



**Isle of Man
Government**

Reillys Ellan Vannin

Mr Peter Morrison
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CF24 0TP



Office of the Minister
and Chief Executive

Contact: Tracey Woods
Telephone: [REDACTED]
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Date: 2nd August 2022

Dear Mr Morrison,

Re: Awel y Mór Offshore Wind Farm Limited application for a Marine Licence under Part 4 of the Marine and Coastal Access Act 2009, ORML2233

Thank you for your email dated 22nd June 2022 in relation to the above, and the associated documents in respect of the requirements under Part 4 of the Marine and Coastal Access Act 2009. This letter is a response from the Territorial Seas Committee (TSC) made up of representatives of a number of Departments and Statutory Boards of the Isle of Man Government. As such, and acknowledging that we are unaware of the full circulation list for this consultation, I would take this opportunity to request that future correspondence on this proposal is sent directly to me, as Chair of the TSC, emily.curphey@gov.im, rather than to individual Government officer contacts. The use of a more central contact ensures timely distribution of the request, and sufficient time to coordinate a comprehensive response. With thanks in advance.

The TSC found it a useful and interesting series of documents and await the associated outcomes as the application progresses through the next stages. The TSC is pleased that the Isle of Man has been identified as one of the consultees as part of this application given the potential for transboundary impacts of the development on Manx territorial waters. Thank you for affording us with the opportunity to consider, and provide comments on the above as a consultee.

The TSC has previously engaged with the Planning Inspectorate on a number of occasions in respect of the overall proposed offshore windfarm development and provided comments at each opportunity. The TSC is satisfied from the documents prepared on behalf of the applicant that all international environmental standards and best practice will be adhered to when undertaking this project. For your information and reference, I attach the previous responses submitted to PINS in respect of their application for the Development Consent Order and that, as noted in the documentation for the Marine Licence, there are significant areas of overlap in both issues and the Isle of Man Government's response. As such, many of the comments below in respect of the various themes have also previously been submitted to PINS as part of their consideration of the DCO application, however, it is felt pertinent to restate them for the separate purpose of a Marine Licence application and the subsequent consideration by yourself and your team.

Whilst the Isle of Man is not a member of the EU and is therefore not directly covered by most European directives, the Isle of Man still follows relevant European environmental safeguards and similarly expects best practice to be followed.

This response therefore represents the input from various officers from the Isle of Man Government, specifically colleagues in the Department of Environment, Food and Agriculture who represent the interests

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most likely to be impacted upon as a result of this application for marine licence. This Committee recognises the scale and complexity of this work and is confident in the assessment processes being undertaken. As such, this committee wishes to reiterate its primary objective, which is to ensure that Isle of Man interests have been considered appropriately at each stage of the process. In this respect it is notable that the Isle of Man is omitted from the mapping included in the document ML-2.13 *Awel y Môr* Marine Licence Plan Areas Map. Given the Island's relative proximity, and acknowledgement of transboundary effects, the Committee would be grateful if the Isle of Man could be included here as a mechanism to ensure due consideration throughout the Marine Licence process. It is noted that cumulative effects in respect of environmental issues will be thoroughly investigated, but this should encompass more than wind farm developments.

It should also be noted that there is concern with regards the cumulative impact of all the proposed offshore windfarms within the Irish Sea area and the impact they could have on shipping and navigation. Noting that for the Isle of Man, as an Island nation, any significant risk of interference with marine navigation is of concern to the TSC since a good safety record is essential with regard to transport to and from the Island, as well as the shipping lanes in our Territorial waters which are used to connect the UK and Ireland.

Marine Conservation and Fisheries

In respect of the above, and of particular importance and concern would be the potential impacts on marine habitats and migratory species found within Isle of Man waters, especially those protected under Manx law¹ or identified as threatened or declining by the OSPAR Convention, and which may be affected by the proposed development.

Comments previously submitted to PINS by the TSC requested the inclusion of Island-based conservation organisations which may also have relevant information and data of interest to the project, in particular those related to ornithology, cetaceans and other regionally-important migratory species. Should it be necessary to provide Cyfoeth Naturiol Cymru with a list of specialist stakeholders, please advise and the request will be dealt with as soon as possible.

