project which is likely to have a significant effect on a European site, then it may, if appropriate, be subject to transboundary liaison (see paragraphs 4.11. to 4.13.) before, following the procedure described in paragraph 3.4 above, considering whether an alternative assessment of

the proposal is required and for notification and publicity before granting consent to the dredging.

### **Determining whether an Environmental Impact Assessment (EIA) or appropriate assessment is required (“screening”)**

- 3.8 The extraction of minerals by marine dredging is a project which is subject to Article 4(2) of the EIA Directive. This requires that such projects shall be assessed by the Member State to decide whether they are likely to have significant effects on the environment through either a case-by-case examination; by consideration against thresholds or criteria, or by a combination of both. If such effects are likely, EIA is required before development consent to commence the project can be given.
- 3.9 In addition, the Habitats Directive requires that plans or projects which are likely to have a significant effect on a European site, either alone or in combination with other plans or projects, should be subject to an appropriate assessment before consent is given for them. The UK has decided that these requirements will both be fulfilled by one regulatory process in relation to marine minerals dredging.
- 3.10 All marine minerals dredging must be subject to EIA unless the applicant has obtained a screening direction to the effect that it is not required or a determination in writing that the proposal is exempt from those aspects of the Regulations. Screening is optional, but if it is not applied for, then the applicant is required to submit an ES along with an application for a dredging permission or sufficient supporting environmental information to enable NIEA to undertake an appropriate assessment of its implications for the site in view of its conservation objectives.

### **NIEA policy on making ‘Screening Determinations’**

- 3.11 NIEA is aware that prospecting and bulk sampling is undertaken to establish the presence of viable aggregate reserves. To ensure that such operations are statistically representative and provide a reliable description of the sampled materials, it is usually necessary for one or more samples together totalling generally no more than 5,000 tonnes of aggregate to be extracted. Such tonnages are unlikely to have significant environmental effects or a significant effect on a European site.
- 3.12 NIEA is, therefore, likely to determine that most marine minerals dredging proposals of more than 5,000 tonnes will normally require EIA or appropriate assessment and, therefore, dredging permission. It is also likely to determine that most marine minerals dredging proposals comprising no more than one vessel-load not exceeding 5,000 tonnes in total (which may comprise several bulk samples which together do not exceed this amount) from a particular prospecting area are not likely to require EIA or appropriate assessment and, therefore, dredging permission unless the proposed dredging is located within:
- 6 kms of the coastline; or
  - 5 kms of a European site.
- 3.13 Operators should seek advice on proposals for bulk sampling of 5,000 tonnes or less of minerals other than sand and gravel, such as shells or maerl since these materials are

light in weight and provide much more volume per tonne. In addition, maerl is a rare and protected habitat and even low level extraction can cause serious damage.

### Requests for a 'Screening Determination'

- 3.14 Prospective applicants may, therefore, wish to apply to NIEA for a determination as to whether their dredging, prospecting or bulk sampling proposal is likely to have significant effects on the environment or a significant effect on a European site. They should make their request to NIEA in writing and supply the following information:
- a plan of the proposed dredging or sampling area, showing its location in relation to identifiable coastal or other navigational features and in relation to any European sites;
  - a description of the proposal, including details of the size of the area and the proposed volume of material to be extracted or sampled;
  - the proposed rate of extraction or the period over which sampling would be carried out; and
  - the proposed use(s) of the material to be extracted or confirmation that samples will be taken for analysis only.
- 3.15 NIEA may, if necessary, request further information. It will consult the owner of the seabed and such of the consultation bodies and other Government Departments<sup>6</sup> as it considers necessary in order to cover all of the issues that should be taken into account in deciding whether EIA or appropriate assessment is required. NIEA will carefully consider each proposal according to its individual circumstances, taking into account the proposed tonnage to be extracted; the rate and duration of extraction; the area to be affected; the proximity of sensitive areas, such as areas of nature conservation importance and fish feeding and breeding areas; and all other existing dredging operations nearby.
- 3.16 If NIEA issues a determination letter stating that the proposal is likely to have significant effects on the environment, then an application for dredging permission must be submitted along with a supporting ES. Such projects are referred to in the Regulation as relevant projects.
- 3.17 If NIEA determines that the proposal is not likely to have significant effects on the environment but is likely to have significant effects on a European site, an application for dredging permission must also be submitted with sufficient information to enable NIEA to carry out an appropriate assessment of its implications for the site in view of its conservation objectives. Such projects are referred to in the Regulations as habitats projects.
- 3.18 If NIEA determines that the proposal is likely to have significant effects on the environment and on a European site, an application for dredging permission must also

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<sup>6</sup> The list may include other Government Departments or parts of Government including NIEA Natural Heritage and Built Heritage, DARD, DCAL, Agri-Food and Biosciences Institute, Foyle, Carlingford and Irish Lights Commission, Maritime and Coastguard Agency and other bodies as appropriate. Consultation bodies may also include administrations in England and Scotland and the Republic of Ireland Government if they are affected by dredging proposals in Northern Ireland.

be submitted with an ES and with sufficient supporting environmental information to enable NIEA to undertake an appropriate assessment of its implications for the site in view of its conservation objectives.

- 3.19 If NIEA determines that the proposal is not likely to have a significant effect on the environment and is not likely to have a significant effect on a European site, dredging permission is not required under the Regulations. The applicant may then undertake the proposed dredging but only strictly in accordance with the proposal submitted to the NIEA for screening.
- 3.20 A determination letter will normally be issued by NIEA within 6 weeks of receipt of the application, although a longer period may be required when additional information is sought. NIEA will notify the applicant if this is the case. NIEA will send the determination letter to the applicant and, if it determines that dredging permission is required, it will also enclose a list of bodies that NIEA will consult if a dredging application is submitted and indicate the number of copies of the application that it will require for consultation purposes. NIEA will also send a copy of the determination letter to the owner of the seabed and to all those bodies and Government Departments consulted on the determination. It will also make copies available to anyone requesting them and will place the letter on the NIEA website<sup>7</sup>.

### **Proposals for trial marine dredging of minerals**

- 3.21 Any ES prepared in respect of an application for dredging of marine minerals should provide a full and sound basis for consideration of the application, for making a decision and preparing appropriate conditions to mitigate any potential adverse environmental conditions. However the marine environment is dynamic and it may not be possible in all cases, even following careful assessment, to be certain of what, if any; adverse environmental effects will arise as a result of detailed aspects of the proposed operations. For example, there might be a possibility that processing of minerals on board the dredging vessel and consequent release of unwanted material back to the seabed could impose significant adverse effects on the marine environment when a large sediment plume is produced. It could be difficult to assess this unless some trial processing of mineral is undertaken by the operator so that NIEA can determine whether, or not, this is a real problem or whether procedures can be adopted to reduce any effects to acceptable levels.
- 3.22 In such circumstances, the prospective applicant might wish to consider whether a practical way forward would be to undertake some trial dredging of minerals. A proposal for such trial dredging should be submitted to NIEA so that it can determine whether it is likely to have a significant effect on the environment or on a European site and whether EIA and/or appropriate assessment and the submission of a dredging application is required under the Regulations. The information that will need to be submitted will be similar to that set out in paragraph 3.14 and will be processed by NIEA as explained in paragraphs 3.15 to 3.20.

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<sup>7</sup> The NIEA website address is [www.ni-environment.gov.uk](http://www.ni-environment.gov.uk)

## **Information needed in an Environmental Statement (“scoping”)**

- 3.23 Guidance on the issues that should be considered in an ES is provided in MMG1 (NI). However, a prospective applicant may also request an opinion from NIEA on the information to be provided in the ES (the “scoping” process). NIEA will consult the owner of the seabed and such other of the consultation bodies and other Government Departments as it considers necessary in order to cover all of the issues that should be taken into account in forming an opinion on the content of the ES. NIEA will normally issue an opinion on scoping within 6 weeks of receipt of the request. NIEA will send its scoping opinion to the applicant together with, unless it has already been supplied; a list of bodies that it will consult if a dredging application is submitted. NIEA will also supply a copy of the opinion to the owner of the seabed and to all those bodies and Government Departments consulted on its content.

## 4. PREPARING AND SUBMITTING THE DREDGING APPLICATION

### Intention to apply for Dredging Permission

- 4.1 Whether or not either a screening determination or a scoping opinion is obtained, the applicant should notify NIEA<sup>8</sup> in writing of the intention to apply for a dredging permission before beginning work on the ES, if required. The applicant should provide NIEA with the general information listed in paragraph 3.14 and, unless it has already done so, NIEA will supply to the applicant a list which will include the relevant bodies and Government Departments to be consulted and also notify the applicant of the number of copies of the application that it requires for consultation purposes. NIEA will notify those on the consultation list of the name and address of the person who intends to submit the ES, and of their duty, under the Regulations, to make information available to that person which they or the applicant consider relevant to the preparation of the ES.
- 4.2 Those bodies will be required to make that information available to the prospective applicant unless it is information which could be exempt from disclosure under the Environmental Information Regulations 2004 or the Freedom of Information Act 2000 and may make a reasonable charge for doing so reflecting the cost of making the information available. NIEA will also indicate that it intends to consult with the Republic of Ireland or the administrations in Scotland or England where it considers that there might be environmental implications for their respective areas of jurisdiction. (It is thought unlikely proposals in Northern Ireland waters would have environmental implications for Wales.)
- 4.3 It is very important that intending applicants discuss their proposals in detail with all the relevant Consultees and do everything they can to overcome any potential objections or concerns so that only full worked up dredging applications and ESs are submitted to NIEA. If an application is submitted where there are still unresolved issues or objections, it may be refused or considerable delays in deciding it may occur if NIEA has to resolve these issues by writing formally to the applicants, copying in all the other parties, or, potentially, by putting the matter before a Committee (see Annex B to this Guidance Note).
- 4.4 Technically, in the Regulations, only environmental considerations can be taken into account in determining dredging applications that are relevant projects and require preparation of an ES and only nature conservation considerations can be taken into account in determining dredging applications that are habitats projects and require appropriate assessment. Therefore, in advising applicants about any marine minerals dredging proposal, consultation bodies and other Government Departments must be as detailed and specific as possible in their comments to explain how their concerns relate to either the protection of the environment or to specific nature conservation issues so that the prospective applicant can properly address their concerns. However, in NIEA' view the wider consideration such as fisheries, navigation, cables and archaeology can and should be taken into account when it grants a permission. NIEA considers that when it grants a permission the schedule of conditions may properly include conditions relating to these wider considerations.
- 4.5 In particular, when consulted on an ES that is nearing completion, consultation bodies and Government Departments requiring the imposition of conditions on any dredging permission which may be granted to protect the environment or mitigate the

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<sup>8</sup> Contact NIEA, Water Management Unit, 17 Antrim Road, Lisburn, BT28 3AL or [www.ni-environment.gov.uk](http://www.ni-environment.gov.uk)

environmental effects of the dredging, should spell out their requirements in detail and provide sound reasons for their imposition. Similarly, when consulted on a draft dredging application that requires an appropriate assessment, consultation bodies and other Government Departments requiring the imposition of conditions on any dredging permission which may be granted to protect nature conservation interests must also spell out their clearly defined requirements in detail and provide sound reasons for such conditions to be imposed.

- 4.6 Conditions must be necessary, relevant to dredging, relevant to the proposal under consideration, precise, enforceable, reasonable and be technically justified to protect the environment or more specific nature conservation interests, as appropriate. A key test to determine whether a particular condition is really necessary is if the dredging application would have been refused if the condition was not imposed.
- 4.7 Intending applicants should ensure that a comprehensive schedule of conditions to protect the environment or more specific nature conservation interest, as appropriate, is provided to accompany every dredging application that is submitted to NIEA and which is acceptable to all key consultation bodies and Government Departments. To achieve this, intending applicants may wish to arrange pre-application meetings with the consultation bodies and other Government Departments to ensure that only fully worked up applications are submitted to NIEA. If agreement cannot be reached on any issue this should be fully explained in the documents accompanying the application. Advice on conditions is given in MMG1 (NI) and Annex C to this Guidance Note shows examples of model conditions. It should be noted that since, to date, no dredging agreements to extract marine minerals have been issued in Northern Ireland these model conditions are taken from English examples.

### **The dredging application**

- 4.8 NIEA can only determine dredging applications within Northern Ireland waters (as defined in the Regulations and at paragraph 1.8) and will provide dredging application forms on request for these waters. Where a dredging proposal straddles the boundary between Northern Ireland waters and waters under the control of another jurisdiction within the UK, separate applications, including full documentation, should be submitted to each of the appropriate regulators. The necessary application forms and any other documentation can be obtained directly from each appropriate regulator. Each application should accord with the Regulations and Guidance that is applicable to the waters concerned.
- 4.9 Applications for dredging permission submitted to the Department must be accompanied by:
- a plan of the application area showing its location in WGS 84<sup>9</sup> and relation to identifiable coastal or other navigational features;
  - an ES if the proposal is likely to have a significant effect on the environment and requires EIA;
  - a detailed schedule of draft conditions; and

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<sup>9</sup> The World Geodetics System (WGS) links to or is the Global Positioning System (GPS) used by most sea-going vessels. GPS receivers on these vessels compute and store coordinates in terms of WGS 84.

