



# Pontardawe and Swansea Angling Society Ltd

[www.pasas.org.uk](http://www.pasas.org.uk)

Treasurer – Phil Jones

Marine Licensing Team  
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22<sup>nd</sup> April 2014

Dear Sirs

MARINE LICENCE APPLICATION (ORDM145)  
TIDAL LAGOON, SWANSEA BAY

1. This is our initial response to the dual Marine Licence (ML) applications by Tidal Lagoon (Swansea Bay) plc (TLSB), to which you said in your email of 24<sup>th</sup> March<sup>1</sup> that we may submit a single representation.
2. We note that “In determining an application for a marine licence (including the terms on which it is to be granted and what conditions, if any, are to be attached to it), the appropriate licensing authority must have regard to (a) the need to protect the environment, (b) the need to protect human health, (c) the need to prevent interference with legitimate uses of the sea, and such other matters as the authority thinks relevant.”<sup>2</sup>
3. We are a not-for-profit club with 300 members. We own, control or enjoy fishing rights on about 8 miles of the River Tawe. Our fishing (for brown trout, sea trout and salmon) is available to the public at modest cost and provides an important recreational amenity.

Salmon and sea trout smolts leaving the Tawe, adults returning to spawn and kelts leaving again after spawning all have to migrate through Swansea Bay, past the proposed lagoon and its turbine array.

We are concerned that the proposed lagoon will harm these migratory fish, detrimentally affecting our fishery and its value. This is likely to arise as a result of:

- a. massive, unnatural flows in Swansea Bay interfering with normal migration routes and behaviour;
- b. fish (smolts, returning adults and kelts) being drawn into the turbines and killed;
- c. fish being drawn through the turbines into the impoundment and trapped;
- d. fish being driven away from the area by unfavourable conditions;
- e. other miscellaneous effects.

<sup>1</sup> 24 March 2014 10:44 to Phil Jones, pmj@abertawe.co.uk

<sup>2</sup> Section 69, Marine and Coastal Access Act 2009

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**Pontardawe and Swansea Angling Society Ltd** Reg'd Office 8 Bwllfa Rd Ynystawe Swansea SA6 5AL Registered in Wales No 6736638  
Our Disabled Membership Section operates as **Tawe Disabled Fishers**

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**Members of**

Welsh Salmon & Trout Angling Association Angling Trust Fish Legal Salmon and Trout Association  
Wild Trout Trust Carmarthenshire Rivers Trust Inst of Fisheries Mgt Canoe Wales

4. You said in your email of 26<sup>th</sup> March<sup>3</sup> that “Due to the requirements of the Marine Works (EIA) Regulations we will only accept representations within the public notice period”. You indicated in that email, however, that you don’t anticipate taking a decision on the Marine Licence application until after the Planning Inspectorate (PINS) decision on the development consent order (DCO), more than 6 months away.

Whilst you obviously have to draw a line somewhere, in the circumstances we don’t think you can reasonably insist on this being our last chance to make representations. As the examination of the DCO application proceeds, we are likely to make further points.

Indeed, in view of our interest it occurs to us that you might reasonably regard us as a “consultation body”<sup>4</sup> and allow us (and other fisheries interests) an extension of the time for response in accordance with Regulation 17(1)(a)(iv). We are not just “the public” – we are major stakeholders.

5. The Environmental Statement (ES) submitted with the ML applications is the same as the ES submitted to PINS in connection with the DCO.

If you’ve seen the “Section 51 advice” letter issued by PINS at the time of their acceptance of the DCO application, you’ll be aware that PINS have drawn attention to various shortcomings in the ES, which have to be put right by submission of revised plans.

Also, there are inconsistencies between the draft DCO and the ES which will have to be corrected – possibly by correction of the draft DCO, possibly the ES.

We believe that you should adopt the same approach as PINS and require revised documents. Presumably that will mean that the application has to be re-advertised.

6. The information to be included in an ES for the purposes of The Marine Works (Environmental Impact Assessment) Regulations 2007<sup>5</sup> is similar to that for the purposes of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009<sup>6</sup>.

Fish Legal, writing for us and others, argue in their letter of 3<sup>rd</sup> March to PINS, copy attached, that the ES as submitted “substantially lacks the required information ... particularly as to the details of the monitoring needed to address the continuing uncertainty about salmonids” and that it cannot therefore be an “environmental statement” as defined in the Regulations.

The same point applies here. The ES submitted to you fails to meet the requirements of regulation 12(2) of The Marine Works (EIA) Regulations 2007. Under regulation 5 the application should be treated as having been withdrawn.