Any marine developments within or adjacent to the Isle of Man territorial waters could potentially impact commercial fisheries in Manx waters, or the interests of its fleet; so it would be appreciated if the issues were also fully considered from that perspective, and that relevant fishing organisations on the Island are included as consultees, via the appointed Fisheries Liaison Officer, and within the Fisheries Liaison and Coexistence Plan.

Of particular importance, therefore, is appropriate consideration of the trans-boundary impacts on Manx marine conservation and commercial interests, and this Committee would particularly like to ensure that the impact on wildlife, habitats and fisheries in Manx waters are fully considered within the scope of this Marine Licence application and its assessment.

As such, and with reference to the Preliminary Environmental Information Report Volume 1, Annex 3.2: Transboundary Screening report, the Committee agree with the conclusion that Transboundary effects relevant to the Isle of Man are included in several of the receptor areas, including; physical processes, fish and shellfish, commercial fisheries. However, in relation to marine mammals and ornithology the Committee does not agree with the conclusion that consideration of marine mammals should be limited to European Sites/SACs within the EEZ of the Republic of Ireland, or that ornithological considerations should be limited to Republic of Ireland and European sites located within the Irish Sea. These conclusions do not appear to take full account of the mobile nature of the species, or the constitutional status of the Isle of Man, which has always been outside the EU and its environmental jurisdiction and classifications.

More specific comments on these aspects, related to individual sections of the PEIR are noted below, and the original response of this Committee (15th July 2020) is also included for your further reference.

Where indicated below, and with reference to the original response, this committee would seek confirmation that the relevant consideration of the Marine Licence, whether via NRW or informed by

¹ Wildlife Act 1990 (http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1990/1990-0002/WildlifeAct1990_2.pdf)

consultant reports, have appropriately considered the relevant trans-boundary, migratory/mobile species and fisheries aspects as they relate to Isle of Man interests.

Marine Navigation

As an Island nation, any significant risk of interference with marine navigation is of concern to the TSC. The TSC has been advised that the Isle of Man Steam Packet Company is content with the current project coordinates and, as such, provided there are no changes made to the proposed site location, the Isle of Man Steam Packet Company no longer needs to be involved. Please advise the TSC should any of this change.

Aviation

Noting that the only apparent reference to the Isle of Man in the consultation documents provided relates to the airport (*Category 6: Environmental Statement, Non-Technical Summary, April 2022 Revision: B Application Reference: 6.7.1: 6.12 Aviation and radar*), clarification has been sought from Ronaldsway Airport in respect of consideration of the impact of the proposed windfarm on aviation, particularly the airport radar. It has been confirmed that the Airport is satisfied that the proposed location of the wind farm will not pose any operational issues for the Airport at this stage. The Airport has requested that it be kept informed should any amendments to the proposed location be considered by the developer. Further, it is requesting that the organisation involved in its construction keep Ronaldsway Airport informed of progress so that it can monitor activity to ensure that the impact remains as predicted.

The Isle of Man Government, via the TSC would welcome the opportunity for continued involvement in this process as and when appropriate. The TSC is happy to continue receiving correspondence in respect of this proposed development, and noting the central email address provided above.

Should you require any further information or clarification on any of the contents of this response, then please do not hesitate to contact myself, and I can raise any items with the members of the TSC.

Yours sincerely



Mrs Emily Curphey
Chair, Territorial Seas Committee

Attachments:

TSC response to PINS in respect of the request for scoping opinion 15th July 2020;
TSC response to PINS in respect of the PEIR 11th October 2021; and,
TSC request to be included within the examination to PINS (webform submission at pre-examination stage) 6th July 2020.

Specific Comments on ORML2233 Awel y Mor Marine Licence Application Consultation

This submission has been provided based on the following considerations:

Noting the relative distance of the proposed development to the Isle of Man and its territorial waters, but acknowledging the potential for transboundary effects across a range of considerations.

Noting the similarities between the PEIR process as part of the Development Consent Order application and the Marine Licence application, the most relevant issues have been highlighted for Marine Licence consideration.

In respect of the Marine Licence Application, the most relevant aspects of the proposal relate to the following topics; Offshore Ornithology, Marine Mammals, Fish & Shellfish Ecology, and Commercial Fisheries.

