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Dyddiad/Date: 03 December 2024

Er sylw / For the attention of: Jake Stephens

Annwyl / Dear Jake,

**FFERM WYNT ALLTRAETH MONA / PROPOSED MONA OFFSHORE WINDFARM
CYFEIRNOD YR AROLYGIAETH GYNLLUNIO / PLANNING INSPECTORATE
REFERECE: EN010137**

EIN CYFEIRNOD / OUR REFERENCE: 20048445

**RE: NATURAL RESOURCES WALES' SUBMISSION ON THE EXAMINING
AUTHORITY'S REPORT ON THE IMPLICATIONS FOR EUROPEAN SITES (RIES)**

Thank you for your Rule 8 letter, dated 23 July 2024, requesting Cyfoeth Naturiol Cymru / Natural Resources Wales' (NRW) comments regarding the above.

Please find below NRW's Deadline 5 submission on the *Report on the Implications for European Sites* (RIES) produced by the Examining Authority (ExA) and published on 19 November 2024. The NRW comments herein comprise generic advice on the RIES as well as responses to the questions directed therein to NRW by the ExA.

These comments should be read in conjunction with advice previously provided into the examination, and alongside our other submissions at Deadline 5.

NRW continues to engage extensively and proactively with the Applicant throughout the examination in order to resolve outstanding matters.

The comments provided in this submission, comprise NRW's response as a Statutory Party under the Planning Act 2008 and Infrastructure Planning (Interested Parties) Regulations 2015 and as an 'Interested Party' under s102(1) of the Planning Act 2008.

For the purpose of clarity, comments from NRW's Marine Licencing Team (NRW MLT) are titled as such and are produced in section 2; all other comments pertain to NRW's advisory (NRW (A)) role.

Our comments are made without prejudice to any further comments we may wish to make in relation to this application and examination whether in relation to the Environmental Statement (ES) and associated documents, provisions of the draft Development Consent Order ('DCO') and its Requirements, or other evidence and documents provided by bpENBW ('the Applicant'), the Examining Authority or other Interested Parties.

Should further clarity be required, we will be pleased to answer these further through the Examining Authority questions and / or a Rule 17 request(s).

Please do not hesitate to contact [REDACTED] [REDACTED] [REDACTED] [\[REDACTED\]@cyfoethnaturiolcymru.gov.uk](mailto:[REDACTED]@cyfoethnaturiolcymru.gov.uk) [REDACTED] [REDACTED] [REDACTED] [\[REDACTED\]@cyfoethnaturiolcymru.gov.uk](mailto:[REDACTED]@cyfoethnaturiolcymru.gov.uk) and [REDACTED] [REDACTED] ([REDACTED] [REDACTED] [\[REDACTED\]@cyfoethnaturiolcymru.gov.uk](mailto:[REDACTED]@cyfoethnaturiolcymru.gov.uk)) should you require further advice or information regarding these representations.

Yn gywir / Yours sincerely,

[REDACTED]

[REDACTED]
Marine Services Manager
Natural Resources Wales

[CONTINUED]

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1 OFFSHORE

1. Notwithstanding the advice below, NRW (A) considers that the RIES, when read in conjunction with the examination documents, is a comprehensive and balanced account of the key matters relating to the Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations') and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (the 'Offshore Marine Regulations') for the Mona project in relation to those protected sites relevant to NRW's remit. We stress that the RIES must also be read alongside our previous submissions to date into the Mona examination.

1.1 Marine Ornithology

1.1.1 General Comments

2. On the whole, NRW (A) considers the relevant sections of the RIES to provide a balanced account of the key Habitats Regulations Assessment (HRA) issues for offshore ornithology. However, as per our response at Deadline 4 (1.1.5 within REP4-105), we wish to impress concerns that as there remain outstanding HRA issues in relation to ornithology which span beyond the publication date of the RIES - particularly with respect to in-combination assessments - the RIES at this point in time should not be considered a reflection of the finalised position. This is because the RIES was published ahead of HRA ornithology issues being resolved. It is our understanding that the Applicant will be submitting additional material to hopefully address some of NRW (A)'s concerns at Deadline 5. We will review this material and provide advice into the examination as soon as possible.
3. We note paragraph 1.1.8 of the RIES states that "...*The RIES will not be revised following consultation*". Whilst we acknowledge the implication of time limitations for the examination, we suggest that following Deadline 5 the RIES is updated - particularly in light of any changes the Applicant makes in relation to the in-combination assessment - before it is included alongside the ExA report to the Secretary of State (SoS), so that a full account of the Examination's considerations of HRA matters is presented in one place.

