



Renewable Energy House  
1 Aztec Row, Berners Road  
London, N1 0PW, UK

T 020 7689 1960  
F 020 7689 1969

info@bwea.com  
www.bwea.com

Jonathan Lartice  
Area 2C  
3-8 Whitehall Place  
London SW1A 2HH

23<sup>rd</sup> February 2007

Dear Jonathan,

## **INTRODUCTION**

This letter is the BWEA response to the consultation on the Marine Works (Environmental Impact Assessment) Regulations 2007 the deadline to which is 16 March 2007 ("the Regulations"). This consultation seeks views on proposals for the application of the Environmental Impact Assessment Directive to existing UK legislation; Part 2 of the Food Environment Protection Act 1985; Part 2 of the Coastal Protection Act 1949 and Harbour Works (Environmental Impact Assessment) Regulations 1999.

It is clear that these Regulations are designed to make sure that the regulators are compliant with the Environmental Impact Assessment Directive and that any parts of the existing UK Regulations that do not quite meet these requirements are bolstered. BWEA believes that it is important to ensure that the UK meets its requirements under the EU directive and so understands the logic in the publishing of this consultation.

As no draft regulations have been provided with the consultation, BWEA will merely set out its response to the questions asked in the consultation document.

### **Question 1: Are there any consultation bodies which you think should be included in the Regulations?**

BWEA feels that the list given in the consultation is comprehensive. The last bullet point provides a catch-all caveat which should ensure that the correct consultees are consulted.

### **Question 2: should we specify in the Regulations which bodies should be statutory consultees?**

It is felt that where possible the Regulations should specify any statutory consultees for the Regulations as this avoids ambiguity and ensures consultees are aware of their duties. It is understood that not every single consultee can be listed due to the fact that some consultees change depending on the type of



regulated activity. However, as the same consultees will be approached time and time again it is felt that these should certainly be listed in the Regulations.

**Question 3: Is there any reason why we should not extend the existing requirement for business to pay a reasonable fee for the service that has been provided to them under the Food and Environment Protection Act 1985 to other expenses incurred under the proposed Marine Works Regulations?**

As stated at 1.1.5 of the consultation document, the requirements of the Environmental Impact Assessment Directive (as amended) are largely already met. Under Part 2 of the Food and Environment Protection Act 1985, the existing requirements a developer has to go through to ensure that a licence are granted is exactly the same as under the proposed regulations. Developers already produce an environmental statement to inform the EIA process and the issue of a FEPA licence.

It is therefore thought that there are unlikely to be any additional expenses under the proposed regulators. This is considered solely in relation to the work done, the stages of application and the work done surrounding this part of the process. It is considered that there should be no need for an increase in fees and that the money paid under the FEPA licence application process is sufficient to ensure that all work done to grant a FEPA licence will be the same as the work done by DEFRA under the Regulations.

It is understood that question 3 is obviously wider than the pure application process in relation to screening and scoping. BWEA gives its opinion on scoping and screening fees in response to question 5.

**Question 4: Do you have any views on the thresholds in Annexe 3 to this consultation? Should thresholds be included in the regulations?**

BWEA is happy with the threshold at 5 in column 1 for offshore generating stations as this is what has been expected.

However, it needs to be pointed out that although an EIA will be needed for devices over 1MW, scoping should be strict to ensure that small demonstration projects are not penalised by excessive EIA requirements that may be more appropriate to large projects of, for example, 200MW plus.

BWEA is of the opinion that it is not essential to have thresholds included in the Regulations and these could easily be dealt with by guidance.

**Question 5: Do you have any comments on the procedure for requesting the screening opinion? Do you consider it appropriate for the Regulator to charge a reasonable fee in respect of the expense providing a screening opinion?**

BWEA considers that the procedure for requesting the screening opinion is fair and in line with other EIA regulations.

BWEA does not see any need for a regulator to charge a fee in respect of the expense of providing a screening opinion. It is felt that a screening opinion is a duty that the Regulator has to carry out under the EIA Directive. This should therefore be a service that is provided to the developer as an individual.

