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Dear Tony,

BWEA response to the DTI Consultation on the implementation of the provision of the Energy Act 2004 relating to the establishment of safety zones around offshore renewable energy installations

With over 330 company members BWEA is the leading renewable energy trade association in the UK and the only body that represents the development of offshore wind, wave and tidal stream energy. This membership includes, amongst others, technology and project developers, utilities, financiers, legal advisors and a broad spectrum of consultants with offshore expertise.

The Association welcomes the opportunity to respond to this consultation and looks forward to continued dialogue with DTI on the outcomes. As an active member of all Government liaison groups it also anticipates positive discussions on this matter with key stakeholders through such forums in the future.

This response follows extensive consultation with members that has included the reception of written comments and the organisation of a one day workshop that was attended by 10 key member companies operating in offshore wind, wave and tidal stream project development.

General Comments

There are a large number of industries and activities in the marine environment that the offshore renewables industry must work closely with in order to facilitate project development. Through Round One, positive industry-stakeholder relations are being created and it is expected that this will allow for the necessary confidence going into both Round Two and the early deployment of wave and tidal stream arrays.

Given the crucial need for the timely development of all offshore renewable energy projects around the UK it is vital that positive relationships are retained



with all other offshore activities. For this reason the offshore renewables industry is cautious not to unduly compromise such activities on the basis of its response to this consultation and has therefore, following guidance from members, taken what it believes to be a pragmatic approach.

By drawing upon the wealth of experience in its membership, both in this country and overseas, the Association has been able to present a position that reflects the requirements of the Energy Act 2004 as well as allowing for the necessary co-habitation of different offshore interests and the delivery of the Governments renewable energy targets.

BWEA therefore regards this response not as a closed answer to the issue of Safety Zones but as one part of the ongoing dialogue necessary to ensure economic, environmental and recreational interests can progress together both safely and sustainably in UK waters.

Specific Comments

BWEA understands that the requirement for Safety Zones stems from the provisions in the Energy Act 2004 relating to all offshore energy installations. However the Association believes that the difference in risk profile between oil and gas installations and offshore renewable energy installations should be considered in their implementation, if indeed they are required at all during operation.

During construction the industry believes an option of putting in place the maximum distance of 500m should exist until the phase of construction that the application covers has been completed. Developers should also have the discretionary option whether to implement a temporary zone around major maintenance activities and/or maintenance vessels following initial construction. This, of course, would be based on the outcome of a risk assessment on the activity being conducted and, if regarded as necessary, would be communicated to mariners and marked in the appropriate way. A key point here is that Safety Zones should not relate only to the installation itself; cable laying boats and jack-up barges, for example, may also require a temporary Zone whilst conducting certain activities. It is however unlikely that smaller maintenance vessels (the type used most often by offshore wind maintenance personnel) would require any such Zone unless the activity being conducted deemed it necessary.

There should also be the provision to immediately create a temporary Safety Zone in extreme circumstances where either individuals on the installation or other users of the sea were regarded as at risk. This would be marked in the appropriate way so as to be recognised by all sea users as an area not to be entered. This point highlights the need to ensure markings for Safety Zones, and their size, are recognised by mariners and standardised internationally. This should remove the need to police such areas. If, however, there is a provision to do so it must not be at the expense of the developer given that the creation of a safety zone removes any liability from them once a vessel or activity covered by the zone has entered it.

In the majority of cases the requirement for a Safety Zone during operation should be based on the outcome of a suitable risk assessment and dialogue between the project developer and those potentially affected by its implementation. Due to the dispersed geographical nature of offshore renewable energy projects there is a significant variation in affected activities around each one and, for that reason, some developers may regard the need for a Safety Zone during operation as less important than others.

Some developers may regard a Safety Zone during operation as a hindrance to their projects success; some may want to implement them only for certain activities (i.e. anchoring) or around particular structures (i.e. offshore substations); and others may prefer to implement the maximum size available around their entire project on a permanent basis. Any process of Safety Zone application must therefore have enough flexibility to accommodate all various positions, both at the time of application and potentially arising in the projects future. This could, for example, allow for the creation, expansion or reduction of a Safety Zone around activities that were not foreseen at the time of the original application, without having to reapply.

The need for flexibility is particularly pertinent when regarding the variation in offshore renewable energy projects themselves. In the short term most significant scale projects will be wind. However from 2008 it is expected that the UK's first wave and tidal stream arrays will start entering the water. These emerging technologies will require a different approach to Safety Zones that will need to take into account the movement of the device in the water, any sub-sea moving parts, the different visual profiles presented and the variation in mooring types applied.

However it is not just installations and vessels that may require the implementation of Safety Zones. Depending on seabed conditions, tidal strength and local sea users, the cables, both between devices and from project to shore, may be regarded as in need of a Safety Zone that related only to certain activities that interact with the seabed. Although BWEA does not believe the practice of putting Safety Zones around cables is conducted in other industries operating in UK waters, it is the Associations understanding that exclusion zones for some activities are implemented around the cables connecting offshore wind farms in Denmark, despite there being open access to the installations themselves. BWEA regards this as a sensible approach that the UK should consider and, if taken forward, one should be able to be considered on a case by case basis.

Even if a Safety Zone is regarded as necessary around an installation, and is implemented following the appropriate procedure, provisions should still exist for some activities to take place. These could be agreed at a later date between the necessary bodies but may include, for example, Search and Rescue training exercises.

