



Ocean Energy Group REA Briefing

Marine and Coastal Access Bill:

Key Benefits and Concerns for the Wave and Tidal Stream Industry

Summary

The Bill has the potential to both help and hinder the development of the UK wave and tidal industry. It all depends on the way in which it is implemented. This will be elaborated in secondary legislation, guidance notes and policy statements.

In summary we would like;

- the Marine Policy Statement to state that harvesting renewable energy from UK waters is a key objective
- Marine Plans to be guided by the objective of Sustainable Development
- Marine Conservation Zones to be seen as areas where wave, tidal and offshore wind energy can beneficially co-locate
- representation in any consultative bodies tasked with developing Marine Plans
- Marine Plans to be flexible to account for changing use and new use over time, such as marine renewable developments
- the IPC to be the consenting body for all marine renewable installations
- Marine Licence terms to be sensitive to the concerns of investors
- the cost of impact assessment and monitoring, particularly within Marine Conservation Zones to be reasonable and proportionate – certainly no higher than 5% of project costs
- the MMO to be required to appoint an Engineering Advisor, in addition to a scientific advisor
- greater human resource dedicated to energy in the Marine Management Organisation.

Introduction – marine renewables are of strategic importance to the UK

The UK is acknowledged to be the current world leader in the marine energy technologies of wave and tidal stream generation. There are numerous embryonic device developers, with a handful of lead companies that have reached a critical stage in the deployment of grid-connected devices and the progression of their technology to market. The provisions of the Marine and Coastal Access Bill will have a direct impact on the commercial prospects for these companies, which have to compete internationally, and the REA urges Government to ensure that the legislative and regulatory framework put in place will protect and support the UK's fragile emergent marine renewable energy sector.

The UK is blessed with abundant marine energy, possessing 50% of Europe's tidal energy resource (10-15% of the global resource) and 35% of Europe's wave energy resource. It is vital that the Marine Bill recognises the potential of marine energy as a secure source of energy for the UK that can help meet both renewables and emission targets. The Carbon Trust has estimated that electricity generated from the UK's wave and tidal stream energy resource could contribute 15 - 20% of current demand, which is about half of the requirement for renewable electricity if the UK is to achieve its EU 2020 target for renewable energy. In the past the UK has

failed to translate its lead on other forms of renewable energy into commercial success and in this context there is concern that the strategic importance of all forms of marine energy will be fully appreciated (not just projects over 100MW that will be licensed by the IPC). With the right support the UK industry has the potential for international commercial success, with global climate benefits.

Impacts on the Wave and Tidal Stream Energy Sector

The REA believes that the provisions of the Bill could bring tangible benefits to the wave and tidal stream energy sector. We have therefore engaged with its development since the concept was first introduced in 2006 and we appreciate the positive response of Government to many of the issues raised during the Public Consultation periods. We also welcome a number of changes introduced in the Lords (see below).

We particularly welcome the specific mention of marine renewable energy installations in the recently published Marine Objectives and the fact that the Devolved Administrations have signed up to these, have pledged to endorse the Marine Policy Statement and agreed that Marine Plans will be UK-wide. We hope that this will ensure consistency in marine licensing throughout the UK.

However, we seek reassurance on certain aspects of the Bill, as outlined below.

Part 1: Marine Management Organisation

The industry seeks confidence that the MMO will be both sufficiently resourced to handle marine renewable projects in a timely fashion, as well as sufficiently guided to facilitate marine renewables deployment, given their unique environmental, economic and social contribution.

Wave and tidal projects currently fall well under the 100MW threshold and therefore they will be handled by the MMO. We are pleased that Government has strengthened the sustainable development remit of the MMO, (by requiring it to make a contribution to the achievement of sustainable development), as this is consistent with a proactive approach to marine renewables. We also welcome the requirement for the MMO to act in an evidence-based fashion (Clause 2). We are pleased that the Secretary of State will issue statutory guidance on how the MMO will meet that duty and that this guidance will go before Parliament, as this offers the potential to specifically highlight the importance of marine renewables. But we remain concerned about the level of practical skills and resourcing of the MMO. Numerous challenges – a new organisation, new marine plans, new legislation, collection and management of marine data – have the potential to overwhelm the estimated 45 staff mentioned in paragraph 1032 of the explanatory notes to the Bill. We urge Government to ensure that plans are in place to provide sufficient finance and personnel for the MMO. We are also concerned that no personnel from DECC or BERR are to be transferred to the MMO and that only 1.5 (new) staff will be dedicated to energy issues.

Given the strategic importance of the UK's marine energy resource, timely delivery of renewable energy targets must be part of the MMO's remit – the fact that it is accountable to Defra raises concerns that the focus may be dominated by local conservation at the expense of wider considerations, including global conservation. Membership of the MMO board is addressed in Schedule 1 and the REA hopes it will reflect renewable energy and climate change interests. The appointment of a Chief Scientific Advisor to the MMO is helpful with respect to marine conservation but it will not address the needs of an engineering discipline, such as marine renewable energy. Therefore the MMO should also be required to appoint a Chief Engineering Advisor.

