

DECISION MAKING IN THE MARINE ENVIRONMENT

15 JANUARY 2008



John Davis
Chichester Harbour Conservancy



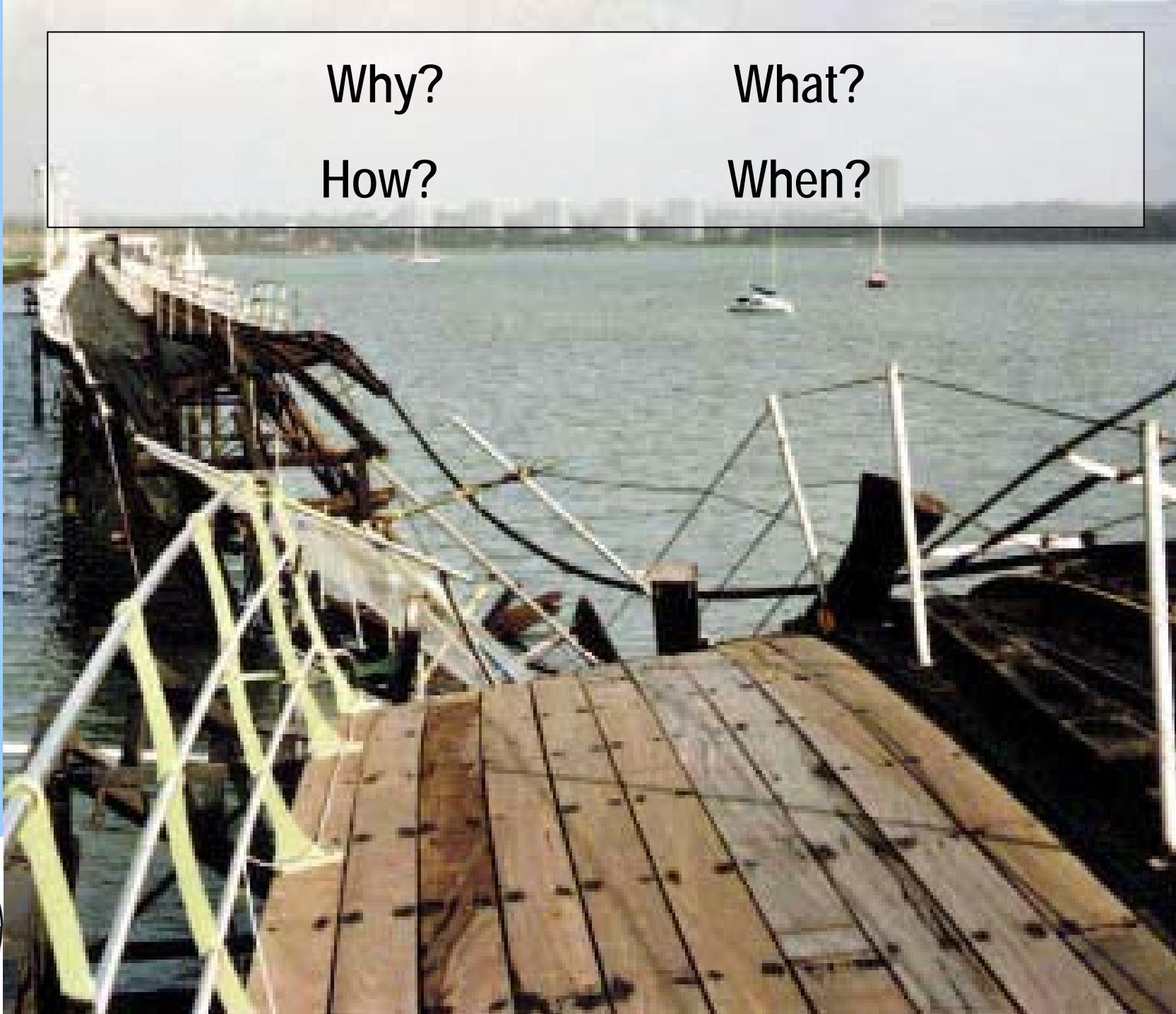
Harbour Works Consents

Why?

