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Consultation on a Marine Bill

BWEA Response – 23 June 2006

The Marine Bill consultation was launched on 29 March 2006. This is the British Wind Energy Association's (BWEA) response to this consultation.

BWEA is the UK's foremost renewable energy association who are championing the interests of wind, wave and tidal stream energy. The prominence of the energy resources in the offshore area means that offshore wind, wave and tidal stream energy are set to provide and contribute substantially towards the UK's renewable energy targets. For this reason BWEA takes a keen interest in the marine environment and any proposed legislation that may affect it.

This response seeks to answer the questions set by Defra giving reasoned answers backed up by evidence. However, due to the wide ranging nature of the consultation, often the answers are conditional. The Marine Bill is as an opportunity to achieve integrated resource management and sustainable development and so to overcome some of the real issues affecting the marine environment. BWEA hopes that this response can be seen as a positive and constructive approach from the offshore renewables industry to facilitate these objectives being met.

The Marine Bill

1 Key Asks

The following characteristics are necessary for the Marine Bill to meet its objectives:

- 1.1 Flexibility: The Bill must maintain this as a key element to ensure it reflects advances in our understanding and the dynamic nature of the marine environment. Flexibility is also necessary to accommodate the nature of development in the marine environment, future advances in technology and to meet changing needs/priorities for use of marine resources in the future.
- 1.2 A homogenous approach to the marine environment and the legislation that regulates it: The Bill must consider how it works within European and national legislation and the so that it complements these regimes rather than adding extra layers.
- 1.3 Adhere to the requirements of better regulation: The Bill should not add to bureaucracy and should be fit for purpose. For instance if an existing organisation can do the job of the Marine Management Organisation it should be given the resources to do so.
- 1.4 Transparency and accountability
- 1.5 Must add benefit over and above the present system, for example by increasing certainty over the suitability of areas for development, reducing cost and risk for industry.
- 1.6 Bring forward opportunities for future site awards.

2 Fundamental necessities to the working of a Marine Bill

The consultation lacks key information and answers on several important strands that underpin the ability of the bill to deliver its objectives. In order for BWEA to fully support this Bill, these strands must be comprehensively dealt with.

2.1 The Issue of Devolution

- 2.1.1 The consultation recognises the rights of the devolved administrations to take a different path from England on the Marine Bill and the way they manage the marine environment. However, it is important to note that resources and ecosystems offshore don't necessarily recognise legislative boundaries or borders and that many users of the sea may operate UK wide.

Firstly, this will not resolve the simplification of consenting for those sectors that operate UK wide. Secondly and more importantly if Marine Spatial Planning (MSP) is not UK wide, its value in facilitating sensible or rational planning decisions will be limited and it may lead to greater uncertainty, a problem that the Bill was trying to resolve. There are sensible reasons why renewables should be addressed on a UK wide basis. National MSP could cut across this and provide

devolved administrations with a mechanism for challenging UK wide planning policy for these activities. It can be seen from the terrestrial planning system that UK wide policies filter into the devolved and regional areas. If devolved administrations did not undertake this approach the whole impetus behind the Bill would be lost.

- 2.1.2 If there is to be a Marine Management Organisation (MMO) without jurisdiction across the UK, problems may arise. Firstly separate devolved MMOs may operate on a different set of priorities that lead to inconsistent application of UK policy. This could lead to duplication, extra cost and less transparency, directly contradicting the principles of better regulation that the Bill is based on. A related issue is that of data collection and accessibility where consideration must be given to how this will be resourced and managed for datasets that straddle administrative boundaries.

2.2 **Information / Data**

- 2.2.1 The issue of data, or the lack of it, in the marine environment is a fundamental issue that causes many practical problems for resource management and sustainable development. Without good understanding of the marine environment for all sectors it makes development and protection of the environment a particularly difficult task. Data is needed in order to underpin a good accurate and well thought out process of MSP. At present, developers incur substantial cost in data collection and analysis. These costs are often incurred prior to any consent being granted and therefore associate with a high level of risk that no revenue will ultimately be forthcoming. This risk is exaggerated by the paucity of data for key species and habitats. BWEA welcomes the opportunity that the Marine Bill provides to address this problem but is concerned that relying on insufficient data could prove the undoing of a spatial plan when more localised planning is taking place. Without accurate data it will be difficult to understand how the plan can go beyond being a basic mapping tool to identify resources and constraints. For example, as experience with particular Round One and Two projects has shown, identifying future use areas on the basis of present information, even following a Strategic Environmental Assessment (SEA), does not necessarily add certainty for developers. Similarly, rigorous criteria and data are necessary for appropriate marine conservation designations. In light of the gaps in our knowledge of environmental criteria and other constraints on development, a flexible, not prescriptive approach will be necessary.
- 2.2.2 In order to ensure that "good" levels of data are required there needs to be large amounts of up front investment to gather this data. Experience in renewable development has shown us that it would take 5-10 years to reach this level. The problem is that without this level of data, uncertainty is likely to increase because any plan based on inadequate data will prove to be inaccurate or possibly not fit for purpose.

2.3 Cost / Resources

- 2.3.1 The Marine Bill requires adequate resources to obtain its objectives or it could be associated with stagnation in decision making that would be detrimental to both development and the environment. Confidence that new opportunities will arise in the (near) future is fundamental to the continued development and evolution of the offshore renewables industry. Resources must be front loaded so that SEA processes are accurate, detailed and extensive. This in turn will effect the development of the plan and so on. It is quite clear that Defra's MCEU struggles from a lack of resources and this in turns leads to delay and uncertainty in the development process. The RIA for MSP goes some way to defining how much MSP may cost and this in itself warrants the fact that this must have full support of the Treasury in order for it to operate properly.

2.4 Harmonized approach to marine regulation

- 2.4.1 It is important to point out that the Marine Bill is a huge undertaking in that it presents an opportunity address the fractured nature of legislation and so to reduce the regulatory burden for developers. BWEA has concerns that unless individual aspects are treated homogenously and thoroughly, then the regulatory burden will increase rather than decrease. This is evidenced by the legislation which already exists in this arena, only some of which renewables encounters (European and international on top of national and together with environmental legislation). Unless the bill works to address the fractured nature of legislation in the marine environment it is difficult to see how the regulatory burden will be lightened. In fact it could lead to additional confusion.

