



# 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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19<sup>th</sup> August 2015

Dear Sirs

MARINE LICENCE APPLICATION ORDML145  
TIDAL LAGOON, SWANSEA BAY

1. REPRESENTATION / CONSULTATION.

- a. This is an attempt to cover as many outstanding issues as we can at this point but there are likely to be further issues which we'll cover in future submissions.
- b. Our status.
  - i. We made the point in our letter of 22<sup>nd</sup> April 2014 that *"in view of our interest it occurs to us that you might reasonably regard us as a "consultation body" ... We are not just "the public" – we are major stakeholders."*
  - ii. Your response on 12<sup>th</sup> May 2014 was that you were *"not aware of PASAS' having any statutory or legislative responsibilities to satisfy this classification"*.
  - iii. We pointed out in our email of 13<sup>th</sup> May that *"the Regulations say "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)". We have an interest. There's no requirement for us to have "any statutory or legislative responsibilities"."*
  - iv. Your reply on 29<sup>th</sup> May said *"NRW does not consider the PASAS to be a Consultation Body under the Marine Works (Environmental Impact Assessment) Regulations 2007. We consider PASAS' responsibilities to be recreational in nature and do not consider PASAS likely to have an interest in the regulated activities by virtue of having specific environmental responsibilities"*.
  - v. Our interest (you used the word *"responsibilities"*) is not merely *"recreational in nature"*. As explained in our letter of 22<sup>nd</sup> April and in more detail in the DCO submissions which we have asked you to take into account, *"We own, control or enjoy fishing rights on about 8 miles of the River Tawe"*. Our fishing rights are currently worth many times the amount paid for them (£30,000). In our DCO Deadline 5 submission we mentioned a value for the fisheries in the Tawe, Neath and Afan of at least £2 million. Since then several interested parties have said that's probably a significant under-estimate.

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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 Inst of Fisheries Mgt Canoe Wales

- vi. Such an interest is clearly not merely “*recreational*” and your mention of “*specific environmental responsibilities*” is inconsistent with the Regulations, which refer to “*an interest in the regulated activity (whether by virtue of their having specific environmental responsibilities under an enactment or otherwise)*”.
  - vii. We acknowledge that treatment as a consultation body under the provision mentioned above is a matter for your discretion but we are suggesting that the reason you have given for not so treating us is mistaken. Anyway, we believe we have made valuable contributions to the ongoing EIA process and we say again that we are not merely the general public. We need to see and be able to comment on all new material, including AEMP revisions, well before you make your ML decision.
- c. “Further information”.
- i. In your email of 29<sup>th</sup> July you asked us to identify documents we were referring to when we mentioned in our email of 24<sup>th</sup> July that “*Some of the information supplied appears to be “further [environmental] information” which has not been advertised in accordance with the Regulations*”. I had in mind the following, where you have consulted us on an ad hoc basis, with limited time in which to make our representations:
    - (a) the document you sent us on 12<sup>th</sup> May with a request for a response by 9<sup>th</sup> June;
    - (b) the document you sent us on 22<sup>nd</sup> May with a request for a response by 19<sup>th</sup> June;
    - (c) the documents you sent us on 1<sup>st</sup> June with a request for a response by 26<sup>th</sup> June (you’ll recall that, because of pressure of time, we overlooked the inclusion in one of those (misleadingly titled) documents of revised IBM results, a pretty significant matter).
  - ii. In addition:
    - (a) a lot of further information was produced by TLSB, some of it in response to requests from the Examining Authority, during the DCO examination. It might have been seen by people paying close attention to the DCO process but it hasn’t been publicised in accordance with regulation 16 for the purposes of the Marine Licence application;
    - (b) we haven’t been consulted at all about (or previously been able to view) the further information supplied to us on 17<sup>th</sup> July in response to our information request, eg:
      - (1) Consultation Response TLSB to NRW 4 7 WFD Letter 23 3 15\_ WFD Final.pdf
      - (2) 580N1701\_Technical\_Advice\_Note-Swansea\_Fish\_Community\_Analysis (redacted).pdf
      - (3) AFD and ADD provisional layout.pdf
      - (4) NRW questions on fish assemblage 26 May 2015.pdf
      - (5) TLSB response to NRW AEMP letter post meeting ISSUED.pdf
      - (6) TLSB Response to NRW MLT HRA in combination effect 290615.pdf
      - (7) TLSB Response to NRW MLT WFD cumulative effect 290615 v2.pdf
      - (8) etc.