What?

How?

When?





Why?

- Island nation
- 95% of Britain's trade in foreign goods through UK Ports
- 580 million tons per annum
- Ports are the life blood of the UK economy

Harbour Works Consents



Why?

- Essential ports are kept open
- Safe for navigation

Why?

- Legal Framework
 - **International** - right of free passage in international waters
 - **National** – public right to navigate in tidal waters
 - **Local** – Harbour authorities
 - Open port duties
 - Conservancy duties





Why?

- At Common Law
 - Construction of works below high water, in navigable waters, so as to interfere with public right of navigation is an actionable nuisance.
 - Need for legal prohibition on and consenting process for harbour works



Harbour Works Consents



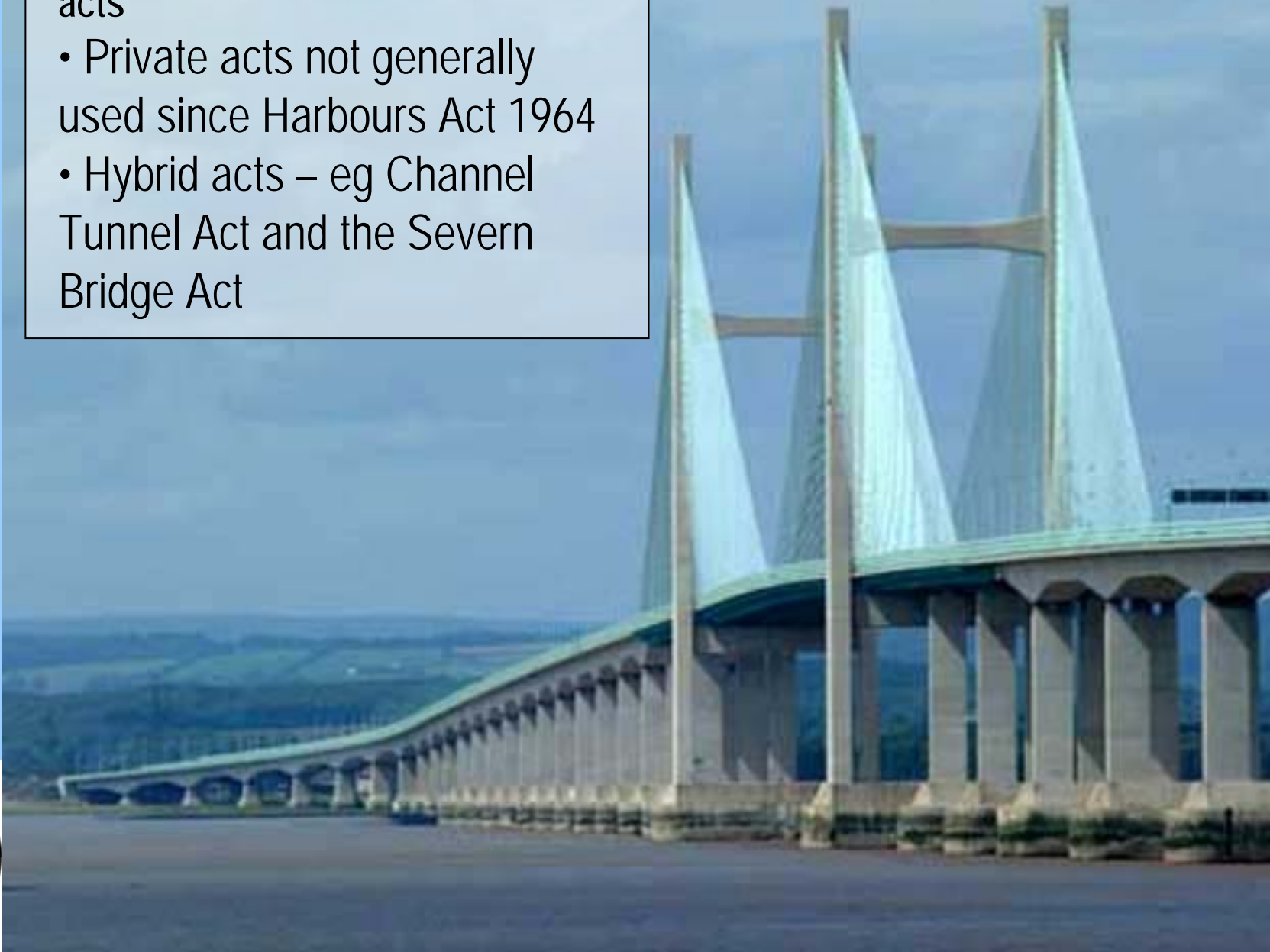
- What?** Consents by
- Private and hybrid acts
 - Harbour Revision Orders under Harbours Act 1964
 - Orders under section 3 Transport & Works Act 1992
 - Harbour authority work / dredging licences
 - Public general acts