If these issues are not addressed comprehensively, BWEA fails to see how the bill can progress in a sensible and coherent manner.

3 Marine Spatial Planning

A well-resourced and managed system of Marine Spatial Planning (MSP) offers fantastic opportunities for rational and transparent decision making, leading to new opportunities for development and increasing certainty and reducing costs and risk for industry. However, it is important to note that, to date, offshore renewables industry has not been hindered by a lack of MSP but a lack of data (Round 2 SEA). MSP must prove its worth over and above a simple data access scheme that developers can use. The BWEA advocate the implementation of MSP if it adds benefit to the system of development in the marine environment. One benefit could be reduction in environmental impact procedures (ie stream-lining scoping options). BWEA believes that MSP has the potential to be beneficial to both the environment and development in the marine environment and for this reason it is right to consider creating a system of MSP (Q1). However, BWEA is still cautious of marine spatial planning for the following reasons:

3.1 Issue of time and delay:

The process of creating a plan will take many months, even years, to complete. This can be evidenced from the terrestrial planning systems. This must not prohibit opportunities for new development in the meantime. In addition, the marine environment is extremely dynamic. It will be difficult to see how plans can be relevant when based on data that is no longer accurate. This does not mean that plans shouldn't be developed but

questions whether they can be considered to be legitimate. For this reason is difficult to see the logic in making detailed plans binding.

3.2 Issue of Data:

Accurate up to date Data will be necessary when formulating the more localised parts of the plan. BWEA believes that to undertake the more detailed parts of the plans, say at a regional or sub-regional level, data is crucial. Again with the problems of inaccuracies in data it is difficult to see how a plan can be binding. Once a plan is formulated, it is concrete until it is reviewed. Being stuck with an unworkable plan will be worse than having no plan at all.

3.3 The issue of Flexibility:

Because of the problems surrounding data, flexibility is vital. It is possible to see that some flexibility can be built in to the plan by reviewing it at certain stages. The MSP pilot programme suggested every 5 years. However, it is arguable that this might not be enough in some areas where the environment changes rapidly, such as in many estuarine areas (the greater Wash, the Thames) and more dynamic coastlines (e.g. the Holderness coast or Morecambe Bay). Will the process be able to cope with reviews of less than 5 years? Will there be the funding and resources to do so? The consultation makes it clear that for MSP to work, flexibility is the key. However it doesn't state how this flexibility will take shape. Where a plan is both prescriptive and binding, flexibility may be limited if the licensing body are being asked to go against the plan. This could result in legal challenges against decisions when the regulator was simply being flexible. For BWEA to fully embrace MSP the issue of flexibility must be fully addressed and explained. There needs to be a process for monitoring progress with the plan, and this does seem to be underplayed in the consultation.

The issue of flexibility combines with the issue of stakeholder involvement. If plans are to be binding there must be community and stakeholder involvement (probably through a system of scrutiny and adoption as is followed in the terrestrial planning process). Simply the plan needs flexibility but community involvement and the process that goes with it could be a tremendous hindrance. This must be addressed.

3.4 Issue of new technologies:

It is important to note that offshore renewables is rapidly expanding and as developers seek to gain more MW from the offshore resource, technology and designs are likely to change. A plan must account for this. Importantly it provides the opportunity for the safeguarding of resources for potential future development. With regard to wet renewables this will be crucial in ensuring that other development or designation (MPAs etc) does not sterilize the area for such future use. However it needs to be stressed that any such areas do not lead to a presumption against development outside of these areas.

3.5 The issue of conflict:

In order to ensure that any conflict between marine users, stakeholders and the marine environment is resolved, large amounts of time will have to be front loaded into the process. MSP could provide a system that give preferred and future use to certain areas. BWEA would welcome this approach especially for those technologies that are reliant on specific

geographically based resources such as tidal energy. BWEA needs to see more work on how certain sectors get allocated preferred status as it was clear from the pilot study that this was an extremely difficult issue to overcome and it has not been properly addressed in the consultation.

BWEA believes that there are a great deal of benefits to be taken from MSP but there needs to be more substance behind the proposals in the consultation on the practical implications before it can fully embrace it. BWEA can see the sense in a binding plan, certainly at a higher level of policy conflict resolution and development strategy but has difficulty when this is applied at a lower more localised level because the flexibility that is needed to cope with the lack of data, a dynamic marine environment and unknown future needs/priorities that could change our marine resource requirements.

To ensure that MSP is fit for purpose and provides the maximum benefits for industry, other marine users and the marine environment, BWEA recommends that any plans should be non-binding at first (Q5). This will allow time for the UK wide gathering of data that would allow for an informed and rational plan. It also allows for the plan to develop and can identify problems and mistakes that have been made without tying individual sectors to a perhaps unworkable plan. Once these problems have been ironed out and sectors are familiar with the workings of the plan and the system it should then become binding. This would follow the precedent from the terrestrial planning system, where plans only became binding when they were robust and comprehensive enough. Tying developers into an unfamiliar, potential damaging process would be against the principles of better regulation.

4 Marine Licensing

- 4.1 The first point to be made is that although the current system has its faults it does not necessarily need whole scale revision. What is clear from renewable developers is that the main fault within the system is process, resource and communication rather than the legislation itself. Because the consultation is aiming towards a Marine Bill, the text is focused on the options for legislative reform. It therefore underplays the opportunities for process improvements that could be introduced by regulators. Thus it needs to be asked where primary legislation would add benefit over reform of process itself. BWEA ask that process improvements must be delivered as well as simply just changing the law. However, the industry acknowledge the vast amount of experience and knowledge that has been gained since the award of Round One and would stress the importance retaining this
- 4.2 It must also be remembered that other consenting regimes are excluded from the Marine Bill. The exclusion of various landward regimes (e.g. Water Resources Act, TCP Act) will do little to assist development projects at the waters edge that will still need to deal with a plethora of different (and sometimes conflicting) sectoral requirements. The Marine Bill must be able to mesh coherently and rationally with these regimes in order for the bill to work at the coast, otherwise it will not meet the requirements laid out at paragraph 1.
- 4.3 As there is the chance to revise the system, BWEA lays down some arguments for the various options given in the consultation.