- the requisite Dredging Application fee.
- 4.10 The submitted application should include a detailed schedule of draft conditions that would, if attached to a dredging permission:
- i) adequately mitigate significant adverse environmental effects;
  - ii) ensure that the dredging permission accords with the application; and
  - iii) provide for the implementation of an appropriate programme of monitoring so that any adverse environmental effects can be identified and addressed as quickly as possible (see MMG1 (NI)).
- 4.11 Monitoring programmes should include measures to:
- assess compliance with dredging conditions;
  - assess the effectiveness of dredging conditions in preventing unacceptable environmental effects;
  - identify as early as possible any unforeseen unacceptable environmental effects of dredging;
  - assess the predictions made in the ES; and
  - provide regular environmental feedback to inform subsequent decisions on dredging matters within the permitted dredging area.

### **Checking the application**

- 4.12 NIEA will acknowledge receipt of the application, check whether it is complete and, if necessary, will request any additional information, as far as possible, within a 3-week period. NIEA will not begin to process the application until all such requested additional information has been received. When the Department is satisfied that all the necessary documentation has been submitted, it will confirm to the applicant that the application is complete and that processing has commenced. This will be done even if it appears to NIEA that the submitted ES does not contain sufficient information to enable the environmental effects to be fully assessed because a determinative view on the adequacy of the ES can only be made after consultation has been undertaken.
- 4.13 In the light of all the information provided, NIEA will also confirm whether it considers that the application might affect the environment of the Republic of Ireland, Scotland or England or whether the application comprises or forms part of a project serving national defence purposes or is otherwise one to which the Regulations only partially apply.
- 4.14 NIEA will notify the applicant if such issues are thought to be relevant and if it considers it necessary to notify the Republic of Ireland or the administrations in Scotland or England of the application. NIEA will request from the applicant sufficient additional copies of the application documents so it can consult the respective Governments or administrations.

- 4.15 Where NIEA considers that the submitted dredging application might affect the environment of the Republic of Ireland, it will notify the Irish Government of the application and will advertise it in the Belfast Gazette. NIEA will request the administration in the Republic of Ireland to respond either expressing an interest, or confirming that they have no interest, within 8 weeks. If NIEA considers that the submitted dredging application might affect the environment of Scotland or England it will consult their respective administrations.
- 4.16 If the submitted dredging application is not required because it is determined that the proposal is exempt from this aspect of the Regulations (see paragraphs 3.2 to 3.7) then NIEA will issue the appropriate determination and send it to the applicant and will return the dredging application fee.

### **Processing dredging applications for relevant projects**

- 4.17 Within 3 weeks of receiving a dredging application for a relevant project, whether or not it is also habitats project, or of receiving and additional documentation in relation to it. NIEA will have completed the following administrative procedures to:
- advertise the application in the Belfast Telegraph, Newsletter, Irish News and Irish Times;
  - place copies of the application and any supporting documentation at the NIEA offices where they can be inspected by the public free of charge for a period of not less than 8 weeks;
  - send copies of the application and all of its supporting documentation, including the ES, if submitted, to all the consultation bodies and other Government Departments. Fishing organisations will be requested to channel their comments through the Department of Agriculture and Rural Development (DARD); and
  - notify any other person or organisation promoting environmental protection in marine waters of the submission of the application and provide details of where it can either be inspected or a copy obtained. This will include persons who NIEA considers are likely to have an interest in the application but are unlikely to become aware of it by means of public advertisement.

### **Procedure for deciding applications affecting European sites only**

- 4.18 Within 3 weeks of receiving an application that is likely to have significant effects on a European site but not on the environment more generally and which is, therefore, a habitats project but not a relevant project, NIEA:
- will place copies of the application and any supporting documentation at the NIEA offices where they can be inspected by the public free of charge for a period of not less than 8 weeks;
  - will consult with any appropriate consultation body;
  - will notify any other person or organisation promoting environmental protection in marine waters of the submission of the application and provide details of where it can

either be inspected or a copy obtained. This will include persons who NIEA considers are likely to have an interest in the application; and

- may also consult the general public and give publicity to the application if it is considered necessary.

### **Processing all dredging applications**

- 4.19 The advertisements and consultation letters will invite comments on the submitted application and indicate that they should be sent to NIEA within not more than 8 weeks from the date of the advertisement and consultation letters. If any consultation body or any Government Department still has concerns about the proposal and, in particular, is not satisfied that the draft conditions suggested by the applicants meet their concerns, they should inform NIEA of this and, if appropriate, spell out the precise wording of conditions that would be required. (See paragraphs 4.36 to 4.44 and Annex C)
- 4.20 Whenever further environmental information is submitted in support of an application, either to overcome inadequacies identified during consultation or because further environmental information otherwise becomes available, additional similar publicity and consultation will be undertaken by NIEA.
- 4.21 A submitted application can be withdrawn by the applicant at any time but the dredging application fee will not be returned once NIEA has begun publicity and consultation on it.

### **Procedure for deciding all applications**

- 4.22 Having regard to the details of the submitted application and its ES, if submitted, the views of all Consultees and other Government Departments, any representations put forward by the general public, published government marine minerals dredging policy and all other relevant circumstances, NIEA will decide how to proceed to making a decision on each application on a case-by-case basis.
- 4.23 Where either no representations are received about a particular dredging application or where all representations are favourable, NIEA may proceed directly to a decision. In all other cases where unfavourable representations are received or there are unresolved issues, NIEA will, depending on the circumstances of the case, either write to the applicants, copying in all the parties, requesting further information or may decide to put the application before a Committee which will consider the matter by either an exchange of written representations or by holding a hearing or inquiry.
- 4.24 An exchange of written representations requires all the parties to put their case in writing to the Committee and such a procedure should usually be used if the case is fairly straightforward and only involves a few parties. More complex cases involving more parties should usually be considered at a hearing at which the Chair of Committee will lead a discussion of the case between all the parties involved. At inquiries, parties are able to cross examine other parties on their evidence and are usually professionally represented. Inquiries should, therefore, be used for complex cases involving several parties. The procedures which will be followed in putting the application before a Committee are set out in Annex B.
- 4.25 Once the Committee has received all the evidence that it requires, the Chair will submit a report to the Department setting out the Committee's conclusions and recommendations

on the case. The report will be a prime consideration for NIEA to take into account in making a decision on the application.

### **Additional procedures for deciding dredging applications for habitats projects**

4.26 Before deciding to grant a dredging permission for a dredging project that is:

- likely to have significant effects on a European site, or
- likely to have significant effects on both a European site and on the environment, and, therefore, required the submission of an ES; and
- not directly connected with, or necessary to, the management of the European site,

NIEA must make an appropriate assessment of the implications of the proposed dredging for the nature conservation objectives of the site taking into account the environmental information submitted by the applicant.

4.27 NIEA may grant dredging permission if the appropriate assessment indicates that the proposed development will not affect the integrity of a European site. Even if it is concluded that the proposal will adversely affect the integrity of the site, NIEA may still grant dredging permission if there are no alternative solutions and if the proposed dredging must be carried out for reasons of overriding public interest, which may be of a social or economic nature.

4.28 If the site contains a priority natural habitat or supports a priority species, as defined within Article 1 of the Habitats Directive 92/43/EEC, such reasons of overriding public interest can relate only to:

- public health, public safety, or beneficial consequences of primary importance to the environment; or
- other reasons that, in the opinion of NIEA, having given due regard to the opinion of the European Commission, are imperative reasons of overriding public interest.

4.29 If dredging permission is given for a proposal that will adversely affect the integrity of a European site, NIEA will secure through conditions that any necessary compensatory measures are taken to ensure the integrity of the *Natura 2000* network of sites.

### **Issuing decisions on all dredging applications**

4.30 Following careful consideration of all the documentation associated with the application, including, where appropriate, the Committee's Report, NIEA will issue a decision letter, either granting or refusing permission. This will normally be issued within 6 weeks from the end of the 8-week consultation period for each application if the case is not put before a Committee or within 9 weeks from receipt of the Committee's Report. Longer timescales may be needed if the Government of the Republic of Ireland or the administrations in Scotland or England have been consulted. In some cases, it may be necessary for NIEA to indicate the decision that it is minded to make and to seek further information or views from the parties, including, if appropriate, proposing to put the application before the Committee again.

- 4.31 Each dredging permission will be issued to the applicant but the decision letters will make clear that the permissions will endure solely for the benefit of the owner of the seabed who, may with the prior written approval of NIEA, transfer them either in whole or in part, to dredging operators. The decision letter will list the main environmental considerations taken into account, and give reasons for the decision. If dredging permission is granted, the decision letter will set out the conditions to be imposed on the permission together with the reasons for them (see paragraphs 4.36 to 4.44). If permission is refused, the decision letter will set out the reasons for refusal.
- 4.32 Copies of the decision letter will be sent to:
- the applicant;
  - the owner of the seabed;
  - the consultation bodies; and
  - all other parties and Government Departments who have indicated an interest in the matter.
- 4.33 Where the Government of the Republic of Ireland or the administrations in Scotland or England have been consulted, NIEA will provide a copy of the decision letter to them.
- 4.34 NIEA will also advertise the decision in the publications used previously to advertise the application, within 28 days of the date that the decision letter is issued. If the Government of the Republic of Ireland has been consulted, NIEA will advertise the decision in the Belfast Gazette. The decision letter and, where appropriate, the Committee's Report will be placed on the public register and the NIEA website within 28 days of the decision letter being issued.
- 4.35 Any decision issued by NIEA under the Regulations can be challenged in the courts by Judicial Review. If any of NIEA's decisions are quashed by the courts and it is required to re-determine them, it will do so after giving careful consideration to the procedures to be followed in re-determining them, in full consultation with all the parties concerned.

### **Dredging conditions**

- 4.36 When granting dredging permission, NIEA may make it subject to any conditions it considers appropriate to reduce, or remove, any potential adverse environmental effects of its implementation. All conditions will apply to the owner of the seabed and will continue to bind the owner after the transfer of the dredging permission.
- 4.37 Many conditions will require operators to submit to NIEA for subsequent approval matters such as monitoring specifications, exclusion zones, dredge zones, work programmes, annual monitoring reports and substantive reviews.
- 4.38 Sometimes, conditions will require operators to prepare such 'subsequent matters' in consultation with specified consultation bodies. It is very important that operators discuss these matters in detail with all the relevant consultation bodies and do everything they can to overcome any potential objections or concerns so that only fully worked up subsequent matters are submitted to NIEA. If a subsequent matter is

submitted to NIEA where there are still unresolved issues or objections, it may be refused or considerable delays may arise in deciding if it should be approved if NIEA has to resolve these issues by formally writing to the applicant, copying in all the other parties or potentially putting the matter before a Committee.

- 4.39 Whenever an operator has prepared a subsequent matter in consultation with relevant consultation bodies, they may consider it expedient to enclose with their submission to NIEA, written confirmation for each of the consultation bodies that they are content with the proposals. This would obviate the need for NIEA to carry out its own consultation with these bodies and should facilitate a faster decision-making process.
- 4.40 Whenever, there is a disagreement with any consultation body about a subsequent matter that cannot be resolved prior to its submission to NIEA, operators should submit the matter to NIEA together with a covering letter explaining the nature of the disagreement. When doing this, operators should bear in mind that it will take time for NIEA to resolve the issue by writing to all the parties or, possibly putting the matter to a Committee, particularly if the approval of the subsequent matter is time-critical to the overall operational activities.
- 4.41 When a dredging permission is granted within an area subject to a regional tonnage limit that has been set out in dredging policy guidance, NIEA may impose conditions restricting regional dredging tonnages to those set out in that guidance. Such conditions will not bind a transferee but will bind the owner of the seabed.
- 4.42 It is possible that dynamic changes in the marine environment which could not have been foreseen or predicted at the time the ES was prepared may occur after the permission has been granted. Conditions will, therefore, be used to limit dredging permissions to specific durations and may also require: -
- i) the periodic substantive review of the dredging permission at specified periods, usually after every five years, throughout the duration of the dredging permission; and
  - ii) monitoring, usually through the implementation of a monitoring scheme approved by NIEA, to assess any dynamic unforeseen changes and to establish whether they are giving rise to unacceptable effects on the marine and coastal environment, fisheries or other users of the sea and, in particular, on European sites. Conditions on dredging permissions will require the results of monitoring to be reviewed at appropriate intervals by the operators and such reviews to be considered by NIEA.
- 4.43 The findings of periodic substantive reviews of dredging permissions and the results of monitoring may give rise to circumstances that require NIEA to either vary or revoke the dredging permission or to amend the approved monitoring scheme. Guidance on variations and revocations of dredging permissions is given in paragraphs 7.1 to 7.9.
- 4.44 Further information on the use of conditions to control dredging activities is contained in MMG1 (NI) and in Annex C to this guidance.

#### **The approval of monitoring schemes by NIEA**

- 4.45 Some conditions of dredging permissions imposed by NIEA will require the operators to subsequently submit for approval the details of monitoring schemes.

These details must be submitted to NIEA within the timeframes set out in the conditions of a dredging permission. NIEA will consult the owner of the seabed and such of the consultation bodies and other Government Departments as it considers necessary and request that their views be sent to it within three weeks. NIEA will normally issue decisions on the acceptability of the monitoring schemes within eight weeks of their submission unless it considers that the matter should be put before a Committee. The procedures for putting such dredging matters before a Committee are set out in Annex B to this Guidance Note.