Offshore Ornithology

Given the proposed constructions, expected heights and operational duration outlined in the Marine Licence application summary, the TSC believes that wide-ranging seabirds, with links to the Isle of Man are a relevant consideration.

The TSC acknowledges that offshore ornithology has been screened in within the transboundary screening report, which is welcomed; as has been the consultation that we have received in relation to this proposal. The report states that the effects are given within each topic chapter of the Environmental Statement. The consideration of Manx conservation features, however, has been inconsistent across the chapters of the Environmental Statement and this is something that the Territorial Sea Committee will raise again in this response.

The Isle of Man view on the ornithology scoping has been included, in full, within the revised Scoping Report, but the applicant's responses are not stated, as they are for the UK consultations. We have therefore sought relevant evidence of consideration within the various reports. We have previously noted the lack of reference to Manx sites that are likely to relate to this study area, and specifically to the Manx shearwater and the comments of the JNCC relating to remaining flight height risks and the possible need for CRM assessment. The TSC has requested evidence of the specific consideration of the Isle of Man in such respects.

We note that no 'significant effects' were found in the ornithological assessments, and therefore site attribution was not undertaken. Nevertheless, although site-related considerations have arisen in the process, we have not found any reference to Manx seabird colonies or Manx sources of migrant birds, lying within the range of the Isle of Man, where they are a feature of a number of designated sites (ASSI, MNR and sites protected under the Manx Museum and National Trust Act), nor the Ballaugh Curragh Ramsar Site. Notably, the Isle of Man wind farm proposal has been included within the cumulative effects consideration.

In the Offshore Ornithology assessment (4.12.10) the effects on linked sites are covered, noting sites not taken into consideration within the Habitats Regulations Assessment (HRA). The Isle of Man does not designate sites under the EU Habitats Regulations (which do not apply to the Island) but we have not found evidence that Manx sites of a similar level of designation or relevance have been taken into account and treated in the same manner, under either of these considerations, nor separately under the transboundary consideration. Only Welsh sites were picked up as linked ornithological sites outside of the HRA.

Similarly, within '**Annex 3, HRA European Site Information**';

- The Copeland Islands (UK) SPA is designated for the following qualifying features:
 - Manx shearwater (*Puffinus puffinus*);
 - Arctic Tern (*Sterna paradisaea*).

Both species are also designation features of several Manx Marine Nature Reserves (Ramsey Bay, Calf of Man and Wart Bank, West Coast MNRs), which are closer and therefore more relevant for consideration within the scope of the proposed development and the ornithology chapter.

- In terms of seabird designation features, Rathlin Island SPA is very similar to the Calf of Man and Wart Bank MNR and the *Baie ny Carrickey* MNR, however the latter two are not acknowledged or considered, and are significantly closer.
- Similarly, within '**Annex 3 HRA European Site Information**', the Burry Inlet and Severn Estuary Ramsar Sites are listed, but not the Isle of Man Ramsar Site at *Ballaugh Curraghs* or potential Ramsar Sites identified in a published report.

It is good to see an assessment of the risk to migrants via migratory pathways analysis, but we did not see evidence that the Isle of Man has been included within the data utilised. Hen harrier was screened out following an assessment using MigroPath. This utilised SPA features data and we do not think that Manx data may have been included in the consideration despite the presence of a high density of breeding hen harriers on the Isle of Man, some of which will cross the Irish Sea on migratory movements and dispersal, and form a likely source of this species passing southwards.

In relation in CRM for migrant birds, little tern migration is discussed, and note is made that migration tends to follow within 10 km of the coast, and that Irish birds must pass through British waters, but no mention is made of Manx breeding little terns which must cross the Irish Sea (along with the Arctic terns which also breed on the Isle of Man). There is, in fact, no mention of the IoM in the Migration (MigroPath) report.

'Due to the migratory routes of terns described in Section 6.1, the population estimates with potential for connectivity with AyM on migration were identified as the Northern England and Scotland SPA populations located to the north of AyM and as a precautionary measure the total UK western non-SPA colonies, with population estimates derived from Appendix A of Furness (2015). Any Irish colonies or southern England SPA colonies were not included within the population estimates presented in Table 3, due to no connectivity identified based on their migration routes.' Page 18.