- 4.4 Option number 1 “do nothing” is clearly not an option even if this is addressing issues of process rather than legislation.
- 4.5 Option number 2 “merging of FEPA and Coastal Protection Act (CPA) regimes”. BWEA feels that this has to be a baseline of any simplification of consenting and licensing within the offshore environment. The Coastal Protection Act 1949 will be over 55 years old and is quite clearly not fit for purpose in some circumstances. Many activities the Coastal Protection Act seeks to licence would be better covered under a FEPA Licence as this would help to avoid duplication, and would therefore be better off under a single licensing regime. At the very least this would seem to suggest a sensible option which should be taken as read
- 4.6 Option 3 a simplified single consent administered by the sponsoring department of a particular sector and option 4 is an integrated regime possibly requiring a single regulatory body. BWEA states that a simplified sector regime could be introduced provided it does provide the savings in time, cost and environmental impact regulation streamlining that is advocated. BWEA envisages that a simplified licensing system could be based solely around the section 36 Electricity Act 1989 for the renewables sector. Section 36 is fundamental to the electricity generation consenting process and should be kept within the department responsible for energy consents. BWEA recommends a single sectoral consent provided by the governmental department responsible for energy consents.

5 Why keep s36?

- 5.1 Although at different stages in their development, both offshore wind and wave and tidal are at a critical stages of their development that delays, such as the introduction of new legislation and organisations, will no doubt hinder. Delay translates into uncertainty for developers and their investors. It would be foolish for the UK to delay development of these industries when it has the potential to be a world leader in these sectors and help establish home grown industries.
- 5.2 S36 allow government to focus its renewable generation policy through a single legislative instrument. To lose this would weaken the government's ability to keep to its international and national commitments on renewables and climate change.
- 5.3 Much work has been done to make section 36 applicable offshore including work on a statutory instrument on applications for consent. To move away from this would be risks wasting this work.
- 5.4 Moving licensing away from those consenting offshore energy risks losing the wealth of experience that has been built up in these departments. Loss of experience translates into delays and extra costs both for government and industry. This would seem to run contrary to better regulation principles.

6 Why a simplified sectoral regime for renewables?

- 6.1 A simplified regime will add many benefits. The following arguments lay out why s36 should not be subsumed into an integrated regime and the benefit of a simplified system.

6.1.1 The consenting body will be responsible for the policy governing the consent:

It is becoming clearer by the day that the UK will be facing an energy generation problem especially surrounding security of supply. This problem needs no advertisement with the forecast decline in the UK's Oil and Gas reserves and the UK's growing reliance on overseas gas imports from more unstable areas of the world. To do this we need to ensure that the UK's energy policy, and responsibility for implementing that policy, is kept in one department's hands. If consenting is moved out of the responsible department's hands this policy will be fractured making it harder to implement. It is difficult to see how a body responsible for an integrated regime can focus on this extremely important issue whilst having to maintain priority for all the other policy marine interests that it will be looking out for. BWEA believes that this is a fundamental consideration that the drafters of the bill must consider.

6.1.2 The ability to resolve conflicts:

It is extremely likely, because of the multiple use nature of the marine environment, that conflict will arise that cannot be solved by negotiation. This will be reflected by the inevitable clash of national policy. If the regulating body managing an integrated regime has to give all policy equal weight then it will be extremely difficult for it to resolve large scale conflict. By transferring this decision to the consenting body it means that the decision will be resolved at a secretary of state level. Thus rather than having both governmental and private interests lobbying the regulating body to make a decision, the conflict is resolved in a straight forward accountable way with one minister making the decision.

6.1.3 This will bring the offshore renewable consenting process in line with the onshore consenting process:

At present any onshore renewable generating plant over 50MW has to be consented by the DTI. Moving away from this system will mean that energy policy implementation will become fragmented. This is a situation the government and BWEA wish to avoid.

6.1.4 Responsibility and accountability:

The Secretary of State responsible for energy provides a clear line of accountability within the governmental system. He is responsible for delivering government energy and renewable targets. When there are problems with in the system it is clear where industry needs to go to make themselves heard. An integrated regime and the body that needs to administer, it will not provide the same accountability when it has to serve the needs of several different sectors. For instance, if there proves to be increasing delays within the integrated licensing system, who is responsible for it? The industry can go to the Secretary of State but as he has no control over the licensing body. How is the licensing body made accountable to industry? The fact that this system is already in existence means that a new layer

of bureaucracy does not have to be added. The system as it stands or with a simplified s36 consent, means that if problems arise in the consenting process, the industry have a clear idea about where the responsibility lies. Problems can't be moved onto other ministers or new bodies. This meets requirements under better regulation as set out at 9.42 of the consultation, especially transparency and accountability.

6.1.5 This does not mean a rubber-stamping of renewable energy developments:

A key benefit for industry that could be delivered by the Marine Bill is the reduced cost and risk associated with site selection that would come from greater data availability and accessibility and the existence of a marine spatial plan. However, this does not imply that renewable energy developments will be 'rubber stamped'. With EU habitats legislation in place and with the right of appeal rubber-stamping is not possible.. Under section 36 the DTI has to consider the potential effect of the development upon the environment. Developments of this size will have to undergo the EIA process. This process is laid down by EU law which will not be changed under the marine bill. The EIA process is one which the offshore renewables industry recognise is important to satisfying stakeholders and the consenting regulator and that the industry supports. The process to getting a licence once the application has been made takes time. Detailed and constructive talks are held with consultees to ensure that objections are resolved. This process means that a consent can take anywhere from 9 to 12 months to be administered and normally ensures all stakeholders are happy with the result

6.1.6 Cost savings:

Keeping consenting within the department would save costs.

6.1.7 Harmonised conditions:

The biggest difficulty that separate multiple licences generate is the alignment of conditions across licences. Often conditions will not be succinct or will conflict with one another. Thus it is the simplification of licensing is only one small step. Keeping this within a department that is familiar with the industry would go some way to eliminating this problem.

6.1.8 Simplification of the consenting process:

This removes the duplication that takes place under the present system. It also means that there is a clear application process with one accountable body.

