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Dear Sir or Madam

## **Consultation on a Marine Bill White Paper, A Sea Change**

### **BWEA Response – 8 June 2007**

Please find attached the BWEA response to the consultation on the Marine Bill White Paper, a Sea Change. The BWEA welcomes the opportunity to engage with Defra on this important piece of legislation.

The BWEA is encouraged by the efforts that have gone into authoring the document and wants to fully support the White Paper but there are certain issues that need to be more fully resolved before BWEA can wholeheartedly back the proposed content of the Bill.

This response will look at these concerns. Firstly it will address the over arching themes running through the White Paper. The response will then go on to look at concerns surrounding some of the more detailed proposals.

The over arching themes that BWEA believe need to be addressed in order to make the Bill work smoothly are:

- BWEA recognise that the authors of the White Paper have to work within a devolved framework and that those bodies with responsibility to deliver the Bill and its equivalent devolved legislation will make every effort to ensure that it is implemented in a coordinated manner. However, it is felt that some mechanism must be set up to ensure that there is enough synchronisation between the devolved administrations and the Westminster Government to ensure the delivery of the objectives of the Bill, for example on the marine management organisation. Without each of the administrations working towards the same timescales and using complementary methods it will be difficult to work towards the ultimate goal of a UK wide Marine Bill: reversing the decline of biodiversity and promoting sustainable development.



- Although the White Paper has recognised the existence and importance of other existing legislative regimes such as the Habitats Directive and the Water Framework Directive, it seems reluctant to expand in greater detail as to how these regimes would work with the Marine Bill to forward the Marine Bill objectives. BWEA raised this in response to the first consultation and it is still uncertain as to how this issue might be dealt with. A very good example of this is the relationship between the EIA Directive and marine planning. Much has been made of the fact that good marine planning could add to further certainty for developers along with a reduction in regulation. However, the biggest challenge for developers in the marine area is the preparation of the EIA. It has been touted that with good marine planning, EIA could be reduced. However, little has been made of this in the White Paper. Thus the proposed Bill could be seen to be doing very little to work with the EIA Directive. The same could be said for appropriate assessment under the Habitats Regulations.
- It is vital that any processes that the Marine Act puts into place do not cause delay to the implementation and future delivery of offshore renewables. BWEA understand that the future Act will have little effect on Round 2 of offshore wind farms but it could affect future deployment of both further offshore wind site awards and larger commercial marine renewables arrays. The timetable to meet the 2020 targets is extremely tight. One type of delay could stem from the implementation of marine plans. Past experience tells us that when a new terrestrial plan is about to be launched, consenting is put on hold until this plan is adopted. It is vital that this type of delay does not happen and that the transfer from a non-plan led system to plan led system is smooth and consistent.
- The MMO must have the resources that it needs to be able to implement its duties and responsibilities under the bill. Whenever this subject is raised in discussions assurances are given. However, BWEA is unsure as to whether the cost of the bill and the resources that are needed to implement the White Paper as suggested, is fully understood across Government as a whole. BWEA is also worried that the skills base within the MCEU (now integrated into the MFA), that DEFRA is working hard to improve, and the skills residing within the DTI will be lost if the MMO moves out of London. Again the disruption of hiring new staff who are unfamiliar with the offshore renewables consenting process is one which the UK as a whole cannot afford. BWEA is also worried that new staff unfamiliar with their roles will be overly cautious in the application of their remit. BWEA urge DEFRA to ensure that everything is done to ensure that the skills base currently in place is not lost.
- Perhaps the most important point and one which the BWEA has constantly made clear is that whilst the proposals look good in theory and on paper, it is the actual practical implication of these proposals that risk uncertainty. While industry will always be required to shoulder some risk, in an already uncertain and fledgling industry such as offshore wind and marine renewables, too much uncertainty can cause the delivery of projects to fail.