### **Transferring dredging permissions**

- 4.46 The owner of the seabed may transfer all, or part, of that permission to any number of dredging operators. The owner must apply to NIEA for the prior written approval to the transfer(s) taking place. The owner of the seabed should provide as much detail as NIEA might reasonably require about the dredging operators to whom the dredging permission is to be transferred. The owner should also indicate the proposed date of transfer and the rates and total amount of extraction authorised for each transfer. It is important that NIEA is notified of all operators that are entitled to dredge within each permitted area so that it is clear when dredging has, or has not, been authorised by the owner of the seabed.
- 4.47 NIEA will normally determine applications for the transfer of dredging permissions within 3 weeks of receipt of all the necessary information. A longer period may sometimes be needed, particularly if additional information has to be sought. NIEA will notify the owner if that is the case.
- 4.48 The operator to whom a Dredging Permission is transferred:
- is legally obliged to comply with all the conditions imposed on the dredging permission by NIEA, except conditions relating to regional tonnage limits; and
  - must confirm to NIEA in writing that the permission has been transferred and the date on which the transfer took place. **Without this confirmation, the transfer will cease to have effect 40 days after the date of the transfer.**
- 4.49 All dredging conditions will continue to bind the owner of the seabed after the transfer of the dredging permission, either in whole or in part, to an operator.

### **Applications to vary existing Dredging Permissions**

- 4.50 The holder of an existing dredging permission may apply to NIEA for the terms of that permission to be varied. **Before** making such an application, the applicants should notify NIEA of their intention and supply the details of their proposed variation. This will enable NIEA to supply a consultation list to the applicants and enable NIEA to determine whether the proposed variation is likely to have significant effects on the environment which will require the submission of a new ES or significant effects on a European site which will require the submission of sufficient information to enable NIEA to carry out an appropriate assessment. NIEA will normally notify the applicants of whether a new ES or appropriate assessment is required within 6 weeks of receiving from them the details of their proposed variation to the existing dredging permission. NIEA will also notify the

applicants of the number of copies of the application that it requires for consultation purposes.

- 4.51 As with the submission of new applications, it is very important that intending applicants discuss their proposals in detail with all the relevant consultation bodies and other Government Departments and do everything they can to overcome any potential objections before formally submitting an application. Ideally, applicants should ensure that all key consultation bodies and Government Departments are content with the proposed variation before it is submitted to NIEA. (See paragraphs 4.3. to 4.7). If an application to vary an existing dredging permission is submitted where there are still unresolved issues or objections, the variation may be refused or delays in determining it may occur if NIEA has to resolve these issues by writing formally to the applicants, copying in all the other parties, or, potentially, by putting the matter before a Committee.
- 4.52 An application to vary an existing dredging permission may be submitted to NIEA on a dredging application form, which NIEA will provide on request<sup>10</sup>. Each application to vary the terms of an existing dredging permission must be accompanied by a plan of the application area showing its location in relation to identifiable coastal or other navigational features; a detailed explanation of the proposed variation; and the reasons for it.
- 4.53 Upon receipt of the application, NIEA will, unless it has already done so, inform the applicant of whether it considers the proposed variation to be likely to have significant effects on the environment or a significant effect on a European site. If NIEA determines that the proposal is likely to have a significant effect on the environment, it will require the submission of a new ES. If it determines that it is likely to have a significant effect on a European site, NIEA will require the submission of sufficient information to enable it to carry out an appropriate assessment. NIEA will normally notify the applicants of whether a new ES and/or an appropriate assessment is required within 6 weeks of receiving the application. If the application has to be accompanied by a new ES, or must be subject to appropriate assessment, the appropriate dredging application variation fee must be paid. If the application does not have to be accompanied by a new ES, and does not require appropriate assessment, the reduced dredging application variation fee must be paid.
- 4.54 NIEA will not begin processing the application until any further requested information, the application variation fee and, if necessary, a new ES has been received. Once all required information and the application variation fee has been received, all applications to vary an existing dredging permission will generally follow the procedures undertaken for new applications except that variation applications not requiring EIA or appropriate assessment will not be advertised, will not be placed on deposit, and consultation will only be with appropriate consultation bodies.

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<sup>10</sup> Copies of application forms can be obtained from NIEA 17 Antrim Road, Lisburn or the NIEA website [www.ni-environment.gov.uk](http://www.ni-environment.gov.uk)

## **5. MONITORING OF DREDGING AND ENFORCEMENT OF CONDITIONS**

5.1 Monitoring conditions will be imposed on all dredging permissions to ensure compliance with that permission and, in appropriate cases, to assess the effects of dredging on the environment. Such conditions will usually require the preparation of a monitoring scheme to be approved by NIEA before any dredging takes place. Monitoring conditions are explained briefly below and in more detail in MMG1 (NI) while examples of them are set out in Annex C to this Guidance Note.

### **Environmental monitoring**

5.2 Monitoring required by conditions of a dredging permission might include, for example, assessments of the effects of dredging on the coastline or other sensitive features in the marine environment. Such monitoring will, however, need to be tailored to the particular circumstances of each site and will require reporting and review of the findings to NIEA at appropriate intervals, etc.

5.3 Where dredging permissions include conditions that provide for periodic, usually 5 yearly substantive reviews, it is likely that the findings of the monitoring programme will form the basis for that review process. In appropriate cases, conditions may require the operator to report to NIEA more frequently than the review period on the results of monitoring. NIEA will consult the owner of the seabed and such of the consultation bodies and other Government Departments as are considered necessary to inform NIEA about the results of the monitoring that are submitted. NIEA will request from the operators as many copies of their monitoring reports as it may reasonably need for consultation purposes. NIEA will carefully consider these reports, taking into account the views of Consultees, and will inform the operator and all other parties if, in its view

- the existing monitoring should continue as it is or be amended in some way; or
- the dredging permission needs to be varied or revoked (see paragraphs 7.1. to 7.9);  
or
- a new monitoring scheme should be submitted.

### **Monitoring of compliance with conditions**

5.4 To ensure that dredging only takes place within the area to which the permission applies, and, in appropriate cases, in accordance with seasonal or other restrictions, every dredging operator will be required, through conditions of the dredging permission, to:

- operate an Electronic Monitoring System (EMS) that records the location of the dredger and indicates whether or not dredging is occurring; and
- supply EMS data to NIEA (or its agent as indicated in the dredging permission) within 30 working days from the end of each month.

5.5 In addition, NIEA may carry out spot checks on dredging operations.

## **Enforcement**

- 5.6 If NIEA becomes aware that dredging has been undertaken that breaches the terms of a Dredging Permission, it will take the matter up immediately with the operator and the owner of the seabed concerned. Where the breach is considered to be significant (for example, in terms of scale or frequency of occurrence or for any other reason), the operator and/or the owner of the seabed may be prosecuted.

## **6. REVIEW OF DREDGING PERMISSIONS**

### **Reviews required by conditions of dredging permission**

- 6.1 NIEA will carry out such periodic substantive reviews of dredging permissions as may be required by the conditions imposed on them. These reviews will usually require the operators to provide NIEA at specified periods, usually 5-yearly, with comprehensive Review Reports which:
- i) review all the monitoring that has so far been undertaken in respect of the permitted dredging;
  - ii) assess the environmental implications for the permitted dredging of any other environmental effects being generated by any other marine or coastal activity, including other dredging operations;
  - iii) identify any unforeseen environmental effects caused by the permitted dredging; and
  - iv) recommend any variations to either the monitoring of the permitted dredging or to the dredging permission itself that may be needed to, respectively, better monitor the environmental effects of the permitted dredging or to protect the environment from any further damage.
- 6.2 NIEA will consult the owner of the seabed and such of the consultation bodies and other Government Departments as it considers necessary in order to cover all aspects of the Review Reports submitted by the operators. NIEA will request from the operators as many copies of their reports as it may reasonably need for consultation purposes.
- 6.3 Having carefully considered the Review Reports from the operators and the views of those parties that it has consulted on them, NIEA will decide whether to:
- amend the existing monitoring operations for the permitted dredging or to allow them to continue as they are; and/or
  - vary or revoke the dredging permission. The procedures for NIEA to either vary or revoke a dredging permission are set out in paragraphs 7.1 to 7.9; and/or
  - require the submission of a new monitoring scheme.
- 6.4 NIEA will notify its decisions and reasons for them to the operators, the owner of the seabed and to all those consultation bodies and Government Departments consulted on the Review Reports and to anybody else who requests them.

### **Reviews required because of likely effects on European sites**

- 6.5 Where a site becomes a European site after dredging permission has been granted, the Regulations require that NIEA must review that permission if the permitted dredging is:
- likely to have a significant effect (either alone or in combination with other projects) on the European site; and

- not directly connected with or necessary to the management of the European site.
- 6.6 In reviewing an existing dredging permission, NIEA must make an appropriate assessment of the implications that the continuation of permitted dredging operations will have for the site, in view of its conservation objectives. NIEA will consult the owner of the seabed, such of the consultation bodies and Government Departments as it considers necessary and, if appropriate, the general public in carrying out this assessment which will indicate whether NIEA should either affirm, vary or revoke the existing dredging permission.
- 6.7 NIEA will affirm an existing dredging permission if it is satisfied that:
- the permitted dredging will not adversely affect the integrity of the European site; or
  - other action to be taken by NIEA, or by another authority, will ensure that the permitted dredging does not adversely affect the integrity of the European site.
- 6.8 NIEA may vary an existing dredging permission to avoid any adverse effects on the integrity of a European site caused by the carrying out or continuation of existing permitted dredging operations.
- 6.9 Even if the appropriate assessment concludes that the permitted dredging operations will adversely affect the integrity of a European site, NIEA may still allow them to continue, by either affirming or varying the existing dredging permission if it is satisfied that there are no alternative solutions and the existing dredging operations must be carried out for imperative reasons of overriding public interest that may be of a social or economic nature.
- 6.10 If, however, the European site contains either a priority natural habitat type or a priority species, as defined within Article 1 of the Habitats Directive 92/43/EEC, such imperative reasons of over-riding public interest can only relate to:
- public health, public safety, or beneficial consequences of primary importance to the environment; or
  - other reasons that, in the opinion of NIEA, having given due regard to the opinion of the European Commission, are imperative reasons of overriding public interest.
- 6.11 Whenever NIEA allows permitted dredging operations to continue that will adversely affect the integrity of a European site, it will secure through conditions that any necessary compensatory measure are taken to ensure the integrity of the *Natura 2000* network of sites (see paragraph 4.26).
- 6.12 NIEA may revoke an existing dredging permission to avoid any adverse effects on the integrity of a European site caused by the continuation of existing permitted dredging operations. It will only revoke such a permission, however, if it is satisfied that any adverse effects cannot be satisfactorily mitigated by varying the existing dredging permission. The procedures for NIEA to either vary or revoke a dredging permission are set out in paragraphs 7.1 to 7.9.
- 6.13 NIEA will notify its decisions and reasons for them to the holders of the dredging permission, the owner of the seabed, and to all those consultation bodies and

Government Departments on the Review Reports and to anybody else who requests them.

## **7. VARIATION, SUSPENSION OR REVOCATION OF DREDGING PERMISSIONS BY THE DEPARTMENT**

### **Variation and Revocation procedures**

- 7.1 NIEA has the power to vary, suspend or revoke a dredging permission at any time during its life if it is considered appropriate to do so to protect the environment from significant environmental effects. This might occur, for example, as the result of:
- the results of monitoring undertaken to comply with conditions attached to dredging permissions;
  - periodic substantive reviews of dredging permissions carried out to comply with their conditions (see paragraph 6.1.to 6.4.);
  - a review by NIEA of an existing dredging permission affecting a European site by means of an appropriate assessment under paragraphs 3 and 4 of Schedule 3 to the Regulations (see paragraphs 6.5.to 6.13); or
  - any other unforeseen reason.
- 7.2 Before deciding whether to vary or revoke a dredging permission, NIEA may request either the owner of the seabed or any holder of the dredging permission to supply by a specified date whatever further information NIEA may require to establish the extent to which any variation or revocation is likely to be effective to protect the environment from significant adverse effects caused by the permitted dredging operations. If the further information requested by NIEA is not provided within the specified period or within such further period as he may allow, NIEA may suspend the dredging permission so that any continued dredging operations will become unlawful and subject to prosecution.
- 7.3. The suspension will cease if the further information requested by NIEA is satisfactorily provided within six months of the dredging permission being suspended. If the requested information is not submitted to NIEA within six months, it will proceed to revoke the dredging permission.
- 7.4 If, as a result of the evidence presented, including the provision of any further information requested, NIEA is minded to either vary or revoke an existing dredging permission, it will serve notice of the proposal on:
- i) the owner of the seabed;
  - ii) the holder(s) of the dredging permission;
  - iii) any other person who, in the opinion of NIEA will be affected by the revocation or variation; and
  - iv) appropriate consultation bodies and other Government Departments.
- 7.5 If NIEA considers that permitted dredging operations should cease or that a dredging permission should be varied as soon as possible, the permission may either be suspended or varied from the date notice is served on the parties described in

paragraph 7.4 pending its final decision on variation or revocation as explained in paragraphs 7.3 to 7.9.

- 7.6 If NIEA proceeds to vary or revoke a dredging permission, it will serve a notice on the parties described in paragraph 7.4 which will provide reasons for its proposed action. All notified parties then have 28 days to make representations to NIEA. Within that period, anyone served with a notice may require NIEA to give them the opportunity to put their case before a Committee. Whenever such a requirement is put to NIEA or whenever unfavourable representations are sent to NIEA about any of its proposals to either vary or revoke an existing dredging permission, NIEA may decide that such cases will be considered by a Committee either by an exchange of written representations or by being heard at a hearing or inquiry (see Annex B to this guidance).
- 7.7 In all cases where either no objections are received to a proposal by NIEA to vary or revoke an existing dredging permission, where all representations are favourable or where unfavourable representations are not put to a Committee, NIEA may proceed directly to a decision to revoke or vary the permission or leave it unchanged. NIEA will send a copy of its decision letter to all parties.
- 7.8 If the permission is varied or revoked following an appropriate assessment or in other cases where NIEA considers it necessary to do so because of the significance of the adverse environmental effects, the variation or revocation will take effect from the date NIEA announces its proposal to vary or revoke the dredging permission. In all other cases, it will take effect from the date of the decision letter issued by NIEA confirming its variation or revocation of the dredging permission. If more than one notice is served, and those notices are served on different days, the revocation or variation shall take effect on the date on which the last of them is served.
- 7.9 Whenever NIEA decides not to vary or revoke a dredging permission that it has either suspended or temporarily varied, the permission will continue to have effect on its original terms and conditions from the date of the decision to not vary or revoke it except that any time limits set out in the original permission will be extended by a period equivalent to the time that the permission was either suspended or temporarily varied.

