



**Cyfoeth
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Wales

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Llangefni Town Hall
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NRW ref: SC1503
MMO ref: EIA/2015/00014

11 September 2015

Dear James Orme,

SCOPING OPINION UNDER THE MARINE WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2007 (AS AMENDED) AND

ELECTRICITY WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (ENGLAND AND WALES) REGULATIONS 2000 (AS AMENDED)

MORLAIS TIDAL DEMONSTRATION ZONE, ANGLESEY.

I am writing in response to your request for a scoping opinion dated 26 May 2015, made in accordance with the Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended) ('Marine Works Regulations') and the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (as amended) ('Electricity Works Regulations').

The purpose of the Environmental Impact Assessment (EIA) scoping procedure is to determine what information should be provided in the Environmental Statement (ES).

In reaching our scoping opinion we have had regard to the information provided in the "*Morlais Tidal Demonstration Array, Royal Haskoning DHV, PB2735*", dated 22 April 2015, and considered the requirements of Schedule 3 of the Marine Works Regulations and Regulation 7 of the Electricity Works Regulations. We have consulted with the bodies that we consider to have an interest in the Project by reason of their responsibilities, as required by the Marine Works Regulations and had regard to their comments.

As you are aware, the Marine Licensing Team (MLT) within Natural Resources Wales (NRW) consulted organisations on behalf of the Marine Management Organisation (MMO) who also received a scoping opinion request in relation to a consent required under section 36 of the Electricity Act 1989 (as amended), for which the MMO is responsible for administering within Welsh inshore waters. The MMO response to this consultation included information on the requirements with regards to the section 36 and 36A of the Electricity Act and safety zone applications under the Energy Act 2004. This information is provided in Annex 1.

Scoping Opinion

The MLT and MMO are generally content with the structure for the ES as described in the scoping report. However, this letter sets out the additional information that we consider necessary to be included and/or assessed in the ES for this Project.

Please note our scoping opinion is based on the information available to us at this time. The information provided in this letter is not a definitive list of the ES/EIA requirements and further information may be required following an application for this Project, to ensure a full assessment is carried out.

Please also note that our scoping opinion will be provided to all those bodies that were consulted and will be published on our public register.

The Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended)

Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (as amended)

Scoping Opinion (SC1503)

Summary of the proposal

Menter Môn Cyf is proposing the Morlais Project to enable the development of the Morlais Demonstration Zone. The Morlais Project will seek to provide a consented tidal technology demonstration zone with communal infrastructure such as export cables and substations, for tidal technology developers to install and test arrays of tidal energy converters.

The Development will consist of the following;

- Offshore Tidal Generators;
- inter-array cables;
- potential offshore hub(s) or substation;
- export cable to landfall;
- onshore cabling from landfall to substation; and
- onshore substation.

Location

The West of Anglesey Demonstration Zone (WADZ) covers an area of 37km² and is located approximately 1km at its nearest point from the west coast of Holy Island, Anglesey. The landfall for the export cable from the WADZ is expected to be at Penrhos Beach, between Penrhos and Holyhead. The location of the substation has not been determined but it is likely to be in the vicinity of Penrhos.

Consultation Responses Received

In considering the scoping report, the MLT consulted with various consultation bodies. The consultation bodies that responded are listed below:

- Natural Resources Wales;
- Isle of Anglesey County Council;
- Isle of Anglesey County Council Biodiversity Officer;
- Holyhead Port Authority (Stena Line);
- Maritime and Coastguard Agency;
- NATS Safeguarding;
- Royal Society for the Protection of Birds;
- Royal Yachting Association;
- Trinity House Lighthouse Service;
- Centre for Environment, Fisheries and Aquaculture Science (Cefas);
- Marine management Organisation (MMO);
- Natural England;
- Defence Infrastructure Organisation; and
- Royal Commission on the Ancient and Historical Monuments of Wales.

1. Non- Technical Summary

- 1.1. Paragraph 1 on page 2 states that the substation's location and grid connection have not been finalised. The link between the substation and grid connection has not been included within this scoping report. This information must be included in the ES. Any regulatory authority is obliged to consider the potential impacts of the Project as a whole, not just the parts of the Project subject to consent under that particular authority.

2. Introduction

- 2.1. Section 2.4 states the elements that the development will be comprised of is used as the basis for consideration of potential impacts in the scoping report. This must include the installation of foundations, and any cable protection (if cable protection is being considered), and any other associated activities throughout the lifetime of the Project such as operation/maintenance and repowering.
- 2.2. Section 2.5.2 states that a shared export cable with the Minesto Deep Green Project is being proposed. It must be made clear who would own and be responsible for the export cable and any associated Marine Licence, and who would be responsible for submission of decommissioning under section 105 of the Energy Act 2004 (as amended).
- 2.3. The cable route has yet to be decided and no details have been provided of potential options, methods of installation or requirements for cable protection. This information must be included in the ES.
- 2.4. We advise that engagement with all relevant regulators, consultation bodies and stakeholders continues throughout the pre-application stage of the Project.

3. Project Boundaries, Approach to EIA and Consenting

- 3.1. The ES for the Project must address all impacts for the installation, operation and decommissioning phases of the development. In doing so, it is important that attempts are made to quantify the significance of the impacts (e.g. expected extent and intensity) and any seasonal variations on impacts are identified based on site-specific environmental sensitivities. Minor or negligible impacts also need to be considered (albeit in less detail). The ES should identify management and mitigation measures to be used for each issue. It is also important to assess the residual impacts following implementation of the identified management and mitigation measures. Where there is established literature or case history this should be highlighted and referenced.
- 3.2. We support the Project Design Envelope (Rochdale Envelope) approach, however we highlight the importance of a clearly defined design envelope to allow the production of the ES. The worst case scenario for the Project Design Envelope for relevant receptors must be clearly identified and the Project Design must be clear so that it can be understood by the regulators and stakeholders. It should be noted that the realistic worst case scenario may change throughout the EIA process depending on the receptors being assessed. The project design envelope as currently defined within the scoping report, requires further refining to be fit for purpose for the EIA.
- 3.3. We welcome the acknowledgement that where a technology falls outside the consented envelope, a separate Marine Licence would be required for deployment at the Morlais Demonstration Zone.
- 3.4. In defining the Project design envelope we recommend that you draw on good practice, such as the lessons learnt from the UK wave and tidal stream demonstration zone workshop in Cardiff, held on 14 and 15 July 2015.
- 3.5. The scoping report has not fully drawn upon information collated within The Crown Estate's plan level Habitats Regulations Appraisal for their 2013/14 wave and tidal stream leasing round, or guidance and information provided by NRW Advisory. We recommend that the following sources are utilised for the EIA:

 - NRW advice on scoping Environmental Impact Assessments for wave and tidal stream demonstration zones and Project sites.
 - NRW advice on scoping an Environmental Impact Assessment for marine renewable energy developments.
 - NRW natural heritage checklist: Tidal stream energy demonstration zone West of Holy Island, Anglesey.
 - NRW note on The Crown Estate's Habitats Regulations Appraisal of their 2013/14 leasing round for wave and tidal stream energy.

