ROYAL DECREE

Ministry of Petroleum and Energy	Ref. no: 20/88-
Minister: Tina Bru	Case no:
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Adoption of Regulations to the Offshore Energy Act

Background

Act No 21 of 4 June 2010 on Offshore Renewable Energy Production (the Offshore Energy Act) defines the framework for utilisation of offshore renewable energy resources. The Act states that, as a rule, offshore renewable energy production outside of the baselines can only take place once the Norwegian state has opened an area for licence applications.

As a follow-up to the Government's strategy for floating offshore wind power outlined in Proposition No 1 to the Storting (Resolution) (2017–2018), the Ministry of Petroleum and Energy has distributed for consultation a proposal to open two areas for offshore renewable energy production and requested feedback in relation to a third area. Opening an area means that it will become possible to apply for licences for renewable energy production in the area in question. The proposal to open areas was accompanied by a draft set of regulations on renewable energy production (the Offshore Energy Regulations). It is expedient to regulate matters in more detail by adopting regulations. In order to provide guidance and clarify conditions for players that want to develop projects, it is necessary to set out requirements relating to order and documentation, among other things, in regulations.

The Ministry has emphasised that the process towards the potential awarding of a licence should be efficient, while also allowing for consultation rounds and assessments in order to provide a basis for sound licensing decisions.

Both the proposal to open areas and the draft regulations were distributed for consultation during the period from 2 July to 1 November 2019. Approximately 300 consultation submissions were received.

The Ministry proposes that the Regulations enter into force on 1 January 2021.

The Ministry also proposes that areas be opened for offshore renewable energy production with effect from the same date. This proposal is discussed in a separate Royal Decree.

Further information about the proposal

The licensing process

The draft regulations clarify how licence applications will be processed. Important considerations underlying the Ministry's proposal include ensuring that the licensing process is similar to that in place for onshore wind power, while also taking account of the distinctive characteristics of energy projects developed offshore.

In addition to the technical differences between offshore and onshore wind farms, an important difference is that there is no equivalent to private land ownership at sea. Developers of onshore projects will often enter into an agreement with a landowner on use of land before applying for a licence. In the offshore setting, the State will decide who is entitled to use areas in different ways and consider the question of licensing. Unlike onshore projects, a strategic impact assessment has already been conducted for areas opened under the Offshore Energy Act.

Notification with a proposal for impact assessment, licence application and detailed plan

The draft regulations describe a licensing process starting with the project developer submitting a notification with a proposal for a project-specific impact assessment programme. The programme is then distributed for consultation.

If the Ministry adopts the project-specific impact assessment programme, it will apply to a specified part of an opened area. The Ministry may change this area, and the Regulations define such areas as project areas. Once a project-specific impact assessment programme has been adopted, the developer must submit a licence application within two years.

The Ministry has taken into consideration that it is expensive to develop a project for offshore renewable energy production, particularly to conduct surveys in connection with the project-specific impact assessment. Therefore, the Ministry does not allow more than one assessment programme to be adopted for the same area simultaneously.

The authorities might need to manage any notifications regarding the opened areas. For example, several notifications could be submitted during the same time period or for neighbouring areas. It could be necessary to consider such notifications in conjunction with each other and be able to control which notifications and areas to proceed with. The Regulations therefore state that the Ministry can determine the assessment programme. This means that the Ministry is not obliged to approve an assessment programme, even if there is nothing wrong with the notification or the programme as such. When the Ministry determines an assessment programme, it can also define in more detail which area the impact assessment is to be conducted for and where it will not be possible for other parties to submit a notification. It must also be possible for the Ministry to delay consideration of a notification for a while in order to maintain control and be able to consider different notifications in conjunction with one another.

If a licence application is submitted within the deadline, the Ministry will process the application. The Ministry decides whether or not to award a licence. The appellate body is the King in council.

Once a licence has been awarded, a detailed plan must be submitted within two years. Once the detailed plan has been approved, the installation must be built within three years.

The proposed Regulations allow for conditions to be stipulated in connection with licensing decisions and detailed plans.

The proposal allows for the extension of deadlines for applying for a licence and submitting a detailed plan, as well as the deadline for putting the installation into operation, by up to two years at a time.

Processing fee

Unlike on shore, the right to utilise offshore energy resources rests with the Norwegian State, and those awarded a licence for offshore renewable energy production will be granted an exclusive right to operate such activities in a defined area.

The Ministry of Petroleum and Energy proposes introducing a fee to be stipulated by the Ministry for processing a notification with a proposal for a project-specific impact assessment. The Ministry is of the opinion that players should cover some of the administrative costs incurred by the State in processing such notifications. If the Ministry determines an assessment programme, it will also grant an exclusive right to plan renewable energy production in an area for a period of two years, and a fee will help to identify applicants with genuine development plans.

In the Ministry's opinion, the current level of NOK 100,000 is in line with circular R-112/15 issued by the Ministry of Finance on funding state activities through fees and charges. One important consideration in this circular was that a fee must not exceed the average costs incurred by the State in processing the notification and approving the project-specific impact assessment programme.

Relationship to petroleum production

Petroleum activities have taken place on the Norwegian continental shelf since the 1960s. The petroleum industry has interests in the North Sea, the Norwegian Sea and the Barents Sea. The Ministry has conducted an assessment of the technical, practical and legal issues that will arise if wind farms are planned and installed in areas of interest to the petroleum industry, based on, among other things, an assessment by the Norwegian Petroleum Directorate (NDP).

One of the conclusions from the NDP's assessment is that offshore wind farms will make it less interesting for the oil industry to obtain knowledge about petroleum resources in the locations where wind farms have been established compared with other sea areas. There is a possibility that the site of a wind farm may contain petroleum resources that will not be discovered.

The Ministry of Petroleum and Energy awards licences both for petroleum production under the Petroleum Activities Act and for renewable energy production under the Offshore Energy Act. This means that the Ministry will have a good overview of the rights granted, and can thus avoid conflict and see the big picture when awarding rights.

Petroleum production licences contain a work programme whose main objective is to find any petroleum deposits. Licences are time-limited. Once the work programme has been completed, the licensee will either apply for approval of a plan for development and operation for a smaller area and relinquish the rest of the area, or relinquish the whole area.

Petroleum is a location-specific resource that must be found and recovered where it is. The exact location of wind power plants within an area opened for wind power production can be adapted to other interests and activities in the area, including petroleum activities.

When an area is opened for wind power, a limit can be stipulated for the scale of wind power development that can be permitted in the area in question. This facilitates locating wind power plants within the opened area in a way that minimises the inconvenience they represent to other interests and activities in the same opened area.

The Ministry finds that wind power licences cannot be awarded for areas where petroleum production licences have been awarded, unless it is specified in the production licence that wind power development may be permitted in the area or by agreement with the holder of the production licence.

Once the Ministry has adopted a project-specific impact assessment programme and thereby defined the project area for a wind power project, such notification is expected to be given in connection with any new petroleum production licences awarded within the same area.

Otherwise, no such notification should be given for petroleum production licences within areas opened for activities under the Offshore Energy Act. Such notifications would only create unnecessary uncertainty for petroleum activities. Since the areas opened under the Offshore Energy Act are relatively large and only parts of them will be utilised, it should be possible to find suitable project areas while avoiding areas for which petroleum production licences have been awarded.

Good dialogue between holders of petroleum production licences and those involved in wind power projects is key to facilitating co-existence. This is particularly true in cases where a petroleum development licence is awarded within a wind power project area.

The Ministry considers that contact between petroleum and renewable energy interests at an early stage will be important to ensure good coordination and a good knowledge base for the Ministry.

Since petroleum is a location-specific resource, it must also be possible to award survey licences and production licences for petroleum in areas covered by a licence under the Offshore Energy Act, including where a wind farm has been established. If a survey licence or production licence is awarded in such an area, it will be particularly important for the players to facilitate co-existence. If the players themselves do not succeed in arriving at a solution, the Ministry should have the authority to decide how activities shall be organised. When awarding a wind power licence in an area of potential interest to the petroleum industry, it may therefore be an option to stipulate the condition that the Ministry may decide that wind power activities shall be adapted, if relevant in return for compensation.

Consultation input and the Ministry's assessments

General comments

Consultation input

Several of the consultation parties provided feedback on factors that the proposed regulations do not regulate.

Nordic Wind is of the opinion that it is the responsibility of the central government authorities to facilitate optimal local value creation when offshore wind farms are established, and that the production of fossil-free hydrocarbons must be facilitated.