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<sup>3</sup> 26 March 2014 18:05 to Phil Jones, pmj@abertawe.co.uk

<sup>4</sup> Regulation 2: “the consultation bodies” means ... (e) such other bodies as the appropriate authority considers likely to have an interest in the regulated activity (whether by virtue of their having specific environmental responsibilities under an enactment or otherwise)

<sup>5</sup> Schedule 3 of the Regulations

<sup>6</sup> Schedule 4 of the Regulations

7. An independent expert fisheries analysis commissioned by us and others supports our view that the content of the ES is flawed and understates the likely harm to salmon and sea trout. The enclosed letters from ourselves dated 2<sup>nd</sup> August 2013 and from Fish Legal dated 5<sup>th</sup> August 2013, 17<sup>th</sup> December 2013 and 3<sup>rd</sup> March 2014, together with the report by APEM Ltd indicate the problems. We won't go into a lot of detail in this letter, because hopefully your NRW technical advisers will have covered these topics fully but the main points are:
- a. uncertainty in the modelling concepts are not sufficiently discussed or acknowledged;
  - b. the turbine encounter modelling uses incorrect assumptions for fish movements in Swansea Bay, over-optimistic assumptions for the proposed acoustic fish deterrent scheme and fails to allow for important factors such as river flows and migration delays caused by the nearby Tawe Barrage;
  - c. the turbine mortality modelling uses incorrect fish sizes, fails to estimate population effects (lifetime egg deposition effects) and fails to allow for indirect mortality from post-passage predation, etc;
  - d. the effectiveness of the proposed acoustic fish deterrent (AFD) scheme is untested in such circumstances and appears implausible;
  - e. the effect on fish from rivers further afield is not acknowledged;
  - f. the assessment fails to set out a worst case for the effects on fish;
  - g. etc.

8. The Water Framework Directive (WFD) assessment submitted in support of the ML application is also flawed:

- a. It fails to recognise that various in-river waterbodies, which are currently below good ecological status because of problems for migratory fish, are likely to be affected by the proposal. These waterbodies have to be brought up to good ecological status in the near future and the WFD precludes developments which could prevent that.

Such waterbodies which have been excluded from the assessment include:

- |      |                |  |
|------|----------------|--|
| i.   | GB110059032280 | Giedd – headwaters to confluence with Tawe               |
| ii.  | GB110059032170 | Tawe – confluence with Giedd to confluence with Twrch    |
| iii. | GB110059032220 | Twrch – confluence with Llynfell to confluence with Gwys |
| iv.  | GB110059032210 | Twrch – confluence with Nant Gwys to conf with Tawe      |
| v.   | GB110059032190 | Upper Clydach – headwaters to confluence with Tawe       |
| vi.  | GB110059032200 | Lower Clydach – headwaters to confluence with Tawe       |

Schemes are already under way to address some of these issues and the proposal could jeopardise them.

- b. It doesn't correctly identify and assess the River Tawe estuary between Morrision and the Tawe Barrage. Paragraph 3.2.0.4 and Figure 3.3 in the WFD assessment are incorrect.

The Tawe Barrage is overtopped by most tides. The effects of construction activities (suspended solids, pollutants, low water quality) are therefore likely to be carried on flooding tides over the barrage and into the upstream estuary. Because of the unusual nature of the waterbody, the

incoming poor quality salt water will drop below the outflowing freshwater and will be trapped in the impoundment, not escaping to sea on the ebb. This will exacerbate existing water quality issues above the impoundment. This is not addressed in the WFD assessment.

9. Location and orientation of turbine array. The draft DCO and works drawings submitted to PINS show that the location and orientation of the turbine array are liable to change, within certain limits of deviation. When you supplied copies of the ML applications, you didn't include works drawings, so we can't tell with this is made clear in the ML application.

Our estimate from the DCO drawings is that they provide for westward deviation of up to 150 metres and clockwise rotation of 15 degrees and for eastward deviation of up to 1,150 metres and anti-clockwise rotation of up to 45 degrees.

If the turbine array were moved in this way, it could have a significant effect on flows in Swansea Bay and on fish. There's no indication in the ES that such deviations have been allowed for in the turbine encounter modelling. If all possible locations have not been modelled, then the applicant cannot claim that the ES has assessed and reflects the worst case.

10. The above points relate to protection of the environment but there are other matters which you need to take account of:
- a. Although not a matter for us, we also want to be sure that you are aware that there are issues relating to the legitimate use of the sea. If they don't submit their own representation in response to this application, please take note of the views of the Swansea Fishermen as set out in their "relevant representation" No 235 at <http://infrastructure.planningportal.gov.uk/projects/wales/tidal-lagoon-swanseabay/?ipcsection=relreps>
  - b. We might also wish at some point, in case you are minded to issue the ML sought, to explain to you the effect upon our organisation and the need for mitigation, monitoring and compensation arrangements to be secured in conditions attached to any such licence.
  - c. Further, in case the scheme fails and someone has to pick up the pieces after construction has started, you need to make sure that your conditions include measures to ensure that the cost doesn't fall on the public purse.
11. When we've seen the representations of your technical advisers, we might wish to make further representations ourselves.

Yours faithfully



Phil Jones  
Director / Treasurer