We note the comments from the JNCC regarding the Rhiannon site data and the flight heights of Manx shearwaters, some of which fell within the expected rotor area for this development (see ES Volume 4, Annex 4.5: Offshore Ornithology Scoping and Consultation Responses, page 16). With reference to 4.12.14 paragraph 313, we ask on what basis Manx shearwater was scoped out of the collision risk modelling (CRM)? Our interest in this is in the protection of a recovering colony of Manx shearwaters on the Calf of Man, and that these birds are a designation feature for the Calf and Wart Bank MNR, and the West Coast MNR. The study area is within the range of the birds nesting on the Calf of Man and there is a likely connection (suggested by directional data – see previous consultation response (*attached*)).

In the offshore ornithology sections, despite the presence of relevant species of seabird on the Isle of Man, including regionally-relevant, breeding colonies and recovery programmes, there are;

Only three, non-specific references to Isle of Man in the main chapter

- Volume 2, Chapter 4: Offshore Ornithology (April 2022, Revision: B)

And no reference to Isle of Man in the following reports;

- Volume 4, Annex 4.1: Offshore Ornithology Baseline Characterisation Report (April 2022, Revision: B), though kittiwake and Manx shearwater show flight directions which may connect breeding season movements with the Isle of Man
- Volume 4, Annex 4.5: Offshore Ornithology Scoping and Consultation Responses

With no references, or acknowledgement of the Manx Marine Nature Reserves (which include significant seabird populations as designation features), the Calf of Man Bird Observatory (and its Manx Shearwater

recovery programme), the Manx Ramsar site (Ballaugh Curragh) or key sea birds colonies, including ASSIs, it is difficult to confirm, or assume, that adequate consideration of Manx ornithological interests have been made. The Isle of Man Government has a reasonable expectation of demonstrable consideration within the Environmental Statement of issues relevant to the Isle of Man, but this is not yet apparent within the ornithological assessments.

By contrast, the Manx MNRs have, following consultation, now been adequately acknowledged and apparently considered in respect of marine mammals and, as such, the two approaches by consultants appear inconsistent.

In respect of the application for a Marine Licence;

- **The Committee therefore requests evidence of specific consideration of the Isle of Man in relation to offshore ornithology in relation to the species and points outlined above.**
- **Further, it is recommended that the Licence regulators or developers contact relevant on-island organisations in relation to specific consideration of local ornithological interests; Manx Birdlife, Manx National Heritage, Manx Wildlife Trust.**

Marine Mammals

(Previous comments to PINS - Reference to PEIR: Chapter 7 and Baseline)

Given the intended construction methods and expected levels and duration of significant levels of underwater noise outlined in the documents provided, the TSC believes that regionally-transiting/migratory marine mammals are an important consideration for the Marine Licence application.

Noting the conclusion in the **PEIR Volume 1, Annex 3.2: Transboundary Screening** report that the focus for consideration will be for *'European Sites where marine mammals are qualifying features will be assessed within the HRA and RIAA'* and that *'the assessment is anticipated to focus on SACs within the EEZ of the Republic of Ireland.'*

As previously noted in earlier submissions to this development proposal, the Isle of Man is not/ has not been an EU member state, and has limited application of EU Directives, and hence European Sites or SACs. However, the Isle of Man Government is a signatory (extended via the UK) to various relevant international conservation conventions and treaties and is committed to protecting biodiversity within its jurisdiction and via its own legislation.

As such, and in addition to statutory protection of these species under the Isle of Man Wildlife Act 1990, the Isle of Man has 10 **statutorily designated** Marine Protected Areas (MPAs) within its waters (<https://www.gov.im/mnr>), several of which include marine mammals (cetaceans and seals) within their designation features (<https://www.gov.im/media/1371896/guidance-notes-for-marine-nature-reserve-designations-160221.pdf>).

These designation features include the following migratory/mobile species, which are referenced within the report, *'...harbour porpoise, grey seals, bottlenose dolphins, Risso's dolphins and minke whales are likely to be present in the vicinity of AyM.'*

Since these Manx MPAs do not feature in the baseline document for marine mammals, it is therefore not clear whether they have been appropriately considered within the assessment process as trans-boundary issues in the PEIR; and so consideration within the Marine Licence is similarly indicated.