The joint committee for the new City of Stavanger following municipal merger (*Fellesnemnda for nye Stavanger kommune*) points out the importance of national ownership of wind power resources.

Offshore Power Plant is of the opinion that the Regulations should be open to new and innovative technology.

Norwegian Energy Solutions points out that it might be important to have the possibility to depreciate losses.

The Ministry's comments

The purpose of the Regulations is to regulate the use of areas and to ensure that they are managed in a way that takes both public and private interests into account in the consideration of licence applications. The Ministry sees no reason to stipulate requirements for public ownership or right of reversion to parallel the regulation of ownership in place for hydroelectric power. There is no private ownership at sea as there is for the land and waterfalls used in hydroelectric power production.

The main input factor in connection with the establishment of a wind farm is the turbines themselves, which have a useful life of 25–30 years. This corresponds to the duration of a licence under the Offshore Energy Act. When a wind farm is decommissioned at the end of its useful life, the licensee as the owner will incur considerable costs in connection with its removal. If the wind farm is to continue operating, considerable investments will be required in new turbines, assembly etc. based on a new licence following a licensing procedure and new impact assessments.

Chapter 1. Introductory provisions

Proposals for purpose

Several consultation parties have contributed proposals for the statement of legislative purpose to be amended, either in the Offshore Energy Act or the Offshore Energy Regulations.

The Norwegian Confederation of Trade Unions (LO) is of the opinion that both the Offshore Energy Act and the Offshore Energy Regulations should explicitly confirm that the wind power is the property of the Norwegian people and that society should be able to benefit from value creation through offshore energy production.

Aker Solutions and *Kværner* are of the opinion that the Offshore Energy Act should include the objective that offshore energy resources should benefit Norwegian society.

The Norwegian Shipowners' Association proposes to include in the Regulations a statement of purpose corresponding to the Petroleum Activities Act Section 1-2 second paragraph, and that national ripple effects and the development of the Norwegian supplier industry should be key criteria in licensing cases. The organisation also refers to the qualitative assessment made when applications are considered pursuant to the petroleum legislation.

The Ministry's assessment

It is the Ministry's opinion that the Regulations cannot have a purpose that differs from that of the Offshore Energy Act, and the Ministry advises against amending the Regulations on this point. Nevertheless, the Ministry takes note of the input, which it will be relevant to

consider should an amendment of the Offshore Energy Act be proposed.

Section 1. Scope

The Regulations have the same scope as the Offshore Energy Act, cf. Section 1 first paragraph of the draft regulations. The Regulations concern renewable energy production and conversion and transmission of electricity as mentioned in the Offshore Energy Act Section 1-2.

Section 1 second paragraph of the draft regulations states that the Offshore Energy Act also regulates the use of areas within the baseline for the purpose of renewable energy production. During its work to identify assessment areas for offshore wind power, the Ministry also considered areas within the baseline, and several of the areas identified are located wholly or partly within the baseline.

In the consultation round, the Ministry proposed that the principle set out in the Offshore Energy Act Section 2-2, that offshore areas must be opened by the King before applications for licences can be submitted, be extended to apply within the baseline as well, cf. the Offshore Energy Act Section 1-2 seventh paragraph.

In the Ministry's opinion, this extension of the scope of Section 2-2 of the Offshore Energy Act would ensure a comprehensive management of areas that can be used for offshore renewable energy production. Licences already awarded pursuant to the Offshore Energy Act are valid regardless of this.

In Section 1 third paragraph of the draft regulations, the Ministry proposed that the Offshore Energy Act Section 8-1 should not apply to the import and export of electrical energy connected to the Norwegian power system.

In Section 1 fourth paragraph of the draft regulations, the Ministry proposed that Section 12 of the regulations should apply to demonstration plants.

Consultation input

The Attorney General of Civil Affairs asks why Section 1 second paragraph of the draft regulations did not refer to Chapter 4 of the Offshore Energy Act.

NORWEA is critical of the extension of the scope for opening areas to include those within the baseline. The organisation refers to the fact that projects near the coast will have a visual impact and therefore problematises whether the administrative rights that the municipalities have in sea areas pursuant to Act No 71 of 27 June 2008 relating to Planning and Processing of Building Applications (the Planning and Building Act) Section 1-2 should be set aside.

The interest organisation for Norwegian power-producing counties, *Kraftfylka,* takes a positive view of the proposal to extend the scope, but requests influence over the choice of such areas.

The Norwegian Association of Local and Regional Authorities (KS), *Finnmark county authority*, *Nordland county authority* and *Kraftfylka* are of the opinion that the scope of the draft regulations overlaps with that of the Planning and Building Act and call for a description of how use of offshore areas for wind power purposes will be clarified in relation to this Act. Finnmark county authority and Nordland county authority also see a need to clarify the relationship between the Planning and Building Act and the Offshore Energy Act. Finnmark county authority considers that the municipal right of disposition is restricted if the Offshore Energy Act is to regulate the use of areas within the baseline.

KS is of the opinion that municipalities must be entitled to refuse wind farms in the municipality's territory. *Kraftfylka* is of the opinion that strong local and regional support must be ensured for offshore wind power and that county authorities must play a key role in assessing the potential for regional synergies from power production.

Vestland county authority takes a positive view of the proposal that the Offshore Energy Act should also apply to use of areas within the baseline.

The Norwegian Polar Institute comments that the Offshore Energy Act also applies to the territorial sea and internal waters around Jan Mayen.

The Ministry of Justice and Public Security writes that an exemption from the Offshore Energy Act Section 8-1 is proposed in Section 1 third paragraph of the draft regulations. In the Ministry of Justice and Public Security's opinion, it is natural to interpret the Offshore Energy Act Section 8-1 third paragraph to mean that it only authorises exemptions in individual cases. The Ministry of Justice and Public Security assumes that the relevant legal authority is Section 1-2 fifth paragraph (the Ministry of Petroleum and Energy believes that the correct reference is Section 1-2 sixth paragraph), but recommends that the Ministry discuss this in more detail.

The Ministry's comments

The Planning and Building Act Section 1-2 second paragraph confirms that in marine areas, the Act applies to a zone extending one nautical mile beyond the baselines.

The Planning and Building Act is the general act governing land use within its scope and, in principle, also applies to wind farms. Wind farms cannot be built in contravention of applicable plans. However, wind power projects are not subject to a zoning obligation and are also exempt from the building application requirement. The relationship between the Planning and Building Act and the sector legislation has been considered by the Storting on several occasions, most recently in connection with the consideration of Report No 6 (2018–2019) to the Storting on the functions of new regions, cf. Recommendation No 119 to the Storting (2018–2019).

If opening areas within the baseline is considered, the Ministry will prepare a proposal on how to coordinate the Offshore Energy Act with other legislation. It is for this reason that Section 1 second paragraph of the draft regulations does not refer to Chapter 4 of the Offshore Energy Act as called for by the Attorney General of Civil Affairs.

The Ministry considers that the extension of the scope of the Regulations does not interfere with the authority of municipalities pursuant to the Planning and Building Act, but rather ensures a holistic management of marine areas.

The Ministry does not change its proposal to extend the scope of Section 2-2 of the Offshore Energy Act and makes no modifications to Section 1 of the Regulations on this point.

As regards the consultation submission from the Ministry of Justice and Public Security, the Ministry wishes to point out that Section 8-1 of the Offshore Energy Act concerns the requirement for a licence to import and export electrical energy, not a licence for the grid installation. We are therefore within the scope of Section 1-2 sixth paragraph of the Offshore Energy Act, which states that the King can limit the application of this Act in whole or in part through regulations or in individual cases when offshore facilities, objectives or activities that fall within the scope of another act are concerned. The Ministry wishes to limit the right to make exemptions because it constitutes double regulation, cf. the Energy Act

Section 4-2.

The Ministry Agrees that the Offshore Energy Act Section 1-2 sixth paragraph is the correct legal authority for limiting the application of parts of the Act in relation to offshore facilities, objectives or activities that fall within the scope of another act.

The Ministry replaces Section 1 third paragraph of the draft regulations with the following: *'Interconnectors for which a licence has been awarded pursuant to Section 4-2 of Act No 50 of 29 June 1991 relating to the Generation, Conversion, Transmission, Trading, Distribution and Use of Energy etc. (the Energy Act) does not require a licence pursuant to the Offshore Energy Act Section 8-1.'*

Section 1 fourth paragraph of the draft regulations, cf. also the proposed Section 12, is removed. See Chapter 2 on demonstration projects for grounds.