Thus BWEA takes the view that even if an integrated regime is considered worth while for the marine environment there are import strategic reasons for renewable energy consenting to remain outside any integrated regime. We must be able to rationalise the need for delivering a coherent energy policy that can deliver goals in tackling climate change and security of supply. This approach has been used with the oil and gas industry and the same arguments apply.

7 Marine Management Organisation (MMO)

- 7.1 BWEA doesn't agree that there should be a presumption for an MMO unless it creates added value and avoids rather than creates bureaucracy. BWEA points out that the introduction of new organisations never speeds up or simplifies a process at first. It first must be asked whether any role allocated to the MMO can be undertaken by an existing body given the correct resources. Especially if organisations such as JNCC are going to continue to exist within the bill. If it can, this will help to save the cost, delay and lack of expertise that can arise from creating a new organisation.
- 7.2 The MMO (if necessary) must be an independent body that sits outside of government. Its role is that of a data collector and collator; the creator of the marine spatial plan; the holder of the marine spatial plan; a facilitator for negotiation and conflict resolution during the creation of the marine spatial plan and an advisor in the consenting process. The MMO must also have a clear and unambiguous duty towards sustainable development. These should be its core functions.
- 7.3 The role of the MMO is central to not creating another layer of bureaucracy and avoiding unnecessary delays. BWEA finds it difficult to see exactly how this can be prevented if the MMO is used as a new consenting body. It is envisaged that the MMO will use the Marine Spatial Plan as a decision tool and identify how a development will interact with other marine industries and whether it is compatible with relevant policies and objectives. It is key that the MMO facilitates cross departmental working and joined up government and the other functions listed above, most of which flow from the MMO as the keeper and creator of the plan.
- 7.4 The MMO must allow access to the data that it holds and make it easy to access this data. The MMO must be data custodian, responsible for an element of QA, as well as dissemination; it must promote data sharing and make it easy to source data, not simply allow data to be accessed.
- 7.5 BWEA envisages that the MMO must be the holder of the Marine Spatial Plan in order for this process to work. By combining its data sources and this aspect of the MMO's role, it will allow adaptive management of the marine spatial plan to actually work.
- 7.6 The MMO must have a facility for resolving conflicts at a plan creation stage. If stakeholders are to have a fair amount of input into the Marine Spatial Plan then there must be this facility to ensure that the plan can progress without delays.
- 7.7 The reasons why consents for offshore renewables should stay outside of the MMO are listed above in the Consents section.
- 7.8 However it is worth noting that the role of the MMO is very much dependent on budget. The more that the MMO is required to do, the more that this will cost. For this reason it would make sense to leave consenting with the responsible government department.
- 7.9 This also raises the question of how it is going to be possible to run a such a body that adds benefit to the marine environment without it becoming a bureaucracy that actually slows the development process down. In principle we would advocate that all statutory advisors with an offshore interest are absorbed into the MMO but this presents problems that in practice will prove to be unworkable. It must be a practical working body.

that fits into a system. By focussing the remit of the MMO to the marine spatial plan this can be achieved. Careful consideration needs to be given to the practical administration of the MMO in order to ensure the vision is workable.

- 7.10 By allowing access to data, developers have a good reliable source. A public database means that studies are not duplicated and conflicts and hazards can be identified early on.
- 7.11 The BWEA asks that if an MMO is deemed to be necessary, it should have no licensing capabilities and should remain independent with no sectoral persuasion.

8 Marine conservation

The Marine Bill is an opportunity to put marine conservation in Britain on a more rational footing.

BWEA agrees with the consultation document that marine conservation should be based on principles of sustainability and structured on an ecosystem approach.

Recognising that we probably do not know how to achieve sustainability (anywhere) and that the implications of ecosystem management are poorly understood, we can only identify the characteristics of appropriate management of the marine environmental management, rather than its details. Key characteristics will comprise:

- Flexibility. The marine environment is dynamic and knowledge is increasing. It is essential, therefore, that the protection system is able to adapt to change and improved understanding
- Transparency. The reasons for the protection of particular areas and the activities that are proscribed or restricted within them should be clearly stated, freely accessible and consistent
- Inclusive decision-making. Relevant stakeholders should have a meaningful input into the selection and objective setting for MPAs.

BWEA is worried that there is a lack of integrated thinking within Defra on the issue of nature conservation. The first is that Marine & Waterways are leading MSP/consenting/MMO but Wildlife & Countryside are leading on nature conservation issues. This flows from the suggestion that Natural England might be responsible for the entire designation process of MPAs (Q74). Also the fact that there is now the latest round of consultation on "The Offshore Marine Conservation (natural Habitats &c.) Regulations 2006." Essentially, the proposals in the current draft regs are to use a similar system of designation as onshore (SPAs and SACs that will be referred to as "European Offshore Marine Sites") by an appointed body. Consultation by the Secretary of State is required, but limited (i.e. representation can be made once a proposal is notified, but there is no requirement for open dialogue). This legislation will come in before consultation on the Marine Bill is done. If the Marine Bill cannot capture all the processes necessary for meeting this legislation, there will be more levels of bureaucracy and this will open up the possibility of multiple levels of proof and potential challenge. The BWEA ask that considerable thought is given to this problem.

- 8.1 The section in the consultation on improving nature conservation refers back to RMNC and Govt Response "Safeguarding Sea Life". Govt is already committed to MPAs and establishing marine ecosystem objectives. The

nature conservation proposals for ecosystem objectives and MPAs betray a lack of joined up thinking in Defra. Many of the suggested requirements would be delivered by MSP. It is unclear whether MSP will be used to designate marine protected areas or whether they will sit outside of this process. This needs clarification.

