

**PONTARDAWE AND SWANSEA ANGLING SOCIETY
 RESPONSES TO EXAMINING AUTHORITY’S WRITTEN QUESTIONS
 TLSB’S COMMENTS**

No	To	Question	Response / Comments by Pontardawe and Swansea Angling Society Ltd
1.10	Applicant	<p>a) Given there is no generation capacity proposed to be stated in the DCO how can the project be said to be a Nationally Significant Infrastructure Project under ss14 and 15 PA2008?</p> <p>b) Does the applicant intend that the DCO will state the generating capacity before it is made?</p>	<p>We refer to this point in our written representation:</p> <p>We aren’t satisfied that the scheme meets the definition of a “nationally significant infrastructure project” for the purposes of the Planning Act 2008:</p> <ul style="list-style-type: none"> • Section 15(3) says “A generating station is [...a nationally significant infrastructure project...] if— (a) it is an offshore generating station, and (b) its capacity is more than 100 megawatts.” • “Capacity” is not defined in the Planning Act 2008 or other relevant legislation. • The Planning Inspectorate (PINS) has said that it believes that “‘capacity’, as used in the PA2008, probably ... means the rated maximum gross output, or ‘nameplate capacity’, of the station”. • We believe that in the context of the contribution that a project can make to national renewable energy needs, a station’s maximum achievable annual average production (46 MW in this case) is more relevant than the nominal capacity of the turbines. • PINS has also said “the Planning Inspectorate, on behalf of the Secretary of State, is only able to decide whether development consent is required for a project, under PA 2008 s.55, once an application has been formally

			<p>submitted.”</p> <p>We therefore ask the Examining Authority to make a ruling on this.</p> <p><u>TLSB’s Comment(s):</u> The full installed capacity of the proposed offshore generating station will be 320MW, as stated in paragraph 3 of section 1.1 in TLSB’s Written Representation response to Principal Issues. This is above the threshold defined as an installed capacity of 100MW in s15 of the Planning Act 2008.</p>
7.1	Applicant	<p>Paragraph 9.7.4.19 concludes that during the operational phase :</p> <p>... the overall predicted long-term impact on the salmon and sea trout fishery is expected to be of Low magnitude with a significance value of Minor, and a confidence of Probable.</p> <p>The basis for the assessment is summarised in paragraph 9.7.4.18, in the following terms:</p> <p>The impact of the operational phase on salmon and sea trout smolt and adult migration, including entrainment and injury in the turbines, has been assessed as being of Minor significance post mitigation. This is due to the low proportion of fish that are predicted to pass through the turbines, the relatively fish-friendly design (small number of blades, slow rotation rate and minimum gap runner) of the turbines and the proposed deployment of fish deterrent systems as a mitigation measure.</p> <p>a) Does the NRW’s “concern over levels of evidence and explanations to support confidence on impacts predicted” expressed in the letter of 11 April 2014 apply to the above</p>	<p>Re Question (b) – Please see our written representation.</p> <p><u>TLSB’s Comment(s):</u> TLSB has commented in full on the considerations in the relevant section of PASAS' Written Representation.</p>

		assessment? And if so what further analysis is needed to bolster confidence in the assessment made? b) What aspects of this assessment and these conclusions are not accepted by those making representations on behalf of fishing interests?	
7.2	Applicant	An attachment setting out a fisheries analysis report is referred to within the Relevant Representations from the Usk Fishing Association and from Fish Legal and several other fishing clubs/angling societies. The Panel has not received this attachment and requests that a copy be submitted into the examination.	<p>Attached.</p> <p>This was a review commissioned by Fish Legal, the Angling Trust, Pontardawe & Swansea Angling Society Ltd, Tawe & Tributaries Angling Association Ltd and Afan Valley Angling Club.</p> <p>It was commissioned after receipt of the Draft Environment Statement in November 2013. Fish Legal advised the applicant of this in their letter of 17 December 2013 responding to the ES.</p> <p>The applicant submitted the DCO application on 7 February 2014, before receipt of the review by fisheries interests on 10 February 2014.</p> <p>Fish Legal supplied a copy of the review to the Planning Inspectorate (and to the applicant) with their letter of 3 March.</p> <p>The applicant has been asked by fisheries interests to respond to the points made in the review.</p> <p><u>TLSB Comment(s):</u> TLSB has also supplied a copy of this report, together with a commentary upon its content as appendices 7.2.1 and 7.2.2 to TLSB's Response to Written Question dated 9 July 2014. Since that submission, further engagement has taken place with APEM, the authors of the report and a further commentary is attached at appendix 7.2.2 of TLSB's response to Written Questions.</p>
7.3	Interested	Does the ES address the requirements for on-going	No. Please see our written representation.