- iii. We trust that you will publicise and consult properly on the final version of the ES, including AEMP, well before you make your ML decision, in order to give interested parties fully adequate time and opportunity to review and respond to this complex scientific information (to which we have already made valuable contributions), including with the assistance of experts if necessary. We aren't the only organisation with an interest in these matters.

## 2. RELEVANT ISSUES.

- a. In your letter of 13<sup>th</sup> May 2014 you said you would "*consider points raised which relate to the environment, human health and avoidance of interference with legitimate users of the sea as relevant to the Marine Licence determination*".
- b. In our letter of 22<sup>nd</sup> April 2014 we noted 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.*"
- c. If you are considering and likely to take account of any matters other than (a) to (c), could you please indicate their nature.
- d. Could you please disclose under the Environmental Information Regulations:
  - i. any arguments or advice you have received, from any person or body, in connection with matters other than (a) to (c) which you think relevant to your determination
  - ii. any advice received from Welsh Govt in relation to any aspect of the application.

## 3. BACKGROUND INFORMATION. We enclose for your information:

- a. Swansea University proposals for salmonid population monitoring, mentioned in earlier correspondence but overlooked by us, for which we apologise. The proposal has been forwarded to TLSB by Angling Trust / Fish Legal.
- b. A letter dated 30<sup>th</sup> July 2015 from Angling Trust / Fish Legal to TLSB, following a meeting on 15<sup>th</sup> July attended by PASAS, Afan Valley Angling Club, Angling Trust, Fish Legal, TLSB and their advisors.
- c. A reply dated 6<sup>th</sup> August by TLSB.
- d. An email dated 16<sup>th</sup> July from TLSB to Phil Jones and a reply by PASAS dated today.

## 4. ENVIRONMENTAL STATEMENT.

- a. We argued in our letter of 22<sup>nd</sup> April 2014 that the Environmental Statement submitted with the Marine Licence application failed to meet the requirements of the Marine Works (EIA) Regulations.
- b. You replied on 12<sup>th</sup> May that you had "*reviewed the Environmental Statement (ES) submitted by the applicant and consider this to satisfy the threshold criteria under Reg 12(2) and Sc 3*" of the Regulations.
- c. We believe that the ES as first submitted should have included all the required elements (in Schedule 3) to a relatively high level of detail – not just to a "threshold" level – sufficient to enable the making of a fully informed decision; if not, then "further information" was required.

