



**CONSULTATION ON SAFETY
ZONES – GOVERNMENT
RESPONSE**

Implementing the provisions
of the Energy Act 2004
relating to the establishment
of safety zones around
offshore renewable energy
installations

APRIL 2007

Government response to the consultation on implementing the provisions of the Energy Act 2004 relating to the establishment of safety zones around offshore renewable energy installations (OREI).

Introduction

39 responses to the consultation were received from the following organisations and individuals:

Renewable Energy Sector

British Wind Energy Association
Centrica
DONG
Eclipse Energy Co Ltd
EDF Energy
E.On Renewables Ltd
European Marine Energy Centre
Eurus Energy
Npower
Ocean Power Technologies Ltd
Renewable Energy Association
Scottish Power
Warwick Energy
Wave Dragon Ltd

Navigation Stakeholders

Chamber of Shipping
Northern Lighthouse Board
Port of London Authority
Royal National Lifeboat Institute
Royal Yachting Association
Trinity House Lighthouse Service

Marine Leisure Stakeholders

British Sub-Aqua Club

Fishing Stakeholders

Northern Ireland Fish Producers Organisation

Northumberland Sea Fisheries Committee

A joint response from the North Norfolk Fishermen's Society and the Wells and District Fishermen's Association

4 individual responses were received from fishermen – 3 from Fleetwood-based fishermen and 1 from Milford Haven

The National Federation of Fishermen's Organisations did not respond formally to the consultation, but asked that we take account of their comments on safety zones in a letter dated 3 October 2006 to the Chairman of the Fishing Liaison with Offshore Wind and Wet Renewables (FLOWW) stakeholder group.

Environmental and Heritage Organisations

A joint response from the Joint Nature Conservation Committee and the Countryside Council for Wales

Marine Conservation Society

WWF-UK

Devolved Administrations and Others

Bond Pearce LLP

Elexon

National Grid

Neath and Port Talbot County Borough Council

South West of England Regional Development Agency

Scottish Executive

A response was also received from a private individual not falling within any of the above categories

Analysis of Responses

1. The following analysis of the responses to the consultation is organised and structured around the questions posed in the consultation document. The Government's responses to the points raised are set out after each question. A summary of the Government position on key issues in the light of the consultation is set out at the end of the document.

Question 1. Is the approach outlined to safety zones during construction and decommissioning workable? Will wave and tidal devices be constructed in a different way that would require a different approach?

2. A large majority of respondents who replied to this question (24 out of 36) found the approach outlined in the first part of the question, including the 500 metre opening presumption for safety zones during the construction and decommissioning of wind farms, reasonable. Those in favour included the British Wind Energy Association, the Renewable Energy Association, the majority of wind farm and wave and tidal developers who responded separately, solicitors Bond Pearce, Trinity House, the Port of London Authority, the RNLI, the Northern Lighthouse Board, the Joint Nature Conservation Committee/Countryside Council for Wales, the Marine Conservation Society, WWF-UK, Neath and Port Talbot County Borough Council and the British Sub-Aqua Club.

3. A number of respondents, including the BWEA and a number of wind farm developers, suggested that 500 metre safety zones should also be established during major maintenance work. It was also suggested by BWEA, the Chamber of Shipping, the Royal Yachting Association and others that applications should be accompanied by an appropriate navigational risk assessment.

4. The response to the second part of the question was more mixed, but the general consensus among those who responded specifically to that part of the question was that the approach to the demarcation of safety zones around wave and tidal devices would need to be different to that adopted for wind farms. The BWEA, REA and others suggested that this would need to take account of a number of variables, including movement of the device in the water, the presence of any sub-sea moving parts, the different visual profiles presented and the variation in mooring types. It was therefore suggested that safety zones around wave and tidal devices during construction and decommissioning should be measured from the extremity of the device, including its moorings, rather than from a fixed central point, as proposed for wind installations.

Government Response

5. Given the broad support for our approach to safety zones during the construction and decommissioning of wind farms, including the 500 metre starting presumption, which is based on the

maximum permissible size of safety zones under UNCLOS (United Nations Convention on the Law of the Sea) regulations, the government intends to proceed with regulations on the basis set out in the consultation document. However, it is worth re-stating that all applications will be assessed on a site by site basis in terms of both the need for a safety zone and, if deemed necessary, its dimensions.