- **Inclusion of these marine mammal features and clarification of their specific consideration from a Manx perspective is therefore requested.**

In addition;

Baseline Study Cetaceans 8.7 Telemetry

'Within the 50 km buffer of the AyM array area, there are telemetry tracks from 34 grey seals, 33 of which were tagged in the West England and Wales MU, and one of which was tagged in the West Scotland MU. The 34 grey seals within the 50 km buffer of the AyM array area showed connectivity with

the following grey seal SACs:This connectivity between seals in the vicinity of AyM and with SACs will need to be considered in the HRA. Likewise, the connectivity with the Republic of Ireland and with the Isle of Man will need to be considered in the assessment of transboundary effects.'

It is acknowledged that the Marine Mammal Baseline report makes significant use and acknowledgement of Manx marine mammal data, however, as with seal telemetry, it is not apparent that this has subsequently been considered within the main PEIR, potentially due to the focus on European Sites/SACs.

As a general example, the terms 'Isle of Man' or 'Manx' do not appear in the text of the document other than in the context of references referred to in the baseline document (of which there are 6). Given the acknowledged similarity of species, and their mobility, specific Manx consideration within the main report appears to be absent. Notwithstanding it may not affect the impact conclusions, it seems appropriate that it is explicitly considered and acknowledged.

- **It has been previously noted that it was not apparent that Manx marine mammals have been specifically considered within the Preliminary Environmental Information Report Chapter 7: Marine Mammals. The Committee therefore requests specific and adequate consideration within the Marine Licence assessment process.**

Fish and Shellfish

(Previous comments to PINS - Reference to PEIR: Chapter 6 and Baseline)

The extensive and disruptive construction activities planned for the seabed within the proposed development site have the potential to affect regionally-important conservation and commercial benthic species. The TSC requests that adequate consideration is given to these issues and that, appropriate contingency and mitigation measures are included to ensure their adequate protection, particularly in relation to trans-boundary species.

In particular, potential impacts on regionally important, high-density and ecologically-connected shellfish beds should be avoided and/or mitigated. The connectivities of such species within the Irish Sea is noted under the Commercial Fisheries section below.

It is acknowledged and appreciated that within the PEIR process, specific reference to consultation with the Isle of Man Government has previously expanded the 'contextual area' for this topic, and leads to greater confidence of consideration of interests.

It is further noted in the **Preliminary Environmental Information Report Volume 1, Annex 3.2: Transboundary Screening report** that assessment of this topic 'is anticipated to focus on the **Isle of Man** and the Republic of Ireland, in addition to transboundary commercial interests considered through the Commercial Fisheries assessment in the EIA.'

The committee further acknowledges the explicit consideration of Manx interests and input in this Section.

Commercial Fisheries

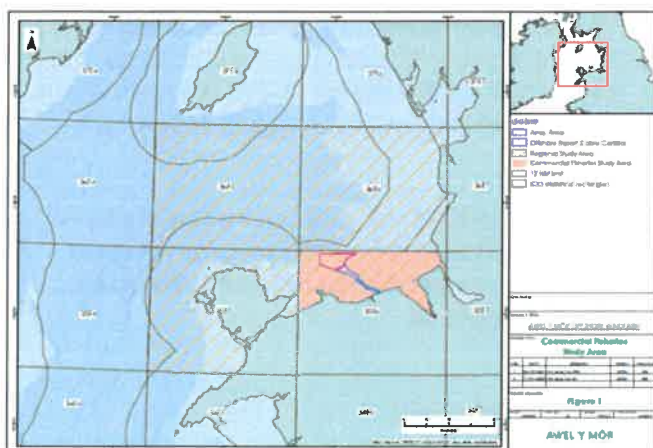
Noting the general conclusion in the PEIR that the potential transboundary impacts on commercial fish stocks in the waters of other states (Ireland and Isle of Man) is of negligible significance, and is therefore considered to be not significant in EIA terms.

However, as noted in previous correspondence on this development (15 July 2020, 22 June 2022), there are a number of limitations acknowledged in the PIER assessment report, and also highlighted in the Isle of Man Government's previous submissions. As such, given the potential for fishery species and fleet behaviour to be impacted by this development proposal, consideration within the Marine Licence application process is indicated.

Commercial fisheries has been screened in as a transboundary impact assessment for this proposed development.