4. Project Description

- 4.1. In Section 4.3.2 Tidal energy converters such as Open Hydro devices are mounted on jacket foundations using pin piles. However, Table 4.1 explains that the Open Hydro device is deployed directly on the seabed using gravity

foundations. This should be clarified and the appropriate impacts considered in the ES.

- 4.2. Section 4.3.2 states that twin rotor floating device types may require up to four gravity anchors. The dimensions of any such gravity anchors should be stated.
- 4.3. The decommissioning stage of the Project must be included in the ES, including a full range of decommissioning techniques for the technologies that are deployed in the Zone.
- 4.4. Section 4.4.1 states that the expected lifespan of the Project is 45 years. The EIA must provide clarification of whether this includes the decommissioning stage. If not, this will need to be added onto the Project timescales for a complete temporal assessment.
- 4.5. We have been made aware that discussions between Menter Môn and NRW Advisory have indicated that renewable technologies deployed within the zone may not be limited to tidal current devices and that floating wind, or wave devices may also be considered. The project design envelope must be sufficient to cover all device types that are intended to utilise the Demonstration Zone, otherwise an additional marine licence, and EIA consideration will be required.
- 4.6. We welcome the inclusion of Section 4.3 (Overview of technology) and would expect a similar section in the final ES.
- 4.7. We recommend liaison with the Port of Holyhead Harbour Master to ensure that an Oil Pollution Preparedness, Response and Cooperation (OPRC) Plan is drawn up for Project. The Port of Holyhead has an OPRC Plan to deal with spillages in the port area. Liaison with the Harbour Master may allow identification of areas for potential mutual assistance.
- 4.8. The scoping report has not addressed high voltage underground cables and whether they will contain cooling oil, or not. As the underground cables will be new it would be favourable if they did not contain coolant oil. If they must contain oil there should be a leak/pressure loss detection system built into the system.
- 4.9. The assessment of impacts must take account of all aspects of the project including, ancillary components. These may include the cable landfall, access tracks, electrical connections (overhead lines or buried cables), construction compounds, sub-stations or other structures required by the scheme

5. Key Policy and Planning Legislation

- 5.1. Section 5.3.6 states that section 36 consent is required for the export cable. It should be noted that a section 36 consent only relates to the generating station. This should be stated correctly in the application.
- 5.2. Section 5.3.4 and 5.3.8 - All components of the Project below Mean High Water Springs will require a Marine Licence determined by NRW (not MMO) as the Project is entirely within Welsh inshore waters.
- 5.3. Section 5.3.4 – states ‘the protection and maintenance of MCZs will be enforced by the MMO’ Please note that this only applies in English waters.

5.4. Section 5.3.5 - As clarified by NRW previously, this scoping opinion has been provided by Natural Resources Wales under The Marine Works (Environmental Impact Assessment) Regulations 2007, and by the MMO under the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (as amended). The EIA should ensure that the role of NRW and the MMO in relation to this Project are correctly defined.

5.5. The EIA must consider the implications of the Project on the following European Directives:

- EC Habitats Directive (protected sites and species measures). A shadow Habitats Regulations Assessment (HRA) or information to inform an HRA document should be provided with the ES. Further details on the requirements of the HRA are provided in section 7.1 and information about European Protected Species (EPS) licensing is provided in Annex 2 of this Scoping Opinion.
- Marine Strategy Framework Directive.
- Water Framework Directive. A Water Framework Directive compliance assessment should be supplied with the ES.

The requirements of national legislation must also be considered, including;

- The Wildlife and Countryside Act (1981), as amended by the Countryside and Rights of Way Act (2000).
- The Natural Environment and Rural Communities Act (2006).
- The Conservation of Habitats and Species Regulations 2010 (as amended).

6. Physical Environment

6.1. Metocean Conditions and Coastal Processes

6.1.1. The scoping report lacks sufficient detail with respect to the coastal processes topic to assess whether the proposed scope is adequate. For example, no detailed information is provided on available baseline data and proposed surveys and there is no detail with respect to modelling proposals. In order to ensure that data collected is fit for purpose, models used are accurate, well calibrated and validated we would urge the applicant to consult with all relevant consultation bodies on the scope of data collection and analysis.

6.1.2. No description or assessment of zone of influence/impact pathways was provided in the scoping report, therefore we are currently unable to confirm whether or not we agree with the zone of influence and impact pathways. This also presents implications for advice that can be provided in relation to designated sites, cumulative impacts and activities to be scoped out. Further detail is required in the ES.

6.1.3. Cable protection is mentioned but limited information is provided in the scoping report. This must be appropriately assessed in the EIA.

6.1.4. Should any modelling be used to inform the EIA, full details of the validation and calibration must be included in the ES.

6.2. Marine Sediment and Water Quality

6.2.1. The potential impacts on marine sediment are provided in Table 6.2 which we agree with, however, there is also potential for the release of contaminants into the water column if marine sediment is disturbed. This should be assessed in the EIA.

6.2.2. Table 6.2 identifies the increase of suspended sediment as a potential impact. The cause of any increases in suspended sediment (for example from disposal of drill arisings, or piling activities) should be identified and considered within the EIA.

6.2.3. Section 6.2.1 describes the baseline for sediment quality. It is expected that contamination of sediment is unlikely, however this is based on a desk based review of potential sources and may not be an accurate reflection of the environment. Should the array require dredging, sampling will be required to determine the physical and chemical nature of the sediment. Depending on the scale of disturbance to install the array, sampling may be required and we would recommend early consultation to determine the sampling requirements.

6.2.4. The need for disposal of dredged material must be considered in the EIA (e.g. for the disposal of drill arisings). This should include:

- evaluate acceptability of potential adverse effects;
- consider alternative options and candidate disposal sites;
- assess the need for a new disposal site.

More detail can be found in the Cefas guidance “Case Studies to Demonstrate the Selection of Dredged Material Disposal Sites at Sea Cefas”.

6.2.5. In addition to the designated European bathing waters that are named in the reports, it should be noted that there is also a designated European Shellfish Water – called Beddmanarch. This should be assessed in the EIA.