	parties	monitoring, review and mitigation of the effects of the Project upon fish populations?	<p><u>TLSB's Comment(s):</u> TLSB has commented in full on the considerations in the relevant section of PASAS's Written Representation submitted with these written representations.</p>
7.16	Applicant	Several local fishing clubs have stated that no consultations have taken place to date. When will you consult with them (Neath and Dulais Angling Club RR, Pontardawe and Swansea Angling Society RR, Afan Valley Angling Club RR, Mond Angling Club RR)?	<p><u>TLSB's Comment(s):</u> TLSB has responded fully to this question in other representations. However, this is not a substantive matter before the ExA.</p> <p>We actually said in our relevant representation:</p> <p>“The developer has failed to consult us properly (in accordance with its own consultation strategy), denying that we might have grounds to claim compensation for effects on our fishing rights. The consent application has been submitted prematurely, before we were able to discuss our expert fisheries analysis with them. We have had no discussions about monitoring, mitigation or compensation arrangements, as required. Responses to our representations (in our own name and by Fish Legal) have been unsatisfactory.”</p> <p>It was obvious to us from the outset that we were “category 3 affected persons” for the purposes of sections 42 and 44 of PA2008, as we have property rights which might be injuriously affected by the development. We alerted the applicant to this in April 2012.</p> <p>The Examining Authority has recently confirmed this by accepting Tawe & Tributaries Angling Association Ltd, who failed to register an interest by the due date, as a category 3 affected party under section 102A PA2008.</p> <p><u>TLSB's Comment(s):</u> TLSB had regard to the submissions of PASAS in determining whether to include it as a category 3 affected person. Its</p>

			<p>conclusions are explained in the letter of application to the Secretary of State. The finding of the Examining Authority in relation to the Tawe & Tributaries Angling Society Ltd is not a finding in respect of the conclusion of TLSB at that stage.</p> <p>The developers had a consultation strategy which included minimum levels of engagement with such persons but they failed to include us and treated us as non- statutory consultees.</p> <p><u>TLSB's Comment(s):</u> TLSB notes that the engagement with PASAS exceeds the requirements of the statutory scheme, including not only the supply of the PEIR, but also draft chapters of the ES itself. The time afforded to PASAS to review the draft ES chapters exceeded the statutory minimum required for a consultation period.</p> <p>We were not notified of the publication of the PEIR – we had to rely on public notices in the press. We received no reply to our response to the PEIR in August 2013.</p> <p><u>TLSB's Comment(s):</u> TLSB notes that PASAS was aware of the publication of the PEIR and adds that it provided a copy of the PEIR to PASAS.</p> <p>After making representations at a public meeting in October 2013 we were given a copy of the draft ES in November 2013 with a request to reply within one month.</p> <p>Replies to our PEIR response were provided in early December and confirmed that our points had not been fully addressed.</p> <p>Fish Legal responded to the draft ES on 17 December, drawing attention to PINS advice that</p> <p>“The overriding intention of the legislation is to ensure that</p>
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			<p>detailed matters are consulted upon and solutions or mitigation negotiated with the local community, landowners, statutory consultees and local authorities before submission of the application for development consent.”</p> <p>The letter pointed out that this was not happening and included a detailed legal argument that our consultation status was not being correctly recognised. The letter also advised the applicant that we were commissioning an independent expert review (by APEM Ltd) which we would discuss with them in due course. We received no response.</p> <p><u>TLSB's Comment(s):</u> In the event, the comments of TLSB's independent reviewer were not received prior to the application for development consent, which was over two-and-a-half months after the draft ES was supplied to PASAS.</p> <p>Before we received the independent review (10 February 2014) and were able to engage in meaningful discussions, the developers had submitted their application for consent (7 February 2014).</p> <p>Their application included a denial, in Chapter 10 of the Consultation Report, that we were “category 3 affected persons”. Comments in Chapter 10 to the effect that we have in any case been properly consulted are rejected.</p> <p><u>TLSB's Comment(s):</u> Under the provisions of ss42-44 PA 2008, this is a matter for the applicant. TLSB drew the matter specifically to the attention of the Inspectorate in submitting the application so that the matter was in its contemplation in doing so.</p> <p>Fish Legal made a submission to PINS on 3 March 2014 that the applicants had not complied with their consultation obligations and</p>
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			<p>that the application should not be accepted. This argument was not accepted by PINS and the application was accepted on 6 March 2014.</p> <p>The applicants failed to notify us (and other fishery interests) of the acceptance of the application in accordance with section 56 PA2008 but on 12 April 2014 they certified under section 58 PA2008 that they had complied with the requirements of section 56.</p> <p><u>TLSB's Comment(s):</u> PASAS is aware of the examination, as are other entities. TLSB notes that PASAS is playing an active role in the examination.</p> <p>As we were satisfied that we (and many others like us) were “category 3 affected persons”, and as we believed that the applicants should have known this, their certificate appeared to us to have been false and to have been given knowingly or at least recklessly.</p> <p>We reported this to PINS but they said that offences under section 58 were not a matter for them. We can provide the correspondence, if required.</p> <p>The current position is that, whilst we have been disadvantaged by having to seek out information which should have been provided to us, other fishery owners with property rights like ours (including at least three persons from whom we lease fishing) have been excluded from the process completely and probably know nothing about the application and this examination.</p> <p>We maintain that the applicant has failed to comply with its obligations to “category 3 affected persons” and that it has wrongly certified compliance with section 56.</p>
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7.22	NRW	<p>Table 9.41 provides figures for reported salmon catches on the Rivers Afan, Neath and Tawe between 2002 and 2011. This question is primarily for NRW but other parties may wish to comment.</p> <p>a) Are figures for 2012 and 2013 available from NRW and can figures for reported catches on the Neath and Tawe stretching back to 1964 be provided please?</p> <p>b) Can comparable figures be provided for reported catches of sea trout on the Rivers Neath and Tawe?</p> <p>c) If the results are presented graphically as 5 year moving averages, are there any identifiable trends that emerge?</p> <p>d) Are there detectable changes for reported catches on the</p>	<p>An Excel workbook providing details of reported rod catches from the 1970s to 2013 is provided herewith. This has been compiled and updated by us over many years from catch statistics published by the Welsh Water Authority, National Rivers Authority, Environment Agency and Natural Resources Wales. During that time there have been slight variations in the way various rivers have been reported but they don't affect data for the Tawe, Neath and Afan.</p> <p>We are reliably informed by fisheries staff who were around at the time that there are no catch data for the Tawe, Afan and Neath before those shown in the workbook. Because of pollution there were no migratory fish in the Tawe for many decades up to the 1960s – the first reported salmon for over 80 years was caught in 1961.</p>