Harbour authority works licences may overlap all of these

Free

What? By private and hybrid acts

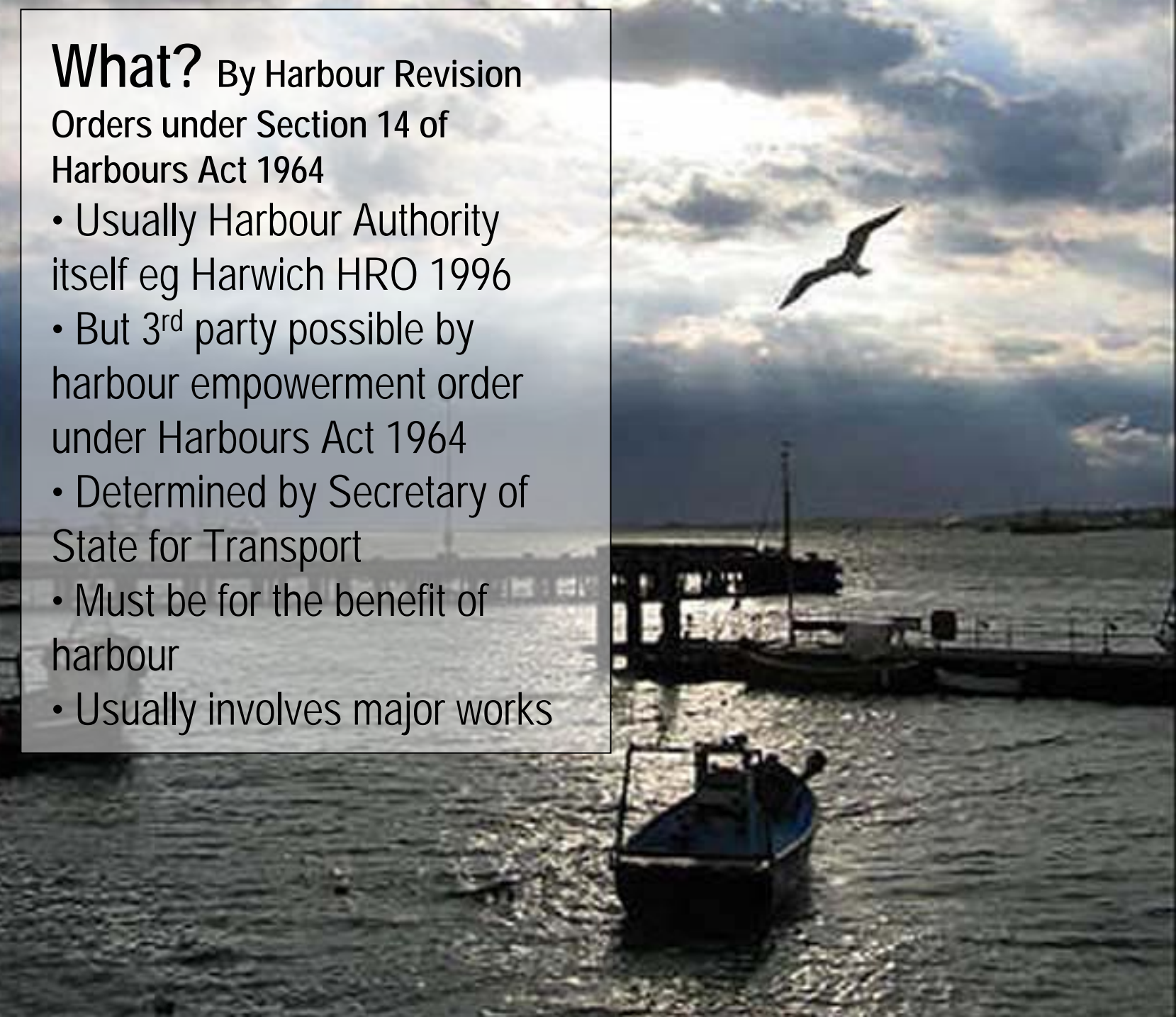
- Private acts not generally used since Harbours Act 1964
- Hybrid acts – eg Channel Tunnel Act and the Severn Bridge Act