6.2.6. The EIA must include an assessment of climate change scenarios.

7. Designated Sites and Biological Environment

7.1. Natural Heritage and Designated Sites

7.1.1. Proposed developments likely to significantly affect European Sites (Special Areas of Conservation (SACs), Special Protection Areas (SPAs), either alone or in combination with other plans or Projects, require special consideration by the Competent Authority (typically the licensing authority) under Regulation 61 of the Habitats Regulations. As a matter of Government policy, the same applies to Ramsar sites.

7.1.2. The HRA is a two stage process, the first stage being a ‘Test of Likely Significant Effect’ to establish whether the proposals are likely to result in significant effects on any European sites (and Ramsar sites). If this establishes that significant effects are likely, or there is uncertainty whether significant effects are likely to result, then an appropriate assessment of the effects of the activity in view of the conservation objectives of the site(s) is required. The HRA also needs to consider in-combination effects of the proposed Project with other projects.

7.1.3. The process of the consideration of development proposals likely to affect European Sites (and Ramsar sites) takes into account the conservation objectives of the site(s) concerned. It is undertaken by the Competent Authority, which in the case of the Marine Licence is NRW's Marine Licensing Team, and is an additional requirement to EIA. However, the information contained within the ES may be of relevance and be used in the HRA. We therefore recommend that the ES includes 'Information to inform the Habitats Regulations Assessment (HRA)'.

Competent Authorities may only permit proposals that will adversely affect the integrity of European Sites (and Ramsar sites) if there are no alternative solutions, there are Imperative Reasons of Overriding Public Interest (IROPI) for the development and compensatory measures have been secured.

7.1.4. Without prejudice to the HRA or consenting process, a package of measures that would avoid or mitigate the effects of the proposed scheme and avoid adverse effects on the integrity of the European Sites (and Ramsar Sites), would appear challenging to achieve in this case. If this is the case it may be necessary to consider the scheme under Regulation 62 of the Habitats Regulations, where the possibility of alternatives to the Project that would not give rise to adverse effects on the integrity of the European Sites are considered.

7.1.5. The Crown Estate has produced a Technical Report, '*Wave and tidal enabling action: consolidation of wave and tidal EIA / HRA issues and research priorities (2014)*', which may be a useful source of information for this EIA. This report identifies the key strategic EIA/HRA issues associated with wave and tidal stream arrays and identifies strategic research priorities which individual developers may plan to undertake or which could be addressed through a coordinated programme.

7.1.6. It is difficult to determine from the information provided in the scoping report the potential impacts and the significance of potential impacts, for protected sites. The EIA should concentrate on impacts both direct and indirect on marine and coastal sites and those adjacent to the cable route and any land-based infrastructure.

7.1.7. Section 7.1 Natural Heritage Designated Sites, appears to have gone beyond the stated 50km area of search by including seabird SPAs as far as Pembrokeshire. We agree that these SPAs should be included as they are within the mean maximum foraging range of some of the classified features, especially gannet (640km) and Manx shearwater (400km).

7.1.8. Within Table 7.1 Habitats Directive sites in Ireland and also in other areas around the Irish Sea are not mentioned in the table. In view of the international nature of the Habitats Directive, designated sites in other countries should also be considered.

7.1.9. There are new Marine Protected Areas (MPAs) being considered that are of relevance to this Project. It should be noted that once the consultation on the proposed SACs and SPAs commences any such designations will become a material consideration in the decision-making process.

7.1.10. Certain species listed under Schedule 5 of the Wildlife and Countryside Act 1981 (WCA, 1981), as amended by the Countryside and Rights of Way Act 2000 (CROW, 2000) are legally protected from 'reckless or intentional disturbance. In addition, certain species listed in Annex IV(a) of the Habitats Directive and whose natural range includes any area in Great Britain are legally protected under the Conservation of Habitats and Species Regulations 2010 (as amended) (the 'Habitats Regulations') and Offshore Marine Conservation (Natural Habitats &c) Regulations 2010 (Offshore Marine Regulations). The Regulations prohibit the deliberate capture, injury, killing or disturbance of any wild animal of an EPS. The ES must consider the impact of the project on species protected under UK and European legislation, including those which are features of protected sites. Further information on protected species of particular relevance to the WADZ and guidance on the requirements of legislation can be found in NRW's '*Natural heritage checklist for the demonstration zone*' and NRW Advisory's '*Advice on scoping an Environmental Impact Assessment for marine renewable energy developments*'.

7.1.11. If the EIA identifies the presence of European or nationally protected species appropriate mitigation and/or compensation and reasonable avoidance measures must be proposed to ensure the Favourable Conservation Status of the species is maintained where necessary.

7.1.12. Menter Môn may also wish to consider whether an EPS Licence under the Conservation of Habitats and Species Regulations 2010 will be required, as it is an offence to deliberately disturb capture, injure or kill or damage or destroy a breeding site or resting place of EPS. Further details on the EPS can be found in Annex 2 of this document. The need for EPS licence(s) should be determined as part of the EIA process.

7.1.13. Sites of Special Scientific Interest (SSSI), which are nationally important sites, notified under the Wildlife and Countryside Act,1981,(WCA) as amended by the Countryside and Rights of Way Act,2000 (CRoW), which could be impacted by the project and therefore should be included in the ES include:

- Rhosneigr Reefs Site of Special Scientific Interest (SSSI);
- Beddmanarach and the Cymyran SSSI;
- Glannau Rhoscolyn SSSI; and
- Ynys Feurig SSSI.

7.1.14. The largest guillemot colony in North Wales, namely Carreg y Llam SSSI has been omitted from the list of protected sites. This SSSI with its notified feature of breeding guillemot should be added for consideration.

7.2. Benthic Ecology

7.2.1. The scoping report has identified the features of conservation importance that require assessment for potential impacts. It is important to note that an EIA should be an assessment of the potential impacts on all potential receptors and therefore we would expect the final ES to include such an assessment. Where receptors are scoped out, a full explanation and

justification explaining the reasons they are not assessed in the ES should be provided.

