

The Marine Bill

Offshore Renewables Perspective



BWEA - Championing the UK wind and marine renewables industries



February 2006

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This document has been compiled by BWEA in response to the 2006 consultation on the Marine Bill. Its purpose is to provide guidance to the offshore renewables industry, and other interested parties, on what will be a significant piece of legislation around the management of economic and environmental interests off the UK coast.

The Marine Bill comes at an important time in the development of all offshore renewable energy technologies and it is therefore important that the industry consider this document in their response to the consultation. Indeed this booklet is designed to give our members a greater understanding of the Bill, lay out some of the basic principles behind it and explain the reasoning behind BWEA's position.

This 'Offshore Renewables Perspective' follows almost 12 months of work by the BWEA Marine Bill Steering Group and regular meetings with stakeholders and Government officials. The Steering Group comprised of wind, wave and tidal energy technology and project developers, environmental consultants and legal advisors.

BWEA, February 2006

What is the Marine Bill?

The increasing use of the sea is creating pressure and conflict in respect to resources and space. Biodiversity in the marine environment is also falling. These issues coupled together mean that there is the need to solve a growing problem. The Marine Bill is the UK Government's attempt at trying to impose a better integrated system for regulating and encouraging the marine environment.



The Marine Bill will look at the following areas:

- **Marine Consents:** Currently there are a number of overlapping consenting regimes operated by different organisations and different Departments within the UK Government and the devolved administrations. It is hoped that these can be streamlined; made to be more transparent and will aid development decisions.
- **Marine Management Organisation (MMO):** The case for a new Marine Management Organisation in England and the range of functions it might take on, is being debated. What its role will be exactly is uncertain but the idea is it could be responsible for planning in the marine environment and possibly also consents.
- **Marine Spatial Planning (MSP):** Marine Spatial Planning is exactly what it says. It is the idea that areas of marine space are allocated for different uses taking into account present use and also possible future use. The idea being that this will help solve conflict.
- **Marine Nature Conservation:** This is to help prevent the decline in biodiversity. The idea is to look at greater protection for marine biodiversity, a set of marine protected areas and the management of these areas.
- **Coastal and Estuary Management:** In response to a European Union recommendation, integrated coastal zone management will be addressed. Current arrangements for coordinating activities in busy estuaries and coastal areas are complex and inconsistent, split between authorities or even incomplete. In light of developing proposals for a system of marine spatial planning, consideration will be given to the need for management arrangements for coordinating activities in estuaries and coastal areas to be strengthened.
- **Fisheries Management and Marine Enforcement:** The effective managing of the fishing industry.

Why is it being discussed now and where has it come from?

The findings of a series of reviews and reports dating from the marine Stewardship report in 2002 and the "Seas of Change" Government response in 2003 suggested that a new approach to managing all marine activities is needed.

On 8 December 2004, Tony Blair and Margaret Beckett launched Defra's Five Year Strategy, which included plans for a new Marine Bill. There have been a number of commitments made about the Marine Bill. The Government's 2005 manifesto commitment was:

"Through a Marine Act, we will introduce a new framework for the seas, based on marine spatial planning, that balances conservation, energy and resource needs. To obtain best value from different uses of our valuable marine resources, we must maintain and protect the ecosystems on which they depend".

Inclusion in the 2005 Queen's speech gave a commitment to publication of a draft Marine Bill during the first session of the current Parliament (i.e. by November 2006).



What are the opportunities?

The Bill could lead to a more streamlined consenting procedure that works in the framework of a detailed and accurate planning system. This would mean that developers have access to data and awareness of potential conflicts when first considering sites. It could also mean more certainty and a reduction in regulation. It would also allow the marine environment to undergo a sustainable development approach that would mean that developers and conservationists are able to work closer together to solve problems. It is also a chance to try and facilitate more "joined-up" Government. It is also a chance to bring the offshore planning system in line with the onshore planning system as oppose to moving them further apart.

What are the potential risks?

The Bill could end up adding a new layer of bureaucracy that is actually worse than the current system. It could be that the regime put in place by a Bill in practice takes a conservation slant rather than a sustainable development one and development is restricted through the creation of too many no go areas. A shift to a radically new consenting procedure could cause future uncertainty to an industry in its infancy. This will translate into delays and a lack of investment and for this reason represents a significant risk.

What is the consultation?

The consultation consists of four areas:

- A review of the consenting process for marine development

- The role of a marine management organisation
- Marine spatial Planning
- Marine Nature Conservation.

In addition, an over arching document will explain the background behind the four areas, why comments are being sought and what objectives Defra want to achieve during the consultation.

Some areas like Marine Spatial Planning will be based on a discussion paper because a pilot study has already taken place. The remaining areas will present a variety of options that can be commented on. All four areas will be subject to Regulatory Impact Assessments published as part of the consultation.

We have outlined what we want to see from the bill and focused on specific areas of the consultation package as BWEA feels that these issues are the ones that will affect the offshore renewables industry the most.

Offshore Renewables vision of the Bill

It is not easy to simplify such a complex piece of legislation. However, the offshore renewables industry believes that the bill should deliver the following objectives:

- Sustainable development
- A single consent issued by the responsible governmental department
- A flexible and adaptive system of marine spatial planning that provides safeguards for future use of the marine environment
- A marine management organisation that is streamlined, effective and works in an advisory capacity to the consenting bodies
- An effective tool or body that is responsible for gathering, processing and giving access to the data gathered and stored.