Part 2: Marine Planning

The industry urges the importance of current and future marine renewables to be reflected through all tiers of planning development and guidance.

Chapter 1: Marine Policy Statement

The REA strongly believes that the Marine Policy Statement (MPS) should refer to sustainable development (i.e. sustainable use of marine resources) and acknowledge the importance of marine renewables to the UK economy. In particular, the MPS should recognise the crucial role of the oceans as a source of green, renewable energy and actively encourage the harvesting of that energy. This will reflect the step-change in renewable electricity generation, from the current 5% to 40%, which must be achieved in the next 12 years in order to comply with the EU 2020 targets. It is important that the MPS encompasses cross-governmental priorities, linking to policy statements that address climate change and security of energy supply.

Chapter 2: Marine Plans

The REA welcomes the reference to sustainable development in Clause 51 but we recommend that this be strengthened by underpinning marine planning with a clear statutory purpose to achieve sustainable development in the marine area. We particularly welcome the efforts that have been made to work with the Devolved Administrations in order to provide a coherent planning regime throughout the UK. This consistency will assist the industry.

We agree with the considerations for marine planning set out in Clause 54. However, it is important the marine plans do not preclude new uses of the marine space, such as wave and tidal stream energy extraction (or indeed carbon capture and storage). These activities would not appear in data based on current marine activities. From the point of view of tidal stream energy, it is important to note that areas suitable for energy extraction are site-specific – moving a development to a different location is unlikely to be a viable option. The plans need to take care to actively log the potentiality of marine renewables from an expert perspective.

Noting that marine plans will not be in place before 2012, we are concerned that major decisions governing allocation of sea space (such as the designation of MCZs) will have already been taken by this time. There is a risk that marine planning will be faced with a “fait accompli” by stakeholders that have already laid claim to sea space, particularly given the limited capacity of the small marine renewables sector to engage with stakeholder processes. The transitional arrangements to be put in place before marine plans are prepared and adopted need to address this risk.

Chapter 4: Implementation and Effect

The REA supports the proposals in Clause 61 for the monitoring of and reporting on marine plans, with the caveat that flexible procedures must be in place for modifying plans as usage of the sea space changes with time. We agree that marine plans should be appraised for sustainability.

We welcome the concept of public participation in the preparation of marine plans (Schedule 5). We understand that advisory and consultative groups to support the development of (and consultation on) marine plans will be established and will work to ensure that the marine renewable energy industry is represented on such groups.

Part 3: Marine Licensing

The industry welcomes the streamlined licensing regime, however we seek safeguards that will ensure the role of marine renewables is fully recognised

The REA particularly welcomes the proposed merger of CPA and Part 2 of FEPA to form a new marine licensing regime and applaud the rationalisation and improvement of regulation, licensing and other approvals through the Bill.

Under the current Planning Bill, offshore energy projects of 100MW and over will be consented by the Infrastructure Planning Commission (IPC) and that the MMO will be responsible for projects below 100MW. Given the confidence an institutional focus on energy brings, the REA would prefer the IPC to be the consenting authority for all offshore renewables (since all are of strategic importance, regardless of scale), with advice from the MMO.

Chapter 1: Marine Licenses

We believe that sustainable development should be specifically included in issues that licensing authorities must consider (set out in Clause 69) when determining a license application. We welcome the clarification in para 237 of the Explanatory notes that 'environmental' refers to the *global* environment, not just the local.

Clause 72 of the Bill sets out the reasons why a licensing authority can revoke a licence, the last one being "*For any other reason that appears relevant*". The catch-all nature of this Clause will reduce the confidence of sorely-needed investors in the marine renewable energy sector and we request that caveats to safeguard the interests of investors are incorporated in the legislation.

Chapter 3: Enforcement and Chapter 5: Supplementary

Subject to clarification of the interpretation of 'serious harm' and 'serious interference', the REA generally supports the introduction of remediation provisions if an activity has or is likely to cause serious harm to the environment, human health or serious interference with other legitimate uses of the sea (Clause 91). With the same proviso, we support the general intention of a system of 'Stop' notices (Clause 102), but request that some checks and balances are introduced in the legislation, addressing for example the right of appeal.

Part 4: Marine Conservation Zones

The REA supports the intention of protecting the marine environment through the introduction of Marine Conservation Zones and we are working with Natural England to ensure that wave and tidal developments can be situated in these areas (in recognition of their contribution to nature conservation by excluding more damaging activities) and to clarify the licensing requirements for installations in MCZs. It is important that the UK's ability to reduce CO₂ levels, and hence contribute to EU and international targets to combat climate change through the use of wave and tidal stream energy, is not adversely affected by designations. Similarly, the UK's energy security of supply, through the development of marine renewable energy, should not be compromised.

Our greatest concern is the cost of environmental impact assessment and subsequent monitoring, which could potentially destroy the UK's wave and tidal energy sector. The Marine Current Turbine development in Strangford Lough provides a concrete example of disproportionate costs for small firms, with £4 million attributable to the stipulated environmental monitoring programme, for a project with an initial budget of less than £10 million.