- d. Subsequent events (during and after the DCO process), particularly the submissions by your NRW Fisheries advisers (supplied to us on 13<sup>th</sup> August 2015 in response to information requests), have demonstrated beyond doubt that the ES did not include all the necessary information and a great deal more has had to be requested (and is still being requested).
- e. The ES (as originally submitted, together with the further information supplied to date) fails to meet the requirements of the legislation and is flawed in its conclusions:
  - i. Schedule 3, para 2. It fails to describe properly aspects of the environment likely to be significantly affected:
    - (a) it fails properly to describe migratory fish behaviour in Swansea Bay, which has implications for the reliability of the modelling and predicted effects;
    - (b) it misdescribes the status of salmon and sea trout populations as “stable”.
  - ii. Schedule 3, para 3. It fails to assess properly the likely significant effects of the project:
    - (a) Direct effects:
      - (1) predicted turbine mortality is based on a turbine encounter model, the reliability of which is not accepted;
      - (2) re-running of the model since the close of the DCO examination has apparently produced much greater turbine encounter rates than those predicted in the ES, which were supposed to have been “worst case”;
      - (3) details of the re-running of the model have not been made available – some figures were tucked away in a table in a document with an unrelated title, but we expect to see far more than this.
    - (b) Indirect and secondary effects – it fails to take account of:
      - (1) the effects set out in para 3 of our letter of 22<sup>nd</sup> April 2014;
      - (2) other effects mentioned in DCO submissions, such as increased risk of predation, particularly post-turbine-passage, failure to assess population effects (lifetime egg deposition, etc).
    - (c) As Peter Gough puts it:
      - (1) IBM Modelling “... is a new and – in this context – untried approach to predictive modelling. And yet it has become central to impact forecasting of impact of SBTL”;
      - (2) “It does not take account of multiple other factors that determine migration routes and behaviours of the range of fish species concerned”;
      - (3) “TLSB assign ‘high confidence to the outcomes from this modelling approach. NRW does not agree – it is ‘very low’ at best”;
    - (d) Cumulative effects:
      - (1) Tawe Barrage. We’ve argued throughout that the ES fails to take proper account of the effects of the barrage, which delays river entry for migratory fish

and causes them to drop back into Swansea Bay. This is likely to lead to increased, repeat encounters with the turbines, which have not been allowed for in the modelling.

- (2) Tidal Lagoon Cardiff.
    - (i) We note that you have requested and TLSB have provided comments on cumulative effects in respect of HRA and WFD. It isn't clear why you restricted your requests to those matters.
    - (ii) Despite the CCW advice in the Swansea screening opinion, you have now said that you won't consider the cumulative impacts of the Cardiff lagoon because of the stage of progress of the respective schemes and the date of submission of the Environmental Statement. We believe that to be a mistake.
    - (iii) There isn't yet an acceptable ES for Swansea, meeting the requirements of the Regulations, so the date of submission of the incomplete ES cannot be a significant factor.
    - (iv) We have pointed out from the outset that Swansea Bay fish frequent the waters above Cardiff and Newport. Tagged Tawe fish used to be caught in the Usk drift net fishery which operated in coastal waters off Newport, until it was closed down because it exploited mixed stocks.
    - (v) It's predicted that a Swansea lagoon would kill fish. It's obvious to us that a much bigger Cardiff lagoon will also kill Swansea Bay fish. That needs to be assessed. If there's inadequate information about the movements of Swansea Bay fish, then it needs to be obtained.
  - (3) Changes to the project design for ship safety purposes. TLSB have told us that a separate Marine Licence application is likely to be submitted for this. The options apparently under consideration have not been assessed in the existing ES and are likely to have significant effects. Such cumulative effects need to be assessed.
- iii. Schedule 3, para 4. As above, the forecasting methods used by the applicant to assess the main effects are flawed. Presumably "forecasting" covers monitoring. Version 4 of the AEMP has been heavily criticised by your advisers:
- (a) *"NRW does not believe the proposals can work, as basic acoustic survey techniques and data processing appear to have been mis-understood"*;
  - (b) *"Initial proposals by TLSB were deeply flawed, and NRW criticisms were strongly supported in a review of proposals by Swansea University"*;
  - (c) *"TLSB have proposed a range of monitoring approaches on the study rivers, however it appears that none have any utility to attribute and quantify impact"*;
  - (d) *"The requirement is to identify an approach that will enable monitoring, with an appropriate level of confidence, of the quantitative impact of the overall development on fish populations"*;

- (e) *“There is clearly inadequate time to establish an appropriate baseline against which to monitor future change”.*
- iv. Schedule 3, para 5. It still doesn't include an acceptable description of the measures envisaged to prevent, reduce and offset any significant adverse effects. Your advisers say:
  - (a) *“NRW recognises that the developer assigns ‘high confidence’ to forecasts of low impact, but does not share this”;*
  - (b) *“NRW expects to see a clear package of mitigation to address damage to stocks, linked to future quantitative or precautionary assessment of damage”;*
  - (c) *“This package should be automatically triggered for implementation unless it can be demonstrated that it is not warranted”.*
- f. It follows that the project clearly should not receive EIA consent, in that an ES (even one containing all the further information provided since submission in early 2014) meeting the legislative requirements has not been produced.