## **8. APPLICATIONS FOR A GOVERNMENT VIEW LODGED WITH THE DEPARTMENT BEFORE, BUT NOT DECIDED, BY 1 MAY 2007**

### **Applications for a Government View**

- 8.1 Applications submitted for a GV which were not determined at the time the Regulations came into force on 1 May 2007 will be processed and determined as applications for a dredging permission only if:
- the application includes an ES which complies with the requirements of the Regulations; or
  - such an ES is supplied within a period of 14 days from commencement of the Regulations.
- 8.2 Whenever an application for a GV proceeds to be determined as a dredging application under the Regulations:
- i) further publicity and consultation by NIEA may not be necessary if it is satisfied that the publicity and consultation that may already have been carried out by the applicant substantially complies with the requirements of the Regulations; and
  - ii) any dredging permission that may be issued will be subject to conditions requiring the payment of fees to recover the costs of NIEA and the Agri-Food and Biosciences Institute (AFBI) in interpreting and assessing the results of monitoring the permission (see paragraphs 1.11 and 1.12).

## **9. THE PUBLIC REGISTER**

### **The availability of the Register**

9.1 NIEA will maintain a public register of all dredging applications and other related marine minerals dredging matters that come to it for decision. This will be maintained by NIEA at its Lisburn offices (NIEA, Water Management Unit, 17 Antrim Road, Lisburn, BT28 3AL) and can be inspected by the general public during reasonable hours free of charge by prior appointment. A summary of the information available on the register can be found on the NIEA web site: [www.ni-environment.gov.uk](http://www.ni-environment.gov.uk). As soon as is practical, the public register will be put on the NIEA website.

### **The contents of the Register**

9.2 The register will contain copies of:

i) all determinations issued by NIEA (or in the case of proposals which comprise or form part of a project serving national defence purposes the Secretary of State) indicating how, if at all the Regulations apply to a dredging proposal;

ii) all screening determinations and scoping opinions that are issued by NIEA together with the views of those bodies that were consulted before issuing them;

iii) all dredging applications and applications to vary existing dredging permissions submitted to NIEA together with their Environmental Statements (if submitted) and all other plans, maps and supporting documentation; copies of all representations submitted to it by consultation bodies, other Government Departments, other UK administrations, the Republic of Ireland Government, and the general public; all decision letters on these applications, including statements of reasons for the decisions;

iv) all the schedules of conditions whenever dredging permissions are issued; copies of all details of all monitoring schemes submitted to NIEA for approval pursuant to the conditions of dredging permissions as well as copies of all representations about these details submitted by consultation bodies, other Government Departments and copies of all decision letters on the submitted details;

v) copies of all applications to NIEA to transfer a dredging permission and copies of all the decisions on them;

vi) every monitoring and review report or any other report submitted to NIEA by operators pursuant to the conditions of dredging permissions; copies of all representations about these details submitted by consultation bodies, other Government Departments and copies of all the decision letters on these reports;

vii) every notice sent by NIEA to the owner of the seabed, the operator or any other party proposing either the variation or revocation or imposing the suspension of any dredging permission or the amendment of any monitoring operations; copies of all subsequent correspondence; and copies of NIEA' decision letters on them;

viii) any reports of or submissions to a Committee appointed to deal with dredging matters requiring further consideration;

- ix) any court order relating to any decision by NIEA or the activities of any operator; and
- xi) all documents in relation to any dredging matter that are put on deposit at the offices of NIEA.

9.3 The Register will be updated within 28 days of the receipt of a dredging application, the issuing of any decision or opinion by NIEA or the despatch or receipt of any correspondence, except where to release correspondence at this stage would prejudice the decision-making process, in which case it will be updated when the relevant decision has been made. All items on the Register will be listed chronologically in an index related to the area of seabed concerned and all areas of seabed will be shown on maps indicating their location in WG84 and in relation to the land.

## ANNEX A

### GLOSSARY OF TERMS

The **application documents** comprise the dredging application (completed form plus any supporting statement and/or covering letter), the Environmental Statement (including coastal impact assessment), a plan of the area, a draft schedule of conditions, and any other documents specified by NIEA.

An **appropriate assessment** of a marine minerals dredging proposal is carried out by NIEA when the proposal is considered likely to have a significant effect on a European protected site and will consider the implications of the dredging for the nature conservation objectives of the site.

**Bulk sampling** is the process of dredging sufficient material usually not exceeding 10,000 tonnes from a sand and gravel deposit to be able to establish the physical and chemical characteristics such that the economically recoverable reserves in the deposit can be estimated to a reasonable level of certainty.

The **consultation list** is a list of all the consultation bodies and Government Departments or other parts of Government that NIEA proposes to consult about a marine minerals dredging proposal and those that it considers that an applicant may wish to consult.

**Consultation bodies** are all the organisations and persons specified on the consultation list as having an interest in a relevant project by reason of their specific environmental responsibilities.

A **decision letter** is issued by NIEA and sets out the decision on a dredging matter that it is required to decide under the Regulations. Such letters are issued in respect of decisions on dredging applications and the revocation, variation and assignment of dredging permissions following the consideration of all the information put before NIEA, including the views of Consultees and representations sent by the general public.

A **determination letter** is issued by NIEA and sets out the determination as to whether or not a particular dredging proposal is likely to have significant effects on the environment and, therefore, whether it requires dredging permission and an Environmental Impact Assessment.

A **dredging agreement** is a commercial agreement or licence between an operator and the owner of the seabed (usually the Crown Estate) governing the terms under which the owner of the seabed allows dredging to take place.

A **dredging application** is an application submitted to NIEA for permission to extract minerals from a specified area of the seabed. Decisions on dredging applications will be made by NIEA in accordance with the Regulations and the guidance in this note. In response to an application, NIEA may grant permission subject to such conditions as it considers appropriate, or refuse permission.

**Dredging operations** affected by these Regulations are only those operations where the dredged material is extracted primarily for use in construction and/or beach replenishment.

A **dredging permission** is issued by NIEA under the Regulations and, once issued, allows a proposed dredging operation to be carried out in accordance with the terms of the permission and the conditions imposed on it. It does not obviate the need for consent from the owner of the seabed.

**Dredging conditions** are imposed by NIEA on dredging permissions that it issues. They are legally enforceable and in general terms are intended to mitigate the effects of dredging on the environment and on other uses of the sea and to require the monitoring of its effects.

An **environmental impact assessment (EIA)** is a procedure for drawing together, in a systematic way, an assessment of a project's likely environmental effects. This helps to ensure that the importance of the predicted effects, and the scope for reducing them, are properly understood by the public and then considered by the relevant competent authority before it makes its decision.

An **environmental statement (ES)** consists of the detailed information about the main likely environmental effects of a project that is compiled by the developer in order to facilitate and inform the EIA process.

The **European Economic Area (EEA)** consists of the states of the European Union together with Norway, Iceland and Liechtenstein.

A **habitats project** is one which is likely to have a significant effect on a European site and requires an appropriate assessment of its implications for the site in light of the latter's conservation objectives.

**Marine minerals** comprise mostly sand and gravel and other similar materials but can also include coal and calcified seaweed.

A **relevant project** is one that is likely to have significant effects on the environment and, therefore, requires EIA and the submission of an ES.

A **subsequent matter** can be any marine minerals dredging matter that is not approved when an initial dredging permission is granted but, instead, is reserved by condition to be approved by NIEA at a later date. Such matters can include monitoring specifications, exclusion zones, methods of working, the submission of monitoring reports and substantive reviews.

The **World Geodetics System (WGS)** links to or is the Global Positioning System (GPS) used by most sea-going vessels. GPS receivers on these vessels compute and store coordinates in terms of **WGS 84**.

## **PROCEDURES FOR DETERMINING MARINE MINERALS DREDGING MATTERS BY WAY OF WRITTEN REPRESENTATIONS, HEARING OR LOCAL INQUIRY**

### **Introduction**

- B.1 This Annex sets out the procedures for NIEA to determine marine minerals dredging matters where it decides that unresolved issues or unfavourable representations about a particular case need to be considered by a Committee. Such matters will include applications for dredging permission and to vary existing dredging permissions; the approval of marine dredging monitoring schemes pursuant to a grant of dredging permission; proposals by NIEA to vary or revoke existing dredging permissions; and any other marine minerals dredging matter that may come to it for decision. For simplicity, this Annex refers to all these different circumstances as marine minerals dredging matters.
- B.2 If NIEA decides that a marine minerals matter requires further consideration, it will appoint a Committee. The Committee will normally have three members (though up to 2 additional members with special qualifications may be appointed if appropriate) consisting of persons with expertise in the matters about which representations have been made. All the Committee members will be independent and drawn from a list of suitable experts maintained by NIEA. A departmental official will normally act as Secretary to the Committee but will not be involved with the case under consideration at any stage.
- B.3 The Committee will consider all the evidence submitted by the contesting parties and its Chairman will prepare a report on the evidence, setting out its conclusions and recommendations, which will be submitted to NIEA. NIEA will take the decision.
- B.4 The Committee will consider evidence either by an exchange of written representations or by holding an informal hearing or a local inquiry.
- B.5 This guidance, therefore, sets out the procedural steps and timetables for the decision-making process to be undertaken by NIEA although, depending on the particular circumstances of each case, further time may be allowed for particular steps.

### **Optional procedures for determining marine minerals dredging matters**

- B.6 Marine minerals dredging matters may be determined following an exchange of written representations, a hearing or a local inquiry.
- B.7 An exchange of written representations between the parties which is administered and co-ordinated by the Committee is a quicker and less expensive alternative to a hearing or inquiry. The written representations procedure is preferred to a hearing and a hearing is preferable to a local inquiry in all suitable cases.
- B.8 A hearing is a round-the-table discussion led by the Chairman of the Committee. It is less formal, simpler, quicker, and, therefore, less costly, than an inquiry. Cross-examination and formal advocacy are not permitted unless the Committee considers they are required to ensure a thorough examination of the issues involved.

B.9 A local inquiry provides for cross-examination and advocacy by the parties involved. It, therefore, lasts longer and is more formal than a hearing. An inquiry may be preferable to a hearing where large numbers of third parties wish to speak or where complicated technical or policy issues need to be considered. Careful preparation is needed to ensure that inquiries last no longer than is necessary and it may, in some cases, be necessary to hold a pre-inquiry meeting, or meetings, to set out procedures and establish 'ground rules' for the conduct of the inquiry. (See paragraphs B60 to B63).

### **Deciding the procedure to be followed**

B.10 NIEA will, following consultation with all the parties concerned, decide on the procedure to be used in determining each particular marine minerals dredging matter that comes to it for determination. These parties will include the applicant seeking a dredging permission; the objectors when the variation or revocation of an existing dredging permission is proposed by NIEA; and all other parties which have either been consulted on a case or otherwise made representations on it to NIEA. They will also include the Republic of Ireland if the Secretary of State considers that any particular dredging matter may effect its environment.

B.11 NIEA will write to all these parties informing them of the:

- statement of the issues considered to be of relevance to the determination of the case. This is only intended to help the parties decide on the appropriate determination procedure and is therefore not definitive. Where another Minister or Government Department has expressed views in writing about a particular marine minerals dredging matter, NIEA will set out those views in the statement; and
- proposed determination procedure.

B.12 NIEA will seek all the parties' views on the proposed determination procedure within 4 weeks of the date of its letter. If any party is dissatisfied with the procedure proposed by NIEA and considers that a different one would be more suitable, it should inform NIEA in writing, setting out clear reasons why a different procedure should be followed. NIEA will carefully consider all replies and within two weeks of the deadline for their receipt, will confirm to all the parties the determination procedure to be followed.

B.13 NIEA will then appoint a Committee and make the necessary arrangements for either the exchange of written representations or for convening a hearing or inquiry.

### **Parties that may participate in the decision procedures**

B.14 The following parties are entitled to submit written representations or to appear at a hearing or inquiry:

- the applicant, in respect of an application for dredging permission;
- the holder(s) of a dredging permission that NIEA is proposing to either vary or revoke; and
- the owner of the seabed.

- B.15 Either NIEA or the Committee may invite any other party to submit written representations or to appear at any hearing or inquiry if they consider them to have a significant interest in, and evidence on, the proposal. Any other organisation or member of the public may submit a written statement to the Committee in respect of any case but will not be sent copies of statements submitted by other parties. They will, however, be able to inspect all other submitted statements at specified public deposit points (See paragraph B18).
- B.16 Any other organisation or member of the public may also attend any hearing or local inquiry but will only be permitted to be heard at a hearing or inquiry at the discretion of the Committee. Such permission will not be unreasonably withheld. Any person entitled, invited or permitted to be heard at an inquiry or hearing may either appear on their own behalf or may be represented by another person.