The Marine Bill's approach to data should be commended. It is vital that a strong, certain and available marine database is set up quickly. Data will form a key part of the work underpinning the Marine Bill. Lack of data in the marine environment is one of the biggest obstacles to environmentally responsible development at sea. Any marine database must be useable, standardised and available. Developers will therefore avoid having to repeat data collection and/or ask Authorities to make decisions on data poor areas. Much can be used from the current COWRIE work in collecting and collating all the data from the Round 2 wind farms and the oil and gas SEA. However, a caveat must be added to this. Detailed marine planning in areas of sparse data, or even areas where there is data, must be done cautiously and with recognition of the changeability of the marine environment. Reference is made at 8.117 to the use of the two way exchange between CEFAS of the information between the MMO and CEFAS. It is unclear why the

MMO does not hold all CEFAS data, or co-ordinates the data through a distributed system, to ensure that there is a one stop shop for data.

BWEA understand that a lot of the proposals in the White Paper will not be dealt with by primary legislation. BWEA takes this chance to ask that those drafting the bill also publish a break down of what will be dealt with by secondary legislation and what will be dealt with by guidance. BWEA welcomes guidance in any form and thinks that these should be linked with timetables that clearly state when objectives should be met.

## **Detailed Points**

### **Marine Planning**

Overall BWEA welcomes the approach to marine planning and believes it is a key to helping protect biodiversity and also encourage sustainable development. The hierarchical approach of a UK wide policy statement underpinned by regional plans will deliver the marine planning that the White Paper envisages.

Focusing more on the UK policy statement:

The statement needs to be clear, concise and able to tackle the salient issues affecting the marine environment. The policy must be clear and unambiguous in the setting out of its vision. The statement should:

- Outline hierarchy of the plans, how they are to interact and how they are to be used;
- Clearly reflect targets set by the EU and UK Government to meet electricity generation from renewable sources.
- Grapple with and resolve conflict in the marine environment. This will mean detail on how policies interact with one another. Strong thought must be given to how conflicting policy is dealt with and the UK policy statements should be explicit as to how resolve policy conflicts at a UK level. The UK policy statement will have failed if it does not resolve these conflicts or apply a mechanism that will allow conflict to be resolved at plan level.

BWEA are satisfied with the proposed public consultation procedure for the UK marine policy statement.

Turning to the marine plans:

BWEA consider that regional plans with a more focused approach on those areas that have a high level of use are to be welcomed. Six years is proposed as the review time for the plans. BWEA thinks that this is an arbitrary number and there needs to be slightly more thought behind the review period. This is important because of the large cost of a review. Having said that, BWEA believe that regular timely reviews are necessary and should be undertaken without fail. Paragraph 4.49 outlines a review should take place when a 'degree of change' has occurred. How is this to be measured? Greater clarity should be given so that clear reasons can be given for delaying or bring forward a review.

The approach to consultation is welcomed and it needs to be stressed that consultation needs to be broad and come early for the plans to be effective for all those affected by them.

BWEA is concerned with the White Paper's overly optimistic approach for the plans to solve conflict (4.56). It must be recognised that there will be many competing individual sectors for the same resource, including nature conservation. An example of a situation where a form of conflict resolution might be required is the co-existence of offshore renewables and oil and gas exploitation. Both industries will need to be fully included in

any marine planning to try to avoid conflicting overlaps and make the best strategic use of the UK's renewable and non-renewable resources. This is why it is crucial that a mechanism to resolve conflicts must be administered at a national level through the policy statement. While certain aspects will require resolution in a regional context, a clear framework will ensure that conflict is dealt with fairly and equally across the plans. It will also give greater certainty to developers.

BWEA is also very supportive of the need for SEA to inform the marine plans. However, BWEA asks that the plan process, including SEA, provides greater certainty to developers by informing and reducing the scope of EIA. This idea has been a key selling point used by DEFRA when talking with BWEA and developers and it is important that it is translated into working practice. Renewable Developers do not shirk away from their responsibilities to conduct EIA, but without this aspect of marine planning, the process offers no benefit for developers. This aspect is also key to the bill fulfilling its better regulation requirements.

The White Paper is fairly quiet on the use of future use zones. BWEA's comment is that renewables must be placed where the resource originates. For tidal devices this will be in very specific areas which will need protecting. For wind or wave, resource is not so specific and dividing up areas of the sea specifically for these technologies may not be appropriate. Future use zones must not create a presumption against development outside of the zones. The main problem is that data and technology changes very rapidly and these zones may not be suitable for development in the future.

