NIRIG
NORTHERN IRELAND
RENEWABLES INDUSTRY GROUP
The Voice of IWEA & RenewableUK in Northern Ireland

Forsyth House
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NIRIG response to the Northern Ireland Marine Bill

The Northern Ireland Renewables Industry Group (NIRIG) is a collaboration between the Irish Wind Energy Association and RenewableUK. NIRIG represents the views of the large and small scale Renewable Energy Industry in Northern Ireland, providing a conduit for knowledge exchange, policy development support and consensus on best practice between all stakeholders in renewable energy.

NIRIG acknowledges the need for a Marine Bill in Northern Ireland and welcomes the opportunity to comment on the proposed Bill.

Before commenting on the Bill itself, NIRIG would like to note that the potential of on-going debate around the possibility of a Marine Management Organisation (MMO) for Northern Ireland could create uncertainty for renewable energy projects needing to move forward later this year. NIRIG would support the creation of an NI MMO to manage balanced decision-making in planning and consenting processes. In Scotland, value has been demonstrated in having a specific agency (Marine Scotland) whose ability to look dispassionately at the separate needs of conservation and economy and to prioritise both is recognised and respected both by industry and by conservation agencies. Given spatially limited marine interests, we recognise the argument that there is more limited bureaucratic justification for creating such an agency in Northern Ireland. However, the lack of clarity on an MMO needs to be addressed and the appropriate vehicle for the licensing consenting process must be defined as early as possible.

Our general comments on the Marine Bill are as follows:

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Marine Planning

- The Bill makes no mention of a need to consider economic activities or climate change mitigation. Other similar legislation in the UK makes explicit reference to climate change mitigation, including the Scottish Marine Act where under 'General Duties' (Part 2) it states that in exercising functions under the Act, Ministers and public authorities must act in the way best calculated to mitigate, and adapt to, climate change. NIRIG would suggest that a similar reference is included in the NI Bill.
- To facilitate renewable electricity generation, reference to the NI Strategic Energy Framework and Offshore Renewable Energy Strategic Action Plan could be included in Schedule 1, Section 9.
- Marine planning should build in concepts of Sustainable Development and combine economic, social and environment considerations: specifically, marine planning should enable renewable energy development. Elsewhere in the UK the bodies responsible for national level marine planning take renewable energy into account and we would suggest that the same should be the case in NI.
- The plan will need to coordinate with other plans in the wider Irish Sea and it is unclear on what timescale this will play out. It is important that the NI marine Bill takes cognisance of the other plans it is set to interface with.

Marine Conservations Zones (MCZs)

- Clause 12(7) refers to economic and social consequences of designation but only as a possibility. NIRIG would strongly recommend that this Clause be amended to read 'in considering whether it is

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desirable to designate an area as an MCZ, the Department *must* have regard to any economic or social consequences of doing so". Experience from the process in England shows that it is very difficult to reach consensus on designation from stakeholders without considering socio-economic factors.

- There is a duty to consult on MCZs and an ability to go to hearings or give written evidence. This duty should be extended to the MCZ management measures, as it is difficult to respond on designation in principle, if the impact on a project or cable route is not known. MCZs would gather more support if the management measures were approved by industry and were not of a prohibitive nature.
- As MCZs are national designations, any MCZ should not be subject to Habitat Regulations Assessment.
- In order to expedite decision-making, NIRIG would suggest that MCZs should not be declared in an area which is strategically important for development and which is locationally inflexible. Specifically, this should also include the areas currently part of The Crown Estate offshore leasing round for NI.
- Potential impacts on certain sectors of MCZ designations should be made clear at the outset. The uncertainty over potential impacts of designation on the renewables sector in England meant that a precautionary approach was taken which had subsequent impacts on the degree of support for co-location. Impacts should be clearly stated and agreed as early as possible in order to facilitate stakeholder support for co-location.
- The objectives of an MCZ are set out at designation, but the management methods are detailed two months after designation. Earlier detailing of management measures would enable wider

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acceptance and will enable the industry to plan for and support the implementation of MCZs.

- There is a duty on authorities to advise against activities that may interfere with the conservation objectives of an MCZ. We appreciate that it is important to build in flexibility on these points but the current wording seems like repetition of Natura 2000 powers and could prevent the 'deploy and monitor' approach that has been successfully implemented in other parts of the UK.
- Further detail on the process for designating MCZs, with clear responsibilities and reporting lines is required, and in light of the continuing uncertainty on an MMO for NI NIRIG would suggest that one department or body be given clear responsibility for designation.
- The departmental Reports will report those activities which are 'prohibitively or significantly restricted'. NIRIG would recommend that in order to fully inform the Department of the impacts of MCZ designation, reporting should also take place on activities which are significantly 'affected'. For example, the Department will presumably be keen to know if an MCZ has significantly increased the cost or delayed the development of a renewable energy project.