1.1.2 Responses to specific questions within RIES

1.1.2.1 Table 2.4

2.4.4 Q c): Do JNCC/ NRW (A) consider a LSE should be identified for any European site with Atlantic puffin as a qualifying feature?

4. The apportioned predicted puffin displacement impact for Skomer, Skokholm and Seas off Pembrokeshire (SSSP) Special Protected Area (SPA) for the Mona project alone, at the Worst Case Scenario (WCS) of 70% displacement and 10% mortality presented by the Applicant in REP4-031, is predicted to be 0.7 birds. Therefore, based on the Applicant's approach to screening Likely Significant Effect (LSE) of taking impacts through if the apportioned impact for a feature equalled more than 0 birds, then it should be considered that an LSE cannot be excluded for this feature of the SPA. However, given that the predicted level of displacement

impact even the WCS equates to well below 1% of baseline mortality, and, would be undetectable against background mortality, we agree that an Adverse Effect on Site Integrity (AEoSI) can be ruled out for the puffin feature of the SSSP SPA from the project alone (as advised in our Deadline 4 response: Annex B of REP4-105). Given that even at the WCS of 70% displacement and 10% mortality the predicted impact as presented in REP4-031 equates to 0.01% of baseline mortality, which is below the Applicant's threshold for taking through to in-combination assessment of the project alone exceeding 0.05% of baseline mortality, we are content that this feature is not taken through to in-combination assessment.

2.4.6 Q: Are JNCC and NRW (A) content that an appropriate range of displacement and mortality has been presented in [REP4-031] to enable an informed decision to be made by the Secretary of State?

5. In REP3-059 and the subsequent Deadline 4 update - REP4-031, the Applicant has considered the appropriate advised range of % displacement and % mortality rates for assessments of the project alone and in-combination assessments. This has enabled NRW (A) to be able to agree that AEoSI can be ruled out for all Welsh Special Protection Areas (SPAs) assessed for project alone impacts (as detailed our Deadline 4 response: Appendix 1 of Annex B of REP4-105). However, whilst the Applicant considers in-combination impacts across the range of advised rates in REP4-031, we advise that unfortunately, they still have not followed aspects of SNCB advice, particularly regarding use of stable age structures from Furness (2015) in the breeding season for age class apportioning of impacts from sites in the in-combination assessment. We consider that this approach risks significantly underestimating in-combination impacts on adult breeding birds and as a result are unable to reach conclusions on in-combination impacts. Further detail on this issue can be found in our Deadline 5 response to REP4-031.

2.4.13 Q: Further to the Applicant's submission [REP4-042], can JNCC and NRW (A) confirm whether they are satisfied the Applicant's approach to age class apportionment during the non-breeding season can be considered appropriate and whether their previous concerns have been resolved?

6. The Applicant has taken different approaches for non-breeding season apportionment in their assessments of impacts from the project alone and assessments of impacts in-combination. For the project alone assessments, the Applicant has taken an approach that results in higher non-breeding season apportioned values than if the standard NRW (A) (SNCB) advised approach was followed (i.e. the Applicant's approach here is more precautionary than the NRW (A) advised approach, which, is acknowledged by both NRW (A) and the Applicant). For the non-breeding season apportionment in the in-combination assessments, the Applicant has employed an alternative approach, which essentially appears to be an overly complicated way of arriving at the same apportionment values and impacts as if the NRW (A) (SNCB) standard advised approach was followed. However, we confirm that the non-breeding season apportionment issue can be considered resolved. Further details can be found in our Deadline 5 comments on REP4-042.