- 7.2.2. The benthic ecology impacts should be assessed for intertidal and subtidal ecology and cover the different stages of development (e.g. Potential effects during construction; operation and decommissioning). Each of the individual impacts should be assessed against potential cumulative effects from other existing or planned developments.
- 7.2.3. The benthic ecology potential impacts table (Table 7.4) has omitted the potential affect associated with the installation of export cables. These include direct loss/alteration of habitat and potential smothering of adjacent habitats due to cable laying. This must be included in the ES.
- 7.2.4. The intertidal ecology section is very brief and has not referenced and included appropriate baseline intertidal habitat maps (e.g. CCW Phase 1 intertidal biotope layer). This information should be presented in a similar way to the subtidal section (Table 7.3). This must be assessed against the predicted landfall location and methodology.
- 7.2.5. The EIA baseline characterisation strategy (Section 7.2.3) must include an assessment of the intertidal habitats present in and around Penrhos Bay. This could include undertaking a re-assessment of the CCW Phase 1 intertidal habitat survey for the planned cable landfall site (Penrhos Bay) to an appropriate scale for the planned works to provide the baseline/characterisation for the intertidal zone at the cable landfall site location.
- 7.2.6. Any nationally important marine habitats and/or species (UK BAP/Section 42) either under the footprint of the demonstration zone, cable route and landfall, or any habitats or species that may be indirectly affected by the planned development (i.e. within the zone of influence) need to be identified and included as part of the ES. These include *Musculus discors* beds (two records to the North of Holyhead from 1996), seagrass (recent and historic records) in shallow water on the east and west sides of Holy Island (outside of the zone but potentially within the wider zone of impact) and fragile sponge and anthozoan communities both within and adjacent to the zone. BAP subtidal mixed muddy sediments, and BAP subtidal sands and gravels are also predicted to occur in and adjacent to the zone, along with patches of Annex 1 rocky reef (survey records and BGS hard substrate map). The BAP species *Arctica islandica* and *Haliclystus auricular* have also previously been found in shallow waters off Holy Island (MNCR records from 1996) and may occur within the zone. If none are present this should be stated.
- 7.2.7. A thorough biosecurity risk assessment must be undertaken as part of the EIA process. The adjacent Holyhead Marina contains the invasive carpet sea squirt *Didemnum vexillum*. This has not been mentioned in the scoping report and should be a major consideration with this Project. The EIA should consider how *D. vexillum* will be contained within the marina, and any measures detailing how onward spread of this species will be mitigated. This is particularly important if, during any stage of the development (construction, operation, decommissioning) the developer intends to use the facilities at Holyhead marina or port for berthing of vessels, materials or equipment.

7.2.8. With regards to section 7.2.3 (EIA baseline characterisation strategy points), the need for new data collection should depend on the quality and timeliness of existing material. If new data collection is required, the following guidance for benthic sampling should be utilised as it is best practice for Projects of this nature;

- Ware, S.J. & Kenny, A.J. 2011. Guidelines for the Conduct of Benthic Studies at Marine Aggregate Extraction Sites (2nd Edition). Marine Aggregate Levy Sustainability Fund, 80pp.

7.2.9. We welcome the approach to confirm the presence of biotopes in the ES by review of available survey data and ecological characterisation surveys.

7.2.10. We agree with the potential impacts of the Project detailed in Table 7.4 and would expect these and in addition an assessment of potential scour on the benthic ecology of the area to be covered in the EIA.

7.3. Marine Mammals, basking sharks and reptiles

7.3.1. Paragraph 2 under 'Mammals' states that there is potential for an area of the Irish Sea adjacent to the West Anglesey Demonstration Zone (WADZ) to be designated as a SAC for harbour porpoise. It should be noted that once the consultation on the SAC commences any such designations will become a material consideration in the decision-making process.

7.3.2. The ES must include impacts during construction, operation (including maintenance) and decommissioning on marine mammals including the following species:

- harbour porpoise;
- common dolphin;
- Risso's dolphin;
- grey seal;
- minke whale; and
- bottlenose dolphin.

Some species present a higher risk than others, for example minke whale and common dolphin, however the potential for collision risk needs to be considered for all species due to possible EPS offence issues (see Annex 2).

7.3.3. The spatial extent of the EIA should be guided by the relevant marine mammal management units. Broad receptor groups have been mentioned in the scoping report but impact pathways have not. The ES must include receptor groups and impact pathways, and the same pathways identified in the ES should be considered in the Cumulative Impact Assessment.

7.3.4. The nearshore and inshore waters of the Anglesey coast are important for cetaceans. Of the several species of cetacean present the most notable are the harbour porpoise and bottlenose dolphin listed in Schedule 5 of the WCA 1981, and under Article 12 of the Habitats Directive. The coast and inshore waters of Anglesey are also important for grey seals which breed and haul out on undisturbed sections of the coast and which feed extensively within the nearshore and inshore waters. The use of the Zone and surrounding area by marine mammals must be assessed both spatially and temporally in the EIA.

- 7.3.5. Bottlenose dolphin and grey seal are both features of SACs which are 'within range' of the WADZ (see NRW Advisory's Natural heritage checklist' for further details). The possible effects on these species features will need to be part of the consideration of the likely significantly effects of the WADZ on European sites (SAC, SPA), both alone and in combination with other plans or Projects, required under Regulation 61 of the Habitats Regulations.
- 7.3.6. Key issues that must be considered in the EIA are displacement and collision during operation and noise impacts during construction, operation and decommissioning. Indirect effects on prey species and cumulative effects should also be considered.
- 7.3.7. The potential for population level effects on marine mammals will need to be considered where significant impact pathways have been identified. Modelling frameworks such as the Population Consequences of Disturbance (PCoD) or tolls such as Potential Biological Removal should be considered.
- 7.3.8. Table 7.5 gives little consideration to entanglement. We advise that you consider Scottish Natural Heritage's (SNH) publication: "Understanding the potential for marine megafauna entanglement risk from renewable marine energy developments" for guidance.
- 7.3.9. Section 7.3.1: We question the statement made here (last paragraph) that Anglesey has no breeding population of grey seals, given that local pupping sites are mentioned in Westcott and Stringell (2003), which is referenced at the foot of the same page.
- 7.3.10. Section 7.3.5: EIA baseline characterisation strategy points: The need to gather new site-specific data through survey is likely to be greater than implied here, especially in light of likely designation of new SAC for harbour porpoise – unless recent historic records are found to provide a wealth of relevant material.

7.4. Fish and Shellfish Populations

- 7.4.1. Table 7.6 identified collision risk to migratory fish as a potential impact; however it does not mention collision risk to non-migratory fish. It is not clear whether or not this has been considered. We would suggest that this should be included in the ES, however if it has been considered and scoped out, justification must be provided.
- 7.4.2. Specific reference should be made to the potential impact pathways for fish species identified in Natural Resources Wales Natural Heritage Checklist: Tidal Stream Energy Demonstration Zone West of Holy Island, Anglesey (2014). This includes sea lamprey, river lamprey and Allis shad which are Annex II fish species of the Pembrokeshire SAC. The EIA should assessed the following impacts:
- effects of Electromagnetic Fields (EMF);
 - effects of underwater noise;
 - barriers to migration routes;

- collision risk with devices;
- effects of habitat loss; and
- indirect effects.