### **Notification of starting date**

- B.17 The date of NIEA' letter to all parties confirming the determination procedure to be followed will be taken as the starting date for the determination procedures. Most procedural deadlines will be set relative to this starting date. It is important to observe these deadlines since costs may be awarded in respect of unwarranted delays. Representations and statements received after the due dates may be disregarded except in extraordinary circumstances.

### **Notification to interested parties**

- B.18 NIEA' letter to all the parties confirming the determination procedure to be followed will also set out: -
- any changes to the statement of the issues which it considers to be of relevance to the determination of the case. This is intended to help the parties and the Committee to prepare for the exchange of written representations, hearing or inquiry and is not definitive;
  - the names and addresses of all those parties either entitled or invited to submit written representations or to appear at the hearing or inquiry as well as any Minister or Government Department that have expressed views in writing on the matter;
  - the names and addresses of all those parties which have been consulted or have expressed a view on the case but who are not entitled or have not been invited to participate in the exchange of written representations or to be heard at a hearing or inquiry and advice to them about submitting written statements and requesting to be heard at a hearing or inquiry;
  - the target dates for the submission of documents and for all the progressive stages of the selected determination procedure;
  - the location of the public deposit points where copies of all submitted documentation can be inspected free of charge by all parties. These will have been previously arranged by NIEA and will include the NIEA offices and are likely to also be the offices where copies of the initial dredging application had been deposited during its consultation stage;

- the reference number for the case to be considered and the address for communications with the Committee; and
- whether NIEA considers it necessary to arrange a pre-inquiry meeting if the case is to be determined following a local inquiry. The Committee may subsequently decide that a pre-inquiry meeting is necessary even though NIEA may have initially considered that it was not.

## **DETERMINATION OF CASES BY THE EXCHANGE OF WRITTEN REPRESENTATIONS**

### **Procedures for the exchange of written statements**

- B.19 If NIEA decides that a case is to proceed to determination following an exchange of written representations, it will request that the applicant seeking a dredging permission or the objector to a proposal by NIEA to vary or revoke an existing dredging permission submits to the Committee within 6 weeks of the starting date a statement in support of their application or objection.
- B.20 NIEA will specify the number of copies of the statement to be submitted so that the Secretary to the Committee can distribute them to the specified public deposit points and to all the parties entitled or invited to participate in the written representations procedure. All these parties will be asked to submit to the Committee their comments on the applicant's or objector's statement within 9 weeks of the starting date. The Secretary to the Committee will copy all these other parties' comments to the specified public deposit points and to all other parties entitled or invited to participate in the written representations procedure who, if they wish, may send their comments on them to the Committee within 14 days. The Secretary to the Committee will then distribute these comments to the specified public deposit points and to all other parties entitled or invited to participate in the written representations procedure.
- B.21 At any time up to the completion of all the exchanges of written representations, any party either not entitled or not invited to participate in the exchange may, nevertheless, submit a written statement to the Committee which will be copied to all parties either entitled or invited to participate in the written representations procedure. Any party not entitled or invited to participate in the exchange of written representations will not be sent copies of the statements submitted by any other party but will be able to inspect them free of charge at the specified public deposit points.
- B.22 The Committee may at any time request within a specified deadline further information or further comments on any aspect of the case or further copies of any statement from any party or from NIEA. It may be necessary for any further information received in this way to be circulated to other parties for further comment. The Secretary to the Committee will copy all such requests and all replies to them to all parties entitled or invited to participate in the written representations procedure and also arrange for copies of them to be available for inspection at the public deposit points.
- B.23 The Secretary to the Committee will arrange for copies of all the written submissions that are received from any party to be made available for inspection at the specified public deposit points. These submissions will remain on deposit until a decision on the case is announced by NIEA.

- B.24 If at any time, any party decides that it does not wish to participate in the exchange of written representations, it should notify the Secretary to the Committee immediately.
- B.25 If, at any time up to the completion of all the exchanges of written representations, any party entitled or invited to participate in the exchange comes to the view that the exchange of written representations is not proving to be an acceptable means of progressing the case, they may notify the Committee of this, explain their reasons and request that the case be progressed by either a hearing or inquiry. The Committee will carefully consider such a request and will consult all the parties before recommending to NIEA whether the written representations procedures should cease and either a hearing or inquiry be convened.
- B.26 Similarly, if at any time up to the completion of all the exchanges of written representations, the Committee comes to the view that the exchange of written representations is not proving to be an acceptable means of progressing the case, the Chairman will convey this view to all parties and consult them before recommending to NIEA whether the written representations procedures should cease and either a hearing or inquiry be convened.

### **The content of written statements**

- B.27 Written statements should provide a succinct explanation of the reasons for either proposing or opposing a dredging application or for opposing or supporting the proposed variation or revocation of an existing dredging permission by NIEA. They should set out facts, reasoning and conclusions. Where appropriate, expert opinions should be stated and substantiated. Opinions on subjective matters should be adequately, but briefly, explained. Reference should be made, as appropriate, to relevant sections of Government policy guidance on marine minerals dredging.
- B.28 Where detailed calculations and/or analysis are required this should be set out in an appendix. If case law is cited, it would be helpful if the full report reference is given and a copy of the case report is attached as an appendix. The conclusions of the written statement should be summarised briefly at the end with cross-references to paragraph numbers. Appendices should be bound separately. A title page should be supplied for each volume. If more than one document is included, an index should be provided and each page of the volume should be numbered. Both statements and appendices should be of A4 size and bound so that when opened they can be laid flat. Statements should be typed on one side of the paper only so that notes can be made on the facing page. Where larger documents such as plans are included they should be folded to A4 size.
- B.29 Applicants' written statements in support of dredging applications should set out a detailed schedule of conditions that have been agreed as far as possible with all the consultation bodies and which will, need to be imposed in the event of dredging permission being granted. In the case of a proposal by NIEA to vary or revoke an existing dredging permission, the objectors may also consider it necessary to set out a detailed schedule of conditions that would obviate the need for the existing dredging permission to be revoked or alternative conditions to those proposed to be varied.
- B.30 The consideration of suggested conditions is an important and integral part of the decision making process because it enables all parties to give their views on whether or not objections to any dredging matter might be overcome by their use. It also ensures that if a dredging application is approved or an existing dredging permission is varied,

the decision will not place the operator under any obligation on which he has not had the opportunity to comment.

## **DETERMINATION OF CASES BY HEARING**

### **Procedures for hearings**

- B.31 If NIEA decides that a case is to proceed to determination following a hearing, it will request that the applicant in respect of a dredging application or the objector to a proposal by NIEA to vary or revoke an existing dredging permission submits a hearing statement to the Committee within 6 weeks of the starting date.
- B.32 NIEA will specify the number of copies of the hearing statement to be submitted so that the Secretary to the Committee can distribute them to the specified public deposit points and to all the parties entitled or invited to attend the hearing. All these other parties and any Minister or Government Department who have expressed views in writing about the matter and who have been referred to in NIEA' statement should provide a hearing statement setting out their comments on the applicant's or objector's hearing statement to the Committee within 9 weeks of the starting date. The Secretary to the Committee will then distribute these statements to the public deposit points and to all to the parties either entitled or invited to the hearing.
- B.33 Any other parties not entitled or invited to the hearing may, if they wish, submit a hearing statement to the Committee as a prelude to attending the hearing and asking to be heard at its discretion. Any such party not wishing to be heard at the hearing may submit a written statement to the Committee, which it will take into account in considering the case. The Secretary to the Committee will copy to the specified public deposit points and to all the parties entitled or invited to the hearing all hearing or other statements that are received from any party not entitled or invited to the hearing. Parties not entitled or invited to the hearing will not be sent copies of the hearing and other statements submitted by any other party but will be able to inspect them and all other statements free of charge at the specified public deposit points.
- B.34 Any party not entitled or so far invited to attend the hearing may, at any time up to 9 weeks before the commencement of the hearing, be invited by the Committee to attend and be heard at the hearing and to submit a specified number of copies of their hearing statement to the Committee. The Secretary to the Committee will distribute these hearing statements to the public deposit points and to all to the parties either entitled or invited to the hearing. If a party not entitled or so far invited to attend the hearing agrees to attend, the Committee will request all the parties that are already entitled or invited to attend the hearing to supply to it within a specified period, further copies of their hearing statements for onward transmission to that party.
- B.35 The Secretary to the Committee will arrange for copies of all hearing and any other statements received from any party to be made available for inspection at the specified public deposit points. These statements will remain on deposit until a decision on the case is announced by NIEA.
- B.36 The hearing statements may be used by the Committee to draft an agenda for the hearing and to lead the discussion on the issues it needs to consider. The Chairman may also use them as a whole or in part in preparing the Committee's Report on the hearing. Hearing statements should, therefore, generally contain similar information to

that contained within the written statements described in paragraphs B27 to B30. If two or more people covering different fields of expertise are to speak in support of each other at the hearing, the hearing statement should make this clear.

- B.37 The Secretary to the Committee will, within 12 weeks of the starting date, provide notification to all parties of the time, date and place for the hearing and the names of the Committee members. The notification will provide at least 4 weeks written notice of these details and will confirm the dates by which hearing statements must be submitted. Not later than 2 weeks before its opening, NIEA will publish notification of the hearing in the Irish Times, Newsletter and Belfast Telegraph. These local newspapers are likely to be the ones in which any initial dredging application was first advertised. The published notification of the hearing will specify its date, time and place; a description of the marine minerals dredging matter to be considered and its location and details of where and when the relevant documents can be inspected free of charge at the public deposit points.

### **Procedures at hearings**

- B.38 The Chairman of the Committee will open the hearing at the appointed time, even if one or more of the parties entitled or invited to attend the hearing is not present. He will introduce himself and the other Committee members, explain the purpose of the hearing, describe the nature of the dredging matter before him, and set out the ground rules for the conduct of the hearing. He will ask all the parties either entitled or invited to attend the hearing to identify themselves and will consider requests to be heard from any other parties. If he agrees for other parties to be heard at the hearing, he may, depending on their number, require some or all of them to give evidence jointly.
- B.39 Any party permitted by the Chairman to be heard at the hearing should, if possible, provide to the Committee and to all the other parties entitled or invited to attend the inquiry, a hearing statement. This should be provided in sufficient time for it to be read by them before the discussion takes place on the issues it concerns. If any party permitted by the Chairman to be heard at the inquiry cannot produce such a hearing statement or cannot provide copies of it to the other parties, the Chairman will, nevertheless, usually allow them to participate in the discussions that take place.
- B.40 The Chairman will set out what he considers to be the main issues to be discussed and will consider requests from any party for any other issue to be discussed as well. It may be necessary for him to devise a timetable so that all parties are aware of when the issues of concern to them are to be discussed.
- B.41 Unless the Chairman determines otherwise, the discussion on all issues will be started by the objector(s) to either an application for dredging permission or to a proposal by NIEA to either revoke or vary an existing dredging permission. All parties will be invited in turn by the Chairman to join the discussion and to ask questions of other parties. In all cases, the applicant seeking a dredging permission and the objector to a proposal by NIEA to either vary or revoke an existing dredging permission will always have the final right of reply.
- B.42 All parties entitled, invited or permitted by the Chairman to be heard at the hearing may call upon professional advisors to either assist them or to participate on their behalf in the discussion that takes place. Because all hearing statements should have already

been distributed to all parties, it should not usually be necessary for any statement to be read out to the hearing in full.

- B.43 If any party giving evidence to the hearing introduces any matters not covered by its hearing statement, the Chairman may agree to any request from other parties to adjourn the hearing to allow time for the consideration of such additional material. The Chairman may agree to such a request where he considers that a failure to provide any written documentation by a specified date has prejudiced the presentation of another party's case.
- B.44 The Chairman may allow any party to alter or add to a hearing statement to the extent necessary for the purposes of the hearing or to update it to reflect changes that have occurred since the hearing statements were submitted to the Committee. He will, if necessary, adjourn the hearing to give all parties adequate opportunity to consider any fresh material or documents.
- B.45 If the Chairman considers it necessary to adjourn the hearing, he will, before doing so, usually agree with all the parties a date, time and place for its resumption and no other additional written notice will be given of this to those parties present at the hearing at the time. The Secretary to the Committee will notify all the other parties in writing of the adjournment and resumption arrangements. The Secretary to the Committee will also notify all parties if the resumption arrangements have to be altered in any way.
- B.46 The Chairman may refuse to allow or curtail evidence being put to the hearing or to curtail questioning or discussion if he considers it to be irrelevant or repetitious. If he refuses to allow any party to be heard at the hearing, it may still submit a written statement to the Committee before the hearing closes.
- B.47 The Chairman may, at any time before the close of the hearing, request any party to submit to the Committee and/or to other specified parties within a specified period any further written or oral evidence that he considers necessary to the determination of the case.
- B.48 The Chairman may require any person who, in his opinion, is behaving disruptively to leave the hearing and may refuse to permit that person to return or to return only on specified conditions. Any person ordered to leave the hearing and not permitted to return may, nevertheless, submit a written statement to the Committee before the hearing closes.
- B.49 The Committee may take into account any written statement, evidence or other documentation received before the opening of, or during, the hearing provided it is disclosed during the hearing and there is adequate time for it to be copied to all the parties entitled or invited to attend the hearing and they all have sufficient time to consider and comment on it to the Committee before the hearing closes.
- B.50 If, at any time before or during a hearing, any of the parties entitled or invited to attend the hearing form the view that the hearing procedure is not proving to be an acceptable means of progressing the case, they may notify the Committee of this, explain their reasons and request that the case be progressed by local inquiry. The Committee will carefully consider such a request and will consult all the parties before recommending to NIEA whether the hearing procedures should cease and a local inquiry be convened.