Section 2. Definitions

The proposed Section 2 letter d) of the draft regulations is removed. See Chapter 2 on demonstration projects for grounds.

Chapter 2 – Notification, project-specific impact assessments, licences and detailed plans

Some of the consultation input is general in nature and not linked to specific sections of the draft regulations. Input pertaining to the licensing process has been thematically organised and commented on below.

General considerations relating to the licensing process

Consultation input

Agder Energi supports the licensing process outlined by the Ministry in the draft regulations.

The Norwegian Oil and Gas Association is of the opinion that the Regulations do not guarantee a predictable licensing process, and reference is made to rules for the petroleum sector that set stricter requirements concerning applicants, deadlines and case processing times.

The Norwegian Shipowners' Association believes it should be considered whether the licensing process can be rationalised further. Reference is made to the fact that no requirements are stipulated for the public administration's case processing times, and that it should be considered whether more of the impact assessment work can be carried out in connection with the area being opened up. The Shipowners' Association also thinks that the licensing system must accommodate adaptations necessitated by technological developments and that a guide should be prepared.

Multiconsult is of the opinion that a clearer process should be outlined for awarding the areas that are opened up. *The University of Bergen* also points out that the draft regulations make no mention of the methodology for assessing the matter of licensing.

Offshore Power Plant is of the opinion that the authorities should emphasise maximum energy harvesting in an environmentally optimal manner in their assessments.

The Directorate for Cultural Heritage and *Statnett* request to be involved in licensing processes at an early stage.

The Ministry's comments

The Ministry's opinion is that detailed regulation of deadlines, case processing times, adaptations following from technological developments etc. over and above what is already proposed in the draft Offshore Energy Regulations is superfluous because the general case processing provisions follow from the Public Administration Act. The Ministry will discuss the comments under the individual provisions below.

Deadlines

Consultation input

Rogaland county authority and *the University of Bergen* endorses the deadlines proposed by the Ministry in the draft regulations. *The Norwegian Ornithological Society* is of the opinion that when it comes to extension of deadline, a strict practice is necessary.

Energy Norway endorses the proposal for strict deadlines in the licensing process, but is of the opinion that considerations for business model development, progress and trading in rights indicate that the deadline for putting an installation into operation should be flexible. *RWE*, *Greenstat*, *Aker Solutions* and *Equinor* also request that the Ministry consider more flexible deadlines in the licensing process.

The Norwegian Confederation of Trade Unions (LO) is of the opinion that, in addition to the deadlines stipulated in the draft regulations, clear activity requirements should be stipulated so that violating them can lead to a licence lapsing. *RWE Renewables* also proposes a more detailed work programme to remedy any extended deadlines for project development milestones.

The Norwegian Shipowners' Association requests that the Ministry consider whether exceeding the deadlines relating to a notification should automatically lead to the approval of the notification lapsing.

Aker Solutions proposes that the Ministry stipulate case processing deadlines for its own work.

The Ministry's comments

Opinions have emerged in the course of the consultation round that support the Ministry's proposals for deadlines. Other opinions included that the Regulations should allow for a greater degree of flexibility, that the deadlines are short, and that exceeding deadlines should automatically result in rights lapsing.

The Ministry has emphasised that the deadlines proposed in the Regulations should address considerations of flexibility and that sufficient grounds must be given for any extensions granted. The Ministry may grant extensions of most of the deadlines, but not by more than two years at a time.

The Ministry refers to the fact that some amendments will be made concerning extension of deadlines and refers to the discussion of Section 11 of the draft regulations below.

Qualification of applicants

Consultation input

Shell and *Equinor* propose qualification requirements to ensure that the applicants have the necessary expertise and experience. *The Norwegian Confederation of Trade Unions (LO)* is of the opinion that the Ministry should consider whether a licence structure and operatorship, similar to the arrangements in place for petroleum activities, could be suitable for offshore renewable energy production.

Ny Energi AS is of the opinion that no requirements should be made of applicants that would restrict diversity, and that the further process once a licence has been awarded should be more individually adapted.

Fred. Olsen Renewables and *Fred. Olsen Ocean* are of the opinion that the licensing system should guarantee a wide range of players.

NORWEA finds it to be unclear on what basis the Ministry proposes to distinguish between different players and how to prioritise different notifications in relation to each other. *NORWEA* therefore proposes introducing a qualification requirement corresponding to that found in Section 10 second paragraph of the Petroleum Activities Regulations, which should ensure that areas are allocated on the basis of objective, non-discriminatory criteria that will generate the greatest possible ripple effects for Norway within the framework of the EEA Agreement.

The Ministry's comments

The Ministry agrees that there may be a need for criteria to distinguish between applicants in cases where projects are quite similar. Any such criteria should be laid down in regulations. Such criteria cannot be adopted at present, as the draft regulations distributed for consultation did not contain any. The Ministry will consider submitting a proposal for amendment of the Regulations in this respect. The Ministry also intends to prepare a guide to the application process.

Licensing assessment criteria

The consultation round generated more input on the licensing process and suggestions for other approaches to the licensing assessment than the Ministry included in its proposal.

Consultation input

Aker Solutions, *The Federation of Norwegian Industries* and *Norwegian Offshore Wind Cluster* recommend that rights to develop wind power be granted on the basis of qualitative criteria. *Maritimt Forum* is of the opinion that national ripple effects and the development of Norwegian industry must be criteria in the licensing process, and that it is important to have a wide variety of players.

Kværner is of the opinion that licensing rounds/announcements should be organised in a manner modelled on the petroleum administration's system.

Aker Solutions and *Fred. Olsen* advise against using auctions to award licences.

The Ministry's comments

The Ministry does not change its proposals concerning the licensing processes. See also the Ministry's comments to input under ‘qualification of applicants’.

Section 3. Notification with proposal for a project-specific assessment programme

Consultation input

Shell suggests that the requirement to describe the project should not be made too detailed at too early a stage in order to allow for modification in light of the impact assessment.

Aker Solutions is also of the opinion that the Regulations must clarify whether an applicant has an exclusive right to an area after the licence application has been submitted, but before the Ministry has reached a licensing decision.

The Ministry's comments

The Ministry does not change its proposals concerning the licensing processes, but intends to prepare a guide to elaborate on a number of issues relating to the application process. This guide will contain further details about what the notification should contain.

Section 4. Assessment programmes

Consultation input

It is the opinion of several consultation parties that the Regulations do not provide for adequate contributions from the environmental authorities and special interest organisations.

The Norwegian Environment Agency points out that the Regulations do not provide for public consultation on the detailed plan, and requests that the environmental administration be consulted in the assessment of environmental consequences and measures to mitigate negative impacts.

The Norwegian Fishermen's Association proposes that Section 4 first paragraph letter b) of the draft regulations be modified to closer resemble Section 22 of the Petroleum Activities Regulations.

The Ministry's comments

In Section 4 of the Regulations, the Ministry proposed what content should be required in a notification with a proposal for a project-specific assessment programme. The Ministry may also require additional information at this stage. The Ministry will distribute the proposed programme to the relevant authorities and special interest organisations, among others, for consultation and make the proposal available to the public online. A reasonable deadline for submitting statements shall be set, and should be no shorter than six weeks.

Section 4 first paragraph letter a) of the draft regulations state that a notification with a proposal for a project-specific assessment programme shall describe: the energy installation, relevant development solutions, the project area and, based on the knowledge available, potential impacts on other industries, the environment and society.

In the Ministry's opinion, the notification should also outline the costs. This could make it easier for the licensing authorities to rank notifications if necessary. Costs will also be a clear criterion that the licensing authorities can emphasise during the licensing process.

The Ministry finds that the proposed Section 4 on assessment programmes ensures the contribution of environmental authorities and special interests organisations. The Ministry is also of the opinion that detailed regulation of consultation/contributions is superfluous because the general rules on consultation/contributions follow from the Public Administration Act.

The Ministry has modified the proposed Section 4 fifth paragraph of the Regulations from a two-year requirement to the rule that assessment programmes cannot be adopted or notifications approved for the same area simultaneously.

Section 5. Processing fee

Consultation input

The Norwegian Shipowners' Association takes a positive view of the proposal to stipulate a case processing fee.

The Ministry of Justice and Public Security writes that the proposed Section 5 third paragraph states that the Ministry can change the fee that follows from Section 5 first paragraph. The Ministry of Justice and Public Security calls attention to the fact that regulations must be amended by regulations.