As noted in TSC's response to the PEIR (11th October 2021), and despite the responses to comments within 'Annex 8.2: commercial Fisheries Consultation Record', there are still only 3 non-specific references to the Isle of Man in Volume 4, Annex 8.1 Commercial Fisheries Baseline Final, and 5 non-specific references in Volume 2, Chapter 8 Commercial Fisheries v Final.

Given the overlap of the Fisheries Regional Study Area within Manx waters (i.e. 36E5), the non-specific references make it difficult to determine whether the Isle of Man commercial fishing interests have been adequately considered.



The responses outlined in the Consultation Record are typically generic, and it is not apparent that further attempts to quantify the fisheries baseline have been made by engagement with relevant Manx data sources (MFPO, Department of Environment, Food and Agriculture (DEFA) or Bangor University (as the IoM Government Fisheries Science Advisors), nor specifically for any potential impact on the Isle of Man fleet.

For example:

Volume 2, Chapter 8: Commercial fisheries (April 2022 Revision B)

- 8.4.3 Potential receptors
Table 3: Receptors included within Group indicate 'English, Scottish, Northern Irish and Welsh vessels targeting king scallop and queen scallop.' Why does this not include equivalent Manx vessels? Does it relate only to the commercial fisheries Study Area, or to the wider Regional Study Area; although in both cases Manx scallop vessels have fished these areas within the last 7 years (both <15m and over 15m).
- Table 5: 'Data Sources used to inform the Commercial Fisheries ES Assessment': refers to UK-registered vessels. Technically it should be British-registered (which would include Manx), or indicate specifically Manx registered, to demonstrate that Manx vessels have been included. This may seem like a minor point, but this type of ambiguity leads to overall uncertainty of adequate consideration.
- Spatial data sources: 'VMS data for UK-registered vessels of 15m length and over'. As previously advised, Isle of Man-registered vessels engaged in scallop fisheries operate VMS, regardless of size. Given that the majority of the Manx fleet is under 15m it is not clear that Manx scallop fishing vessels have been adequately included in this assessment. MMO will also hold VMS data for vessels under 12m fishing in Manx waters for scallops (36E5), and possibly within the wider Regional study area.
 - Further, it is unclear why only VMS data for over 15m has been used, when data for all UK/British/Manx-registered vessels over 12m is available from MMO. This must significantly reduce the quality of the baseline used in the assessment.

These examples do not provide reassurance that Manx commercial fishing interests have yet been adequately considered, regardless of the ultimate conclusion of the assessment.

Further, and in relation to requested engagement with the Manx Fish Producers' Organisation, the response; '*The Manx Fish Producers' Organisation is included on the AyM fisheries stakeholder distribution list and was invited to attend group meetings and respond to request for individual interview.*' is considered insufficient, given the noted overlap of the Regional Study Area with Manx territorial waters. Direct contact with the representative organisation is recommended in order to clarify potential interests, and the eligibility of Manx-registered vessels for the Fisheries Cooperation Strategy (compensation scheme).

Dr. David Beard
CEO
Manx Fish Producers Organisation



In summary, given the overlap of the Fisheries Regional Study Area within Manx territorial waters (ie. 36E5) and the acknowledged trans-boundary risk, there is a reasonable expectation to unequivocally demonstrate that Isle of Man commercial fishing interests have been specifically and appropriately taken into account.

The documentation as presented does not adequately achieve this, given the limited, non-specific reference to the Isle of Man within the Commercial Fisheries chapter and supporting reports, application of restricted data sets (ie >15m only) and the absence of demonstrated engagement with;

- The Manx Fish Producers' Organisation
- The Department of Environment, Food and Agriculture (Isle of Man Government)
- Bangor University (in their capacity as fisheries science advisors to the Isle of Man Government).

The Isle of Man Government has a reasonable expectation of demonstrable consideration within the Environmental Statement of issues relevant to Isle of Man interests, and this is not yet apparent within the Commercial Fisheries assessments.

In the context of significant offshore windfarm development within the Irish Sea, and the nature of both fisheries stocks and fishing fleet behaviour, the Isle of Man Government believes that adequate and specific consideration of commercial fishing interests is undertaken, in particular for the expected cumulative impacts of the current and future windfarm development rounds.