6. We accept the suggestion put forward by BWEA, the Chamber of Shipping, the Royal Yachting Association and others that applications should be accompanied in each case by an appropriate navigational risk assessment. However, in cases where a safety zone application is made at the same time as a Section 36 (Electricity Act 1989) application for the development of an OREI, the same navigational risk assessment may be used for both applications. The MCA will also require each application to be accompanied by an undertaking from the applicant that they will adequately monitor and police the safety zone.

7. The suggestion that 500 metre safety zones should also be in place during major maintenance operations seems sensible, although we will be seeking to define more clearly what is meant by that term in order to ensure consistency of interpretation. Here again, however, the need for a safety zone and its potential dimensions would need to be established on a site by site basis and considered in the light of site specific conditions.

8. For the reasons given in the responses from BWEA, REA, wave and tidal developers and others, we also accept that different arrangements may need to be adopted with regard to the demarcation of safety zones around wave and tidal devices during their construction and decommissioning. Once again, we propose that each application should be assessed on its merits in terms of both the need for and potential dimensions of any safety zone.

9. We also accept that the establishment of safety zones, whether during construction, major maintenance and decommissioning or the much longer operational phase of an OREI's life, could potentially result in the displacement of certain types of fishing activity. We therefore recommend close consultation between OREI developers and fishermen's representative organisations on a site by site basis both during the development of OREI and throughout the safety zone application process to try to minimise any impact on the fishing industry.

10. In order to minimise disruption to mariners and other users of the sea, we propose that safety zones during construction, major maintenance and eventual decommissioning of OREI should be established on a 'rolling' basis covering only those areas of the total site in which such activity is actually taking place at a given time. Once that activity had been completed in that specific location, the zone would then roll on to cover the next specific location within the site in which such activity was taking place. Depending on the scope of the safety zone application, the area in which work had been completed would then either revert to an operational safety zone or have unrestricted access for navigation. However, it might be prudent, subject to further discussion with Trinity House, to light and mark the entire site in an appropriate way to ensure that mariners and other users of the sea are aware that construction, major maintenance or decommissioning activities are taking place within the site.

Question 2. Is the policy of a starting presumption of 50 metre safety zones during the operational phase of an installation's life reasonable?

11. The response to this question was very mixed with no clear consensus emerging.

12. The BWEA suggested that a 50 metre presumption was reasonable as a starting point, but that it should allow for developers to negotiate with other stakeholders on a case by case basis on the types of activity that might safely be allowed to continue within such designated waters. BWEA and a number of wind farm developers also suggested that the regulations should allow for temporary operational safety zones to be established only around certain activities (i.e. anchoring or trawling) and/or around certain structures (i.e. sub-stations). Trinity House, the Northern Lighthouse Board, the Scottish Executive, the Northumberland Sea Fisheries Committee, Bond Pearce and a number of OREI developers also felt that the 50 metre presumption was reasonable.

13. The Chamber of Shipping, the Royal Yachting Association, the National Federation of Fishermen's Organisations, the North Norfolk Fishermen's Society/Wells and District Fishermen's Association and the Northern Ireland Fish Producers Organisation were strongly opposed to the establishment of operational safety zones.

14. The Northumberland Sea Fisheries Committee was supportive of the 50m presumption. Of the few individual fishermen who responded separately to the consultation, the Fleetwood-based fishermen called for a complete ban on all fishing activity within wind farms on safety grounds, while the Milford Haven-based respondent shared the view expressed by the NFFO etc.

15. A minority of respondents favoured larger 'operational' safety zones. With a view to guarding against potentially serious environmental impacts of larger vessels colliding with OREI situated close to shipping lanes, the Joint Nature Conservation Committee/Countryside Council for Wales and the Marine Conservation Society proposed standard safety zones of 500 metres. To safely accommodate the turning circles of medium to large vessels, Neath Port Talbot County Borough Council also called for safety zones of 500 metres around all OREI. The RNLI felt that 50 metres was insufficient to allow for the effects of tides and proposed 100 metre safety zones around each wind turbine and advisory safety zones around entire wind farm arrays.