The Ministry's comments

The Ministry agrees with the Ministry of Justice and Public Security and has chosen to modify Section 5 in the final Regulations. The processing of each notification with pertaining assessment programme is subject to a fee stipulated by the Ministry of Petroleum and Energy. When the competence to stipulate tariffs rests with the Ministry, the fee can be changed without adopting a Royal Decree. The fee will be set at NOK 100,000 for the time being.

Section 6. Content of project-specific impact assessments

This section sets out requirements for the content of a project-specific assessment. It must be adapted to the scope of the energy installation and to what extent the energy installation can be said to be covered by previous impact assessments conducted for the project area.

Consultation input

The Norwegian Environment Agency is of the opinion that the draft regulations fail to take account of the requirements set out in the EIA and SEA Directives. The Agency writes that the preparatory works to the Offshore Energy Act states that the Act's provision on impact assessments shall address Norway's obligations under the above-mentioned directives. Its interpretation of the preparatory works to the Offshore Energy Act is that the impact assessment provisions were intended to be in accordance with the Impact Assessment Regulations as well as the directives. It is therefore of the opinion that it must be ensured that the Offshore Energy Regulations also comply with this regulatory framework. The draft regulations do not to a sufficient extent fulfil the requirements that the Directives stipulate in relation to impact assessments, particularly the requirement to specify what account is to be taken of the impact assessments when licensing decisions are made. As regards deviations from the Impact Assessment Regulations other than those directly linked to the directives, the Agency mentioned the following, among others:

- that assessments are to be conducted in accordance with established methodology
- specified requirements to discuss impacts (including overall impacts)
- discussion of knowledge gaps and uncertainty factors
- discussion of relevant environmental monitoring topics
- requirement that when new knowledge is obtained, the knowledge must be organised

in accordance with existing standards and made available to the public authorities

The Norwegian Association of Local and Regional Authorities (KS) is of the opinion that the list of topics to be included in a project-specific impact assessment must include outdoor recreation interests, ecosystem services, the marine environment and cumulative environmental effects.

The Norwegian Polar Institute points out that the territorial sea and internal waters around Jan Mayen presents challenges such as drift ice and icing, and is therefore of the opinion that impact assessments under Section 6 of the Regulations should also state whether the installation is capable of withstanding such conditions. It also requests that a requirement for aesthetic considerations to be taken into account be included in the same section.

The interest organisation for Norwegian power-producing counties, *Kraftfylka,* is of the opinion that impact assessments must consider the consequences for shipping, fisheries and environmental interests such as seabirds and other migratory bird species. *Kraftfylka* and *Nordland county authority* are of the opinion that outdoor recreation interests, ecosystem services, the marine environment and cumulative environmental effects must be included in the project-specific impact assessments.

WWF is of the opinion that great emphasis must be placed on nature diversity and indigenous peoples in the licensing process and proposes that the Regulations refer to the principle of the Nature Diversity Act, which geographical scope does not extend to all of Norway's sea area. In the organisation's opinion, areas defined as particularly valuable and vulnerable in management plans must be considered for protection under the Nature Diversity Act.

Tekna – the Norwegian Society of Graduate Technical and Scientific Professionals points out that it is a possibility to consider using the petroleum administration's existing grid as a tool in the licensing system for renewable energy as well.

The Ministry of Defence requests that the Ministry consider whether project-specific impact assessments should contain a separate section on consequences for the Norwegian Armed Forces' activities.

The Ministry of Transport requests that considerations for navigability and safety at sea should be added to Section 6 of the draft regulations.

The Norwegian Coastal Administration (NCA) points out that it may become necessary to prepare navigational risk analyses in development cases, and that it must be considered whether an ‘area to be avoided’ is necessary. Impacts on radar systems, channels of communication, oil spill response, search and rescue must also be taken into consideration, according to the NCA. The NCA also considers that opening of areas may require the establishment of new traffic separation schemes. The NCA suggests that the Regulations require impact on shipping to be considered under Section 6 and consequences for society to be included in the assessments under Section 6.

The Norwegian Confederation of Trade Unions (LO) points out that petroleum production licences have been awarded in the area Sørlige Nordsjø II, and it assumes that potential petroleum resources will have been surveyed before renewable energy production licences are awarded.

The Ministry's comments

The Ministry has changed Section 6 of the Regulations to include the interests of the Armed Forces and shipping in the description and assessment of the potential environmental and societal effects of the energy installation.

In the Ministry's opinion, Section 6 of the Regulations will clarify Section 4-1 second paragraph of the Offshore Energy Act, which states that *'When areas are opened pursuant to Section 2-2, and licences awarded or detailed plans approved pursuant to Sections 3-1 and 3-2, the presentation of the case or the decision must state how the impact assessments and statements received have been assessed, and what bearing they had on the decision.'*

The Ministry has included more provisions in the Regulations than proposed in the draft. In the Ministry's opinion, Section 6 of the Regulations now addresses the requirements of the consultation parties.

The installation of fixed or floating wind turbines will make an area less accessible for petroleum exploration and production for a long time.

A more detailed assessment of potential petroleum resources in a defined area where an applicant plans to install wind turbines may be necessary before a wind power licence is awarded. It may be relevant for the wind power company to have such assessments conducted as part of a project-specific impact assessment. Such an assessment may include, for example, assessments of the scope and quality of existing geophysical data, reprocessing of such data, and the collection and processing of new geophysical data.

The proposed project-specific impact assessment programme should include concrete proposals for investigations and assessments to be carried out, so that the impact assessment can be modified in light of consultation submissions received. The programme is to be adopted by the Ministry, and the Norwegian Petroleum Directorate can provide expert advice.

Assessments of the potential for petroleum can be time-consuming and could make it challenging to complete the impact assessment programme by the deadline set in Section 7 of the Regulations. In such cases, the Ministry may extend the deadline, cf. Section 11.

Section 7. Licence applications

Consultation input

The interest organisation for Norwegian power-producing counties, *Kraftfylka,* proposes including county authorities in Section 7 final sentence as one of the 'relevant authorities', that county authorities should be guaranteed the right to raise objections in wind power cases in their marine territory, cf. the Energy Act Section 2-1 seventh paragraph, and that clear requirements are stipulated for licence applications, including deadlines for implementation.

NORWEA is of the opinion that the proposed two-year deadline between licensing decision and detailed plan is not sufficiently flexible and that it is unlikely to ensure the best possible utilisation of resources. Instead, it suggests introducing a system whereby the licensee and the Ministry agree on a development plan, corresponding to the system in place under the Petroleum Activities Act.

The Directorate for Cultural Heritage proposes that cultural heritage sites be explicitly mentioned in Sections 7 and 10 of the Regulations. The Directorate for Cultural Heritage refers to the prohibition set out in the Cultural Heritage Act against disturbing and

disfiguring monuments and sites which are automatically protected and disturbing ship finds that are more than 100 years old without special permission, and also includes a reminder of the mandatory inquiry obligation.

The Ministry's comments

The Ministry considers that it would not be appropriate to include detailed regulation of cultural heritage matters in the Offshore Energy Regulations, as the Cultural Heritage Act already regulates the prohibition against disturbing and disfiguring automatically protected monuments and sites and disturbing ship finds that are more than 100 years old without special permission. The Cultural Heritage Act also regulates mandatory inquiries. The Ministry would also like to refer to the fact that Section 6 of the Regulations mentions that the impact assessment must describe and consider the potential environmental and societal effects of the energy installation on cultural heritage sites, cultural environments and landscapes.

The Ministry does not change its proposal for Section 7 on licence applications. The Ministry considers the two-year requirement to be appropriate, considering that the developer can apply for an extension of deadlines pursuant to Section 11 of the Regulations. The Ministry plans to develop a guide that elaborates on the content of applications, among other things.

Section 8. Decisions on licences for energy installations

Consultation input

Several consultation parties have made general comments on the proposed licensing system, described in the thematic breakdown above.

The Norwegian Fishermen's Association proposes that the right to appeal licensing decisions be made clear in the Regulations.

The Ministry's comments

The right to utilise offshore energy resources rests with the Norwegian State, cf. the Offshore Energy Act Section 1-3. It is therefore important to the Ministry that offshore renewable energy resources are utilised in accordance with societal objectives, and that energy installations are planned, built and operated in a manner that ensures that account is taken of the energy supply, the environment, safety, commercial activities and other interests, cf. the Offshore Energy Act Section 1-1.