7.4.3. A section should be included in the ES on transitional fish species (which would include bass, herring, whiting etc.) and a migratory fish section for lamprey, salmonids and eels.

7.4.4. We recommend early engagement with all relevant consultation bodies to discuss the requirements for underwater noise data collection and assessment. This comment applies to all underwater noise receptors.

7.5. Ornithology

7.5.1. The proposed Project is in close proximity to important areas for marine life and birds. The application site is adjacent to, and within the foraging ranges of, sites nationally and internationally designated for their importance for birds, such as the Glannau Ynys Gybi / Holy Island Coast SPA, SAC and SSSI; and Ynys Feurig, Cemlyn Bay and the Skerries SPA and SSSI.

7.5.2. The scoping area for the EIA should be denoted by mean maximum foraging ranges (as identified in Thaxter *et al* (2012)) from SSSIs and SPAs. A map should be provided that shows the protected seabird features of sites that could potentially reach this area, based on their foraging ranges. This map should show protected sites (SPAs and SSSIs) with signposting to a table that lists, 1) the site, 2) the qualifying features and 3) the mean maximum foraging distance to the WADZ.

7.5.3. The EIA should consider the potential for displacement of food sources from the area in addition to displacement of birds themselves. It has been noted how piling of turbines could lead to a reduction of clupeid sp. spawning grounds (Perrow *et al*, 2011).

7.5.4. The EIA should include assessment of the potential for birds to collide with structures that are lit at night.

7.5.5. Given experience at other offshore sites, it is unlikely that coastal survey work will provide useful data to inform the EIA. We consider that the use of boat based surveys would enable true densities of seabirds to be ascertained to enable accurate predictions of impact to satisfy the requirements of both EIA and HRA. We would recommend consultation with all relevant bodies to discuss the need for and scope of any additional ornithological data gathering before work commences.

7.5.6. In the first row of Potential Impacts Table 7.8, we consider that there is also potential for birds to impact structures in normal flight at night or (especially) in strong winds/ storms. This potential impact should be included in the EA.

7.5.7. Key areas of concern for ornithology which must be assessed in the EIA include:

- Collision risk between diving birds and moving parts of the device. This also applies to fish and marine mammals.

- Disturbance/Habitat Exclusion/Displacement: The development proposal may exclude birds, fish and marine mammals through producing noise, creating a physical or perceptual barrier, resulting in avoidance, and consequent exclusion from food resources.
- Sedimentary Processes and Pollution: The devices may cause an increase in turbidity, associated with alterations of sedimentation patterns and therefore potentially an increased collision risk. There is also a potential risk of toxic compounds being leached from antifouling paints, hydraulic, or lubricating fluids. Seabirds and other marine wildlife are sensitive to contamination by oil-based compounds.
- Indirect impacts: to birds, fish and marine mammals due to habitat loss for prey, depletion, displacement or aggregation of prey.
- The above possible adverse impacts may be applied to a range of birds (including the seabird features of SSSIs and SPAs), both breeding and non-breeding populations. Impacts may occur during installation, operation, decommissioning and routine maintenance operations.

7.5.8. Terrestrial impacts: The land based works including the landfall of cables may have a possible adverse impact on birds and habitats. For example, the possible impacts to the chough population of the Glannau Ynys Gybi / Holy Island Coast SPA, could include disturbance and displacement of breeding and foraging birds. The local chough population is also subject to possible adverse impacts from other development proposals along the north coast of Anglesey, including the decommissioning of Wylfa Power Station, Wylfa B, the Deep Green Project and LNG Amlwch. Thus, cumulative effects on chough must be considered and addressed. Chough is listed within:

- Annex 1 of the European Council Directive on the Conservation of Wild Birds (79/409/EEC), known as the 'Birds Directive'. Article 4 (1) of this Directive states that "*species mentioned in Annex 1 shall be subject to special conservation measures concerning their habitats in order to ensure their survival and reproduction in their area of distribution*". Article 4 (4) of this Directive states that, outside protected areas "*Member States shall strive to avoid pollution or deterioration of habitats*" for listed species. The Conservation (Natural Habitats, &c.) Regulations 1994 transpose this Council Directive into national law.
- Schedule 1 of the WCA, 1981 (as amended), which means it is specially protected at all times of the year (and not just within the breeding season).
- Johnstone, I., Young, A. and Thorpe, R.I. (2010). The revised population status of birds in Wales. *Birds in Wales* 7(1): 39-91., as 'Amber' because it is a species of European Conservation Concern.
- Natural Environment and Rural Communities Act 2006 as a species of '*principal importance for the conservation of biodiversity*'

7.5.9. The potential impact of this development, both alone and in combination with other plans and Projects (including further phases of this development), upon populations of birds should be appropriately addressed. This may require bird surveys, including terrestrial bird surveys. The RSPB can also provide relevant terrestrial bird data for the general vicinity, including chough data.

7.5.10. Ornithological surveys should follow the guidance set out in '*Guidance on Survey and Monitoring in Relation to Marine Renewables Deployments in*

Scotland Volume 4: Birds (Scottish Natural Heritage, 2011)'. Boat based surveys (or aerial surveys) will be required owing to the distance of the development site from the shore. It is important to identify the extent of the offshore site and provide a defined site boundary and appropriate buffer. RSPB research into potential effects of wave and tidal stream devices on birds recommends that, due to the paucity of systematic data, the longevity of birds, inter-annual and weather dependant variations, at least two years of pre-application data are collected, covering all seasons and including both breeding and non-breeding populations.

7.5.11. We recommend early engagement with all of those organisations with an interest in ornithology to gain advice on survey methods.

7.5.12. There is potential not only to mitigate for the adverse impacts of the development, but also to enhance the biodiversity of the development site and its vicinity. This should be addressed in the ES. Mitigation/enhancement measures if required could include:

- a. Time-related restrictions on construction, in relation to nesting periods.
- b. The use of sympathetic land management.

7.6. Terrestrial and Coastal Ecology

7.6.1. The EIA should take into consideration any potential impacts of onshore development associated with the Morlais Demo zone. The EIA should include appropriate ecological surveys to assess the likely impact of the scheme on protected sites and/or species.

7.6.2. Further information is required in the EIA on cable burial depth and potential climate change impacts such as foreshore steepening and erosion issues at the landfall location.

7.6.3. The proposed development is approximately 950m away from the boundary of the Beddmanarch Cymyran SSSI. The EIA should give full consideration to the potential impacts the scheme may have on this designated site.