1.1.2.2 Table 2.6

2.6.1 Q a): *Further to the Applicant's Deadline 4 submissions, can NRW (A) and JNCC confirm whether they agree that all in-combination LSEs have been identified by the Applicant in respect of marine ornithology?*

7. The Applicant's approach to in-combination screening is that where the project alone impact equates to below 0.05% baseline mortality, then it is deemed non-material and within natural fluctuations of the population, and is therefore screened out of in-combination assessment. We have indicated that we are content with the Applicant's approach in this case where the impacts from the project alone are very small. Taking this and the fact that the Applicant has considered in REP4-030/031 that where the predicted project impact alone impact exceeds 0.05% baseline mortality across anywhere within the whole range of SNCB advised assessment rates, then the site and feature combination has been taken through to in-combination assessment, we are now content that all in-combination LSEs for Welsh SPAs/Ramsars have been identified by the Applicant and are taken through to in-combination assessment, namely:

- Skomer, Skokholm and seas off Pembrokeshire SPA: Manx shearwater; seabird assemblage, including named components: kittiwake, guillemot and razorbill
- Grassholm SPA: Gannet
- Aberdaron Coast and Bardsey Island SPA: Manx shearwater

1.1.2.3 Table 3.3

3.3.6 Q a): *The Applicant maintains that an outline EMP is not necessary. The ExA notes that Part e) of point 18 of conditions listed in Part 2 of Schedule 14 of the draft DCO refers specifically to the certified document 'Measures to minimise disturbance to marine mammals and rafting birds from transiting vessels'. This document contains the cable installation restriction. Can JNCC and NRW (A) further elaborate why this is not sufficient to secure the necessary mitigation?*

8. We have reconsidered the information provided by the Applicant regarding this issue. We note that paragraph 1.1.3.8 of the 'Measures to minimise disturbance to marine mammal and rafting birds' document [REP3-020/021] states that this document '*...will be included as an appendix to the Offshore Environmental Management Plan (EMP), which is secured within Schedule 14 of dDCO and expected to be secured within the standalone NRW Marine Licence.*' As the cable installation seasonal restriction within Liverpool Bay SPA is included within the 'Measures to minimise disturbance to marine mammals and rafting birds' document, and, as noted above, will be included as an appendix to the Environmental Management Plan (EMP) -secured within of the dDCO and expected to be secured within the standalone NRW Marine Licence – then, based on this, we consider that the seasonal timing restriction mitigation measure is adequately secured.

3.3.16 Q: Further to the Applicant's Deadline 4 submission [REP4-042] and [REP4-049], can JNCC and NRW (A) provide an update on their positions in relation to the apportionment of impacts in the in-combination assessment?

9. We note that the 'Offshore Ornithology Apportioning Clarification Note' [REP4-042] specifically covers clarification on non-breeding season apportionment methods the Applicant has used for project alone and in-combination assessments. The methods the Applicant has taken for apportionment of impacts in the breeding season in the in-combination assessment is detailed in their updated 'Offshore Ornithology Supporting Information in line with SNCB advice' document [REP4-030].
10. Based on the information provided by the Applicant in REP4-042, we are content with the Applicant's approach to the non-breeding season apportionment (age class and apportionment to sites), as the Applicant's approach for this for in-combination essentially results in the same overall apportionment rates as if our standard advised approach is followed.
11. However, we do not agree with the use of the non-breeding season stable age structures from Furness (2015) for age class apportioning in the breeding season in the in-combination assessments, as had been indicated to the Applicant during the call NRW (A) and JNCC had with the Applicant on 29th October 2024 and as also raised in our Deadline 4 response [REP4-105]. We consider that this approach risks significantly underestimating in-combination impacts on adult breeding birds – further detail on this can be found in our Deadline 5 response to REP4-030. We are, however, content with Applicant's approach of using proxy wind farm sites for apportioning values to individual SPAs for those projects where that information is not available (e.g. for the gap filled projects). We also welcome that the Applicant has now included information on which wind farm has been used as the proxy for projects in REP4-030.