It must therefore be clear that no one has a legal right to be awarded a licence to develop offshore wind power, and that it is up to the public administration's ordinary discretion which parties it awards licences to. See also the Ministry's comments under the heading ‘Qualification of applicants’.

The Ministry is of the opinion that, in addition to the general rules about the right of appeal that follow from the Public Administration Act, it will be sufficient to include information about the right of appeal in the individual decisions issued by the licensing authorities.

Section 9. Application for approval of a detailed plan

Consultation input

KS Bedrift, *Kraftfylka* and *Rogaland county authority* suggest that material changes to the detailed plan should trigger a new impact assessment and public consultation process. *The Norwegian Society for the Conservation of Nature* is of the opinion that requirements concerning the construction phase must be included in the Regulations.

The Ministry's comments

An application for approval of a detailed plan shall be submitted to the NVE within two years of the decision to award a licence. If the licensing decision is appealed, the two-year deadline runs from the conclusion of the appeal processing. The Ministry has included a possibility to apply for extension of deadlines by up to two years at a time in Section 11 of the Regulations.

The Ministry does not change its proposal for Section 9, but intends to prepare a guide to elaborate on a number of issues relating to the approval of detailed plans.

Section 10. Decisions to approve a detailed plan for the development and operation of an energy installation

Consultation input

Shell suggests that the requirement that the installation must be put into operation should not be dependent on grid connection, as it is conceivable that energy can be transported from the installation in other ways. *Multiconsult* suggests that the requirement for an installation to be put into operation should apply to the first turbine, not the whole installation, and finds the deadlines too short.

The University of Bergen is of the opinion that it may already at the time of approval of a detailed plan be clear that a longer deadline will be necessary to complete the development. It proposes an adjustment to the wording concerning the extension of deadlines in Section 10 of the Regulations to make the deadline three years or a deadline to be set in the licence.

The Ministry's comments

The Ministry modifies the wording of Section 10 such that the requirement for the installation to be in operation concerns the generation of energy, not just electricity.

As regards Section 10 first paragraph of the Regulations, it is a requirement that an energy installation must be put into operation within three years of the decision to approve the detailed plan for its development and operation.

The Ministry realises that this deadline could give rise to challenges. It can be difficult for a developer to know when starting up whether it will be able to keep the deadline.

Nevertheless, the Ministry does not change the deadline proposed, as emphasis must be placed on energy installations being put into operation as soon as possible after the decision approving the detailed plan. In this context, the Ministry points out that the developer may apply for an extension of the deadline.

Section 11. Extension of deadlines

Consultation input

No consultation input has been received concerning this section.

The Ministry's comments

The Ministry nevertheless changes the wording of Section 11 first paragraph of the draft regulations to the following: *'Upon application, the Ministry may extend deadlines that follow from Section 7 first paragraph, Section 9 first paragraph and Section 10 final paragraph. The deadlines can be extended by up to two years at a time.'*

This is done in order to not make it a requirement for applying for extension of deadlines that the developer must hold a licence, as was the case in the draft regulations. The second sentence is changed to make it clearer that there is more than one deadline that can be extended and that they can be extended more than once, but not by more than two years at a time. A strict practice is envisaged for extension of deadlines where the Ministry will consider, among other things, how far the developer has progressed in the process.

It follows from Section 11 second paragraph of the draft regulations that exceeding deadlines can result in rights lapsing.

Section 12. Demonstration projects

The Ministry proposed in Section 12 first paragraph of the draft regulations that the following provisions of the Offshore Energy Act not be made applicable to demonstration projects:

- Section 2-2 on opening areas, cf. Section 2-2 fourth and fifth paragraphs
- Section 3-1 second paragraph on detailed plans, cf. second paragraph final sentence
- Section 4-1 on notifications with a proposal for a project-specific assessment programme, cf. Section 3-1 third paragraph and Section 4-1 third paragraph.

Consultation input

The Norwegian Ornithological Society is of the opinion that there should be no possibility of considering major demonstration projects for licensing.

Norwea does not believe that there will be any great need for demonstration projects and therefore requests the Ministry to instead consider whether there is a basis for expanding the definition of what provisions exemptions can be granted from to ensure that other business development is not impeded.

The Ministry of Justice and Public Security writes that if a regulatory provision is to authorise the adoption of regulations that depart from the provisions of the Act, this will in principle have to be explicitly stated in the statutory provision.

The Ministry's comments

There has been a wish to open areas for offshore renewable energy production, among other things to facilitate demonstration projects. Floating wind power technology in particular have been mentioned in this context.

The Offshore Energy Act allows for exemptions from the rule on opening areas 'in special cases', cf. Section 2-2 fourth paragraph. The preparatory works point out that the exemption

for such projects must be interpreted strictly, and that what size a demonstration project can be before it must be processed pursuant to the main rule of the Act on opening areas, is a matter of interpretation (Proposition No 107 (2008–2009) to the Storting).

The Ministry proposed including a separate provision on simplified processing of demonstration projects in the Regulations.

The Ministry of Justice and Public Security is of the opinion that the exemptions from the Offshore Energy Act for demonstration projects proposed by the Ministry in the draft regulations only gave the Ministry competence to make individual decisions granting an exemption 'in special cases'.

The Ministry elects to remove the provision on demonstration projects from Section 12 of the Regulations. Applications for demonstration projects will then fall under the provisions on opening of areas, detailed planning and notifications with a proposal for a project-specific assessment programme. The Ministry may nevertheless grant exemptions from the rule on opening areas in special cases pursuant to the Offshore Energy Act Section 2-2 fourth paragraph. The Ministry may also waive the requirement for a detailed plan in special cases, cf. the Offshore Energy Act Section 3-1 second paragraph final sentence. Whether demonstration facilities are to be granted exemption pursuant to the Act and Regulations will then be decided on the basis of a concrete assessment of each individual application.

As a consequence of Section 12 being removed from the final Regulations, the numbering of the subsequent sections will be adjusted accordingly.

Chapter 3 – Compensation for fishermen

Section 13 of the draft regulations contains provisions on the establishment of a committee tasked with considering claims arising as a consequence of restrictions imposed on fishing grounds, in addition to a committee to consider claims arising as a consequence of pollution and waste pursuant to Section 9-3 of the Act and installations that cause damage pursuant to Section 9-4 of the Act.

Section 14 of the draft regulations contains rules on the establishment of an appeals committee

Consultation input

The Directorate of Fisheries takes a positive view of a compensation committee being established and organised under the Directorate of Fisheries.

The Norwegian Fishermen's Association suggests a more detailed assessment of the compensation scheme for fishermen. *Nordland Fylkes Fiskarlag,* the regional branch of the Norwegian Fishermen's Association for Nordland county, is critical of the proposal to establish such an arrangement, as the organisation does not want a system of 'indulgences'.

The Norwegian Shipowners' Association calls for better grounds for why the scheme can be transferred from the petroleum industry, whether the appeals committee should have a different composition, and whether the assessment of evidence in Section 9-3 of the Act should have been a free assessment of evidence.

The Ministry of Justice and Public Security is of the opinion that it is not evident that Section 9-5 of the Offshore Energy Act provides legal authority for establishing an appeals committee. In such case, the establishment of an appeals committee entails an exemption from the provisions on appellate instances in Section 28 of the Public Administration Act.

The Public Administration Act Section 28 fourth paragraph provides a legal basis for prescribing rules of appeal which depart from the provisions of the Act by adopting regulations. It follows from the Public Administration Act Section 45 second paragraph that before the sector ministry can petition for use of the King's authority pursuant to the Public Administration Act Section 28 fourth paragraph, it must obtain the consent of the Ministry of Justice and Public Security.

The Ministry's assessment

The Ministry has obtained the consent of the Ministry of Justice and Public Security to establish a committee and an appeals committee. The consideration of such cases by a committee has been selected to create a regulatory framework that is similar to the one that applies to petroleum activities. The Ministry does not change its proposal for Sections 13 and 14.
They will be Sections 12 and 13 in the applicable Regulations.

Chapter 4 – Miscellaneous provisions

Section 18. Conditions

The Norwegian Fishermen's Association is of the opinion that the Regulations must refer to the Offshore Energy Act Section 3-1 regarding the right to stipulate conditions for a licence.

It is very important to the *Directorate of Fisheries* that all installations must be removed on decommissioning.