- 8.2 The marine conservation areas in the UK are a confusing multitude of different sites resulting from different conventions and legislation. A move to standardise the sites would be useful and easier to understand.
- 8.3 Marine Conservation areas should be a flexible and workable tool to protect the marine environment. They should work succinctly as another sector competing for space in the marine spatial plan and taking into account the needs of each particular region. Allocation of these sites must be done in a clear and transparent manner so that all stakeholders have a clear idea about why the allocation has been proposed. The consultation identifies a number of possible delivery organisations and roles. For this reason any MPA should have to undergo a licensing system similar to a development consent. This would ensure that stakeholders are consulted over the decision and a good understanding of why the MPA is granted.
- 8.4 Marine Conservation areas should not exclude renewable energy development. It is fundamentally important that the MPA network doesn't sterilise the sea bed for existing or future development activities. Allocation of sites should not hinder development already under way. Marine conservation areas should not add to the existing duplication of designated sites with coincidental boundaries. By amalgamating all sites under one particular name that meets the UK's requirements the system is simplified. However, this must be a thorough overview and not just simply adding of a new type of site to an already large list. Otherwise the effort will be a waste of time. MPAs should then specify what development is allowed within it to ensure that developers have a clear idea of where they stand with in the system.
- 8.5 The precautionary principle must be used in conjunction with the proportionary principle to ensure that the correct factors are considered when development is proposed. This is essential in the marine environment where extremely accurate data is often hard to find. By weighing up the benefits of the development a fairer and more considered conclusion can be reached.
- 8.6 It must be recognised that some forms of development are less harmful than others and that in some circumstances can benefit marine biodiversity. To preclude renewable energy devices from areas that would benefit from the constraints they impose on the use of that area (e.g. by reducing fishing pressure) would be non-sensical and a blow to the potential of tackling climate change. BWEA believes that not all sectors have the same impact on the environment and biodiversity and any implementation of MPAs should reflect this. As long as conservation objectives are not compromised, the larger inshore conservation areas should not preclude multiple use development.

BWEA would welcome the chance to meet with the marine legislation team to further explore evidential matters relating to the marine bill. This would allow a more in depth understanding of the evidential issues on both sides.

QUESTIONS 1

Section 8 – Planning in the marine environment

1. Is it appropriate for the UK Government to consider creating a new system of marine spatial planning?

Yes, see 3.1

2. If so, should the Government consider statutory provisions within the Marine Bill in order to implement a new system of marine spatial planning, or should alternative methods be considered?

See 3.6

3. Do you have any view on the broad objectives of marine spatial planning laid out above?

Please see 3

4. What are your views on marine spatial planning as a context or framework for decision-making?

Please see 3. MSP presents one way of managing the marine environment. Ideally and in theory it presents a fantastic opportunity. However the practicalities of various elements of MSP present such great challenges that it is difficult to see how it can present an overall framework for decision making at this present time.

5. To what extent, if at all, should plans be 'binding' on decision-makers and decision-making? (See the initial Regulatory Impact Assessment at Annex 5A for further information).

Because of the problems of data that exist at the moment and the other problems as discussed at 3, BWEA believe that only a higher level/national plan can be binding. For instance this plan will contain targets for offshore renewable energy development and can split this between regions. These can be binding.

6. Do you have any views on the broad underlying principles for marine spatial planning, as laid out above?

See 3

7. Do you have any views on the potential increase or reduction of regulatory burden on Government or business, at either the planning stage or during subsequent licensing stages, as the result of a system of marine spatial planning?

See 3. The production of MSP will be an increase full stop. It must be judged whether the benefits out weigh the burdens.

8. Do you have any views on the geographical application of any new system of marine spatial planning?

See 1 and 3

9. Do you have any views on ways in which regulatory efficiency could be improved in the intertidal zone, if a new system of marine spatial planning were created? (See also paragraphs 8.98 to 8.101)

10. Is this overall approach, involving a strategic marine planning policy statement, followed by spatial plans, appropriate?

If it adds benefit and is non binding at first.

11. Are there particular aspects of, or experience gained from the terrestrial or any other planning system, which should be considered when developing a marine planning system?

Yes non-binding plans to begin until there is a good understanding of how they work and the correct data to back it up.

12. Do you have any views on the elements of a strategic marine planning policy framework statement laid out in this section?
13. Do you have any views on the way in which a strategic marine planning policy framework statement should be developed and the timeframe it should cover?
14. What are your views on the nature and role of the planning body which would undertake the development of spatial plans?

See 7

15. What are your views on the scale, location and possible boundaries of the areas used for spatial plans?

They must be UK wide at highest level working down to regional areas and then focused on areas where there is high use ie Liverpool harbour/Solent

16. Do you think that Marine Spatial Planning should apply in the same way in all parts of UK waters?

See 3 and above

17. What are your views on the need for planning at sub-regional or local level?

Would be necessary to allow future use zoning. It is these areas that require the data and this may cause the problems that are discussed at 3.

18. What are your views on the activities, developments and resources within the marine area, which might be considered within spatial plans?
19. Are there any anticipated future type of marine use, or technological advances, which you think the UK Government should consider when developing the strategic marine planning policy statement or in the marine spatial plans?

The plan must be flexible enough to anticipate any possible future use of the marine environment. If it can not it has failed both as a plan and in its drive for flexibility.

20. What are your views on data and information availability in relation to marine spatial planning?

See 1 and 3

21. What are your views on the plan making process?
22. How should conflicting demands on marine space be addressed in the development of spatial plans?
23. What are your views on the allocation of 'preferred areas' for certain activities, future development or protection of resources?

See 3

24. What are your views on the process of developing maps or charts as part of the marine spatial planning process?
25. Do you have any views on the need to consider the sustainability and environmental impacts of spatial plans, including the use of SEA in the process?

SEA will be integral to the data gathering process to inform the plan.

26. In what ways could Government ensure that marine spatial planning would be open, transparent and inclusive?
27. What are your views on the way in which the rights of individuals or organisations may be affected by the planning process?

BWEA recognises that there are many good consultation methods from the terrestrial system that can be used to ensure involvement. There must be a scrutiny and adoption process if plans are to be binding. However, BWEA points out that this could have inevitable increase on time and a possible decrease in flexibility.

28. Do you have any views on the implementation, monitoring and review of plans?
29. Do you have views on how the duration of time for which plans should apply and how often plans should be formally reviewed or modified outside of such reviews?
30. Do you have any views on how UK Government can ensure marine spatial planning works effectively with other planning systems, particularly in the coastal zone, in order to achieve the aim of integrated coastal zone management?

Section 9 – Licensing marine activities

31. Do you have any views on whether it is appropriate to use the Marine Bill to simplify and streamline the licensing system for marine activities?