16. The only issues on which a degree of consensus emerged from the responses to this question were that all applications should be accompanied by an appropriate navigational risk assessment; and that wave and tidal devices are sufficiently different (from wind farms and each other) in terms of overall dimensions, technologies deployed and layout to warrant a case by case approach.

Government's response

17. Given the widely divergent range of views expressed with respect to safety zones during the operational phase of an OREI's life, and in particular the very marked differences of opinion between those advocating no safety zones at all during operation and those who have called for the maximum permissible under UNCLOS regulations (500 metres), we have again sought the views of the MCA as the statutory advisor for navigation safety. The MCA take the view that where safety zones are required it would provide clarity for mariners and other users of the sea to have a standard starting presumption, and that 50 metres should be adequate to prevent collisions between vessels and offshore wind turbines. However, MCA agree that for the reasons outlined above wave and tidal devices would need to be treated differently. On balance, therefore, we believe that the most sensible way forward would be to adopt the approach put forward in the consultation document, i.e. a 50 metre

starting presumption for 'operational' safety zones around offshore wind turbines, subject to case by case assessment of all applications based on careful consideration of site specific conditions. Assessment of applications for 'operational' safety zones around wave and tidal devices would be based solely on consideration of site specific conditions, rather than any presumption on standard dimensions.

18. As indicated in our response to Question 1, we agree with the view expressed by various respondents, including the BWEA, Chamber of Shipping and Royal Yachting Association that each application should be supported by an appropriate navigational risk assessment. As with applications for safety zones for construction and decommissioning etc, the MCA will require an undertaking from applicants that they will adequately monitor and police 'operational' safety zones.

19. For the reasons set out in the summary of the Government's position on key issues at the end of this paper, we do not accept the argument put forward by the Chamber of Shipping, the Royal Yachting Association and Fishermen's representative bodies that 'operational' safety zones will always be unnecessary. However, as indicated in our response to Question 1 above, the DTI and MCA will assess all applications on a site by site basis in terms of both the need for a safety zone and, if deemed necessary, its dimensions.

20. In order to ensure that applicants are clear as to what will be required of them when applying for a safety zone, we intend to prepare and issue a guidance note covering all aspects of the safety zone scheme.

21. We intend to keep the policy on 'operational' safety zones outlined above under review, and will issue any further guidance that may be required as and when necessary in the light of experience with actual applications.

Question 3. In the context of making an application for a safety zone, are the requirements for information about the installation reasonable? Is there any other information about the installation that the regulator will need?

22. The majority of respondents who answered this question found the requirements for information about the installation reasonable.

However, the following additional information was suggested by the organisations shown in brackets after each bullet:

For all types of installations

- Descriptions of works involved in construction and decommissioning, together with known variables such as size and number of vessels at peak periods (Northern Lighthouse Board and EDF Energy)
- Location of sub-sea cables, including export cables (EDF Energy)
- Location of electric cable connections and offshore platforms housing connection equipment (Scottish Power)

For wave and tidal devices

- Above and below water components (Ocean Power Technologies Ltd)
- Anchor spread and penetration of devices into different parts of the water column (European Marine Energy Centre)
- Extent of operational movement envelope of the device (REA and Wave Dragon Ltd)
- Proposed location of moorings and power cables (SWERDA and Scottish Power)

23. The Port of London Authority suggested that there should also be a mechanism to allow for additional information to be provided by the applicant in support of the application.

24. The British Sub-Aqua Club (BSAC) suggested that applications should include projections of possible future development in the area.

Government response

25. Most of the above suggestions for additional information seem reasonable, particularly for wave and tidal devices. However, it would seem unreasonable to expect an applicant to have the necessary knowledge to provide projections of possible future developments in areas adjacent to that for which an application is being made. We do not therefore accept the BSAC's suggestion. However, we note that the Government's Marine White Paper has proposed a system of marine planning that will enable more strategic management of the sea.

Question 4. Are the requirements for information about the safety zone reasonable? Is there other information about the safety zone that the regulator will need?