The interest organisation for Norwegian power-producing counties, *Kraftfylka,* requests that the Ministry clarify whether area fees can be included as a condition for a licence, and is of the opinion that the introduction of area fees to municipalities and county authorities within the baseline should be considered.

The Norwegian Ornithological Society is of the opinion that the Regulations must stipulate requirements for migration surveys and surveys over multiple seasons.

Offshore Power Plant also suggests that licences should come with research and development requirements for the projects and that the authorities must have the possibility to take over power plants.

The Norwegian University of Science and Technology (NTNU) and *SINTEF* suggest that licences should be awarded based on a list of criteria, including the degree of research and innovation efforts and to what extent the applicant is prepared to make data available for research and development.

The Ministry's assessment

The Ministry refers to Section 19 of the draft regulations (Section 18 of the applicable Regulations), which allows for conditions to be stipulated for a licence. The Ministry notes the views that have emerged about what requirements should be set, but cannot see that any of the comments necessitate changes to the proposed Regulations.

Section 19. Meteorological data

The Ministry wrote in the draft regulations that if the licensee and the Norwegian Meteorological Institute fail to reach an agreement, the Norwegian Water Resources and

Energy Directorate (NVE) may issue an order. The Ministry elects to remove the provision that the NVE may issue orders because orders can be issued by the Ministry.

Section 20. Compliance control

The Ministry wrote in the draft regulations that the NVE shall ensure that the rules and decisions issued in or pursuant to the Regulations are complied with in accordance with Section 10-5 of the Offshore Energy Act.

The Ministry of Justice and Public Security writes that the proposed Section 21 is in reality a delegation of the Ministry's competence under the Offshore Energy Act Section 10-5. Such delegation should be adopted through a delegation decision, not through regulations.

The Ministry's assessment

The Ministry takes note of the views that have emerged, but refers to the fact that a delegation decision is not an absolute requirement. The Ministry cannot see that the comment necessitates changes to the draft regulations. It will be Section 20 on compliance control in the applicable Regulations.

Section 21. Coercive fines

The Ministry proposed in Section 22 of the draft regulations to allow the Norwegian Water Resources and Energy Directorate to impose coercive fines to ensure compliance with obligations imposed in or pursuant to these Regulations or conditions stipulated in decisions in or pursuant to the Regulations in accordance with Section 10-6 of the Offshore Energy Act.

The Ministry's assessment

The Ministry has distributed for public consultation a proposal to amend the Offshore Energy Act, among others, as regards administrative reactions and sanctions. The bill was presented to the Storting on 7 May. If the Storting amends the Offshore Energy Act such that it necessitates amendment of the Offshore Energy Regulations, the Ministry will propose the necessary amendments. It will be Section 21 in the applicable Regulations.

Chapter 5 – Entry into force

The Ministry did not propose a date of entry into force in the draft distributed for public consultation. None of the consultation parties commented on this.

Following an overall assessment, the Ministry's view is that the Regulations should enter into force on 1 January 2021.

Grid

Consultation input

Statnett agrees with the Norwegian Water Resources and Energy Directorate's assessments regarding the power grid in its strategic impact assessment and updated assessment from 2018. The undertaking is of the opinion that direct connection to existing interconnectors or interconnectors under construction will introduce new and undesirable risks. According to Statnett, it may be an option to connect a wind farm in the Sørlige Nordsjø area to both Norway and other countries, and in such case, Statnett should be in a responsible role.

Statnett is of the opinion that it may be unfortunate if extensive development takes place and each individual project is connected via a production radial, and that a greater degree of coordination may be desirable to achieve a rational grid structure.

Zero Emission Resource Organisation is of the opinion that the development costs of offshore power grids should be covered by the public purse, and that the development must be seen in conjunction with interconnectors.

Hydroelectric Corporation requests that it be made possible for several parties to use the same submarine transmission cable.

KS Bedrift finds it important that installations to be connected to the Norwegian grid should be subject to relevant requirements and orders pursuant to the Energy Act.

Shell points out that greater clarity concerning grid connection is needed, and that the authorities must take an active role in defining the framework conditions for grid connection.

ABB is of the opinion that system responsibility at sea should be assigned and that a plan should be laid for offshore grid development.

Norwegian Energy Solutions is of the opinion that the authorities must take the initiative to develop grid solutions.

RWE suggests that grid connection should already be clarified at the time of development.

Vestland county authority assumes that offshore wind power development will not lead to an increase in network tariffs for the regional grid.

The Directorate of Fisheries is of the opinion that cable routes should also be included when development cases are distributed for public consultation.

NorthConnect KS, which is planning to build a submarine transmission cable from Eidfjord in Norway to Peterhead in Scotland, which, if built, could cross Utsira Nord, requests that a minimum distance of 1,000 metres be stipulated between anchors of floating wind farms and the submarine transmission cable.

Equinor requests that the Ministry consider whether grid installations awarded a licence under the Offshore Energy Act should be subject to a connection requirement.

The Ministry's assessments

Offshore wind power will primarily be connected to the onshore grid through connections known as production radials. Offshore wind parks can also be linked to petroleum installations, with or without a radial connection line to shore. Radial lines are grid installations whose main function is to serve a player or group of players.

If offshore wind power is to be developed primarily with a view to exporting the electricity, radial lines directly to other countries can be built. If the electricity is sent directly to another country, the domestic grid investments needed will be smaller than for production radials to Norway or wind power connected to interconnectors. This would require a licence under Section 8-1 of the Offshore Energy Act.

Installations for the generation, conversion, transmission and distribution of energy within the baselines cannot be constructed, owned or operated without a licence under the Energy Act.

Generation facilities for which a licence has been awarded pursuant to the Offshore Energy Act also require a licence under the Energy Act if the facility is to be connected to the

Norwegian grid. Authority to make decisions regarding installation licences has been delegated to the Norwegian Water Resources and Energy Directorate (NVE), except for new large power lines exceeding 20 kilometres in length with a voltage of 300 kV or more, for which decisions are made by the King in Council.

Statnett SF is the undertaking with system responsibility within the baseline and owns most of the transmission grid in Norway. Interconnectors are also part of the Norwegian transmission grid, and all major interconnectors from Norway are owned by Statnett. Revenues and expenses form part of the basis for the transmission grid tariff. The NVE regulates which expenses can be passed to the customers. Revenues from interconnectors help to reduce tariffs for the transmission grid customers.

As long as any wind farms are connected to shore by means of radial lines, they will be considered ordinary connection installations for production. This means that Statnett can stipulate conditions in line with the system responsibility for the connection point in the same way as for onshore producers.
The producer must also deal with the local grid company where the production is connected. Statnett thus has a clear role in the connection of offshore wind farms. Most of the offshore wind power plants' radial connection lines will only have one or a small number of users. These radials will be considered customer-specific installations. Such installations are not part of the transmission grid. The Ministry therefore considers, in line with the preparatory works to the Offshore Energy Act, that it is not necessary to designate a party with system responsibility for offshore activities in the Regulations at present.

The Ministry assumes that offshore radial lines will be owned by the producers, and that the onshore investment costs of connecting wind farms will be covered by contributions to investments.

The Ministry points out that players that plan to apply for an offshore renewable energy production licence must engage in good dialogue with the relevant onshore grid owner at an early stage of the process.

The Ministry also points out that, pursuant to Section 3-4 of the Offshore Energy Act, conditions concerning facilitation of or connection to other installations or systems can be stipulated in the licence or detailed plan. The Ministry makes no changes to the Regulations at the present time.

Mortgaging

The University of Bergen is of the opinion that it would be advantageous if provisions on mortgaging were to be included in the Offshore Energy Act. Reference is made to the fact that this is absolutely critical to ensuring that projects are realised, and reference is also made to how this has been resolved in the Petroleum Activities Act and the aquaculture register.

The Norwegian Shipowners' Association proposes examining the possibility of pledging licences as security for funding.

NORWEA is of the opinion that rules should be introduced that facilitate the mortgaging of floating and fixed facilities and the licence.

Aker Solutions, *Equinor* and *Kværner* are of the opinion that it should be allowed to mortgage installations for which a licence has been awarded pursuant to the Offshore Energy Act. *Aker Solutions* is also of the opinion that rules for the transfer, revocation and

relinquishment of licences should be clarified

The Ministry's assessments

At an input meeting on 20 June 2018, the Ministry received input that the legislation does not accommodate financing of offshore energy projects through mortgaging of licences, facilities or cables.

The Ministry agrees that it might be expedient to have such a register of assets linked to offshore generation facilities, and notes that such a register exists for petroleum activities.