Harbour Works Consents

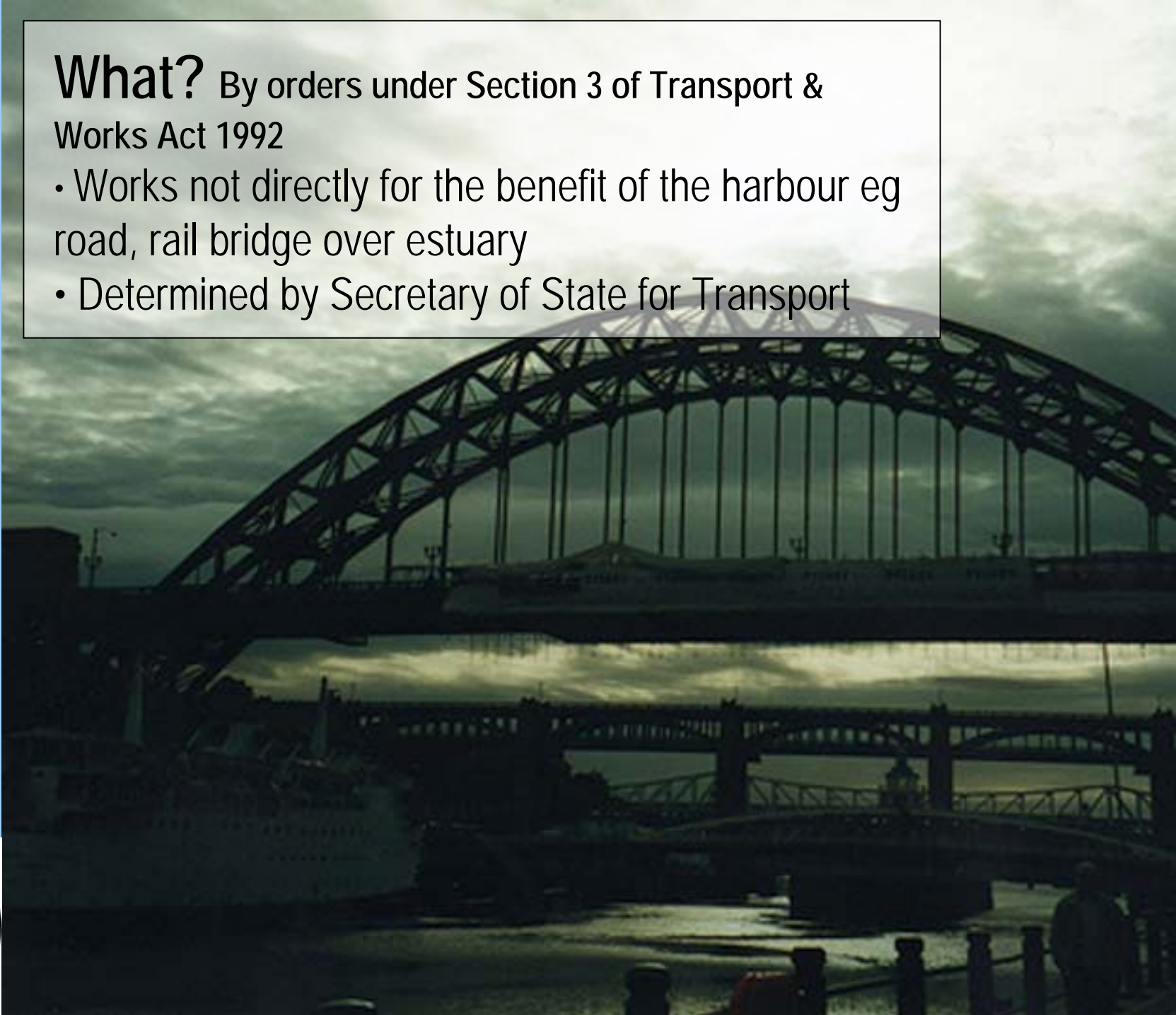
What? By Harbour Revision Orders under Section 14 of Harbours Act 1964