26. The majority of respondents who answered the first part of the question were satisfied that the requirements for information about the safety zone were reasonable. However, the following additional information was suggested by the organisations shown in brackets after each bullet:

For all types of installation

- How the Safety Zone will be monitored and how monitoring will be resourced (Royal Yachting Association and Port of London Authority)
- Any proposals for extending the site and information on total area to be included within the safety zone (Northern Lighthouse Board)
- Details of construction, major maintenance and decommissioning plans (E.On Renewables)
- An up to date traffic survey (North Norfolk Fishermen's Society/Wells and District Fishermen's Association)

For wave and tidal devices

- Information on anticipated range of sea states (for wave devices) and (for tidal devices) tidal stream rates (REA)
- Typical spring/neap tidal data, including current speeds (E.On Renewables)

Government response

27. The BWEA and a number of wind farm developers have argued that due to the marginal economic viability of wind farms, the burden of monitoring safety zones should not fall on the developer. However, we believe that it would not be unreasonable to ask developers to make some provision for monitoring safety zones for which they have applied and be prepared to provide an outline of those arrangements in their applications. For example, developers and/or their appointed contractors will spend considerable periods of time in or around wind farm sites during construction, operation and decommissioning and should therefore be best placed to monitor and police safety zones and report transgressions. The Maritime and

Coastguard Agency has already made it clear that it does not have the resources to monitor safety zones, but that such monitoring and gathering of evidence of transgressions will be required if, in appropriate circumstances, they are required to pursue prosecutions. The expected approach to monitoring is likely to be based on the use of relatively simple measures, such as the use of video cameras, to gather evidence rather than more extensive approaches such as the deployment of guard vessels.

28. The remaining additional information requested seems reasonable, although much of this has already been covered under the previous question. However, traffic surveys are provided with Section 36 development applications and it would not seem necessary, except perhaps if the Section 36 application and the safety zone application were submitted some time apart and there had been a significant change in traffic in the intervening period, to ask the applicant to undertake a further survey in support of a safety zone application.

Question 5. Are the requirements for publicising the fact that an application for a safety zone is being made workable, and will they suffice to bring to the attention of stakeholders who have an interest in safety zones that an application is being made?

29. The majority of respondents who answered the first part of this question (19 out of 23) were satisfied that the publicity arrangements proposed in the consultation document were workable. However, it was suggested by the organisations shown in brackets below after each bullet that we should consider making additional arrangements to bring safety zone applications to the attention of the following stakeholders:

- The British Cruising Association (RYA, REA and E.On Renewables)
- All marinas and boatyards within 20 miles of the development for which an application was being made (RYA)
- Royal Yachting Association (REA and E.On Renewables)
- British Sub-Aqua Club (REA)
- National Federation of Fishermen's Organisations (REA and E.On Renewables)
- Relevant general Lighthouse Authority (Northern Lighthouse Board)
- Environmental NGOs (Marine Conservation Society)

30. Eurus suggested that applications should be posted on the 'Kingfisher' website, which is presently used by OREI developers for publicising information about their projects/developments.

31. The Marine Conservation Society suggested that a list of consultees, including all environmental NGOs, should be maintained by DTI or MCA and passed on to developers as a guide to organisations they should consult when making a safety zone application.

32. The British Sub-Aqua Club requested that DTI or MCA should establish and maintain a central database for applications to which any national organisation with an interest in OREI should be allowed access.

33. For wave and tidal devices, a developer suggested that for reasons of protecting intellectual property, the confidentiality of device specifics might need to be protected in some way.

Government response

34. Of the organisations listed above, Trinity House, the Royal Yachting Association and the National Federation of Fishermen's Organisations are already consulted by DTI/Defra on Section 36 OREI development applications, as are the Chamber of Shipping, the relevant port authority and sea fisheries committee. A list of the organisations we propose to consult on safety zone applications is attached at Annex A. We believe that the arrangements outlined in the consultation document for publishing and advertising applications will be sufficient to allow other organisations and individuals to comment on an application if they wish to do so.

35. The British Sub-Aqua Club's suggestion that the DTI should establish and maintain a database of safety zone applications is not unreasonable, but the costs of establishing and maintaining such a system for a comparatively small number of applications is thought likely to outweigh the potential benefits. A more cost-effective way of achieving the intended outcome might be to post safety zone applications on the Energy pages of the DTI website. Alternatively, applications could be posted by developers on the 'Kingfisher' website, as suggested by Eurus. On balance, a combination of these last two options would seem both reasonable and achievable.