BWEA believe that the MMO is the right body to be advising and drafting the plans as they will be keepers of the data used to inform the plans. If conflict is still present in the plan there needs to be a hearing aspect to the formation of the plan. This will aim to resolve conflict if this has been unable to be satisfactorily dealt with by the plan.

## **Licensing**

BWEA is extremely supportive of a one project; one licence approach to licensing and consenting. It therefore fully supports the need for only one Section 36 licence/consent for renewable energy installations. However, BWEA does have some reservations about the MMO being competent authority rather than the department responsible for energy. Streamlining the consenting system is important. However, it is not the legislation that causes the most problems. Timetables by which consultees must respond should be published and the MMO must enforce these timetables strictly.

Some thought must be given to how this instrument is delivered. Section 36 as it currently stands is a very inflexible instrument. If changes need to be made to a Section 36 application the whole application must be resubmitted. In comparison, FEPA is a fairly flexible instrument and changes can be made without having to resubmit the whole application. Therefore changes to the legislation must ensure that either s36 consent has flexibility written into it or that a deemed FEPA licence is granted.

The White Paper asks for ideas as to how to resolve the problem of public inquiries for onshore works when the offshore works have consent. This is a difficult issue to deal with and subject to removing the right to objection of a Local Authority, BWEA see little way forward on this issue. It is hoped that the policy outlined in the planning white paper can deal with this aspect, though BWEA will need more clarity about how these two sets of proposals will work together.

The proposals for licensing for renewable energy installations still leave a big question mark over responsibility between the MMO and the Secretary of State. When asked at the launch who would be granting the Section 36 licence BWEA was told that this would be the Secretary of State for Department of Trade and Industry. However, the White Paper seems to suggest that the MMO will be the competent authority and will therefore

be signing off the Section 36 consent. Now, the planning white paper indicates that projects over 100MW will be decided by the new Infrastructure Planning Commission (IPC). BWEA would appreciate this issue being resolved so that we can plan with confidence, knowing who will be making the final decisions.

BWEA would be most unhappy if it was to be solely an MMO signing off the Section 36 Consent. BWEA believe that this system will fracture and fragment energy policy from delivery. The White Paper is also unclear as to the line of accountability for energy policy in the marine area. Does it reside with DEFRA because the MMO is a DEFRA sponsored body or does it still reside with DTI? The planning white paper proposals complicate matters further, with potentially two licensing bodies, with which makes the decision dependent on project size, and with one independent and one linked with DEFRA. BWEA is worried that there is potential for confusion here, and would strongly welcome early clarity on how these two sets of proposals are intended to work together.

It is not clear why the MMO has to be the consenting authority. In fact, it is not clear why there is a disparity between 5.91 (oil and gas) and the new system for Section 36. If the oil and gas system is administered by the DTI, why can the new renewables licensing system not be administered by the DTI? It is argued in the White Paper that the oil and gas system is one which they are happy with and works well for them. BWEA have been stressing for the entirety of the consultation on the Marine Bill that although there are some issues with the current system, it isn't actually broken. Problems with the system such as delays through statutory advisors will not actually be changed by moving it to an MMO. All that moving it to an MMO creates is uncertainty through the bedding in of the system and a possible lack of resource and loss of skills. BWEA does not believe that this will necessarily happen, but there is always the possibility, and in a fledgling industry such as marine renewables, this uncertainty could have great impact. This would be damaging for the environment, the industry and the UK's government's desire to be a leader in developing offshore renewable technologies.

Generally, the interaction between the Marine Bill proposals (which have been developed over a considerable period) and the planning white paper proposals (which have come forward quite rapidly) is an area of concern. BWEA would argue against an arbitrary approach to thresholds (ie the 100MW point as suggested in the planning white paper) because this could lead to a division between projects when environmental impacts may be very similar. A division between an IPC and MMO also would lead to duplication, an issue that the Marine Bill was trying to solve. Again it is very difficult for BWEA to comment when the new planning regime is still under development that may still fundamentally conflict with some of the planning and licensing proposals in the Marine Bill White Paper.