#### 5. WATER FRAMEWORK DIRECTIVE.

- a. The DECC Sec of State decided that an article 4.7 derogation was justified in respect of the Swansea Bay coastal waterbody on the basis of:
  - i. a WFD assessment by TLSB;
  - ii. a WFD article 4.7 derogation report by TLSB;
  - iii. a report by NRW submitted right at the end of the examination.
- b. The documents supplied in response to our information requests suggest that, apart from consideration of alternatives, which NRW felt unable to advise on at the end of the DCO examination but where you have now received additional advice, you will be relying on the advice that was submitted to the DCO examination.
- c. In that case, the arguments that we submitted to the DCO examination, not properly addressed, still apply:
  - i. WFD Article 4.8 says that when applying article 4.7, *“... a Member State shall ensure that the application does not permanently exclude or compromise the achievement of the objectives of this Directive in other bodies of water within the same river basin district and is consistent with the implementation of other Community environmental legislation.”*
  - ii. An article 4.7 derogation in respect of Swansea Bay coastal waterbody must not therefore permanently exclude or compromise the achievement of WFD objectives in any of the Swansea Bay river waterbodies containing migratory salmonids.
  - iii. The many Swansea Bay river waterbodies include:
    - (a) some which already achieve high ecological status;
    - (b) some which already achieve good ecological status; and
    - (c) some which fail to achieve good ecological status.

- iv. To assess whether achievement of objectives for those waterbodies is likely to be permanently excluded or compromised, it's necessary to assess:
  - (a) the significance of the various elements (fish, physico-chemical elements, etc) to the current status of each waterbody;
  - (b) the effect on those elements of any lagoon impacts; and
  - (c) the effect on the waterbody status of changes in those elements.
- v. The assessments by TLSB and NRW, referred to above, fail to assess properly the potential effect of the lagoon on the Swansea Bay river waterbodies:
  - (a) The NRW Advice Note 9/12/2014 was prepared in a hurry and para 2.4 says:
 

*“NRW has reviewed this evidence [TLSB’s assessment, described in para 2.3] as a matter of urgency within the limited time available and supplemented it with our own evidence and analysis. However, we reiterate the concerns previously raised with regard to the significant volume of information submitted by the Applicant at a late stage of the examination and the limited time to secure further detail on that information. This has made it impossible for us to advise on Article 4(7) in the level of detail that we would normally consider appropriate.”*
  - (b) The note only deals fleetingly with migratory fish in para 2.7 (our underlining):
 

*“In relation to the Applicant’s assessment of fish in all relevant water bodies, the Applicant has predicted that there will be an adverse impact on fish receptors, based on modelling. NRW remains of the view that the extent of the impacts cannot be quantified with a high degree of certainty and that there therefore remain a risk that the impact level is higher than predicted, or indeed that some impacts may not be accounted for. On this basis NRW consider it reasonable that the DCO secures mitigation and compensation upfront where modelling indicates that adverse impacts are likely to occur. Furthermore the high levels of uncertainty means that a robust monitoring programme, with commitment to further mitigation/compensation if required, needs to be secured in the DCO. NRW believe that, on the balance of the evidence provided by the Applicant and with an appropriate mitigation / compensation strategy in place, it is reasonable to conclude that any impacts are unlikely to result in the objectives of the WFD being compromised. Therefore, on the basis of the above proviso and in line with the applicants WFD revised assessment, it is not considered necessary to include fish within river water bodies as part of the 4(7) derogation.”*
  - (c) Any shortcomings in the TLSB assessment on which NRW advice is based therefore calls into question the NRW advice itself. We’ve never received a proper response to our DCO submissions, which examined the detail of TLSB’s assessment. Although our submissions were copied to NRW, clearly the NRW staff dealing with WFD were under pressure and weren’t able before the close of the examination to address our points as well as those of TLSB. We’ve sent you copies of our DCO Deadline 5 and