Consenting

- The NI Marine Bill indicates that dual applications (for both marine licences and consent under Article 39) will follow the procedures of the Electricity Order (Clause 7 of Part 4). This seems a departure from the original intention (as noted in the SEA/RLG) to place the emphasis on the marine licence application process (whence the target date for determination by NIEA of four months arose). As a result of the proposals in the NI Marine Bill, however, it seems that the applications

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will follow the Article 39 application process. Whilst this is welcome the following issues arise:

1. **Decision-making on consent applications** - The NI Marine Bill wording appears to make continuing discussion of a NI MMO irrelevant for an Article 39 consent application as the application will proceed via the Electricity Order route irrespective of the conclusions of discussions on a NI MMO. In either case, licensing/consenting should be adequately resourced to manage caseload with appropriate marine expertise to support robust decision making. There is value in streamlining the consents process so that a lead agency can provide a one-stop-shop for all consents and licenses required for a project. This includes DoE (the FEPA and CPA marine license), DETI (Article 39) and the Planning Service (onshore elements). With any existing department as a lead agency, there is a real challenge in ensuring balance due to the core perspectives and objectives of that department. With DETI as a lead, it would need to be very transparent that conservation considerations were being given proper consideration. Equally with DoE/NIEA as leads, it would need to be transparent that economic development was being given adequate weight. Joint-working between departments is a political ideal, but it must be recognised that this is not always easy. Therefore effective management processes must be put in place to deliver balanced outcomes irrespective of the selected front-door department.

2. **Timetables** - Whilst the Electricity Order itself provides no clear set of procedures for the Article 39 consent application, the Offshore Electricity Development (Environmental Impact Assessment) Regulations (Northern Ireland) 2008 does set down some procedures for Article 39 applications that require EIAs. This defines deadlines for

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consultation responses (excluding transboundary consultations) where consultees have 4 weeks to respond either to the application or any further information. There is no time limit, however, after the expiry of the consultation period within which the Department must make its decision and there is always the scope for the Department to conclude that a public inquiry is necessary under Article 66 of the Electricity Order before it can reach a decision, for which, again, there is no timetable. We believe that for strategically significant projects there should be timetables for a decision. In fact, the Directive underpinning the regulations (EIA Directive for Offshore Electricity Developments) as amended requires the Department to "fix appropriate time limits for the various stages of the procedure in order to ensure that a decision is taken within a reasonable period".

3. **Pre-application discussions** - The Offshore EIA Regulations do not contain any guidance on pre-application discussions that will need to be undertaken to ensure a streamlined application to cover all matters that might subsequently lead to delays in addition to the standard matters relating to environmental scoping and project definition. This would include overlap with onshore planning; the equivalent of Article 40 agreements of the Planning Order; scope, timing and workings of potential inquiry; milestone meetings and decision timetable; consultee lists; Rochdale envelope; conditioning discussions; decision making body or bodies; process for varying consent; compulsory purchase powers amongst others.

4. **Stream-lining** - Projects will require consent for all on-shore aspects under Planning (Northern Ireland) Order 1991. It would be useful if streamlining addresses how the Article 39 and the marine licence

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applications would dove-tail with the Planning Order consents. Under the same principles, it would be sensible if only one EIA were to be required for the entire project (offshore generating station and on-shore connection assets). There is a risk that streamlining of one part of the process is rendered irrelevant if it does not capture all aspects of the process including on-shore grid connection. In the absence of a full one-stop shop, it is critical that consistent principles are adopted for both on-shore and off-shore regulatory bodies such that all aspects of a major offshore infrastructure project can progress in parallel through the consenting systems. This can best be achieved by efficient pre-application co-ordination between DETI, DOE and NIEA as the three consenting/licensing bodies with the intention of being to produce a definitive decision within a fixed timescale (subject to a window for any legal challenge). Given the need for coordination it would be beneficial to develop a “one stop shop” as we have seen in other regions.

Along with these general comments, NIRIG believes the Bill would be improved with the following specific changes:

Clause 12 (7) – Change “may” to “must”. This would significantly strengthen the call to consider economic and social consequences

Clause 12 should feature an extra clause 12.9 urging consideration of energy potential

Clause 13 - MCZs should be designated with reference to the MPS. A failure to consider the MPS would add severe complications to the process and reduce the streamlining effects of the bill

Clause 14 (4) - on consultation before designation should have a further sub clause (c) including DETI in the statutory consultees

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Clause 18 (3) – should include a new sub clause (d) stating the need to minimise impediments to development of renewable energy in those areas.
Clause 19 (2) (c) – Change 'restricted' to 'affected'. This would inform the Department of delays and cost implications of MCZ designation on renewable energy developments
Schedule 1, Clause 9 should include a reference to economics with regards to the plan.
Schedule 1, Clause 3 (4) DETI should be explicitly listed as a department to consult with.

Areas that we feel are particularly strong and should be implemented as currently read include:

Clause 2(10) (d) This clause requiring DETI to be involved as part of the marine plan is vital.
Clause 5(2) (a) Economic characteristics are key and should retain a high profile in the bill.
Clause 5(2) (c) Energy should be kept as an important area to review

The adoption of the NI Marine Bill is a key tool for steering policy formation and we believe that the alterations suggested above would both improve the Bill and facilitate Northern Ireland's ambition to become a leader in the renewables industry. We welcome comments and further engagement on this important piece of legislation.

For further information, please contact:

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