- B.51 Similarly, if at any time before or during a hearing, the Committee comes to the view that the hearing procedure is not proving to be an acceptable means of progressing the case, it will convey this view to all parties through the Chairman who will consult them before recommending to NIEA that the hearing should cease and a local inquiry be convened.

## **DETERMINATION OF CASES BY LOCAL INQUIRY**

### **Procedures for local inquiries**

- B.52 If NIEA decides that a case is to proceed to determination following a local inquiry, it will request that all the parties entitled or invited to attend the inquiry submit to the Committee within 6 weeks of the starting date a written statement of case. NIEA will specify the number of copies of the statement to be submitted so that the Secretary to the Committee can distribute them to the specified deposit points and to all the other parties entitled or invited to attend the specified local inquiry. If NIEA requires a pre-inquiry meeting to be held, the statements of case should be submitted to the Committee within 4 weeks of the end of that meeting.
- B.53 Any other parties not entitled or invited to the inquiry may, if they wish, submit a statement of case to the Committee as a prelude to attending the inquiry and asking to be heard at its discretion. Any party not wishing to be heard at the inquiry may submit a written statement to the Committee, which will be taken into account in considering the case. The Secretary to the Committee will copy to all the parties entitled or invited to the inquiry and to the public deposit points all statements of case or other statements that are received from any party not entitled or invited to the inquiry. Parties not entitled or invited to the inquiry will not be sent copies of any statements of case submitted by any other party but will be able to inspect them and all other statements free of charge at the specified public deposit points.
- B.54 Any party not entitled or so far invited to attend the local inquiry may, at any time up to 10 weeks before the commencement of the inquiry, be invited by the Committee to attend and be heard at the inquiry and to submit, within 6 weeks, a specified number of statements of case which the Secretary to the Committee will distribute to the public deposit points and to all the other parties entitled or requested to attend the inquiry. If such a party agrees to attend the inquiry, the Committee will request that all the parties that are already entitled or invited to attend the inquiry supply to it, within a specified period, further copies of their statements of case for onward transmission to that party.
- B.55 Statements of case should set out full particulars of all submissions and arguments that each party intends to put forward at the inquiry. They should briefly outline the evidence to be put forward without explaining it in detail. They should list all the documents (including maps and plans) to which the parties intend to refer within their proofs of evidence (see paragraph B64 to B70). The aim of the statements of case is to enable all parties to focus on matters that are in dispute and to assess any scope for negotiation. Copies of documents that are referred to in the statement of case should be provided unless they are already publicly available, for instance, accompanying the application or already in the public domain, such as published Government policy statements, etc.
- B.56 The Committee may reasonably require further information from any party by a specified date prior to the opening of the inquiry. The Committee will specify the

number of copies of such further information that it requires so that the Secretary to the Committee can distribute it to the specified public deposit points and to all the other parties entitled or invited to attend the local inquiry.

- B.57 The Secretary to the Committee will, within 12 weeks of the starting date, provide notification to all the parties of the time, date and place for the inquiry; the names of the Committee members; and, if considered necessary, the date and location of any pre-inquiry meeting. The inquiry will be held not later than 22 weeks from the starting date or not later than 8 weeks from the conclusion of the any pre-inquiry meeting. If the Committee considers that it is impracticable to start the inquiry within these timescales, it will set the earliest practicable date thereafter.
- B.58 Since the aim must always be to set the inquiry date as early as possible, parties entitled or invited to attend the inquiry will be allowed only 1 refusal of date before the Committee proceeds to fix the time and date. The period allowed for negotiation of inquiry dates will normally be limited to one month and will commence when the first offer of an inquiry date is made. Once a date has been fixed it will be changed only for exceptional reasons.
- B.59 The Secretary to the Committee will provide all parties with at least 4 weeks written notice of the date, time and place of the inquiry. He will also confirm the dates by which statements of case, proofs of evidence and statements of common ground must be submitted. NIEA will publish notification of the inquiry, not later than 2 weeks before its opening, in the Irish Times, Newsletter and Belfast Telegraph. These local newspapers are likely to be the ones in which any initial dredging application was first advertised. The published notification of the inquiry will specify the date, time and place of the inquiry; a description of the marine minerals dredging matter to be considered and its location and details of where and when the relevant documents can be inspected free of charge at the specified public deposit points.

### **Pre-inquiry meetings**

- B.60 Either NIEA or the Committee may require a pre-inquiry meeting to be held. If one is to be held, it will take place within 16 weeks of the starting date and the Secretary to the Committee will give all parties 2 weeks notice of its date and location and an outline of the matters to be considered.
- B.61 Matters to be considered at any pre-inquiry meeting might include:
- any necessary clarification of NIEA' statement of issues to be considered at the inquiry;
  - identification of any material required by the Committee and not already covered by any already submitted statements and how this is to be provided, including progress of any special studies being undertaken;
  - the response from any party to any request to it by either NIEA or the Committee to attend and be heard at the inquiry;
  - requests by any party not entitled or so far invited to the inquiry to be invited by the Committee to be heard at it.

- the need for any other parties to be invited to attend and be heard at the inquiry;
- requests by the Committee for parties to consider collaborating in the submission of their evidence to the inquiry;
- arrangements for the distribution of proofs of evidence. These can either be sent by each party directly to the Committee and to all other parties entitled or invited to attend the inquiry or, alternatively, a specified number can be sent by each party to the Secretary to the Committee who will then distribute them to all other parties entitled or invited to attend the inquiry.
- arrangements for the preparation and distribution of any statements of common ground including arrangements for any informal meetings that may be required in assisting the preparation of such statements;
- the timetable for any work to be done before the inquiry opens including the submission of any further statements;
- a timetable for appearances at the inquiry;
- the roles of any assessors; and
- general housekeeping issues; e.g. days of sitting, start and closure times and the possibility of late sittings for parties who cannot give evidence during normal office hours.

B.62 The Secretary to the Committee will send copies of the minutes of the pre-inquiry meeting and, if appropriate, a projected timetable of appearances at the inquiry to all parties as well making them available at the public deposit points.

B.63 If the Committee requests further information from any party at the pre-inquiry meeting, it will specify how many copies are required so that the Secretary to the Committee can distribute it to the public deposit points and to all the parties entitled and invited to attend the inquiry. Such information should be provided within 4 weeks of the conclusion of pre-inquiry meeting.

### **Proofs of evidence**

B.64 All the parties entitled or invited to attend the inquiry and any Minister or Government Department that has expressed views in writing about matters which have been referred to in NIEA' statement will be required to submit to the Committee no less than 4 weeks before the opening of the inquiry, a specified number of proofs of evidence. If any proof of evidence is longer than 1500 words, a similar number of summaries of it should also be submitted. Summaries should not normally exceed 10% of the length of the whole proof of evidence. They should accurately condense the key points of the proof and should not go beyond the text that they purport to summarise. It is normally only the summary that is read out at the inquiry unless the Chairman of the Committee agrees otherwise.

B.65 The Secretary to the Committee will distribute these proofs of evidence and any summaries of them to all the parties entitled or invited to attend the inquiry and also

arrange for them to be made available for inspection at the public deposit points. These procedures may be changed as required by the Committee at the pre-inquiry meeting.

- B.66 A proof of evidence is a statement prepared by any party entitled or invited to appear at the inquiry; it contains the written evidence about which the person, or witness, attending the inquiry on behalf of any party will speak. Generally speaking, it should contain all relevant scientific and technical evidence in support of the case being put forward and should be similar in content to the written statements that are exchanged between the parties when cases are processed by an exchange of written representations. (See paragraphs B27 to B29).
- B.67 Proofs of evidence should be concise and should contain facts and expert opinions derived from the witnesses' own professional or local knowledge as applied to individual cases. They should not include matters that are not in dispute. They should focus on what is necessary to make a case and avoid including unnecessary material. Where the evidence makes a point that relies on another document, the relevant page and paragraph number in that document should always be identified and cross-referenced. If case law is cited, the full law report reference should be included together with a copy of the case report included as a document and cross-referenced. Proofs should be bound so that they can be opened flat. They should be printed on only one side of the paper so notes can be made on the opposite page. The pages and paragraphs should be numbered.
- B.68 All documents accompanying proofs of evidence should be prepared carefully and presented and edited, where appropriate, to exclude irrelevant material. They should be separated from the proofs of evidence. All should carry the case reference number as well as have identifiable submission reference numbers prefixed by letters denoting the name of the party producing them. The relevance of all documents submitted should be explained in evidence or submissions.
- B.69 All of the main parties should start to number their documents prior to the inquiry and should keep an up-to-date list to be submitted before the close of the inquiry. As far as possible documents should be of A4 size. Extracts from published material must indicate the precise context with full titles, chapter headings, and dates. A photocopy of the document title page is often sufficient to indicate its origin and publication date. Plans maps and diagrams should be similarly identified and be of A4 size or folded to A4 size. Plans and maps may be photographically reduced and incorporated into an A3 size folder provided it is flexible enough to be folded to A4. Otherwise, photographs should be mounted on a series of A4 cards. The site plan should be specifically identified as a document. Bundles of correspondence can be submitted as single documents provided that each letter is separately listed and numbered.
- B.70 The proof of evidence is open to cross-examination as a whole unless the party presenting it notifies the Committee Chairman that it intends to reply on the contents of the summary alone. To avoid unnecessary copying, any documents or extracts of documents that are already available or are otherwise in the public domain need not be submitted. All parties should afford any other party or person who reasonably requests the opportunity to inspect and, where practicable, to take copies of the proof of evidence, the ability to do so.

## **Statements of common ground**

- B.71 Where there is substantive agreement on some issues, a statement of common ground may be prepared by any party in association with one or more other parties. Any party can initiate discussions with any other party about the preparation of statements of common ground. They should, however, keep the Committee informed of any progress. Statements of common ground should clearly indicate points on which there is mutual agreement including, for instance, details of the proposed dredging area and of relevant policy so that the inquiry can then concentrate, as appropriate, on matters that remain in dispute. Statements of common ground, if prepared, should complement the proofs of evidence and should be submitted to the Committee at least 4 weeks before the inquiry opens. Parties proposing to submit a statement of common ground should liaise with the Secretary to the Committee to determine how many copies should be submitted so that the Secretary can distribute them to all the other parties entitled or invited to attend the inquiry and to the specified public deposit points.
- B.72 Statements of common ground should be kept factual and should not contain opinion or comment. Inquiry time can also be saved by seeking to agree beforehand the conditions that should be imposed on any new or varied dredging permission. All parties should afford any other party or person who reasonably requests to do so the opportunity to inspect and, where practicable, to take copies of any statement of common ground.

### **Procedures at the inquiry**

- B.73 The Chairman of the Committee will open the inquiry at the appointed time, even if one or more of the parties entitled or invited to attend the inquiry is not present. He will introduce himself and the other Committee members, explain the purpose of the inquiry, describe the nature of the marine minerals dredging matter before him, and set out the ground rules for the conduct of the inquiry. He will ask all the parties either entitled or invited to attend the inquiry to identify themselves and will consider requests to be heard from any other parties.
- B.74 Any other party allowed by the Chairman to be heard at the inquiry should, if possible, provide to the Committee and to all the other parties entitled or invited to attend the inquiry, a written statement of the evidence they intend to give. This should be provided, if possible, to these parties in sufficient time for it to be read by them before the evidence is presented to the inquiry. If any party allowed by the Chairman to be heard at the inquiry cannot produce such a written statement or cannot provide copies of it to the other parties, the Chairman will, nevertheless, usually allow them to present oral evidence to the inquiry.
- B.75 It may be necessary for the Chairman to devise a timetable or to alter any existing projected timetable that may have already been agreed at any pre-inquiry meeting. If he agrees for other parties to be heard at the inquiry, he may, depending on their number, require some or all of them to give evidence jointly.
- B.76 Unless the Chairman determines otherwise, all inquiries will commence with an opening statement from the objector(s) to an application for dredging permission or to a proposal by NIEA to either vary or revoke an existing dredging permission. All other parties will be heard in the order determined by the Chairman. In all cases, the applicant seeking a dredging permission and the objector in respect to a proposed variation or revocation of an existing dredging permission will always have the final right of reply.

- B.77 All parties entitled, invited or permitted by the Chairman to be heard at the inquiry and any Minister or Government Department which has submitted a proof of evidence may call witnesses to present their evidence. Because all statements of case, proofs of evidence and statements of common ground will have already been distributed to all these parties prior to the opening of the inquiry, it should not usually be necessary for proofs of evidence or their summaries to be read in full.
- B.78 Only those parties entitled or invited to attend the inquiry and any Minister or Government Department which has submitted a proof of evidence may cross-examine witnesses although the Chairman may, at his discretion, ask any party who he has allowed to be heard at the inquiry if they wish to ask any questions of any witness. Generally speaking, the calling of evidence and cross-examination are at the discretion of the Chairman.
- B.79 When all parties have given all their evidence and cross examined all other parties, the Chairman may invite those parties entitled or invited to attend the inquiry or any Minister or Government Department which has submitted a proof of evidence to make closing statements with, in all cases, the applicant seeking a dredging permission and the objector in respect to a proposed variation or revocation of an existing dredging permission always having the final right of reply.
- B.80 If any party giving evidence to the inquiry introduces any matters not covered by either its statement of case or proof of evidence, the Chairman may agree to any request from other parties to adjourn the inquiry to allow time for the consideration of the additional material. The Chairman may agree to such a request where he considers that a failure to provide any written documentation by a specified date has prejudiced the presentation of another party's case. The Committee may favourably consider any claim for costs from any party against any other party which unreasonably causes such an adjournment.
- B.81 The Chairman may allow any party to alter or add to a proof of evidence to the extent necessary for the purposes of the inquiry or to update changes that have occurred since the proofs of evidence were submitted to the Committee. He will, if necessary, adjourn the inquiry to give all parties adequate opportunity to consider any fresh material or documents.
- B.82 If the Chairman considers it necessary to adjourn the inquiry, he will, before doing so, usually agree with all the parties a date, time and place for its resumption and no other additional written notice will be given of this to those parties present at the inquiry at the time. The Secretary to the Committee will notify all the other parties in writing of the adjournment and resumption arrangements. The Secretary will also notify all parties if the resumption arrangements have to be altered in any way.
- B.83 The Chairman may refuse to allow or curtail evidence to be put to the inquiry or cross-examination to be undertaken if he considers it to be irrelevant or repetitious. If he refuses to allow any party to be heard at the inquiry, they may still submit a written statement to the inquiry before it closes.
- B.84 The Chairman may, at any time before the close of the inquiry, request any party to submit to the Committee and/or to other specified parties within a specified period any further written or oral evidence that he considers necessary to the determination of the case.