36. The suggestion that the confidentiality of wave and tidal device specifics might need to be protected in some way in order to protect developers' intellectual property rights seems reasonable. However, since this could potentially conflict with the need to provide adequate information on the device in an application, we will need to consider further, in consultation with wave and tidal developers, BWEA and REA, how this could be done whilst at the same time providing sufficient information to satisfy the requirements for a safety zone application.

Question 6. Is a 28 day minimum period for objecting to a proposal for a safety zone reasonable?

37. A large majority of respondents who answered this question (19 out of 23) agreed that the 28 day minimum period for objections was reasonable. However, the BWEA and a number of offshore renewables developers who responded separately also called for a strictly observed maximum time limit. The BWEA and some developers suggested that this should also be set at 28 days, although two developers suggested a maximum time limit of 60 days.

38. The Scottish Executive felt that the 28 day minimum was acceptable, but suggested that it would be beneficial if the notice of application could be served by DTI/Scottish Assembly on their websites. The Northern Lighthouse Board also found the minimum period acceptable, but suggested that the regulator should accept notifications within that period from bodies which met at less frequent intervals, such as Fishermen's representative organisations, that they intended to reply formally at a later date. The Royal Yachting Association and RNLI suggested a minimum period of 56 days, the Port of London Authority a minimum of 42 days. The Chamber of Shipping felt that the minimum period was insufficient but did not suggest an alternative timescale.

39. The BWEA and a number of developers suggested that the Secretary of State should also have powers to create a safety zone with immediate effect in an emergency.

Government response

40. We have no evidence that the 28 day minimum period is insufficient for those who wish to do so to register objections to Section 36 applications for development of an OREI. In parallel with the public consultation process for safety zone applications the

Department will consult the stakeholders listed in Annex A and set a longer deadline for responses. The combination of these processes has proved adequate for Section 36 applications and there is no reason to believe that they would be less effective for safety zone applications. We are therefore reluctant to extend the minimum consultation period for safety zone applications beyond 28 days. However, as with Section 36 development applications, we would encourage developers to give all consultees as much advanced warning as possible that an application for a safety zone was about to be made.

41. We are also reluctant to adopt the suggestion by the BWEA and OREI developers that a strictly observed maximum time limit for objections should be introduced, as this would be inconsistent with the reasonable flexibility we have shown with regard to Section 36 applications, and might be construed by other stakeholders as placing undue restriction on the consultation process.

42. With regard to the BWEA's suggestions that the Secretary of State should have powers to create a safety zone with immediate effect in emergency situations, it should be noted that Section 95 of the Energy Act 2004 already empowers the Secretary of State to issue a safety notice at his discretion.

Question 7. Are there other organisations on whom notice should be served that an application for a safety zone is being made?

43. BWEA, Bond Pearce and a number of developers who responded separately said that there were no other organisations upon whom notice of application should be served.

44. The Royal Yachting Association suggested that if notice of application was to be served only on the MCA as suggested in the draft regulations, the MCA or DTI should ensure that all other navigation stakeholders were informed of all applications. The Chamber of Shipping suggested that notice should be served on all stakeholders with an interest in OREI.

45. The Northern Ireland Fish Producers Organisation requested that notices, details of the installation and cable connections should be made available to local and visiting fishing fleets. The South West of England Regional Development Agency (SWERDA) suggested

that we should require the applicant to make clear what processes had been put in place to notify/consult with the fishing industry.

46. The Marine Conservation Society suggested that notice should be served on all environmental NGOs. Conversely, the joint response by the JNCC and the Countryside Council for Wales said that this was not necessary, but that they would appreciate an opportunity to comment on individual proposals through public consultation or a more informal process.

47. The Scottish Executive requested that for applications for safety zones around installations in Scottish Waters, notice should also be served on Scottish Natural Heritage and the Scottish Environmental Protection Agency.