See 6

32. Are there any particular emerging trends, new technologies or novel types of activity, which any future licensing system should address?
33. Do you have any views on the inclusion or exclusion of certain regimes from the scope of the proposed licensing reforms in this consultation?

See 4, 5 and 6

34. Do you have any views on improvements that might be made to the process and administrative aspects of marine licensing, which the UK Government could consider throughout the development of proposals for the draft Marine Bill?

See 4.1

35. How can we ensure that the draft Marine Bill reduces regulatory burdens within Government and on business, within the licensing system?

See 4, 5 and 6

36. Are the objectives for a reformed licensing system laid out above sensible?

See 4

37. Are there any other key principles that should be considered as part of any changes to the regulatory system?

See 4

38. Are these appropriate options to consider in this consultation? Are there alternatives to, or variations on the above options, which should be considered? (The initial Regulatory Impact Assessment in Annex 5B which accompanies this section of the consultation invites your views on the costs and benefits of the proposed options)

39. What are your views on the advantages or disadvantages of the 'Do Nothing' option?

See 4, 5 and 6

40. Would Option 1 address the objectives and key underlying principles for an updated licensing system, as set out in paragraphs 9.38 to 9.43 of this consultation document?

See 4, 5 and 6

41. What are your views on the advantages or disadvantages of Option 2, to 'merge the environmental and navigational controls'?

See 4, 5 and 6

42. Would Option 2 address the objectives and key underlying principles for an updated licensing system, as set out in paragraphs 9.38 to 9.43 of this consultation document?

See 4, 5 and 6

43. What are your views on the advantages or disadvantages of Option 3, a simplified sectoral regime?

See 4, 5 and 6

44. Would Option 3 address the objectives and key underlying principles for an updated licensing system, as set out in paragraphs 9.38 to 9.43 of this consultation document?

See 4, 5 and 6

45. What are your views on the advantages or disadvantages of Option 4, an integrated regime?

See 4, 5 and 6

46. Would Option 4 address the objectives and key underlying principles for an updated licensing system, as set out in paragraphs 9.38 to 9.43 of this consultation document?

See 4, 5 and 6

47. Do you have any views on the storage of natural gas in sub-seabed geological structures and the provision of facilities to unload gas that has been transported by ship?

48. Do you have any views on the proposal to create a fit-for-purpose licensing proposals for the storage of natural gas that has been transported from elsewhere, in sub-seabed geological structures?

49. Do you have any views on the capture and subsequent storage of carbon dioxide in naturally occurring sub-seabed geological structures to alleviate the effects and impacts of climate change and ocean acidification?

50. Do you have any views on the creation of fit-for-purpose licensing provisions for the capture and storage of carbon dioxide in naturally occurring sub-seabed geological structures?

Section 10 – Protecting the marine environment

51. Which marine management regimes or processes should include the consideration of marine ecosystem objectives?

To the extent that they can be defined, these objectives should be applied to all marine management regimes and processes

52. Should the consideration of objectives be required through policy guidance, changes to management regimes or a statutory duty?

The implications of this question are not fully understood, so no response is given at this stage.

53. Do you agree that a new mechanism for the designation of protected areas should be introduced in the Marine Bill?

BWEA agrees that a new mechanism for the designation of protected areas is required. This should be based on principles of sustainability and the ecosystem approach.

54. Should the new mechanism complement or replace legislation on Marine Nature Reserves?

See above

55. Which of the purposes listed should the new mechanism cover? Are there any others that should be considered?

BWEA believes that the new mechanism should focus on the ecological purposes.

56. What are your views on site protection measures being used to protect interests other than those for which a site is primarily designated?

BWEA believes that site protection measures should focus on the primary interest features. If MSP is implemented, there would be no real requirement to provide for site protection measures to protect interests other than those for which a site was primarily designated. This highlights the need for integration between MSP and nature conservation provisions.

57. Do you agree that, where options exist, a range of factors including social and economic considerations should be taken into account in choosing between sites?

This requirement is a fundamental part of sustainable development, which BWEA strongly believes should underpin any future changes in the marine environment.

The MPA network must not sterilise the seabed for existing or future development activities.

58. Should we include provision for altering site boundaries, or de-designation of sites? Under what circumstances?

BWEA supports the inclusion of provisions to change boundaries where necessary/appropriate. This could help to underpin the evolution of MSPs and accommodate the changing needs of nature conservation and industry.

59. Do you agree that different marine nature conservation sites will need to have different levels of objectives?

BWEA supports different levels of protection/objectives for different types of MPA and for flexibility in modifying objectives.

60. What are your views on a flexible site mechanism where levels of protection can be altered to meet site needs and objectives?

See response to Q60.

61. What are your views on whether marine protected areas should directly control activities managed at the national level, or provide protection through wider marine management mechanisms? What would be required to make each approach effective?

Both approaches require substantially more data than is currently available. BWEA suggests that site protection mechanisms might best be delivered indirectly rather than directly. A direct mechanism would cut across the proposals for MSP and effectively lead to a separate system of MSP for MPAs. This would do little for integrated marine management.

62. Are there other mechanisms that we should consider introducing for site protection? Should we introduce a requirement for an appropriate assessment to be carried out where activities are likely to cause significant damage to a site?

The implications of this question are not fully understood, so no response is given at this stage.

63. Do you consider that the seaward boundary of SSSIs should be clarified?

Yes. From an industry perspective, boundaries need to be justifiable and clear.

64. Which option would you prefer for the interface between the two regimes? What are the key considerations?

It is questionable whether the primarily land-based management approaches in SSSI legislation are appropriate for the marine environment. BWEA would be reluctant to see SSSI powers extended much below MLWM.

65. What do you consider are the best options for the landward boundary for marine protected areas and the seaward boundary for SSSIs and why?

Landward boundary of MPAs would be MHWS and a seaward boundary for SSSIs as MLWS/LAT, or where it is sensible to include whole estuaries, the boundary might be the estuary closing line/geographic boundary.

66. Are there threats to the conservation of marine species in the offshore area or elsewhere that are not addressed by existing measures and controls? Please give examples.

67. Which option for species protection in the Marine Bill would be most compatible with the principles described in section 4? Are there any other options that should be considered?

MSP is likely to provide a better framework within which to address ecosystem objectives.