Consents

Currently the system is run joint-departmentally between DTI and DEFRA. The process has been streamlined with the establishment of a one-stop shop (ORCU). The developers and the regulators have learnt to work with the system so that both sides are familiar with each others' needs.

What do we want?

We want a consent system that is based solely around section 36 of the Electricity Act 1989. Section 36 is fundamental to the electricity generation consenting process. We recommend a single sectoral consent provided by the governmental department responsible for energy consents with the MMO acting in an advisory capacity to this department. 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 risk wasting this work.

What do we not want?

We do not want section 36 consenting to be moved away from the department responsible for energy consents.

Why do we advocate this?

It is essential that the system of consents work consistently and in a way that gives confidence to developers, investors and the public. This system does this because it provides:



1. 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.

2. Responsibility and accountability:

There is a clear line of appeal to the secretary of state responsible for energy. This also gives a direct and easy to understand appeal system that is transparent and accountable. The fact that this system is already in existence means that a new layer of bureaucracy does not have to be added. It 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.

3. 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 various national policies and differing commercial interests. If the MMO has to give all policy equal weight then it will be extremely difficult for it to resolve large scale conflict. By leaving this decision with the departmental 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 MMO to make a decision, the conflict is resolved in a straight forward accountable way.

4. 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. 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 MMO 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.

5. 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.

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

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 and will not be changed by the marine bill.

The Marine Management Organisation

It is proposed that there should be an organisation that deals with various aspects of the marine environment. For example marine spatial planning and handling of all marine data.

What do we want?

The MMO 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.

The role of the MMO is central to not creating another layer of bureaucracy and avoiding unnecessary delays. BWEA find 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 tool to guide consents decisions 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.

The MMO must allow access to the data that it holds.

What do we not want?

A MMO that is responsible for the consenting of offshore renewables by absorbing section 36 into a single marine consent regime.

Why?

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.

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.

Most of the reasons why consents for offshore renewables should stay out side of the MMO are listed above in the Consents section.

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.

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.

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.

Marine Spatial Planning

What do we want?

In the creation of the plan BWEA envisages that the MMO will use the data to create GIS mapping of all relevant available information within the marine environment. This data and policy will be used to create a constraints map. It can also be used to safeguard areas such as tidal resource to provide for potential future development, within the remit of sustainability.

However it must be made clear that there is not a presumption against development outside of these areas and that there is flexibility within the plan to recognise that constraints will differ from sector to sector and will change with time and technology.

This constraints mapping and safeguarding for future use will have to undergo extensive conflict resolution at the plan creation stage involving all stakeholders. The MMO will be the facilitator of this negotiation and conflict resolution.

There must be the potential to review the Plan at regular intervals to ensure that it is taking into account all relevant changes in the marine environment. The plan will be used to aid sustainable development and highlight conflicts as and when they arise.

What do we not want?

A prescriptive zone system that lays down strict and unchanging or difficult to change areas. A system that does not account for multiple use and the ability for different sectors and industries to use the same space. A system that does not allow for stakeholder input at a plan creation stage.

Why?

Flexibility at all stages of the Plan, is key to its success. It is vital that the plan is seen as a tool to help avoid and resolve conflicts, it is not the solution to resolving conflicts. Conflict will never be fully erased from the marine environment because of its multiple use nature and this must be recognised. A prescriptive system will not allow this.

Stakeholders must have an input at plan creation stages to ensure that their needs are properly understood and conflicts are highlighted and resolved early in the process.

“Future use” mapping is important to protect areas such as tidal energy resource because their needs are extremely resource specific. Again the need for flexibility is still important because it is likely that new data may limit the scope of these “future use” zones. Also the best commercial viability for a project may not overlap exactly with the future use zone.

This could be a result of changes in technology. This is why it is vital that there is not a presumption against development outside these zones.

Regular reviews will help to keep the plan in line with changes in technology, data and the marine environment.

Marine Nature Conservation

What do we want?

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.

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.

Marine Conservation areas should not exclude renewable energy development. There should be clear guidance on the issues to be taken into account when development is being planned in conservation areas.

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.

What do we not want?

Marine conservation areas should not be allocated on a purely precautionary basis due to information being incomplete. Allocation of sites should not hinder development already under way.

As long as conservation objectives are not compromised, the larger inshore conservation areas should not preclude multiple use development.

There is a large question mark over how these areas will be policed and what authority will be used to allocate and maintain these areas. It seems that as these areas will be used mainly for conservation this will sit awkwardly with an MMO that has sustainable development as its core directive.

Marine conservation areas should not add to the existing duplication of designated sites with coincidental boundaries.

Why?

The system of site designation in the UK is complicated and confusing. 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.

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.

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 would be non-sensical and a blow to the potential of tackling climate change.



What next?

BWEA will be responding to the Marine Bill consultation in full but urges everyone to respond because of the significant changes that could take place. Without a response we as an industry will go unheard.

This document is designed to give you an initial understanding of the issues. If you have any queries on the Marine Bill, the consultation and BWEA response, please do not hesitate to contact:

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