48. The following additions were suggested by the organisations shown in brackets:

- Chamber of Shipping (Trinity House)
- The appropriate general Lighthouse Authority (Northern Lighthouse Board)
- Sea Fisheries Committees and the Marine Fisheries Agency (Northumberland Sea Fisheries Committee)
- Statutory Port and Harbour Authorities where the proposed safety zone falls within or adjacent to the seaward limits of those authorities (Port of London Authority)
- British Marine Aggregate Producers Association (REA)
- Royal Yachting Association (REA)
- British Sub-Aqua Club (REA)
- National Federation of Fishermen's Organisations (REA)
- British Cruising Association (REA)
- Shark Trust (BSAC)
- RNLI (BSAC)
- Marine Conservation Society (BSAC)
- Whale and Dolphin Conservation Society (BSAC)
- Nautical Archaeology Society (BSAC)

Government response

49. In our opinion, it would be unreasonable and unnecessarily burdensome to expect applicants to serve formal notice of application on such a wide and diverse range of stakeholders. Although safety zones will have implications for other stakeholders, they are first and foremost a safety of navigation issue and we therefore take the view

that applications need only be formally served on the MCA, as the statutory advisor on navigation safety, and the other parties listed in draft regulation 5. However, as part of the wider consultation process we recommend that applicants should also provide copies of the application to the organisations listed in Annex A to this paper, and, for applications for safety zones in Scottish Waters, Scottish Natural Heritage and the Scottish Environmental Protection Agency. Once again, we strongly recommend that applicants should also provide as much advanced warning of an application as possible to any stakeholder likely to have an interest.

50. We do not think it would be reasonable to ask applicants to make notices, details of the installations and cable connections available to local and visiting fishing fleets, as suggested by NIFPO, other than through the process of advertising the application set out in the draft regulations. Similarly, we do not believe that the applicant should be asked to provide information on what processes have been put in place to notify/consult the fishing industry, which is a matter between the applicant and local/national fishing industry representatives.

Question 8. Is a charge of £2,000 for making an application for a safety zone reasonable?

51. Only half of the respondents to the consultation replied to this question. 14 respondents thought that the charge was reasonable, but 5 of these (BWEA, Bond Pearce and three developers) expressed a preference for a sliding scale with £2,000 set as the maximum fee. Three respondents (EMEC, Bond Pearce and REA) requested clarification of how DTI had arrived at this figure. Three renewables developers commented that £2,000 should be a one-off fee covering all stages of the life of an OREI from construction (including major maintenance work) through to operation and eventual decommissioning.

52. Trinity House suggested that the charge should be related to the average cost of dealing with an application, and that there should be provision for the cost to be altered periodically. The Port of London Authority sought clarification as to whether an application would apply to a single installation or an entire array.

Government response

53. The proposed £2,000 fee for applications was in fact based on a projection of the average amount of time it would be likely to take an experienced DTI consent manager to process an application, and an estimate of other costs involved, including overheads. It does not seem an unreasonable amount, but we will review the position from time to time in the light of actual experience with applications.

54. It will be possible for a single application to cover more than one phase of an OREI's life. For example, the applicant may choose to submit a single application covering all phases of an OREI's life, i.e. construction, operation, major maintenance and decommissioning. In such cases a single fee of £2,000 would be charged. However, where separate applications are submitted at different times for separate phases of an OREI's life it is envisaged that a separate charge would be made for each individual application.

55. As stated in the consultation document, an application could apply to a single installation or to a number of installations comprising an array. In practice, however, it is thought likely that most applications would fall into the latter category.

Question 9. Are there any other categories of exemptions from the prohibition on entering a safety zone that should be included in the regulations?

56. The following additions were suggested by the organisations shown in brackets:

- SAR vessels engaged in live operations, training and exercises (BWEA, RNLI and OPT Ltd).
- Vessels belonging to a general Lighthouse Authority (or engaged by one) in the performance of its duties (Northern Lighthouse Authority and Trinity House).
- RNLI and Coastguard vessels (E.On Renewables)
- OREI construction and maintenance vessels and vessels owned by OREI developers (various, including Port of London Authority).
- Vessels engaged by developers to undertake activities such as bird monitoring activities, benthic investigations and sampling of fish densities, as required under the terms of their FEPA licenses (JNCC/CCW).

- Vessels engaged by the electricity transmission System Operator for Great Britain (GBSO) and the Balancing and Settlement Code Company (BSCCo) for Great Britain and their respective agents (National Grid and Elexon)

57. The Royal Yachting Association suggested that the list of exemptions should be expanded to include vessels in distress and any vessel (including recreational) responding to an emergency situation/vessel in distress. The British Sub-Aqua Club suggested that diving and support operations should also be exempt unless a specific case could be made for exclusion.