68. Do you consider that unlicensed activities currently threaten the conservation of marine ecosystems and biodiversity? If so which activities are of most concern and why?

69. What are your views on the introduction of byelaw-making powers for the control of unlicensed activities?

See response to Q68

70. Are there alternative regulatory approaches to the control of such activities that we should consider?

The implications of this question are not fully understood, so no response is given at this stage.

71. Should any powers to control unlicensed activities be related to marine protected areas, or capable of wider application?

The implications of this question are not fully understood, so no response is given at this stage.

72. What do you think are the most important improvements that the Government could make to the prevention of marine nature conservation offences and the enforcement of relevant legislation?

73. What are your views on which organisations should (or should not) carry out different stages of marine nature conservation functions arising from the Marine Bill to ensure that the principles in section 4 and those in paragraphs 11.16-11.25 are delivered?

This needs to be considered further, given the uncertain role of the MMO. It may need input from Natural England and/or JNCC.

74. Do decisions on which organisations fulfil which roles affect any of your answers on other questions in this consultation document? If so, how?

75. Do you consider that any changes to functions, powers or duties of delivery organisations are needed to facilitate the implementation of nature conservation legislation in the Marine Bill?

Section 11 – The potential for a Marine Management Organisation

76. Have we correctly identified the functions that are the 'core' to deciding whether to create an MMO?

MSP is a core function. Marine Licensing is not. If you have MSP the need for an integrated Licensing scheme falls away because MSP allows an integrated approach. Please see 4, 5 and 6.

77. Are there other functions that you consider 'core' to an MMO? Why?
78. Do you consider that the Marine Fisheries Agency should be merged into an MMO, if established?
79. Do you consider that CEFAS should remain outside an MMO, if established?
80. Have we identified the right marine organisations for potential inclusions in an MMO?
81. Are there other marine organisations that we should be considering merging into an MMO?
82. Do you wish to make any points to be included in our consideration of whether individual non-core functions should be delivered by an MMO?

Rather than a licence coordination point (which would act to create further delay and another hoop to jump through) the MMO could take on a more conflict resolution role making sure that individual organisations are making decisions. This is an idea that can be explored further but would mean that the MMO can retain its independent stance whilst dealing with marine development.

The MMO should undertake all Marine Data roles (11.55, 11.56, 11.57, 11.58)

83. Do you agree that we should exclude the potential transfer of statutory (marine) nature conservation advisory roles to the MMO from further consideration?

Yes – MMO should not be sectorally biased and should be taking a sustainable development approach. This would preclude conservation roles

84. Are there any other 'non-core' functions that we should be considering for inclusion in an MMO?

The consultation identifies a long list of non-core functions that could be included in an MMO. MPAs (the MMO has an important role to play here), marine enforcement (it makes sense for one organisation to take a lead here), co-ordination of data (in MSP pilot BWEA suggested MMO might act as marine info portal aka MDIP) and marine ecosystem objectives (these must be a fundamental part of MSP) as being particularly relevant. Q84 asks specifically whether the nature conservation agencies statutory duties under Natura 2000 should be excluded from consideration.

85. Are there functions that you consider incompatible – i.e. they should not be undertaken in combination – whether by an MMO or another body?

MSP and licensing for large scale, nationally important developments (ie Wind farms)

86. Are there functions that you consider should be grouped together – i.e. undertaken within the same organisation? If so, should this be the MMO or not?

Data managing and MSP

87. Do you have views on the most appropriate status for an MMO?

Non-ministerial independent body like the HSE.

88. Do you have views on the nature of the relationship that an MMO would need with other bodies?

89. Do you have any further information that would assist us in developing the RIA?

90. Are there any other comments you want to make regarding the potential creation of an MMO?

Annex 5A – Initial Regulatory Impact Assessment – Marine spatial planning

91. Do you have any views on the risks associated with the current control system?

Risks are based on uncertainty of when a decision will be reached for a licence and the data required to back this up. This equates to uncertainty through time. An issue that is unlikely to change much through MSP.

The other risk is that a SEA that is not adequate creates really problems. This was the case for Round 2 Wind farms. This has led to real problems for developers such that some projects may never get passed the development stage. This was an Issue of the correct data.

92. Do you have any evidence that either supports or contradicts the risks of the current system as laid out above? We would welcome additional examples, quantified where possible.

It is extremely hard to provide examples of a system that doesn't exist.

93. Do you have any examples of where conflicts have arisen between different marine activities, developments or resources? We would appreciate information about the costs incurred in any such situation.
94. Do you have any examples or information regarding the costs to business of applying for licences that are later refused?
95. Do you have any views on the risks or unintended consequences of any of the proposed options for a system of marine spatial planning?
96. Do you have any views on the potential benefits of any of the proposed options for a system of marine spatial planning? We would welcome quantified information where possible.
97. Do you have any views on how these options might offer benefits to the system for licensing marine activities? We would welcome quantified information where possible.
98. Do you have any views on the potential costs of collating existing available information about the marine environment or collecting additional information?
99. Do you have any information about the costs of existing planning systems which may be broadly useful or indicative in considering a new system?
100. Do you have any views on the potential costs of any of the proposed options for a system of marine spatial planning? We would welcome quantified information, where possible.
101. Do you have any views on the potential impacts of any of the proposed options for a system of marine spatial planning on SMEs? We would welcome information, quantified where possible.
102. Do you have any views on issues relating to competition regarding any of the proposed options for a system of marine spatial planning?
103. Do you have any views on issues relating to enforcement, sanctions or monitoring regarding any of the proposed options for a system of marine spatial planning?