The Offshore Energy Act does not provide legal authority for establishing a register of assets in facilities for offshore renewable energy production, and the Ministry has therefore not given this question further consideration in its work on the Regulations to the Offshore Energy Act.

Relationship to other legislation

Espoo

It follows from the Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention) of 25 February 1991 that if neighbouring states could be affected by adverse environmental impacts caused by measures in Norway, an environmental impact assessment shall be undertaken (Article 5) and the neighbouring state shall be notified (Article 3) and consulted (Article 5).

The Ministry assumes that the licensing process prescribed in the Act and Regulations meet the requirements set out in Article 2 of the Espoo Convention. The Ministry will attend to consultation with neighbouring countries on concrete projects as part of the licensing process.

OSPAR

The purpose of the Convention for the Protection of the Marine Environment of the North-East Atlantic of 22 September 1992 (OSPAR) is to protect maritime areas against the adverse effects of human activities so as to safeguard human health, conserve marine ecosystems and, when practicable, restore marine areas which have been adversely affected The Convention regulates pollution of the marine environment from land-based sources, offshore petroleum activities and dumping, and safeguarding of marine biological diversity.

The Utsira Nord and Sørlige Nordsjø I are both located within the region known in OSPAR contexts as Greater North Sea.

OSPAR has adopted special guidelines for assessment of the environmental impact of offshore wind power (no 3 2008). These guidelines have guided the development of the Act and the draft regulations in terms of, e.g., area assessments, impact assessments, consideration of licence applications and decommissioning of energy facilities. The Ministry assumes that the guidelines have been observed through the Offshore Energy Act and Regulations, and will be complied with through the concrete case processing in licensing cases.

The Harbour and Fairways Act

Consultation input

The Norwegian Coastal Administration states that projects within an area extending 12

nautical miles from the baseline require a licence under the Harbours and Fairways Act due to considerations of safety and safe passage.

The Ministry's assessments

The Ministry took note of this information.

Financial and administrative consequences

The opening of areas and adoption of Regulations to the Offshore Energy Act will give rise to licence applications for offshore renewable energy production. Case processing costs are assumed to be covered within the energy authorities' budgets and partly covered by the case processing fee stipulated in Section 5 of the Regulations.

Costs will also be incurred in connection with the establishment and operation of a committee tasked with considering claims for compensation from fishermen and the appeals committee.

The Norwegian State may also be liable for compensation to fishermen following from the consideration of claims for compensation, cf. the Offshore Energy Act Section 9-2. It is not possible to determine the scale of such potential costs. In the Ministry's opinion, good project-specific impact assessments can reduce the probability of fishing becoming impossible, cf. the Offshore Energy Act Section 9-2.

The Ministry of Petroleum and Energy

recommends:
that the Regulations to the Offshore Energy Act (Offshore Energy Regulations) be adopted in accordance with the enclosed proposal.

Regulations to the Offshore Energy Act (Offshore Energy Regulations)

Legal basis: Adopted by Royal Decree of 12 June 2020 pursuant to Act No 21 of 4 June 2010 on Offshore Renewable Energy Production (the Offshore Energy Act) Section 1-2 sixth and seventh paragraphs, Section 2-1, Section 3-3, Section 3-4 first paragraph, Section 3-5 third paragraph, Section 4-1 third paragraph, Section 9-5 first paragraph second sentence, Section 10-4 third paragraph and Section 10-10. Proposed by the Ministry of Petroleum and Energy.

Chapter 1. Introductory provisions

Section 1. *Scope*

These Regulations apply to offshore renewable energy production and to the conversion and transmission of electricity offshore as provided in the Offshore Energy Act Section 1-2.

The Offshore Energy Act Section 2-2, Chapters 5–6 and Chapters 9–10 apply to sea areas inside the baseline.

Interconnectors for which a licence has been awarded pursuant to Section 4-2 of Act No 50 of 29 June 1991 relating to the Generation, Conversion, Transmission, Trading, Distribution and Use of Energy etc. (the Energy Act) does not require a licence pursuant to the Offshore Energy Act Section 8-1.

Section 2. *Definitions*

a. By *project-specific impact assessment* is meant an impact assessment for the energy installation in question for the purpose of identifying relevant advantages and disadvantages before the installation is established, assessing the impact of its development and proposing mitigating measures.
b. By *project area* is meant a delimited geographical area within an area opened pursuant to Section 2-2 of the Offshore Energy Act where an undertaking as mentioned in Section 3-5 of the Offshore Energy Act has had an assessment programme adopted or been awarded a licence to develop an energy installation.
c. By *notification* is meant a notification of a planned project in which the developer describes the project and its location within an opened area and presents a proposal for an assessment programme.

Chapter 2 – Notification, project-specific impact assessments, licences and detailed plans

Section 3. *Notification with proposal for a project-specific assessment programme*

If an undertaking that meets the requirements set out in the Offshore Energy Act Section 3-5 wishes to apply for a licence for an energy installation, it must first submit a notification to the Ministry containing a proposal for a project-specific assessment programme.

Section 4. *Content of project-specific assessment programmes*

At a minimum, a notification with a proposal for a project-specific assessment programme

shall describe:

a) the energy installation, relevant development solutions and costs, the project area and, based on the knowledge available, possible impacts on other industries, the environment and society;
b) the factors that will be assessed and what methods will be used to do so;
c) and information about the applicant.

The Ministry may request additional information.

The Ministry will distribute the proposed project-specific assessment programme to the relevant authorities, special interest organisations for consultation, and make the proposal publicly available online. A reasonable deadline for submitting statements shall be set. The deadline should be no shorter than six weeks.

The Ministry can determine the assessment programme on the basis of the proposal and the consultation submissions received.

No more than one assessment programme can be determine for the same area simultaneously.

Section 5. *Processing fee*

The processing of each notification with pertaining assessment programme is subject to a fee stipulated by the Ministry of Petroleum and Energy. The fee must be paid to the Norwegian State, represented by the Water Resources and Energy Directorate.

The notification will not be processed if the fee is not paid.

Section 6. *Content of project-specific impact assessments*

The project-specific impact assessment programme shall be adapted to the scope of the energy installation and be prepared in accordance with the adopted assessment programme. It must contain a description of any previous impact assessments for the project area.

A joint impact assessment can be prepared for energy projects that are also required to carry out an impact assessment pursuant to the Energy Act.

The impact assessment pursuant to the first paragraph shall give an account of the energy installation and shall, as a minimum, describe:

a) the installation's physical properties and planned technical solutions, its location and area use during both the construction phase and operating phase;
b) alternative development solutions that the applicant has examined and the grounds for the choice of development solution and project area, the criteria for the choices made, and connection to grid installations and, if relevant, coordination with petroleum activities;
c) the most important features of the project during the operating phase, such as the project's energy requirements, energy consumption, energy solutions, transport requirements, and the types and quantities of natural resources that will be used;
d) an estimate of the type and quantity of waste, residue, emissions and pollution that will be generated during the construction and operating phase;
e) impacts relating to climate change;
f) alternative design, technology, location, scope and dimensioning solutions that the proposer has considered;

g) an assessment of what licences, approvals or consents must be applied for pursuant to other applicable legislation;
h) an implementation schedule;
i) and measures in connection with the decommissioning of the energy installation.

The impact assessment pursuant to the first paragraph shall provide a specific description and assessment of the potential environmental and societal impact of the energy installation and shall, as a minimum, discuss:

a) seabed conditions and the marine environment;
b) cultural heritage sites, cultural environments and landscapes;
c) birds, fish, habitat types and other forms of natural diversity;
d) relevant environmental monitoring topics;
e) the fishing industry and other commercial activities;
g) Sami nature and the basis for Sami culture;
h) accident risk and emergency preparedness;
i) the interests of the Norwegian Armed Forces and maritime traffic;
j) the potential impact on ecosystem services;
k) outdoor recreation;
l) sea, air, land and noise pollution;
m) and climate considerations.

The impact assessment shall describe the current environmental status and provide an overview of how the environment is likely to develop if the plan is not implemented.

This description must include positive, negative, direct and indirect impacts in both the short and the long term. The description must also include an assessment of the overall impact of the installation in light of plans that have already been implemented, adopted or approved for the zone of influence.

If the plan or application presents several alternative solutions, their respective potential environmental and societal consequences must be described, and grounds provided for the alternative chosen by the proposer.