- B.85 The Chairman may require any person who, in his opinion, is behaving disruptively to leave the inquiry and may refuse to permit that person to return or to return only on specified conditions. Any person ordered to leave the inquiry and not permitted to return may, nevertheless, submit a written statement to the Committee before the inquiry closes.
- B.86 The Committee may take into account any written representations, evidence or other documentation received before the opening of, or during, the inquiry provided it is disclosed during the inquiry and there is adequate time for it to be copied to all the parties entitled or invited to attend the inquiry and they all have sufficient time to consider and comment on it to the Committee before the inquiry closes.

### **Awards of costs**

- B.87 If any party considers that any other party participating in a local inquiry has behaved unreasonably to the extent that they have incurred unnecessary expense, they may submit a claim for costs to the Committee before the inquiry closes. Such a claim should identify the party that it is alleged has behaved unreasonably and should specify the additional and unnecessary expenses that have been incurred. Costs may be awarded against any party if it is shown that they have acted unreasonably so that any other party has incurred unnecessary expense. For example, failure to appear at an inquiry or hearing on an agreed date or unnecessary delays due to an adjournment to consider late evidence might be a reason for an application for the award of costs.
- B.88 Awards of costs in favour or against third parties are made only in exceptional circumstances. The Chairman will normally ask for applications for award of costs, if any, to be made at the end of the inquiry proceedings. Reference should be made to Department of the Environment (DOE) Circular 8/93 "Award of costs incurred in planning and other (including compulsory purchase order) proceedings"

### **Procedures after written representations have been received or after any hearing or inquiry has closed**

- B.89 As soon as the exchange of written representations has been completed or any hearing or inquiry has closed, the Committee will consider all the written statements, representations and other evidence that have been submitted and the Chairman will prepare a report on the case setting out the Committee's conclusions and recommendations. He may disregard any written representations submitted after the deadline for their receipt and he may disregard any further evidence submitted after a hearing or inquiry has closed. In 80% of cases, he will submit the Report to NIEA within 7 weeks of the closure of the inquiry, hearing or the exchange of written representations.
- B.90 If, having carefully considered the Committee's Report and obtained advice from other Government Departments or other parts of Government where appropriate, NIEA:
- differs from the Committee on any matter of fact mentioned in the Report or on any other matter appearing to it to be material to a conclusion reached by the Committee; or
  - considers it necessary to take into account any new evidence or new matter of fact; or

- proposes to disagree with the recommendation of the Committee,

will not issue a decision on the case without first consulting all the parties that submitted evidence to the Committee. In some circumstances NIEA may consider it necessary to put the matter back to a Committee, in which case, it will consult all the parties on whether this should be done and seek their views on the procedure, either inquiry, hearing or the exchange of written representations, that should be followed. The procedure for the reconsideration of the matter by a Committee does not necessarily have to be the same as the procedure used for the Committee's initial consideration of the matter.

- B.91 In these circumstances, NIEA will write to all the parties that have either submitted written statements to the Committee or have appeared at any hearing or inquiry and seek their views on the action that NIEA proposes to take. All parties will be invited to submit their comments to NIEA within 21 days. NIEA will copy all replies to all parties who, if they wish, may send their comments on them to NIEA within 14 days.
- B.92 If NIEA considers that the case needs to be put back before a Committee for an exchange of written representations or for a hearing or inquiry to be re-opened, NIEA will send a letter to all the parties which will set out all the matters already described in paragraph B18.
- B.93 NIEA will make the necessary arrangements for the appointment of a Committee and for either the exchange of written representations or for the re-convening of a hearing or inquiry. If a case has previously been considered at a hearing or inquiry, it may not always be possible to appoint the same Committee to conduct a re-opened hearing or inquiry. The procedures for the exchange of written representations or for re-opening of a hearing or inquiry will generally follow those already described.

### **Announcing Decisions**

- B.94 NIEA will notify its decision and the reasons for it in writing to all parties that participated in the decision-making procedures and will also send copies to anyone else requesting them. NIEA's decision letter will either enclose a copy of the Committee's Report or a summary of its conclusions and recommendations. If any person who was entitled or invited to participate in the decision-making procedures does not receive a copy of the Committee's Report and wishes to be sent one, they should request a copy in writing from NIEA within 4 weeks of the announcement of the decision. The Committee's Report, in this context, does not include any documents appended to that report. However, any interested party can, within 6 weeks of the announcement of the decision, apply to NIEA to be provided with the opportunity of inspecting such documents. Such requests will not unreasonably be refused by NIEA unless it is information which could be exempt from disclosure under the Environmental Information Regulations 2004 or the Freedom of Information Act 2000.

### **Re-determination of cases**

- B.95 If NIEA's decision is quashed by the courts and it is required to re-determine the case, it will decide on the appropriate procedures to be followed by consulting all the parties as set out in paragraphs B10 to B16. The re-determination of the case will follow either the written representations, hearing or inquiry procedures, as described above.

B.96 It may not always be possible to re-appoint the same Committee who had previously conducted either the exchange of written representations, hearing or inquiry into the case.

## **THE APPLICATION OF CONDITIONS TO DREDGING PERMISSIONS:**

### **PRINCIPLES AND MODEL CONDITIONS**

#### **Principles**

- C.1 The Regulations empower the regulator to impose on dredging permissions for both new dredging proposals and for variations to existing dredging permissions any conditions which are considered necessary to protect the environment and to implement Government marine minerals dredging policy.
- C.2 In considering dredging applications, the regulator (NIEA) needs to take account of the dynamic and variable nature of the marine environment and complex and detailed scientific considerations relating to the potential impact of the proposed dredging on the environment. It is, therefore, important that in preparing applications, environmental statements (ESs) and draft schedules of conditions, applicants are accurately and comprehensively informed by the consultation bodies, on the basis of the ES, their scientific knowledge and environmental responsibilities, of the precise wording of the conditions that they require to be imposed on any dredging permission.
- C.3 In considering applications, draft schedules of conditions and if necessary amending them NIEA will take into account:
- the ES;
  - all the information supplied with a dredging application including the schedule of draft conditions submitted by each applicant with their application; and
  - the comments of the consultation bodies and other Government Departments on the application and the draft conditions together with the draft conditions they may require.
- C.4 This Annex should be considered by applicants in preparing schedules of draft conditions and by consultation bodies and other Government Departments in expressing their views on submitted applications and schedules of draft conditions and in formulating any additional conditions that they consider are appropriate. The schedule of draft conditions prepared by applicants to accompany a dredging application should also explain why each condition is required. Similarly, consultation bodies and other Government Departments should explain why they consider any further conditions to be appropriate.
- C.5 The draft schedule of conditions submitted with a dredging application should be the product of an iterative process of negotiation and discussion between the applicants, the consultation bodies and other Government Departments during the preparation of the dredging application and if required, the ES. Applicants should be satisfied that the schedule of draft conditions is acceptable to all key consultation bodies and Government Departments before a new dredging application is submitted to the regulator for determination.

- C.6 All conditions must be technically justified by the facts and circumstances of each individual dredging application. Conditions must also be:
- (i) necessary to either protect the environment and/or to secure marine minerals policy objectives;
  - (ii) relevant to dredging and should not relate to any other activity with which the applicant may be involved;
  - (iii) relevant to the particular dredging application under consideration and its potential cumulative impact with other dredging proposals;
  - (iv) enforceable so that the regulator can take appropriate action under the Regulations in the event of a breach;
  - (iv) precise so that their requirements are easily understood; and
  - (v) reasonable in relation to the scale and circumstances of each individual dredging application.

### **Model Conditions**

- C.7 The following model conditions are illustrative of the principles described in paragraph 6. They are grouped into the main types of conditions which may be applied to dredging permissions. However, applicants should prepare draft conditions which are appropriate to the particular circumstances of each individual dredging application.

### **Time Limits**

- C.8 Conditions should provide for the date by which the dredging of marine minerals should start and the date by which it should cease. They should also cover any seasonal restrictions on dredging such as those necessary to protect fish spawning areas. If it is proposed that dredging permissions should be reviewed at 5 yearly or at any other intervals, this should be explained in the conditions.

#### *Examples:*

- The dredging operations within the permitted area must be commenced within 18 months of the date of this dredging permission otherwise it shall cease to be of any effect.
- The Operators shall notify the regulator in writing of the date on which dredging operations commenced within the permitted area within 7 days of them commencing.
- All dredging within the permitted area shall cease within 15 years of the date of commencement of dredging within the permitted area.
- The Operators shall notify the regulator in writing of the date on which dredging operations cease within the permitted area within 7 days of them ceasing.

- No dredging shall take place within (for example, sub-area X), as defined in Condition XX, between (for example 1 May to 30 June inclusive) within all years that dredging operations take place. (Such a condition may be required, for example, to protect fish spawning areas).

### **Location of Dredging**

C.9 Conditions should clearly identify by WGS84 co-ordinates the area in which dredging will take place and any working zones within that area which have been identified.

*Example:*

- The dredging operations shall only take place within the area defined by the following co-ordinates and shown on the chart accompanying the schedule of conditions).

### **Extraction Rate**

C.10 Conditions should specify the total quantity of material to be extracted during the life of the permission and the maximum amount to be extracted within each year.

*Example:*

- The total quantity of material to be extracted shall not exceed XX million tonnes.
- Subject to the provisions of Conditions 3.1, no more than X million tonnes shall be extracted per annum.

### **Working Arrangements**

C.11 Conditions should provide for the way the dredging operations are to be carried out. Matters covered may include:

- (a) the number and type of dredging vessels to be used;
- (b) the provision of an Electronic Monitoring System in the dredging vessels to be used;
- (c) the arrangements for zoning the permission area, including the order in which zones are to be worked, the number of zones which may be dredged at any one time; periods of notice to be given of a move from one zone to another; and details of any exclusion zones in which no dredging may take place;
- (d) trial dredging;
- (e) whether screening is to be undertaken and, if so, within which zone(s);
- (f) the depth limits on extraction of material;
- (g) the direction of dredging;
- (h) any restrictions on concurrent dredging;

(i) the condition in which the seabed should be left when dredging has ceased.

*Examples:*

- No more than XX dredgers shall operate within the permitted area at any one time.
- All dredging in the permitted area shall be carried out by Trailer Hopper Suction Dredgers.
- All dredgers operating in the permitted area shall be fitted with an Electronic Monitoring System approved by the Crown Estate Commissioners.
- The Operators shall divide the permitted area into xx zones. The co-ordinates of the zones and selection of the first zone to be dredged will be determined after the pre-dredge surveys and prior to the commencement of dredging within the permitted area, in consultation with NIEA, the Crown Estate Commissioners the Department of Agriculture and Rural Development, the Department of Culture (DCAL), Arts and Leisure, the Maritime and Coastguard Agency, Foyle, Carlingford and Irish Lights Commission (in Carlingford Lough and Lough Foyle only) and submitted in writing for approval. No dredging shall take place until the regulator has approved in writing the co-ordinates of the zones to be dredged and the selection of the first zone to be dredged.
- The Operators shall notify in writing the regulator, the Crown Estate Commissioners, the Department of Agriculture and Rural Development, the Department of Culture, Arts and Leisure, Foyle, Carlingford and Irish Lights Commission (in Carlingford and Lough Foyle only) and the Maritime and Coastguard Agency of the co-ordinates of the first zone to be dredged as soon as possible after these have been approved by the regulator and not later than x weeks before the commencement of dredging.
- Dredging shall only take place in one of the zones approved pursuant to Condition 4.4 above at any one time. This zone shall be worked to commercial exhaustion, or until indicated otherwise by environmental monitoring under the terms of Condition xx, before dredging commences in another zone. Once working of a zone has ceased, either because of commercial exhaustion, or as a result of a variation in the terms and conditions to which this dredging permission is subject due to significant adverse environmental impacts, no further dredging shall take place in that zone.
- The Operators shall give x months' notice in writing to the regulator, the Crown Estate Commissioners, the Department of Agriculture and Rural Development, the Department of Culture, Arts and Leisure, Foyle, Carlingford and Irish Lights Commission (in Carlingford and Lough Foyle only) and the Maritime and Coastguard Agency and to relevant fishing organisations, as advised by the two Departments, of their intention to cease dredging in one zone and to commence dredging in another zone.
- The Operators shall ensure that all areas in which the resource is x metres or less in thickness within the permitted area are identified. No dredging shall take place within such areas. No dredging shall take place until charts detailing the location of any such areas and the co-ordinates of the exclusion zones established to protect them have been submitted to the regulator, the Department of Agriculture and Rural Development, the Department of Culture, Arts and Leisure, Foyle, Carlingford and Irish Lights Commission (in Carlingford and Lough Foyle only), the Maritime and Coastguard Agency and the Crown Estate Commissioners and acknowledged by them in writing.