Annex 5B Initial Regulatory Impact Assessment – Proposals for reform of marine licensing

104. Do you have any general information about the costs of the current licensing system?
105. In particular, do you have any specific evidence in relation to the applications process within the current licensing system, as follows:

- a. Have you had to obtain one or more licences or consents for a particular project, development or activity? If so, what costs did you incur as a result of the application process, and how long did it take?
 - b. Does the length or speed of the application process have significant cost implications for you?
 - c. Have you undertaken or been involved in an advertising process in relation to a project development or activity, either as a business or other participant? If so could you provide examples of the length of this process, and the costs that you incurred?
 - d. Have you been involved in preparing an Environmental Impact Assessment for a project, development or activity, either as a business or other participant? If so could you provide examples and explain the costs that you incurred?
106. Do you have specific examples of the compensation / mitigation aspects of the current licensing system? Can you provide evidence of how complex it was, and costs you incurred?
107. Do you have any views on the risks associated with the current licensing system? Evidence which supports or contradicts the risks laid out above or additional examples, quantified where possible, would be very useful.
108. Do you have any specific information with regard to the risks associated with the current system, as follows
- a. Have you felt that you have been treated inconsistently as a result of the separation of different marine licensing regimes and the regulators responsible for them? If so please could you outline the situation that caused this treatment.
 - b. Are there any instances where you believe the current marine licensing system was unable to take relevant environmental, social or cultural factors into account during decision making? If so could you provide examples, and quantify the environmental, social or cultural costs or disbenefits that resulted.
 - c. Have you, or anyone you are aware of, been discouraged from investing in an area as a result of the complexity of the current marine licensing system?
 - d. Do you believe that an excessive regulatory or administrative burden has been placed on you, or someone you know, as a result of duplication in marine licensing legislation or systems, or the need to obtain more than one licence for a particular project? If so, could you place an estimate on the excessive cost placed on your business on an annual basis.
 - e. Has the current marine licensing system inhibited or threatened to inhibit your use of new technologies or types of marine activity? If so could you explain the cause and estimate the cost to your business.
 - f. As an individual or business, do you believe that there is any lack of transparency or certainty within the current marine licensing system, which has adversely affected you in any way? If so could you provide examples of where this has occurred, and estimate the cost to your business.
 - g. As a participant in the licensing system or other interested party, are there instances where you believe a lack of transparency or certainty within the current marine licensing system, has meant that you were adversely affected by a decision in relation to a particular development or activity? If so, could you provide examples of where this has occurred and estimate the economic, environmental or personal cost that was incurred.
109. Do you have any views on the risks or unintended consequences of any of the proposed options for a reformed licensing regime?

110. Do you have any views on the compliance with or enforcement of any of the proposed options for a reformed licensing regime?
111. Are there any other sectors or groups which would be affected by a reformed licensing regime?
112. Do you have any views on the potential benefits of any of the proposed options for reform of the licensing regime? We would welcome information as to the potential benefits, quantified where possible.
113. Do you have any views on the potential costs of any of the proposed options for reform of the licensing regime? We would welcome information as to the potential costs, quantified where possible.
114. Do you have any views on the potential impacts on SMEs of any of these options for reform of the licensing regime? We would appreciate information about the possible impacts, quantified where possible.
115. Do you have any views on competition issues relating to any of the proposed options for reform of the licensing regime? We would appreciate information about the possible effects on competition where possible.
116. Do you have any views on issues relating to enforcement or sanctions regarding any of the proposed options for reform of the licensing regime?

Annex 5C Initial Regulatory Impact Assessment – Improving marine nature conservation

117. What costs would business or others incur if further deterioration in marine ecosystems or significant losses in biodiversity were to occur? Please provide quantified examples where possible.
118. What are the benefits for businesses and others associated with improvements in the state of marine biodiversity? Please give quantified examples where possible.
119. Would businesses benefit from clearer guidance on what needs to be taken into account in environmental impact assessments?
120. What are the financial costs and benefits for businesses and others associated with certainty or uncertainty over what restrictions Government might place on development or other licences (for ecological reasons)? Please give examples.
121. To what extent do businesses currently take account of the Government's ecological objectives (such as biodiversity action plan targets) in environmental impact assessments? Please give examples.
122. What costs are involved in considering ecological objectives (such as biodiversity action plan targets) environmental impact assessments? Please give quantified examples where possible.
123. To what extent could the costs involved in considering ecological objectives be reduced through the introduction of clearer, more coherent and accessible Government objectives and the provision of more information, data and guidance (as proposed in this consultation document)?
124. What are the costs of modifying, mitigating or compensating for development proposals, fisheries, leisure or other activities to help meet ecological objectives? Please give quantified examples where possible.
125. How far would businesses be willing to modify activities to help deliver a non-statutory set of marine ecosystem objectives? What level of take-up measures to deliver non-statutory ecosystem objectives would you anticipate across marine industries?

126. Would there be other costs associated with the implementation of marine ecosystem objectives which should be taken into account? Please give quantified examples where possible.
127. How would you value the benefits to business and others in improvements in the state of marine biodiversity in marine protected areas?
128. What are the costs of modifying, mitigating or compensating for development proposals, fisheries, leisure or other activities to help conserve protected areas? Please give quantified examples where possible.
129. What are the costs of agreeing and implementing voluntary protected areas?
130. To what extent would businesses be prepared to modify activities to avoid causing significant damage to voluntary marine protected areas? What level of take-up of voluntary site conservation measures would you anticipate across marine industries?
131. How would you value the benefits to business and others of an improvement in the state of marine biodiversity in offshore sea areas (beyond the 12nm from the coast)?
132. What are the costs of agreeing and implementing voluntary or sectoral measures for the protection of important marine species? Please give quantified examples where possible.
133. To what extent would businesses be prepared to implement voluntary measures such as codes of conduct for the protection of important marine species? What level of take-up would you anticipate across marine industries?
134. What would the costs and benefits be to businesses and others of modifying currently unlicensed activities to prevent significant impacts on biodiversity? Please give quantified examples where possible.
135. What are the costs of agreeing and implementing voluntary controls on unlicensed activities such as whale-watching codes?
136. What level of take-up would you expect to see of voluntary measures designed to prevent unlicensed activities from having significant impacts on marine biodiversity, such as voluntary restrictions on recreational activities in sensitive areas / seasons?
137. Would small businesses expect any of the nature conservation proposals in this consultation paper to impact specifically or disproportionately on your business? Please include an assessment of the financial and other impacts on your business sector.
138. Would any of the nature conservation proposals in this consultation paper be likely to affect the competitiveness of your business or sector? Please complete the competition filter test and include an assessment of the financial and other impacts on your business sector.
139. What costs would be entailed in the effective enforcement of the proposals in this consultation document? Please include an analysis of any cost estimates provided.
140. To what extent do you think there is scope for more efficient use of existing enforcement resources? Please give examples.