

## Appendix A

### **Deposit Deposits in the Sea (Exemptions) Order 1985 Consultation on a proposal to require Offshore Transmission Owners to obtain a licence under Part II of the Food and Environmental Protection Act 1985 for the deposit of cables UKBCSE and Industry Response**

#### **1. Introduction**

The UK Business Council for Sustainable Energy (UKBCSE) was established in 2002 to support the fastest transition to a sustainable energy economy consistent with the delivery of a secure, reliable and affordable energy infrastructure.

UKBCSE has been working with the UK's major energy trade associations – Association of Electricity Producers, British Wind Energy Association, the Energy Networks Association, the Gas Forum and the Renewable Energy Association, in support of the majority of provisions contained within the Marine and Coastal Access Bill. The following responses to the consultation questions are provided within this context. This response should be read in conjunction with our covering letter, and we hope that our comments are helpful to DEFRA. Should you have any queries or require any additional information, please do not hesitate to contact Jane Smith at [jane@political-intelligence.com](mailto:jane@political-intelligence.com) in the first instance.

#### **2. Consultation Questions – UKBCSE & Industry Response**

##### ***Q1 Do you support Option 1?***

In principle, Industry would be in agreement to Option 1 as a temporary pragmatic solution to the legislative gap arising between the new Offshore Transmission Regime going live and the relevant provisions of the Marine and Coastal Access Bill coming into force. Through Option 1 the Marine and Fisheries Agency (or the new Marine Management Organisation) will continue to consider the environmental impact of submarine transmission cables connected to offshore wind farms when these cables are deposited, and will apply appropriate monitoring and other conditions. This will ensure that development in the marine environment continues to be conducted in a sustainable manner. Also, as pointed out in the consultation, this option would enable 'business as usual'. Cables will continue to be assessed and monitored for their environmental impact, without a temporary and unintended regulatory gap. However, we would also make the following key points:

##### **Holistic Consideration**

This approach contradicts the proposed holistic consent regime being implemented under the provisions of the Planning Act 2008 as follows:

- The Nationally Significant Infrastructure Projects (NSIPs) consent regime under the Infrastructure Planning Commission (IPC), allows for the holistic consideration of different elements of a project together i.e. in the case of offshore wind energy developments above 100MW the developer could apply jointly with the Transmission Owner for a consent application (with the provision to vary the ownership details at a later stage through Schedule 6 provisions);
- The IPC can, presumably on the advice of the Marine and Fisheries Agency (or MMO), grant the necessary licences under both the Coastal Protection Act and Part II of the Food and Environment Protection Act 1985.

The consultation makes no reference to the IPC, and yet the six projects listed are all in excess of 100MW. This is presumably because they are already within the planning regime and the only remaining consent required is the granting of the licence. It is therefore assumed that, in future, similar projects would naturally fall within the jurisdiction of the NSIP

/ IPC regime if their applications are submitted after 1 March 2010. However, colleagues would welcome clarification as to:

- Whether this is the case, and therefore in the future the Marine and Fisheries Agency or the Marine Management Organisation would be a statutory consultee to the IPC;
- Is this proposed temporary amendment to the Deposits in the Sea (Exemptions) Order 1985 therefore only necessary because:
  - National Policy Statements will not yet be designated and so the IPC will only be a recommending body from June to late 2010? Therefore there is a temporary need to continue with the MFA or MMO until NPS designation has taken place? and / or
  - All of the projects are already within the planning system and the FEPA licences are the only remaining consent outstanding?
- If other projects are to be submitted to the IPC after 1 March 2010, will the consenting and licensing processes be run as one, or in parallel?

In the future the ability for developers to choose to opt for joint submission and therefore option of holistic consideration of a project under the IPC regime should endure.

**Q2 *Bearing in mind that this option is intended to maintain 'business as usual' until the new licensing regime under the Marine and Coastal Access Bill commences, are there any unforeseen impacts that you consider likely to result from this option?***

The key unforeseen impact that may arise is potential confusion from developers as to these interim arrangements being proposed and the transitional arrangements already being implemented under the Planning Act 2008.

**Q3 *Do you support Option 2? If so, what do you consider are the benefits of Option 2 over option 1?***

Industry's preference is for Option 1 in order to ensure that an appropriate legislative regime exists to ensure compliance with FEPA requirements. Failure to do so could render a project subject to a judicial review, and risk ensuring that appropriate conditions and monitoring are in place. Given that all of the projects mentioned are already in the planning system it would seem sensible to maintain the current arrangements, albeit with wind energy developers and offshore transmission owners applying separately for their FEPA licenses temporarily.

**Q4 *Do you support Option 3? If so, what do you consider are the benefits of Option 3 over Option 1?***

Industry does not support Option 3 – for the same reasons stated in Q3.