7.6.4. There is a record of otter and great crested newts in the vicinity of the proposed development. Otters and great crested newts are protected under the WCA, 1981 (as amended) and the Conservation of Habitats and Species Regulations (2010). The EIA should assess the scheme's potential impact on the maintenance of the otter population at a favourable conservation status.

7.6.5. EIA baseline characterisation strategy points: We agree with the proposal to gather existing and new data. We note that a large amount of relevant material has been gathered from recent survey work for other proposals/cases in the area (particularly Lateral Power and Land and Lakes), if available would be useful to inform the baseline characterisation.

7.6.6. We have been made aware that common lizards are present in the area, although not EPS, reptiles have partial protection under the WCA, 1981, and should be covered in the EIA.

8. Human Environment

8.1. Seascape and landscape

- 8.1.1. The scoping report is brief in setting out the proposal in the seascape and landscape context. It acknowledges the Llyn AONB statutory landscape designation and outlines the Seascape Character Area baseline context for the development proposal. We recommend that you utilise Regional Seascape Units and Local Seascape Units information. The latter includes a sensitivity assessment to tidal stream development. We recommend that additional advice is sought from NRW advisory in this matter.
- 8.1.2. In regard to sensitive viewpoints – the AONB is referred to and distinctiveness of South Stack in particular. Sea views towards the Anglesey coastline as well as views of the sea from the coast are relevant to the assessment. In the case of the former, views from the Ireland to Holyhead Ferry contribute to an important gateway to Wales.
- 8.1.3. Section 8.2 land use and quality does not mention that part of Penrhos Beach and all of Penrhos Coast Park which lies within the Llyn AONB. The routing of the cable, construction disturbance, location of the substation and potential effects upon the visual amenity of visitors to this part of the AONB need to be considered within the scope of the EIA.
- 8.1.4. The list of developments included within the cumulative effects assessment appear to include the relevant consented, operational and in planning development within the vicinity but we recommend Anglesey County Council planning department and NRW MLT are contacted to provide definitive comment on this matter prior to submission of any application.

8.2. Commercial Fisheries

- 8.2.1. It is not clear whether or not impacts to crab fisheries have been considered. This should be included in the ES, or, if this has been scoped out justification should be provided.
- 8.2.2. FishMap Mon may provide useful information to inform this section of the EIA. The Fish Map Mon information was gathered to give a better understanding of the fishery around Anglesey and help manage, protect and help maintain a sustainable fishery, and protect fishermen's livelihoods in the area. <http://fishmapmon.naturalresourceswales.gov.uk/>

8.3. Shipping, Navigation and Marine Infrastructure

- 8.3.1. The ES should supply detail on the possible impact on navigational issues for both Commercial and Recreational craft, with regards to:
- collision risk;
 - navigational safety;
 - visual intrusion and noise;
 - risk management and emergency response;

- marking and lighting of site and information to mariners;
 - effects on small craft navigational and communication equipment; and
 - the risk to drifting recreational craft in adverse weather or tidal conditions.
- 8.3.2. A Navigational Risk Assessment (NRA) must be submitted in accordance with MGN 371 (and 372), the MCA's Methodology for Assessing the Marine Navigational Safety & Emergency Response Risks of Offshore Renewable Energy Installations, and the MCA's Under Keel Clearance Policy paper. The NRA must include a completed MGN 371 checklist available from the MCA website.
- 8.3.3. The NRA must include comprehensive vessel traffic analysis in accordance MGN 371 and assessment of the possible cumulative and in-combination effects on shipping routes and patterns.
- 8.3.4. The shipping and navigation study should include radar and manual observations in addition to AIS data to ensure vessels of less than 300gt are captured.
- 8.3.5. If it is necessary for the cables to be protected by rock armour, concrete mattresses or similar protection which lies clear of the surrounding seabed, the impact on navigation and the requirement for appropriate risk mitigation measures must be assessed. The ES should pay particular attention to export cable routes and burial depth for which a Burial Protection Index study should be completed and, subject to the traffic volumes, an anchor penetration study may be necessary. Due cognisance needs to address cable burial and protection, particularly close to shore where impacts on navigable water depth may become significant. Any consented cable protection works must ensure existing and future safe navigation is not compromised. The MCA would accept a maximum of 5% reduction in surrounding depth referenced to Chart Datum.
- 8.3.6. The cumulative and in-combination effects require detailed consideration and the proximity of sites close to the development area will require a detailed assessment.
- 8.3.7. Casualty information from the Marine Accident Investigation Branch (MAIB) and RNLI would be a useful data source, in establishing the risk profile for the area.
- 8.3.8. Any application for construction or operational safety zones will need to be carefully assessed and supported by evidence from the development and construction stages. For further detail on safety zones see the MMO's comments in Annex 1.
- 8.3.9. Particular consideration will need to be given in the ES to the implications of the site, size and location on SAR resources and Emergency Response Co-operation Plans (ERCOP).
- 8.3.10. The EIA should give consideration to how the Zone could be marked with marine aids to navigation in accordance with the general principles outlined in *IALA (International Association of Marine Aids to Navigation and Lighthouse Authorities) Recommendation O-139 on the Marking of Man-Made Offshore Structures as a risk mitigation measure*. In addition to any

permanent marking required, it should be borne in mind that additional aids to navigation such as buoys may be necessary to mitigate the risk posed to the mariner, particularly during the construction phase. All marine navigational marking, which will be required to be provided and thereafter maintained by the developer, must be agreed with Trinity House. This will include the necessity for the aids to navigation to meet the internationally recognised standards of availability. In the event that it is not possible to present the final definitive layout of tidal energy devices within the Zone in the Environmental Impact Assessment, then indicative layouts and marking should be considered for likely and “worst case” scenarios.

8.3.11. Any reference to IALA recommendations on the marking of wind farms should refer to O-139 Edition 1 December 2008 which replaced all previous versions.

8.3.12. The following concerns have been raised by consultees in relation to navigation, which should be considered in the EIA:

- a) Trinity House has advised that an irregular arrangement of tidal energy devices is particularly difficult to satisfactorily mitigate the risk posed to the mariner in most cases. Therefore, every effort should be made to avoid having isolated tidal energy devices by achieving a regular shaped layout of tidal energy devices ideally with two clear lines of orientation.
- b) Laying of the cable may cause disruption to regular ferry traffic and other vessel in the vicinity of the Traffic Separation Scheme at the port entrance.
- c) Trinity House has advised that a Zone wide NRA will not be sufficient to adequately assess the impacts within the proposed site and NRAs will be required in addition from each individual developer, as the risks associated with the various types of device are likely to be different and as the site grows the cumulative risk will inevitably change.