58. The North Norfolk Fishermen's Association/Wells and District Fishermen's Association response suggested that all fishing vessels should be including in the list of exemptions for both navigation and fishing activities. The Northumberland Sea Fisheries Committee suggested that passive fishing activities, e.g. potting and netting should be exempted where appropriate.

59. On monitoring policing and enforcement of safety zones, Bond Pearce expressed concern about a possible enforcement deficit and requested clarity as to whether the MCA or the developer would shoulder the majority of the enforcement burden. The BWEA stated that in their and their members' view, there should be no role for developers in monitoring, policing or enforcing safety zones. Conversely, the Scottish Executive agreed that the costs of monitoring and policing safety zones should fall to the applicant, but suggested that the DTI develop guidance in consultation with all relevant parties, including the devolved administrations.

Government response

60. Most of the suggestions set out in bullets above are in fact already included in the list of vessels and activities permitted in a safety zone at Part 3 (Regulation 9) of the draft regulations, either specifically or under one of the general categories listed. It is our view that RNLI and other Search and Rescue (SAR) vessels would fall within general category (f), i.e. vessels "acting in connection with the saving of life or property". This category would also apply to private/ recreational vessels entering a safety zone in response to vessels in distress. However, we accept RNLI's advice that they and other declared SAR resources should be exempt for exercise and training purposes as well as operational emergency situations, and

SAR exercises and training will therefore be listed specifically in the regulations rather than under the aforementioned general category.

61. We also accept the request that a new category should be added to the list of exemptions to allow access to safety zones for vessels and personnel engaged by the electricity transmission System Operator for Great Britain (National Grid Electricity Transmission) and the Balancing and Settlement Code Company for Great Britain (ELEXON Ltd) and their respective agents.

62. We also accept JNCC/CCW's view that a new category should be created to cover vessels engaged by OREI developers or owners to undertake various environmental studies/monitoring activities that may be required under the terms of their FEPA licenses.

63. As indicated in our response to Question 4, the Government does not accept the BWEA's view that OREI developers should have no role in monitoring safety zones. There is clearly a role for the developer in monitoring such designated waters and, where necessary, providing evidence of transgressions to the Maritime and Coastguard Agency. However, we will seek the views of the MCA and other stakeholders with regard to the Scottish Executive's suggestion that we should consider issuing guidelines on the monitoring and enforcement of safety zones.

Question 10. Can you provide any information on the types of fishing activity currently undertaken within existing wind farms or in the strategic areas designated for the construction of Round 2 wind farms? Do you have any views on types of fishing activity that could safely continue to be undertaken in wind farms, or any ideas as to how existing activities might be adapted to make their safe continuation possible?

64. The joint response from the North Norfolk Fishermen's Society and Wells and District Fishermen's Association suggested that the building of wind farms would effectively exclude all types of dredging and bottom trawling from these sites because of the danger of gear becoming entangled in cables on the seabed. It also concluded that static netting, fill and drift nets would need to be limited in size, but that potting could safely continue where cables were buried.

65. The Northumberland Sea Fisheries Committee stated that non-passive methods of fishing such as demersal trawling, beam trawling and scallop dredging would not be safe within a wind farm. However,

they also mentioned that local fishermen had been able to fish (potting and gill-netting) to the base of installations at the Blythe offshore wind farm. The contention that some forms of passive fishing activity might be safely conducted within a wind farm was also supported by the British Sub-Aqua Club, who suggested that creel fishing and scallop diving should be allowed within safety zones subject to suitable guidelines being drawn up.

66. The Renewable Energy Association suggested that small craft of less than ten metres in length should be allowed to fish artificial reefs created by turbine towers. They also suggested that the towers should have mooring facilities for such vessels to obviate the need for them to anchor and thereby possibly damage or unearth cables.

67. A wave and tidal developer stated that in their view it would be unsafe for fishing vessels to enter certain types of wave devices because of the movement of such devices. The Northern Lighthouse Board suggested that no commercial fishing or leisure activities should be allowed where sub-surface wave and tidal devices were deployed, but that some types of fishing activity might be able to continue in wind farms.