- No dredging shall take place until the Operators have submitted written confirmation to the regulator and the Crown Estate Commissioners that either:
  - (i) no cables have been identified by the pre-dredge surveys required by Condition xx; or
  - (ii) any cables identified by the pre-dredge surveys required by Condition xx have been protected by exclusion zones, the co-ordinates of which shall also be given in writing

and this information has been acknowledged by the regulator in writing.
- A maximum of xx cargoes of material may be extracted from within the permitted area during the first xx months from the date of commencement of dredging before the zones are identified.
- No on board screening of any dredged material shall be carried out within the identified area/the permitted area during the first 5 year period of dredging within the permitted area. This condition may be amended, in accordance with Condition xx, in the light of the information provided by the Substantive Reviews of the dredging operations required by Condition xx.
- Not more than xx metres of material shall be removed from the permitted area.
- The Operators shall ensure that dredging is carried out in a direction that is parallel to the tide, which is xx/xx.
- No more than two vessels shall dredge concurrently within the permitted area unless they are separated by distances of at least x kms along the tide and x kms across the tide.
- The Operators shall ensure that when dredging operations have ceased within any zone a minimum of 0.X metre of gravelly sand and sandy gravel will be left as substrate.
- The Operators shall ensure that when dredging operations have ceased within any zone no deep pits or steep slopes are left in the seabed.

## Navigation

C.12 Conditions should specify appropriate measures to ensure safe navigation.

*Example:*

- No dredging shall take place until the Operators have obtained information from the Commissioner of Irish Lights and the Foyle, Carlingford and Irish Lights Commission on navigational marks in the area. Damage shall not be caused to such marks nor shall they be removed. The Operators shall be liable for any expenses arising from damage to or movement of such marks.

## Archaeology, War Graves and Wrecks

C.13 Conditions should provide for archaeological remains to be identified and appropriate measures to be taken to protect them, in accordance with the Guidance Note, *Marine*

*Aggregate Dredging and the Historic Environment*, issued by the British Marine Aggregate Producers Association and English Heritage in April 2003, the related *Protocol for Reporting Finds of Archaeological Interest*, issued in August 2005, and any subsequent replacements of those documents. Matters covered may include:

- (a) pre-dredge surveying of the archaeological potential of the dredging area;
- (b) appropriate mitigation measures to protect any features of archaeological interest;
- (c) archaeological assessment of any geophysical surveys;
- (d) actions to be taken in the event that features of archaeological interest are encountered during the course of dredging;
- (e) procedures for the reporting of any archaeological finds.

*Examples:*

- In complying with Conditions 6.2 to 6.6 the Operators shall observe the Guidance Note, *Marine Aggregate Dredging and the Historic Environment*, issued by the British Marine Aggregate Producers Association and English Heritage in April 2003, the related *Protocol for Reporting Finds of Archaeological Interest*, issued in August 2005, and any subsequent replacements of those documents.
- The Operators shall ensure that the pre-dredging surveys required by Condition xx are reviewed, using appropriately qualified experts, to identify areas of archaeological potential. No dredging shall take place until a report of that review has been submitted to the regulator and acknowledged by it in writing.
- The Operators shall ensure that appropriate mitigation measures are developed with archaeological curators, as defined in *Marine Aggregate Dredging and the Historic Environment* to protect features of archaeological interest. These measures shall be agreed with NIEA, and implemented as agreed. Archaeological curators shall be informed of the agreed mitigation measures. No dredging shall take place until details of the agreed measures have been submitted to the regulator and approved by it in writing.
- In the event that features of archaeological interest are encountered in the course of dredging, the Operators shall comply with the provisions of the *Protocol for Reporting Finds of Archaeological Interest* referred to in Condition 6.1 above, and any subsequent replacements of that protocol. The Operators shall also notify the regulator. The regulator may, in the light of such notification, seek to vary the terms or conditions of the dredging permission, but will only do so following consultation with interested parties.
- The Operators shall ensure that:
  - the strategy for and specifications of any further geophysical surveys to be conducted further to the conditions of this dredging permission are drawn up in accordance with archaeological advice;
  - those surveys are assessed archaeologically; and
  - the results of any such assessment are submitted to the regulator by xx.

- The Operators shall ensure that the reporting of any archaeological finds is carried out in accordance with the provisions of the *Protocol for Reporting Finds of Archaeological Interest* referred to in Condition 6.1 above. Copies of the reports shall be sent to the regulator, the Crown Estate Commissioners, and to the Ulster Museum. The regulator may, in the light of such reports, seek to vary the terms or conditions of the dredging permission, but will only do so following consultation with interested parties.

### **Liaison Arrangements:**

- C.14 Conditions should provide for notification procedures and liaison arrangements with organisations representing the fishing industry, recreational divers and other users of the sea, as appropriate.

#### *Examples:*

- C.15 The Operators shall ensure that communication with the fishing industry, about proposed dredging operations begins upon receipt of this dredging permission and, in any event, no later than x months before the commencement of dredging within the permitted area. This shall be carried out with the assistance of the Department of Agriculture and Rural Development's Fisheries Division.

- The Operators shall ensure that protocols are agreed with the Department of Agriculture and Rural Development's Fisheries Division and the Crown Estate Commissioners for effective communication, ie the provision of updated information on the location and timing of dredging operations, zoning etc, and implemented as agreed. No dredging shall take place until copies of the agreed protocols have been submitted to regulator and acknowledged by it in writing. Copies of the agreed protocol shall also be provided to the Crown Estate Commissioners and Department of Agriculture and Rural Development.
- Once acknowledged in writing by the regulator the agreed protocols required by Condition 7.2 shall be implemented as agreed and shall only be altered with the prior written agreement of the regulator.
- The Operators shall ensure that all operations within the permitted area are carried out in accordance with the Operational Code of Practice between the Marine Aggregates Extraction Industry and the Fishing Industry, a copy of which is appended to these conditions at Annex x.

### **Monitoring**

- C.16 Conditions should provide for a programme of monitoring, to include pre-dredge monitoring, monitoring to be carried out during the life of the dredging operations and, where appropriate, post-dredge monitoring. The provision of Electronic Monitoring System records to the regulator should also be covered. Matters covered by monitoring programmes may include:

bathymetric surveys;  
 sidescan sonar surveys;  
 seismic profiling;  
 seabed sediment sampling;

surveys of benthic ecology;  
surveys of individual fish species;  
resources surveys.

All monitoring shall be carried out in accordance with recognised national or international quality control procedures where these are available.

*Examples:*

### ***Pre-Dredge Monitoring***

- The Operators shall ensure that:

(i) a specification for a programme of pre-dredge monitoring is drawn up in consultation with NIEA and DARD and other relevant bodies, as advised by the regulator;

(ii) the agreed specification is submitted to the regulator for approval;

(iii) the specification is implemented as approved in writing by the regulator and using acknowledged independent experts in the appropriate fields.

No dredging shall take place until the approved specification has been implemented.

- The Operators shall ensure that any changes to the monitoring programme as approved by the regulator are only implemented with the prior written approval.
- The programme of monitoring required by Condition 8.1 shall include provision for the following surveys to cover the permitted area and reference sites:

benthic ecology, bottom-dwelling fish and scallops  
drop down video  
sidescan sonar  
sub-bottom profiling  
vibrocore sampling  
magnetometer  
detailed assessment of 'contacts'

In addition, the following surveys shall be carried out over the permitted area plus a 500 metre margin around the perimeter:

infill bathymetry.

- The Operators shall notify the regulator, and other relevant bodies and Consultees on the dredging application, as advised by the regulator, in writing of the date and location of the pre-dredge surveys required by Condition 8.3, not later than 6 weeks before the surveys are carried out.
- The Operators shall ensure that, within x months from the completion of the pre-dredge surveys required by Condition 8.3:
  - (i) a detailed report on the surveys is prepared by acknowledged independent experts in the appropriate fields;

(ii) that the report includes evidence of consideration and development of suitable "indicators of change" to be drawn up in consultation with NIEA and DARD.

No dredging shall take place until the report has been acknowledged in writing by the regulator.

### ***Subsequent Monitoring***

- The Operators shall ensure that:

(i) a specification for a programme of monitoring is drawn up in consultation with NIEA and DARD and other relevant bodies, as advised by the regulator following the analysis of the pre-dredge survey results and the preparation of the report on the surveys required under Condition 8.5(i). The specification shall include a timetable for the individual monitoring surveys which are to be undertaken during the first 5 years of the commencement of dredging within the permitted area;

(ii) the agreed specification is submitted to the regulator for approval.

No dredging shall take place until the specification has been approved by the regulator in writing.

- The Operators shall ensure that the programme of monitoring is implemented in accordance with the approved specification using acknowledged independent experts in the appropriate fields and that the programme is maintained throughout the period in which dredging is carried out.

- The programme of monitoring shall be flexible and may be revised by either:

the regulator, following consultation with relevant Consultees; or

the Operators provided that they obtain the prior written approval of the regulator.

- The Operators shall ensure that any changes to the monitoring programme as approved by the regulator are only implemented with the prior written approval from the regulator.

- The programme of monitoring required by Condition 8.6 shall cover the permitted area and the same reference sites used for the pre-dredge surveys required by Condition 8.3. It shall initially contain the following surveys, which shall not be undertaken until the Operators have submitted to the regulator the location and validity of the sampling stations and the regulator has approved them in writing:

(i) within 6 months of the date of commencement of dredging within the permitted area, a study of plume dispersal;

(ii) an annual assessment of scallop stocks;

(iii) for the first 5 years from the date of commencement of dredging within the permitted area, bathymetric surveys to be undertaken annually;

(iv) for at least the first 5 years from the date of commencement of dredging within the permitted area, sidescan sonar surveys to be undertaken annually to inform the data from the benthic surveys required by (v) below;

(v) for at least the first 5 years from the date of commencement of dredging within the permitted area, benthic ecology and bottom-dwelling fish surveys and drop down video surveillance to be undertaken annually using sampling sites considered by NIEA to be valid indicators of reference, and dredged areas;

(vi) in the fourth year from the date of commencement of dredging within the permitted area; a repeat of the baseline benthic survey, including sidescan sonar and drop down video surveillance, to be carried out;

(vii) a bridge watch for cetaceans, to be carried out using the methodology for recording and identifying cetaceans developed by Seawatch Foundation, making use of sighting forms and reference sheets.

- The Operators shall ensure that detailed reports on the results of the monitoring required by Condition 8.6 are prepared by acknowledged independent experts in the appropriate fields within 3 months from the completion of the fieldwork in each case.

### ***Post-Dredge Monitoring Surveys***

- The Operators shall ensure that:
  - (i) a specification for a programme of post-dredge monitoring is drawn up in consultation with NIEA and DARD and other relevant bodies, as advised by the regulator;
  - (ii) the agreed specification is submitted to the regulator for approval;
  - (iii) the programme of monitoring is implemented in accordance with the specification as approved in writing by the regulator, and using acknowledged independent experts in the appropriate fields, within 3 months from the cessation of the dredging within the permitted area;
  - (iv) any changes to the monitoring programme as approved by the regulator are only implemented with prior written approval from the regulator.
- The programme of monitoring required by Condition 8.12 shall contain the following surveys to cover the Government View area and reference sites:

benthic ecology bottom-dwelling fish and scallops;  
drop down video;  
sidescan sonar;  
sub-bottom profiling;  
vibrocore sampling.

In addition, the following surveys shall be carried out over the permitted area plus a 500 metre margin around the perimeter:

bathymetry

- The monitoring results shall be used to produce a report describing the condition of the seabed following the cessation of dredging within the permitted area. In the event that the state of the seabed, as described in that report, gives cause for concern, the regulator will consider what actions, if any should be taken, including remediation at the cost of the Operators.

### ***Control and Distribution of Reports***

- The Operators shall ensure that copies of all the approved specifications, all the reports and the results of all surveys and monitoring required by these Conditions are provided to the regulator, Department of Agriculture and Rural Development, the Department for Culture, Arts and Leisure, Foyle, Carlingford and Irish Lights Commission (in Carlingford and Lough Foyle only), the Maritime and Coastguard Agency and the Crown Estate Commissioners, and shall make them available, on request, to all parties consulted on the dredging application, within x months of the completion of the fieldwork unless otherwise specified in the Conditions.
- The Operators shall ensure that copies of all bathymetric surveys and reports on such surveys required by the above Conditions are provided to the National Hydrographer, the UK Hydrographic Office within x months of the completion of the fieldwork.

### **Substantive Reviews of the Dredging Operations**

C.17 Conditions should, where appropriate, provide for substantive reviews of the dredging operations at 5 yearly intervals.

#### *Example:*

- Within 3 months of the start of the fifth and tenth years following the date of commencement of dredging, the Operators shall ensure that a Substantive Review of the dredging operations within the permitted area is prepared and submitted to the regulator, using acknowledged independent experts in the appropriate fields, summarising the results of the monitoring undertaken to date and detailing the environmental effects of the dredging operations; the effectiveness of the Conditions imposed on the dredging operations and recommending any variations to the dredging operations as may be necessary to protect the environment, and any variations to the programme of monitoring as may be necessary to ensure that effective environmental monitoring of the dredging is maintained.