8.4. Archaeology and Cultural heritage

8.4.1. We recommend that Cadw, Royal Commission on the Ancient and Historical Monuments of Wales (RCAHMW), Gwynedd Archaeological Trust, Receiver of Wreck and UK Hydrographic Office are contacted to supply the most up-to-date information on which to base the EIA.

8.4.2. Section 8.6.3 makes no reference to a Written Scheme of Investigation (WSI) to detail any necessary mitigation measures (e.g. development exclusion zones). We recommend that a WSI is undertaken and approval of the WSI and all of the programmes of archaeological work is gained from Gwynedd Archaeological Trust, RCAHMW and Cadw.

8.4.3. We welcome the proposal to undertake additional historic environment studies and draw your attention to the following good practice guidance documents which we recommend are utilised for these studies:

- Historic Environment Guidance for Wave and Tidal Energy <https://historicengland.org.uk/images-books/publications/historic-environment-guidance-wave-tidal-energy/>
- Historic Environment Guidance for the Offshore Renewable Energy Sector <http://www.thecrownestate.co.uk/media/5876/km-ex-pc-historic-012007->

[historic-environment-guidance-for-the-offshore-renewable-energy-sector.pdf](#)

- Offshore Geotechnical Investigations and Historic Environment Analysis: Guidance for the Renewable Energy Sector
<http://www.thecrownestate.co.uk/media/5901/km-ex-pc-historic-012011-offshore-geotechnical-investigations-and-historic-environment-analysis-guidance-for-the-renewable-energy-sector.pdf>
- Marine Geophysics Data Acquisition, Processing and Interpretation: Guidance Note
<https://historicensland.org.uk/images-books/publications/marine-geophysics-data-acquisition-processing-interpretation/>
- COWRIE Guidance for the cumulative impacts on the historic environment from offshore renewable energy - available on request from enquiries@thecrownestate.co.uk
- Model Clauses for Archaeological Written Schemes Investigation
<http://www.thecrownestate.co.uk/media/5514/model-clauses-for-archaeological-written-schemes-of-investigation.pdf>
- It is anticipated that the developer will appoint a heritage champion amongst its Project team and have a retained archaeological consultant who will provide a point of contact for implementing reporting best practice, as outlined in the Offshore Renewables Protocol for Archaeological Discoveries (ORPAD)
<http://www.wessexarch.co.uk/projects/marine/tcerenewables/protocol-implementation-service>
- The Operational Guides provided by ORPAD give an introduction to ways in which historic environment assets can be protected through construction phases. It would be expected that this good practice would be adopted by the developer and all the developer's contractors.
<http://www.wessexarch.co.uk/projects/marine/tcerenewables/documents>

8.4.4. In 8.6.3, second bullet point 'review of subsurface historical interest features using existing bathymetric data and geophysical data' - we are aware of some limitations for archaeological purposes in the seabed mapping (multi-beam data) gathered by SEACAMS. We therefore draw your attention to specifications for marine geophysical surveys to assist with the identification of historic environment assets (e.g. side-scan and magnetometer) in the above guidance documents and recommend that you utilise these for future surveys. The involvement of an appropriately qualified maritime archaeological consultant in the design of these surveys will be critically important.

8.4.5. As the proposed landfall for the transmission cable is to cross through a beach where there are recorded intertidal peat deposits, it is likely that a geotechnical assessment will be required for archaeological purposes. The involvement of an appropriately qualified maritime archaeological consultant in the developing the design of those survey, so that they best answer both historic environment and engineering purposes, will be critically important.

8.5. Air Quality

8.5.1. The EIA should take into account roads and transport links that are likely to be used to transport construction materials and whether the potential change

in traffic pollution will be significant. We would recommend continued consultation with all those bodies with an interest in air quality to ensure the assessment of potential air quality impacts is fit for purpose.

8.5.2. Protected Sites within 200m of the selected roads will need to be identified. The amount of NO_x, SO₂, dusts, nitrogen deposition that is likely to occur at the sites within 200m of the roads and whether this additional pollution is more than 1% of the relevant nutrient nitrogen critical loads, NO_x & SO₂ critical level and dusts deposition for these sites, will need to be assessed in the EIA.

8.6. Tourism and Recreation

8.6.1. This section of the ES should include sea-based recreational and sport activities.

9. Cumulative Impacts and In-Combination Effects

9.1. Cumulative effects are likely to be significant in such a busy area and the EIA must address the implications that additional activities in the area will have on environmental resources e.g. bird displacement.

9.2. Other Projects and activities in addition to those considered within section 10 of the scoping report will need to be considered when assessing the cumulative impacts and in-combination effects of Morlais. Clearly identifying the key impact pathway / receptor combinations of relevance to Morlais, once the Project design envelope has been agreed will help to identify other activities which will need to be considered. It is important to note that for wide ranging marine species such as mammals or widely foraging seabirds, this may include Projects or activities located some distance from Morlais.

9.3. In-combination effects with other developments/proposals will also need to be assessed for HRA and WFD. These include Lateral Power and Wylfa Newydd nuclear power station.

9.4. Section 10.1.3 – the types of Projects considered for cumulative impact assessment should include, in addition to those listed in the scoping report;

- disposal of dredged material at Holyhead deep disposal site; and
- cables and pipelines

10. Proposed EIA Methodology

10.1. Section 11.1 states “Baseline data collection to characterise the existing environment”. There is a need for clarity of terminology to make clear the distinction between baseline survey or data gathering and collation of data to inform the assessment of impacts within EIA. Data gathering including identifying those receptors which might be vulnerable to impacts is known as characterisation. Data gathering against which there will be impact monitoring, for example to validate predictions made in the EIA, is known as baseline data.

10.2. Identifying the key impact pathway / receptor combinations will help to focus any additional evidence or data collection to most effectively inform the assessment

of impacts within the EIA process. We would encourage engagement and with all relevant stakeholders to discuss the need for and scope of any additional data gathering before work commences.

10.3.It may be helpful to include outline notes on HRA proposals, if only to show how HRA – whilst using much of the same material - will be different, for clarity.

10.4.The ES should detail any mitigation and monitoring as far as possible.

10.5.The ES should be thoroughly proof read before submission to ensure that information such as protected site names and features of the sites are correct. Incorrect information or the omission of important information may result in incomplete assessments within the Environmental Statement. Omission of information regarding sites, features and protected species could cause delays should further information be required that has not been considered previously.

10.6. The EIA must be informed by best available evidence. This might include data gathering within the offshore scoping area, as well as experience from the consenting process for other test sites such as the Perpetuus Tidal Energy Centre (PTEC) off the Isle of Wight and the European Marine Energy Centre (EMEC) in Orkney.

Should you have any questions in relation to this scoping opinion, please do not hesitate to contact me.