The impact assessment shall be based on relevant and available information. If the available information about important factors is inadequate, additional information must be obtained. In cases where new information is obtained, it must be systematised in accordance with existing standards and made available to the authorities.

Assessments and field surveys must comply with recognised methodology and be carried out by persons with relevant qualifications. A brief account must be provided of the data basis and the methods used to describe the impacts and any scientific or technical problems encountered in connection with the collection and use of data and methods. The impact assessment shall describe knowledge gaps and circumstances to which there is uncertainty attached.

The impact assessment shall describe measures planned to mitigate material negative environmental impacts. The description must include planned environmental monitoring.

The Ministry may require further assessments and information.

Section 7. *Licence applications*

Within two years of the Ministry adopting an assessment programme for a project area, the

party that has applied for adoption of the programme shall submit a licence application to the Ministry. The project-specific impact assessment shall be enclosed with the application.

The application shall, as a minimum, contain information about:

a) the applicant, the applicant's operations, ownership and financial capacity. If the application is submitted by multiple applicants, it must state the name, address and nationality of all the applicants;
b) who will represent the applicant(s) in Norway in relation to the Ministry;
c) what area the licence application concerns;
d) whether a licence is also applied for pursuant to the Energy Act, e.g. for connecting the energy installation to the onshore power grid;
e) and a description of the planned project:
   - estimated installed output
   - estimated annual production
   - connection solution to the power grid
   - cost estimate
   - an assessment of the profitability of the project
   - the project`s potential for conflict with other interests.

The Ministry may require further information.

The Ministry will distribute the licence application with the project-specific impact assessment to the relevant authorities and special interest organisations for consultation and make it publicly available online. A deadline[1] for consultation submissions shall be set and should be no shorter than six weeks.

Section 8. *Decisions on licences for energy installations*

The Ministry decides whether to award a licence and approve the project-specific impact assessment pursuant to the Offshore Energy Act Sections 3-1 and 3-2 based on the licence application and the impact assessment for the energy installation. The Ministry shall state the grounds for its decision. A licence can be awarded for a period of up to 30 years from the installation is put into operation.

Conditions shall be set to prevent or limit material negative impacts on the environment and society.

If necessary, the Ministry shall require monitoring of material negative environmental or societal impacts of the project. If monitoring is made a requirement, the Ministry shall decide the procedure, duration and scope of the monitoring.

Section 9. *Application for approval of a detailed plan*

An application for approval of a detailed plan must be submitted to the Norwegian Water Resources and Energy Directorate within two years of a licence being awarded.

Applications for approval of a detailed plan shall contain such information as follows from the licence and otherwise describe the planned construction of the energy installation, as well as financial, resource-related, technical, environmental and safety-related aspects of the energy installation's construction and operation. The Norwegian Water Resources and

[1] The deadline shall be set by the Ministry

Energy Directorate may demand that alternative solutions be assessed. The detailed plan shall, as a minimum, contain the following:

a) the scheduled start-up date for construction work and completion date for the energy installation;
b) a technical description of the development;
c) a description of the planned operation and funding of the energy installation;
d) a plan for decommissioning and removal of the energy installation;
e) and any changes to the documentation used in the licence application.

The Norwegian Water Resources and Energy Directorate may require additional information.

Section 10. *Decisions to approve a detailed plan for the development and operation of an energy installation*

The Norwegian Water Resources and Energy Directorate makes decisions on the approval of a detailed plan and must state the grounds for its decision. The grounds shall state the conditions that apply to the approval and any measures required to mitigate negative environmental impacts.

The Norwegian Water Resources and Energy Directorate must be notified of any changes to a detailed plan and may require that an application be submitted for an amended detailed plan.

The detailed plan for development and operation of an energy installation must have been approved by the Norwegian Water Resources and Energy Directorate before construction can commence.

An energy installation must be put into operation within three years of the decision to approve the detailed plan for its development and operation. An installation has been put into operation once energy or electricity has been generated and transported out of the project area.

Section 11. *Extension of deadlines*

Upon application, the Ministry may extend deadlines that follow from Section 7 first paragraph, Section 9 first paragraph and Section 10 final paragraph. The deadlines can be extended by up to two years at a time.

Failure to comply with deadlines may result in the approval of a notification with a project-specific assessment programme, licence or detailed plan lapsing.

Chapter 3 – Compensation for fishermen

Section 12. *Committee tasked with considering claims for compensation*

Claims pursuant to Section 9-2 of the Offshore Energy Act as a result of restrictions being imposed on fishing grounds will be considered by a committee comprised of one representative of the Directorate of Fisheries, one representative of the Norwegian Water Resources and Energy Directorate, and one member who meets the qualification requirements for appointment as a judge.

The committee must consider claims filed pursuant to Section 9-2 of the Offshore Energy Act within four months of receipt of the claim by the committee's secretariat, c.f. Section 17.

In special cases, the committee may extend the case processing time.

Claims as a result of pollution and waste pursuant to Section 9-3 of the Offshore Energy Act and installations that cause damage pursuant to Section 9-4 of the Offshore Energy Act will be considered by a committee comprised of one representative of the fishing industry organisations, one representative of companies that hold licences under Section 3-5 of the Offshore Energy Act, and one member who meets the qualification requirements for appointment as a judge.

The committees are chaired by the member qualified for appointment as a judge. The committees make their decisions by majority vote.

Section 13. *Appeals committee*

Decisions made by a committee considering claims pursuant to Section 12 may be appealed within two months to an appeals committee comprised of one representative each from the Directorate of Fisheries, the Norwegian Water Resources and Energy Directorate, the fishing industry organisations, and companies that hold licences under Section 3-5 of the Offshore Energy Act, plus one member who meets the qualification requirements for appointment as a judge. Section 12 fourth and fifth paragraphs of the Regulations shall apply correspondingly.

Section 14. *Appointment of the committee and appeals committee*

The committees described in Sections 12 and 13 are appointed by the King for a term of two years. One deputy is appointed for each committee member.

Section 15. *Assessment of evidence in cases of joint and several liability*

When assessing evidence pursuant to the joint and several liability provision set out in Section 9-3 sixth paragraph of the Offshore Energy Act, particular emphasis shall be placed on:

a) what object caused the damage, if this can be ascertained;
b) the location of the harmful event;
c) the damage or type of damage in question;
d) the sequence of events involved in the harmful event;
e) and experience of previous fishing in the area.

Section 16. *Filing claims*

Claims for compensation must be filed using the prescribed form and addressed to the committee's secretariat via the Directorate of Fisheries' regional offices.

Section 17. *Secretariat*

The Directorate of Fisheries will function as the committees' secretariat.

Chapter 4 – Miscellaneous provisions

Section 18. *Conditions*

The Ministry may stipulate conditions for decisions made pursuant to these Regulations to take account of public or private interests.

Section 19. *Meteorological data*

The licensee must ensure that generation facilities are equipped with meteorological data registration equipment as recommended by the Norwegian Meteorological Institute. The data shall be transmitted to the Norwegian Meteorological Institute on a continuous basis and made publicly available.

Section 20. *Compliance control*

The Norwegian Water Resources and Energy Directorate shall ensure that the rules and decisions issued in or pursuant to these Regulations are complied with in accordance with Section 10-5 of the Offshore Energy Act.

The Norwegian Water Resources and Energy Directorate is authorised to order the rectification of conditions that are not in compliance with the Act or with decisions made pursuant to the Act.

The licensee must contribute to the implementation of compliance control measures. This includes providing such information and documentation as is necessary for the performance of compliance control measures.

Representatives of the Norwegian Water Resources and Energy Directorate or other authorities shall at all times have access to the energy installation's vessels and facilities, as well as to available data and material necessary for the performance of compliance control and inspection activities. The representatives shall also be entitled to participate in investigations. Representatives of the public authorities are entitled to spend as much time on vessels and facilities as necessary. Rights holders and licensees shall provide transport for such representatives to and from vessels and facilities and accommodate them on board.

Section 21. *Coercive fines*

The Norwegian Water Resources and Energy Directorate is authorised to impose coercive fines to ensure compliance with obligations imposed by or pursuant to these Regulations or conditions stipulated in decisions or pursuant to these Regulations, c.f. Section 10-6 of the Offshore Energy Act.

Coercive fines may be imposed as daily penalties or as a lump sum. The fine shall accrue to the Treasury. The imposition of a coercive fine constitutes grounds for an attachment order.

Chapter 5 – Entry into force

Section 22. *Entry into force.*

These Regulations enter into force on 1 January 2021.