The position of BWEA is therefore simply that flexibility is key. Given the difference in geographical location and technology type employed in offshore renewable energy projects the Association strongly believes a pragmatic approach to Safety Zones must be taken. This must allow each project and its local stakeholders to come to a satisfactory agreement based, where necessary, on a rigorous risk assessment. There should not therefore be a presumption to impose a Safety Zones based on central Government guidance. However during construction BWEA believes the pragmatic approach would be to implement the maximum zone until construction has been completed. Safety Zones should be implemented only where regarded as necessary and, if implemented, must be marked and communicated in an appropriate and standardized manner.

Flexibility to implement, reduce or extend a Safety Zone in the future should exist in any initial application and temporary Zones must be an option for implementation around particular activities and events. Where these activities and events require immediate attention, the ability to immediately create a Safety Zone must exist. There should also be an option to create a Safety Zone around installation craft and over cable locations. In general the Zones themselves should be able to be created only for certain activities (i.e. anchoring or trawling) and/or around certain structures (i.e. cables or substations) and should not necessarily relate to all sea users and/or all structures. They should

also not require policing at the expense of the developer given that any zone itself will present the limits of liability. This should create the flexibility necessary for project developers and other offshore interests to interact positively around the timely construction and safe operation of offshore wind farms in UK waters.

Consultation Questions

Question 1

Is the approach outlined to safety zones during construction and decommissioning workable? Experience to date is based on the construction of offshore wind farms. Will wave and tidal devices be constructed in a different way which would require a different approach to safety zones?

Yes, the approach is workable. However this approach should also be an option for implementation during major maintenance and should therefore also relate to large maintenance and construction vessels as well, not just structures or fixed installations. This option should be part of the original application and not require a new one.

Wave and tidal project development will not require a different approach. However they may require a different approach to Zone demarcation that is not based on a fixed structure but takes into account the movement of the device in the water, any sub-sea moving parts, the different visual profiles presented and the variation in mooring types applied. Any Safety Zone may have to be marked from the extremities of these considerations.

Question 2

Is the policy of a starting presumption of 50 meter safety zones during operational phase of an installations life reasonable?

It is reasonable as a starting assumption but this should allow for developers to negotiate with stakeholders on a case by case basis. It should not be enforced legally on every activity around every project.

There should also be the ability for SZ's to be implemented only around certain activities (i.e. anchoring or trawling) and/or around certain structures (i.e. substations). In most cases their creation must be based on a justifiable safety case. The HSE principles of ALARP could be applied in any assessment of this kind.

Safety Zones should also be able to be created, reduced or expanded after an initial application in order to accommodate issues or activities that were not foreseen during the original application. Provisions for this must be included in the original application and not require a new one.

The term 'installations' in this instance should also include cables in order to provide the option for Safety Zones to be created around them that refer to specific activities.

Question 3

In the context of making an application for a safety zone, are the requirements for information about the installation reasonable? Is there any other information about the installation which the regulator will need?

The term 'installation' should refer to the development in its entirety, including cables, not just each individual structure.

It must be agreed upfront that temporary Safety Zones for ad hoc maintenance and emergency procedures can be implemented without the need for further application and consultation. Facilitation for this should be made in the original application.

There is no other information that the regulator will need. Although, as mentioned in Question 1, there will be a need to take into consideration the differing technologies employed in wave and tidal energy projects in order to deal with them accordingly.

Question 4

Are the requirements for information about the safety zone reasonable? Is there other information about the safety zone which the regulator will need?

It needs to be clear that there is a difference between construction/major maintenance Zones and those relating to operation, and that some will be temporary and others may refer only to certain offshore activities or vessels. These must be marked appropriately.

There is no other information that the regulator will need.

Question 5

Are the requirements for publicising the fact that an application for a safety zone is being made workable, and will they suffice to bring to the attention of stakeholders who have an interest in safety zones that an application is being made?

They are workable but there must be a rigorous enforcement of a maximum limit for responses. BWEA recommends this to be set at 28 days.

Question 6

Is a 28 day minimum period for objecting to a proposal for a safety zone reasonable?

It appears to be reasonable. However there must also be a maximum limit, which the industry believes should also be set at 28 days. In the case of emergencies the power must exist for the creation of a Safety Zone immediately.

Question 7

Are there other organisations on whom notice should be served that an application for a safety zone is being made?

No. However, it should also include any organisation set up under the Marine Bill, such as an MMO, and be distributed by an MMO to all relevant bodies that it works with.

Question 8

Is a charge of £2,000 for making an application for a safety zone reasonable?

Given the fact that there are huge variations in project size it may make more sense to have a sliding scale for charges with the maximum limit set at £2,000, however the amount is reasonable.

The original fee should however cover the flexibility to change the original application due to unforeseen circumstances without further charge.

Question 9

Are there any other categories of exemptions from the prohibition on entering a safety zone which should be included in the regulations?

If a Safety Zone has been agreed then provisions should exist of certain activities to enter it based on an agreement with the developer. This may include, for example, authorized Search and Rescue training. Some Zones should also have the ability only to relate to certain activities or vessels.

Question 10

Can you provide any information on the types of fishing activity currently undertaken within existing wind farms or in the strategic areas designated for the construction of Round 2 wind farms? Do you have any views on types of fishing activity that could safely continue to be undertaken in wind farms, or any ideas as to how existing activities might be adapted to make their safe continuation possible?

Such matters should be discussed and decided upon on a case by case basis. Given the variation in fishing activities, in individual opinion, in seabed and tidal conditions and in technology application (particularly regarding foundations or mooring), this cannot be answered generically.

Existing environmental statements should however provide suitable guidance of this nature for existing projects.

ENDS

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BWEA

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