Chapter 1: Marine Conservation Zones

Clause 116 sets out the grounds for designating Marine Conservation Zones (MCZs). We do not support the proposed grounds – "if (the appropriate authority) thinks that it is desirable to do so". It is essential that proposals for designation are based on robust scientific evidence and clear site selection criteria. The designation process should also enable consideration of socio-economic factors and interests, as well as requirements for nature conservation. Renewable energy is a unique "socio-economic" activity, in that its *raison d'être* is entirely environmental. We therefore support the inclusion of Clause 114 (7) in the Bill – stating that the appropriate authority may have regard to any economic or social consequences of MCZ designation – and believe it is important that this remains in the Bill.

The REA is pleased that an MCZ order must state the protected feature or features and the conservation objectives for the MCZ (Clause 117). We believe that the conservation objectives for MCZs should always incorporate the following concepts:

- that sites contribute to mitigation and adaptation measures on climate change
- that sites are part of the MMO's delivery of sustainable marine development.

Inclusion of the above would guarantee a balance between the delivery of local and global environmental interests in the MCZ framework.

We hope that the Bill will provide for the Secretary of State to issue statutory guidance containing further details of the designation requirements following enactment of the Bill.

The blanket restrictions in Clause 126(7) of the Bill do not allow for different tiers of protection under the MCZ network. If these restrictions are to be imposed, the climate change benefits of a renewables project should count as “measures of equivalent environmental benefit to the damage which the act is likely to have in or on the MCZ.”

The REA strongly supports the policy intention that designations are to be made by the Secretary of State, with advice on the scientific aspects of designation provided by the nature conservation bodies. We recommend that relevant government departments (such as BERR) and the MMO have a clear role in providing economic and social advice and that there are transparent mechanisms by which such advice is taken into account.

We applaud several changes to the MCZ provisions of the Bill that have been made following Public Consultation. These include:

- Limitation on the timescale for designation to 12 months (Clause 119(10))
- Reduction of the time for enforcement of an emergency designation from 18 to 12 months (Clause 132(5))
- Power of the Secretary of State to revoke an emergency designation (Clause 132(8))

We approve of the Reporting System set out in Clause 124 and suggest that MCZs should allow, wherever possible, for the exploration of the potential positive local benefits of renewable energy installations e.g. fish-stock sanctuaries around offshore wave and tidal farms.

REA has proposed the following amendments;

Engineering expertise and staff capacity

Schedule 1, para 15

After line 11, add

“Chief engineering advisor

(1) The MMO must appoint a person to be its chief engineering adviser.

(2) The chief engineering adviser is an employee of the MMO.

(3) The MMO may only make an appointment under sub-paragraph (1) with the approval of the Secretary of State as to any terms and conditions of employment not falling within paragraph 17 or 18.”

Science and engineering are very different disciplines. The appointment of a Chief Scientific Advisor to the MMO is helpful with respect to marine conservation but it will not address the needs of an engineering discipline, such as marine renewable energy. Therefore the MMO should also be required to appoint a Chief Engineering Advisor.

Schedule 1

Other staff

Paragraph 16 after item (2), line 17 add:

“(3) The MMO must engage a sufficient number of staff to deal with the strategically important area of marine renewable energy”

We are concerned about the level of practical skills and resourcing of the MMO. We are particularly concerned that no personnel from DECC or BERR are to be transferred to the MMO and that only 1.5 (new) staff will be dedicated to energy issues such as consenting wave and tidal projects.

Time limit for determining renewables applications

Clause 71 (1)

Licences

Insert new sub-paragraph under (c) on line 30

“This decision shall be made within 16 weeks of the application.”

Time is of the essence for marine developers. These may be funded by venture capital, and delays cost money. It would be extremely helpful if there were a timescale to approve an application e.g. in South Africa Environmental Impact Assessments must be decided within three months and planning applications within four months.

Limiting monitoring costs for developers

Clause 127, page 87

Advice and guidance by conservation bodies

New subparagraph to be added below (2) on line 21

“The appropriate statutory conservation body must give advice on the requirements for monitoring of the impacts of a permitted activity within a MCZ. The costs of this monitoring should be reasonable and proportionate with respect to the scale, costs and environmental benefits of the project.”

The Marine renewables industry's greatest concern is the cost of environmental impact assessment and subsequent monitoring. This could potentially destroy the UK's wave and tidal energy sector. The Marine Current Turbine development in Strangford Lough provides a concrete example of disproportionate costs for small firms, with £4 million attributable to the stipulated environmental monitoring programme, for a project with an initial budget of less than £10 million.

Furthering Sustainable Development for the MMO

REA is happy to support the amendment put forward by WWF that the MMO should have a high level duty to 'further' sustainable development. We hope this will help foster a proactive approach to facilitating marine renewables.

If you would like more information about the REA and our work on marine renewables please visit www.r-e-a.net or contact;

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