BWEA note that the MMO would have the power to review and modify a licence. BWEA understand that this is necessary in creating flexible working licences that are adaptive to the environment. However, these changes should only be made if they can be shown to be reasonable and proportional.

BWEA would also like to see the recently announced safety zone applications become part of the one-license approach, so that an additional application is not required for this.

## **Nature Conservation**

The proactive approach of the White Paper is to be commended. The need to halt biodiversity decline is important and the timetable for a network of sites is feasible and one which the UK as a whole can work towards.

BWEA asks that the bill's approach to marine conservation is proportional. At the moment offshore renewable development as an industry is regulated disproportionately in terms of its effect on the environment when compared with other sectors such as fishing, which has little regulation and is considered by NGOs to be extremely damaging

to the environment. For instance, consideration must be given to the objectives for Marine Conservation Zones (MCZ). A highly protected MCZ may be set up. Does this still mean that renewable arrays cannot be placed within it? It is important to recognise the importance of complimentary activities within marine conservation zones. For example, wave renewable energy arrays and fishing no-take areas.

The bill says it is based on an ecosystem approach. There are many divergent opinions on what exactly this is. Any Marine Bill or guidance surrounding it must clearly state what the ecosystem approach is so individuals and sectors are left with no doubt as to what is being proposed.

BWEA support the approach to consultation on marine conservation zones as laid out in paras 6.52 to 6.56. However, DEFRA may want to consider whether the option to hold hearings will be advantageous if an MCZ is considered to be extremely contentious. BWEA also support the approach set out in paras 6.40–6.43.

BWEA feel that a good understanding of the need for flexibility is present within the ideas for MCZs. This will allow protection of habitats and the ability to review the influence of renewable technologies on MCZs. The White Paper does not express whether this would include the ability to move boundaries. Would there be criteria for assessing when boundaries need to be moved? BWEA believe there should be more consultation on these issues or that flexibility of the MCZs should be built into the initial consultation and objectives of the MCZ.

BWEA calls on DEFRA to replace all coastal and marine sites with one established system of MCZ's. All sites can be subsumed into this system and the objectives of the site would make it clear what the site was intended for and why it is placed in such an area. This would ensure that there are no disparities between sites and a simple, effective and useable system is available to all. For instance, a database could easily be set up as part of the MMO website where individuals can access the details of the MCZ and find out what exactly its objectives and protection is. This would ensure that a standardised approach to marine conservation areas is applicable across the UK and would therefore be easier for everybody to use.

BWEA ask that the process for setting up MCZs is tied into the MSP process. Marine conservation and MCZs should not be able to jump the queue when it comes to how they are subsumed into any marine plan. Given that some MCZs may have an extremely large space allocation it is vital that their allocation is formed in line with the marine plan and not before.

## **Marine Management Organisation**

BWEA support the vision of the MMO apart from it being the competent authority for renewable energy licensing.

BWEA feel that it is important for the MMO to be seen to be independent. The cross government sponsorship will help maintain this and being accountable to the DEFRA Minister means that there is some democratic accountability still available. However, BWEA believe that the MMO as competent authority for renewable licensing will reduce accountability of the government in marine energy matters.

BWEA is unhappy with the MMO as competent authority. The idea of having the MMO as the competent authority stems from Government efforts to depoliticise the planning process. However, on large infrastructure projects such as offshore wind farms BWEA find it difficult to see how a decision to an Application could be anything but a political decision. Because of this, there must be political accountability in the form of a Minister making the decision to grant the licence.

The approach to roles and workings with many statutory bodies is a sensible one. There is a difference between many statutory bodies and the sustainable development work of the MMO. For instance, Natural England is a conservation body and this would not sit well within the ideas of sustainable development. BWEA also feel that the merging of statutory bodies into the MMO would be unworkable.

BWEA is worried about the costs and skills base issues that will surround the MMO and it is these which need to be guaranteed in order that certainty can be gained for the offshore renewables industry.

I hope that you find these comments helpful. If you have any queries regarding this response please contact me at the about details.

Yours faithfully

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