Deadline 5E submissions, with maps and extensive quotes, so will just re-state the main points:

- (1) The TLSB assessments fail to identify properly (and the NRW reports fail to correct) the boundaries of the:
  - (i) "Tawe Estuary" transitional waterbody, the upstream limit of which is the Tawe Barrage;
  - (ii) "Tawe – confluence with Twrch to tidal limit" river waterbody, the downstream limit of which is the Tawe Barrage.
- (2) The Tawe Estuary assessment acknowledges effects on physico-chemical elements of the Tawe river waterbody but simply fails to assess their effect on the WFD status of that waterbody.
- (3) The Tawe Estuary assessment has a section dealing with "Key potential effects on fish." Para 3.6.3.21 says:

*"The key potential effects assessed within the EIA (Chapter 9 Fish including Recreational and Commercial Fisheries of the ES) in relation to diadromous (migratory) fish are: increases in suspended solids, increased noise and vibration, artificial light, habitat modification and loss during dewatering of the cofferdam and entrainment in the turbines. As identified previously, the potential effects of the Project will occur principally in the Swansea Bay coastal waterbody and partially in the Tawe Estuary waterbody as they move to their natal rivers. However, any effects on migratory fish occurring with these waterbodies will indirectly effect the status of the fish quality element within hydrologically connected waterbodies. As such, this section outlines the potential effects on migratory fish, namely salmonids, trout and eel that navigate through the Tawe Estuary and into upstream waterbodies, as given in Table 3.15."*

That description of the "Key potential effects on fish" is hopelessly wrong.

- (4) Paras 3.6.3.21 to 3.6.3.65 then go on to discuss these "key potential effects" and para 3.6.3.66 baldly concludes:

*"It is considered that none of the impacts discussed above, once mitigation has been implemented, would result in a decline in the individual EQRs for migratory fish for the Tawe or its associated waterbodies. As no baseline fish classification data is available for the Tawe Estuary, it is assumed that it is of a 'good' status. Notwithstanding this, the same conclusion is reached for the migratory fish that pass through the Tawe Estuary. No deterioration of the status of the River Tawe, its associated waterbodies or its transitional waters on a non-temporary basis is therefore concluded."*

That's the full extent of the assessment of effects on the ecological status of the 17 Tawe river waterbodies.

- (5) Such assessment has, of course, been torn to pieces by your NRW fisheries advisers. So everything based on that assessment is undermined:
  - (i) the TLSB article 4.7 derogation report, as far as it relates to "other" waterbodies and article 4.8;
  - (ii) the NRW Advice Note 9/12/2014;
  - (iii) the DECC assessment of the project under article 4.7;
  - (iv) the Sec of State's DCO decision, as far as it relates to "other" waterbodies and article 4.8;
- (d) Similar points apply to the Rivers Neath and Afan.
- (e) It follows, therefore, that without a satisfactory assessment of the effects on the status of the river waterbodies, showing that achievement of their WFD objectives will not be compromised, you cannot reasonably follow the DECC Sec of State and allow derogation from article 4.7 in respect of the Swansea Bay coastal waterbody.

6. CONCLUSIONS:

- a. You are not in a position to grant EIA consent.
- b. You are not in a position to accept the WFD assessment or to allow an article 4.7 derogation.
- c. You are not in a position to issue a Marine Licence.
- d. There is still much work to do and we look forward to full involvement in the remaining process.

Yours faithfully



Phil Jones  
Director / Treasurer