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Mrs D Parker

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Dear Sir

I am deeply concerned as to the reason you wrote to me using the name and address of another complainant, especially as you are well aware of the view of the Porthcawl Environment Trust [PET] as to the issue of pile driving in the Outer Bristol Channel [OBC], an area which has been identified by the WWF as an A/B site of importance to the harbour porpoise, a species listed in Annex ii] and iv] of the EU Habitats Directive 92/43/EEC.

These species are highly protected pursuant to Article 12.[1] of the Directive which lays down a 'system of strict protection' prohibiting all deliberate disturbance especially during the breeding season, which is approximately April to October.

The WWF has identified this area as an AB site of importance for the harbour porpoise. The fact that it has not been identified as a SACs, or on the EU list of sites to be designated at a later date, must lay with the incompetence of the JNCC for failing to put forward the OBC as a SACs. [Or was this decision done for another reason?]

A CONFLICT OF INTEREST

For the past ten years or more the OBC has been earmarked for an enormous zone of wind farms. In the past, the application by several applicants to build offshore wind farms in Swansea Bay has not been successful due to the fact that to pile drive in an area that has been identified as an A/B site of importance to the harbour porpoise would be unlawful pursuant to Article 12.[1] of the Habitats Directive 92/43/EEC.

Therefore I must urge you to read and digest the contents of a letter by Mr Garcia Burguess again (Copy supplied to your client). Mr Burguess was at that time head of the EU Infringement Unit who stated that to pile drive in such an area as an OBC during the breeding season would be unlawful.

It is clear that this message has not been seriously taken by your client on the issue of pile driving in the OBC especially during the months of April to October which would be unlawful.

Therefore if Tidal Lagoon Swansea PLC is granted a DCO, and it is licensed to use the methods of percussion and vibro piling during the summer months it would set a case of precedence in order for the development to go ahead.

The first step has already been taken for this to proceed. The Crown Estate has put the OBC up for lease again in order for other applicants to put a tender for a lease in order to build offshore wind farms. I presume using the method of pile driving during the breeding season of the harbour porpoise.

A TEST CASE

This action has highlighted the importance of 'the licensing the Swansea Bay Lagoon' using the method of pile driving to continue during the breeding/rearing season of the harbour porpoise.

This has set a case of precedence in order for other such cases to follow suit such as offshore wind farms in the OBC.

I am of the view that the only way this problem can be resolved is by the EU Courts of Justice. There are already infringement charges ongoing in the case of the UK Government versus the EU Commission for failure to comply with Article 4[1] of the Directive. PET was the lead complainant that led to this infringement case.

I therefore give notice that if the OBC is licensed to allow vibro or percussion piling especially during the breeding season for the harbour porpoise, it would be my duty as an advisor to PET on the terms and concepts laid down in the Habitats Directive, to make another formal complaint to the EU Infringement Unit on the grounds of non-compliance of Article 12[1] of the Habitats Directive 92/43/EEC.

It now remains to be seen what licence is granted as it would require an EU Derogation Licence,

In Conclusion

The only area of complaint we have is the use of pile driving in the area of the OBC, particularly during the breeding/rearing season of the Harbour Porpoise.

Article 12. (1) of the European Union Habitats Directive 92/43/EEC. States I quote.

"Member States shall take the requisite measures to establish a 'System of Strict Protection' for the animal species listed in Annex 1V (a) in their Natural Range" Prohibiting...

b) Deliberate Disturbance of these species, particularly during the breeding, rearing, hibernation and migration.”

Both Brian Saunders and I have explained this to the relevant staff of the Tidal Lagoon Project to no avail.

Denise Parker.

(Adviser to Porthcawl Environment Trust)