		<p>Tawe as a result of the construction of the barrage in 1992 and modification of the fish pass in 2001?</p>	<p>The workbook includes, on separate sheets:</p> <ul style="list-style-type: none"> • annual figures for both salmon and sea trout (sewin) • 5 year rolling averages for both salmon and sea trout • charts of the annual figures, comparing those for the Tawe, Neath and Afan with those for the whole of Wales • similar charts of the 5 year rolling averages. <p>Identifiable trends:</p> <ul style="list-style-type: none"> • In some years the similarities between results on the various rivers are striking. • Over the whole period the improvement in Tawe salmon catches, compared with other rivers, has been striking but that has changed in the last 3 years • Neath sea trout catches have dramatically overtaken Tawe catches since the mid 90s <p>We'll leave it to NRW to say whether they believe there are detectable changes as a result of the construction of the Barrage in 1992 and the modifications to the fish pass in 2001.</p> <p>We also provide herewith two NRW papers: "Salmon stock performance in Wales 2013_2.docx" and "Sea trout stock performance 2013.docx".</p> <p><u>TLSB's Comment(s):</u> TLSB welcomes the provision of this information to the examination.</p>
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7.23	Applicant	<p>Application of “IBM fish encounter modelling” is described in paragraphs 9.5.3.30-8 of Chapter 9 of the ES: Fish including Recreational and Commercial Fisheries and output from the model (a still-frame example from the adult salmon model video) is illustrated in Figure 15. Para 9.5.3.38 (Doc 6.2.9) states that:</p> <p>The model shows that olfactory trails from the two rivers remain quite distinct with the Lagoon in place and turbines and sluices operating, allowing adult salmon to home to their natal rivers with minimal distraction. Results demonstrated that there is no significant effect on olfactory trails as a result of water being drawn in to the Lagoon and released again.</p> <p>a) What level of confidence should the panel have in the output from this model?</p> <p>b) What would be needed to produce an assessment that would be more firmly based?</p>	<p>The Examining Authority should not give too much credence to the output of the models, nor attach too much importance to olfactory trails, which are but one of the factors influencing salmon and sea trout behaviour close to their home river.</p> <p><u>TLSB's Comment(s):</u> TLSB agrees that olfactory trails are one of a number of factors affecting or capable of being described as fish behaviour. The IBM modelling carried out by the fish behaviour experts at THA on behalf of TLSB does take account of these other behaviours. To the extent that modelling does not enable such behaviour to be understood, the expert evidence of THA is to be relied upon.</p> <p>Please see our written representation.</p> <p>We do not accept that “olfactory trails from the two rivers remain quite distinct with the Lagoon in place and turbines and sluices operating, allowing adult salmon to home to their natal rivers with minimal distraction”</p> <p>We agree with ES Appendix 9.5 (“Accuracy And Limitations”) where it refers to “a clear distinction between precision and accuracy” and “the potential false impression of accuracy due to precision”.</p> <p><u>TLSB’s Comment(s):</u> TLSB has commented in full on the considerations in the relevant section of PASAS's Written Representation.</p>
13.44	Applicant	<p>Can the applicant confirm that all affected persons have been consulted with reference to the correct land plans and Book of Reference entries in respect of land in which they have an interest?</p>	<p>As explained in reply to Question 7.16, we maintain that category 3 affected persons have NOT been properly consulted, nor identified in the Book of Reference.</p> <p><u>TLSB's Comment(s):</u> Please see TLSB’s Response to Question 7.16</p>