68. A wind farm developer suggested that no trawling or netting should be allowed within wind farms, and that potting should only be carried out under special restrictions. They also said that in order to avoid damage to cables, no vessels should be allowed to anchor anywhere within wind farms or along their cable routes during construction or operation.

69. JNCC/CCW requested a further round of consultation and the completion of a new Regulatory Impact Assessment once the information requested under this question had been received and analysed. They went on to suggest that we should delay finalising the regulations until this additional work had been completed.

Government response

70. Although the response overall has not added significantly to our existing knowledge of these issues, it would seem sensible to allow sufficient flexibility in the regulations to allow applicants and fishing industry representative bodies to consider what fishing activities might safely continue to take place within wind farms and/or safety zones, on a site by site basis. We would be reluctant to issue specific restrictions relating to potting or any other form of static

fishing. Here again, we believe that this would be best left to those with experience/expertise in such activities to discuss with safety zone applicants on a site by site basis.

71. Given that this question has generated little new information, it seems unlikely that a further round of consultation, as requested by JNCC/CCW, would provide any additional or more meaningful data on these issues at this time. We do not therefore propose to undertake a second round of consultation.

Summary of Government position on key issues

72. Given that the responses to the consultation from some stakeholders appear to suggest that some of the proposals in the consultation document may have been misinterpreted, it is worth re-stating the following key elements of the proposals:

- All applications for safety zones will be carefully considered by DTI and MCA on a case by case basis and assessed on their individual merits on the basis of site specific conditions.
- The starting presumptions for possible dimensions of safety zones set out in the consultation document were intended only as indications, based on discussions with the Maritime & Coastguard Agency and the HSE, of what dimensions of safety zone might be required to prevent collisions between offshore renewable installations and vessels navigating in their vicinity. They were not intended to be prescriptive.
- An application can be made in respect of a single installation or several installations making up an array.
- It will be possible for a single application to cover more than one phase of an OREI's life, e.g. construction, decommissioning and operation.

73. Some respondents to the consultation, including the Chamber of Shipping, the Royal Yachting Association, the National Federation of Fishermen's Organisations and three local fishermen's representative bodies, have questioned the need for safety zones around OREI, particularly during the operational phase. Common themes running through their responses were that:

- there have been no reported incidents to date involving collisions between vessels and existing wind farms in UK waters;

- OREI present significantly less risk to mariners and other users of the sea than oil and gas installations, around which 500 metre safety zones are created automatically by law;
- existing arrangements for marking and lighting offshore development sites and vessels involved in construction work, together with notifications to mariners, including the marking of the position of OREI on charts, are sufficient to prevent collisions between vessels and OREI.

74. The government accepts the first and second of these points. We also accept that present arrangements for marking and lighting OREI sites and vessels involved in their construction may be adequate in some circumstances. However, these measures may not be sufficient in all cases and safety zones may therefore be necessary. As indicated in the partial regulatory impact assessment included in the consultation document, Round 2 wind farms, three of which have already been consented, are very much larger (when built the largest will have 300 plus turbines and occupy an area in excess of 230 square kilometres) than the five small wind farms already in operation in UK waters, which were limited to a maximum of 30 turbines per farm. It might be dangerous therefore to assume from a safety perspective that the lack of reported incidents to date involving these smaller arrays, which have been in operation for comparatively short periods of time, obviates the need to take the reasonable precautionary measures proposed in the consultation document.

URN 07/923

SAFETY ZONE APPLICATION CONSULTEE LIST

British Marine Aggregate Producers Association
Chamber of Shipping
Countryside Commission for Wales (where appropriate)
Department for Transport
Environment Agency
Joint Nature Conservation Committee (where appropriate)
Local Port Authority (if appropriate)
Local Sea Fisheries Committee
Maritime and Coastguard Agency *
National Federation of Fishermens' Organisations
Natural England
Northern Lighthouse Board
Royal Yachting Association
Trinity House Lighthouse Services
Scottish Environmental Protection Agency (where appropriate)
Scottish Executive (where appropriate) **
Scottish Natural Heritage (where appropriate)
Welsh Assembly Government (where appropriate) ***

* Formal notice to be served for all applications

** Formal notice to be served for applications in Scottish water

*** Formal notice to be served for applications in Welsh waters