- Usually Harbour Authority itself eg Harwich HRO 1996
- But 3rd party possible by harbour empowerment order under Harbours Act 1964
- Determined by Secretary of State for Transport
- Must be for the benefit of harbour
- Usually involves major works



What? By orders under Section 3 of Transport & Works Act 1992

- Works not directly for the benefit of the harbour eg road, rail bridge over estuary
- Determined by Secretary of State for Transport



Harbour Works Consents

What? By Public general acts

- Eg Pipelines Act
- Telecommunications Act
- Coastal Protection Act 1949
- Environment Protection Act 1995



What? By Harbour authority works licence
• Powers from Harbour Authorities Special Legislation

- Powers vary from harbour to harbour
- Contain conditions for works & dredging
- Do not absolve applicant from gaining other consents
- Overlap and maybe in addition to other statutory consents
- Appeal to Secretary of State





How? Prior Consultation for Harbour Authority Works

- Licence Imperative
- Outline plan
- Highlight harbour authority concerns with scheme re-navigation and wider impact on harbour
- Suggest changes
- Outline and advise on other consents and requirements

Harbour Works Consents



How? Planning Consent (TCPA)

- Required for all works below HW (within jurisdiction of local planning authority)
- Unless exempted by HRO in private / local act
- Issued by Local Authority



How? Consent under S34 of Coastal Protection Act 1949

- Purpose – secure safety of navigation
- Applies to any consent for works that may impede or obstruct navigation
- Exemption – where Secretary of State for Transport has approved works under HRO or Transport & Works Act order having considered impact of works on navigation
- Application to Marine and Fisheries Agency (MAFA)
- Wide ranging consultation by MAFA
- NB Considerable overlap with Harbour Works Licences