In 3.2.9 it is said that allowing the Regulator to recover the costs of services provided will also enable the service to be carried out efficiently. BWEA questions why there should be any difference between a free service and a service which has to be paid for. Both should be provided efficiently regardless of payments. BWEA would like to know why paying for a screening fee would make the process run more efficiently.

BWEA will also consider the issue of the payment of a reasonable fee for a scoping opinion here. At the moment a scoping opinion is requested from DTI under Section 36 and the Electricity Works (Environmental Impact Assessment)

Regulation 2000 (**Electricity Works Regulations 2000**). At the moment no fee is charged for a scoping opinion. It is understood that DEFRA work closely with DTI on providing a scoping opinion to the developer. It would seem illogical for one authority to be able to charge a fee when the other could not. BWEA also reiterates its arguments in 6.2 above that this is a duty that the Regulator has to undertake under the EIA directive and therefore should be a service provided.

**Question 6: Do you consider it reasonable, under any part of the proposed regulations, for the Regulator to treat an application as having been withdrawn where information has not been provided within a reasonable period as specified by the Regulator?**

BWEA do consider this reasonable as there is the need to weigh unnecessary delay and the resource of the Regulator when a developer has not provided information within a reasonable period as specified by the Regulator. However, the Regulations must allow for extensions to these time periods where developers have been unable to provide information and have given reasonable explanations to the Regulator as to why they have not been able to meet the time limit set to them. This will ensure that if a developer is prejudiced reasons beyond their control, it can be agreed with the Regulator that the time period can be extended and applications are not withdrawn unnecessarily or with prejudice to the developer.

**Question 7: Do you consider a period of at least 28 days as a reasonable amount of time for consultation bodies to consider a scoping opinion?**

BWEA finds that the wording "at least" should be deleted, i.e. that consultation bodies must stick to a period of 28 days to provide a scoping opinion. It should further be made clear to consultation bodies that scoping opinions provided later than the 28 day deadline are not necessarily taken into consideration.

**Question 8: Do you have any comments on the Regulator having the authority to direct the applicant to carry out a function that the Regulator could otherwise carry out? Does this provision where it appears in the proposals in this consultation provide for more transparency in relation to the cost of processing the application (the cost of publicising and forwarding information to consultation bodies for example)?**

Developers of offshore windfarms are already familiar with this provision as they have to provide notice to the DTI under the Electricity Works Regulations 2000. Developers already have to provide the notices to newspapers and therefore bear the brunt of the cost of advertising. These notices also cover applications under FEPA. Therefore BWEA understands that this would add more transparency to the costs of the applications but it should be made clear that this is a cost that is reflected back on to the applicant.

**Question 9: Is 42 days a reasonable timescale for making representations on an application and environmental statement? Would a different timescale be more appropriate?**

The number of days on the Electricity Works Regulations 2000 is 28. BWEA would question firstly why there needs to be this difference, and the fact that this does not reflect normal EIA procedure. Therefore it is felt that for consistency 28 days is a more appropriate timescale.

However, the important thing is that the agreed timescale for making representations is respected. This is not the case today, even for statutory consultees and other key consultees. As for question seven it should be made clear by the Regulator, that representations provided later than the stipulated deadline are not necessarily taken into consideration.

**Question 10: Do you have any comments on the procedure for considering representations from the public?**

BWEA has no comment to make.

**Question 11: Do you have any comments on the proposed offences?**

These are consistent with the offences under the Food and Environment Protection Act 1985 and therefore BWEA has no further comment.

**General Comments**

BWEA is concerned that the introduction of these rules will cause conflict with existing regulations. The EIA process for all offshore generating stations over 1MW is currently governed by the Electricity Works Regulations 2000. Developers throughout the UK make their scoping requests to the DTI, Scottish Executive or EHS in Northern Ireland under these regulations. In England and Wales DTI then work closely with DEFRA on providing a scoping opinion, but the scoping opinion comes from DTI.

BWEA see little need to in change this system and that only one scoping report need be submitted in support of both the Electricity Works Regulations 2000 and the proposed regulations in this consultation. One department should take the lead in returning the opinion and this should be kept as the DTI. It is felt that where there is conflict or duplication between the regulations DTI should take responsibility for the action.

**Michael Hay**

**Head of Offshore Renewables**

**BWEA**