Yours sincerely,



Shelley Vince

Marine Licensing Team

Natural Resources Wales

References

Thaxter CB, Lascelles B, Sugar K, Cook ASCP, Roos S, Bolton M, Langston RHW and Burton NHK (2012). Seabird foraging ranges as a preliminary tool for identifying candidate Marine Protected Areas. *Biological Conservation* 156: 53-61.

Perrow, M.R., Gilroy, J.J., Skeate, E. R., Tomlinson & M.L. (2011). Effects of the construction of Scroby Sands offshore wind farm on the prey base of Little tern *Sternula albifrons* at its most important UK colony. *Marine pollution bulletin*

ANNEX 1 – MMO CONSENTING POWERS AND REQUIREMENTS

The MMO has consenting powers for section 36 (“s36 consent”) of the Electricity Act 1989 (as amended) for Projects under 100MW in English and Welsh waters, as transferred under section 12 of the Marine and Coastal Access Act 2009 (“MCAA 2009”). As such, the MMO is responsible for consenting functions under section 36(1), (5) and (7) of the Electricity Act 1989 (as amended), for the construction, extension or operation of generating stations.

An applicant seeking a s36 consent may apply for a screening request under the Electricity Works (Environmental Impact Assessment) (England & Wales) Regulations 2000 (as amended) (“EWR 2000”). Following consideration of the details provided in the Morlais Tidal Demonstration Array Scoping Report for an opinion on the Scope of the Environmental Statement (ES), the MMO can confirm that the proposed Project has been screened in to the EWR 2000 and will require an Environmental Impact Assessment (EIA) to assess the potential effects during the construction, operation and maintenance on physical, biological and human receptors. A screening opinion was sent by email to the applicant on 13 August 2015.

The EWR 2000 apply in the case of any s36 application for consent to construct, extend or operate a generating station. However, the MMO will seek to discuss arrangements with Natural Resources Wales (NRW) and the applicant regarding the streamlining of the regulatory process.

Under the EWR 2000, the MMO is required to give a scoping opinion within 3 weeks of the last date by which any consultees are required to make representations (or, if earlier, the date by which the last representation is received).

The MMO has functions under section 95 of the Energy Act 2004 (as amended) (“EA 2004”) with regards to declaration of safety zones around renewable energy generation stations. These functions were transferred under section 13 of the MCAA 2009. A safety zone application can be applied for at any time, however the MMO recommends that such an application is delayed to such a time that the device(s) to be deployed and their locations are known in more detail. However, the MMO advises that the intention to apply for safety zones should be considered as part of the wider application for a marine licence / s36 in order for consultees to understand the how the Project may impact upon them e.g. to allow local fishermen/mariners to understand if safety may be in place and what effect (if any) this may have on them.

The MMO wishes to make you aware of the specific advertising requirements under the EWR 2000 in accordance with regulation 14. Whilst this is may not be specifically relevant to the scoping opinion at this stage, the MMO wishes to point out whilst there is a requirement to advertise further/additional information under the EWRs 2000, there is no such requirement under The Marine Works (Environmental Impact Assessment) Regulations 2007 (MWR 2007). It is the MMO’s view that there are three types of information which need to be considered during the application process under EWRs which is set out below;

- **Further Information.** Regulation 13(1) is concerned with the applicant providing “*such further information as may be specified concerning any matter which is required to be, or may be, dealt with in the ES*”. This includes instances where the MMO requires further information either to supplement a deficient ES or where specified information required under the EWR 2000 has not been provided. Further information under 13(1) triggers the requirement for further advertisement in accordance with regulation 14 of EWR 2000.

- **Verification.** Regulation 13(2) allows the MMO to request in writing the applicant to provide information as required to “*verify any information within the applicant’s ES*”. Whilst there is no requirement for further advertisement of “verification” information in accordance with regulation 14; such information can be considered “additional information”, see below.

- **Additional Information.** The EWRs was amended by Electricity Works (Environmental Impact Assessment) (Amendment) Regulations 2007 (“EWR 2007”) to comply with the Public Participation Directive and resulted in the insertion of regulation 14A which defines a further category of “*additional information*”. “Additional Information” is information that is made available to the MMO after receipt of the ES and prior to determination, is of material relevance to the content of the ES but is not intended to supplement the ES, and is not “further information” under regulation 13(1). “Additional Information” may include representations from the applicant, advisors and the public and is required to be advertised in accordance with regulation 14A(2).

ANNEX 2: EUROPEAN PROTECTED SPECIES - LEGISLATIVE PROTECTION

In UK waters, European Protected Species are:

- cetaceans (whales, dolphins and porpoises);
- turtles; and
- Atlantic Sturgeon (*Acipenser sturio*).

All European Protected Species and the places they use to rest and breed are legally protected under the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species (Amendment) Regulations 2011 (the Habitats Regulations). The Habitats Regulations transpose the requirements of the Habitats Directive (Council Directive 92/43/EEC) into UK law, and the Offshore Marine Conservation (Natural Habitats &c) Regulations 2010 (Offshore Marine Regulations) extend this protection into offshore waters.

Under Regulation 41 of the Habitats Regulations: -

A person commits an offence if he or she:

- a) deliberately captures, injures or kills any wild animal of a European protected species;
- b) deliberately disturbs animals of any such species;
- c) deliberately takes or destroys the eggs of such an animal; or
- d) damages or destroys a breeding site or resting place of such an animal.

Disturbance of animals includes in particular any disturbance which is likely:

- a) To impair their ability
 - (i) to survive, breed or reproduce, or to rear or nurture their young, or,
 - (ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate;or
- b) to significantly affect the local distribution or abundance of the species to which they belong.

Under S.9(4)(b) and (c) the Wildlife and Countryside Act 1981 (as amended):-

A person commits an offence if he/she intentionally or recklessly

- disturbs any such animal while it is occupying a structure or place which it uses for shelter or protection; or
- obstructs access to any such structure or place.

Where the legal protection afforded European protected species under the Habitats Regulations is likely to be compromised by a proposed development, the development may only proceed under a licence issued. Under Regulation 53(2) of the Habitats Regulations, licences may be issued for the purposes of:

‘preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature, and beneficial consequences of primary importance for the environment.’

Furthermore, a licence can only be issued if the following two conditions are also met:

- That there is ‘no satisfactory alternative’ (Regulation 53(9)(a)), and that
- ‘the development will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range’ (Regulation 53(9)(b)).

In addition, Regulation 9(5) of the Habitats Regulations confirms that all competent authorities, in exercising any of their functions, must have regard to the provisions of the Habitats Directive so far they may be affected by the exercise of those functions.