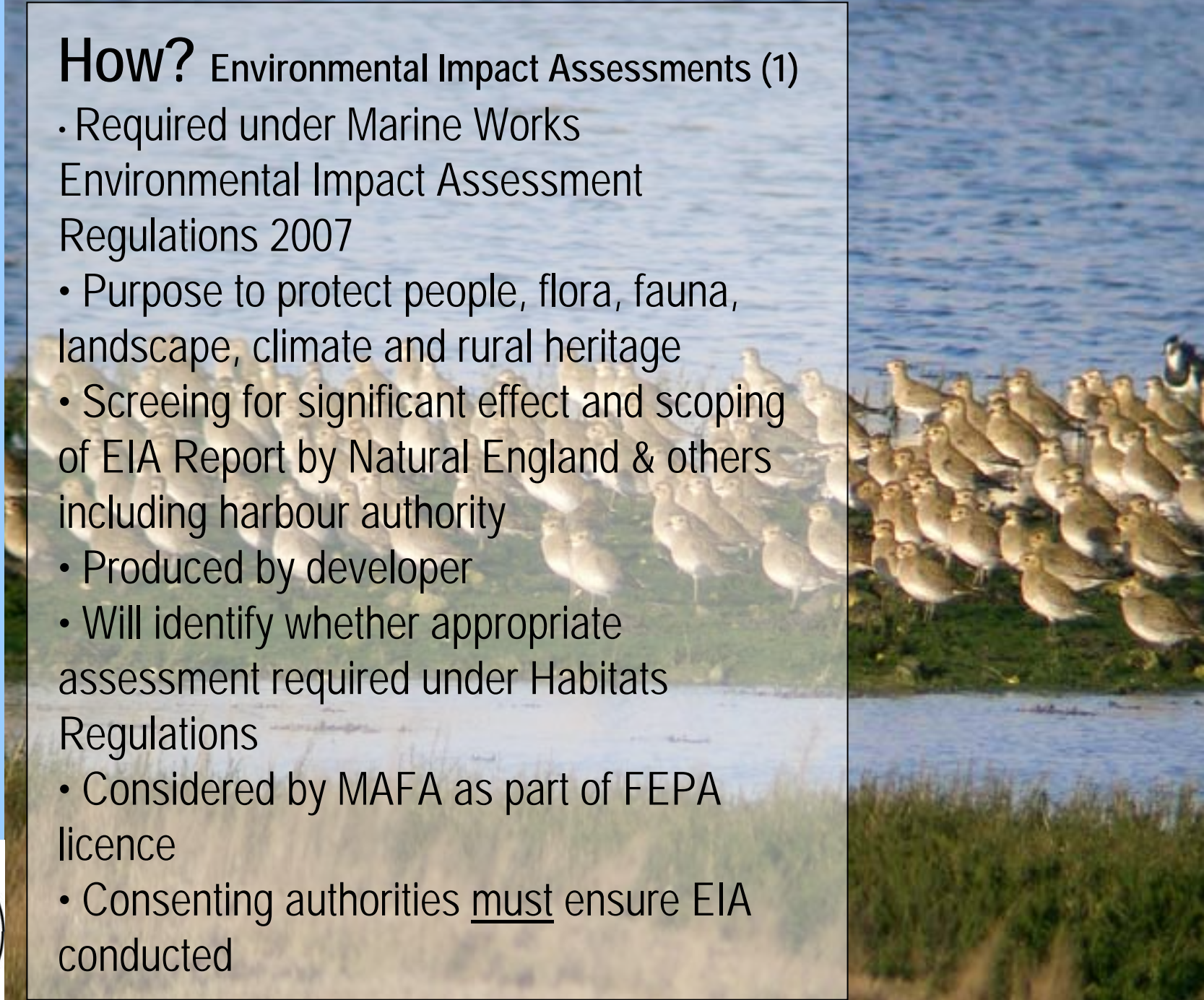
How? Consent under Section 5 of Food & Environment Protection Act

- Purpose to prohibit the placing of dredgings and substances below HW that may damage the environment
- Exemption – some harbour works eg Aids to Navigation and moorings if authorised by harbour authority or Trinity House
- Application to Marine & Fisheries Agency (MAFA)
- Wide ranging consultation by MAFA



How? Environmental Impact Assessments (1)

- Required under Marine Works Environmental Impact Assessment Regulations 2007
- Purpose to protect people, flora, fauna, landscape, climate and rural heritage
- Screening for significant effect and scoping of EIA Report by Natural England & others including harbour authority
- Produced by developer
- Will identify whether appropriate assessment required under Habitats Regulations
- Considered by MAFA as part of FEPA licence
- Consenting authorities must ensure EIA conducted



Harbour Works Consents



When? Implementation not until

- Planning consent
- Harbour authority works licence / HRO
- FEPA & CPA licence
- Others as required
- Apply early

NB However works or dredging is consented, the Secretary of State is in the consenting loop