1.1.2.4 Responses to questions within main body text

Paragraph 2.6.3 Q: Are JNCC/NRW content that a LSE can be excluded for the European sites listed in Table 2.2 of the RIES?

12. We agree with regard to the Welsh SPAs/Ramsars listed in Table 2.2 for ornithology. We note that sites located outside of Wales (i.e. England, Scotland, NI) are outside of our remit and hence the ExA should request advice from the relevant SNCB for these sites (i.e. NE/NatureScot/DAERA).

Paragraph 2.6.6 Q: Further to the Applicant's Deadline 4 submissions, can NRW (A) and JNCC advise whether it considers there to be a LSE to any qualifying feature(s) of any European site(s) in addition to those captured in Table 1.125 of the revised HRA Screening Report [REP2-012] and the lesser-black backed gull from Skomer, Skokholm and the Seas off Pembrokeshire / Sgomer, Sgogwm a Moroedd Penfro SPA? (Please refer to IDs 2.4.4 and 2.6.1 of this RIES where relevant).

13. Table 1.125 of REP2-012 does not include Skomer, Skokholm and seas off Pembrokeshire (SSSP) SPA puffin. As noted in our response to Table 2.4 question 2.4.4 part c) above at paragraph 4, we consider that an LSE cannot be ruled out for this feature. However, we note that the Applicant has included an apportioned assessment of project impacts alone to puffin SPAs, including SSSP SPA, in their Deadline 4 'Supporting information in line with SNCB advice' document [REP4-030]. Based on this we can agree that an AEOI can be ruled out for this feature for the project alone, and agree that based on the level of predicted mortality from the project alone that it is not taken through for a detailed in-combination assessment and that an AEOI can be ruled out for the project in-combination with other plans and projects.
14. We again note that sites located outside of Wales (i.e. England, Scotland, NI) are outside of our remit and hence the ExA should request advice from the relevant SNCB for these sites (i.e. NE/NatureScot/DAERA).

Paragraph 3.3.9 Q: Can NRW (A) confirm whether it is content with the projects included in the offshore ornithology in-combination assessment presented in [REP4-031]?

15. Following the work undertaken by the Applicant to gap fill historical projects and that these are now included in the in-combination assessments presented in REP4-030/031, we are generally content with the list of projects included in the in-combination assessment. Due to the length of time it has taken the Applicant to address the concerns with the projects included in the in-combination assessments, we note that data are now available for the LIÿr 1 project, which is relevant for inclusion in the in-combination assessments and is currently not included in the assessments in REP4-031. This was highlighted to the Applicant at a call on 29 August 2024 where the Cumulative Effects Assessment (CEA) and gap fill methods was discussed with the SNCBs with respect to both the Mona and Morgan Generation Asset projects. The project level information about LIÿr 1 can be found on NRW's public register and this has been advised to the Applicant. We also note that, as yet, the Applicant has still not updated the figures included for the Morgan Generation and Morecambe Generation projects from those to the Preliminary Environmental Information Report (PEIR) to those in the submission documents. We have repeatedly advised since our Written Representations [REP1-056] that these numbers should be updated to account for the best available evidence currently available for these projects, i.e. updated to the submission figures that include 24 months of site-specific data for each project.

Paragraph 3.4.6 Q: Further to the Applicant's Deadline 4 documents, can NRW (A) provide comment on the level of significance of in-combination impacts for Welsh designated sites.

16. Following review of the Applicant's Deadline 4 submissions, unfortunately our position regarding offshore ornithology in-combination impacts remains that we still consider it inappropriate to comment on the potential significance of in-combination impacts presented at this stage for relevant Welsh designated sites. This is because the Applicant has still not followed aspects of our advice/presented in-

combination impacts following our advised approach alongside their preferred approach. The main issues that remain with regard to their assessments are:

- We do not agree with the use of the non-breeding season stable-age structures from Furness (2015) for age-class apportioning in the breeding season. We consider that the Applicant's use of this approach risks significantly underestimating in-combination impacts on adult breeding birds. Further details regarding this can be found in our Deadline 5 comments on REP4-030/031. We reiterate our previous advice provided to the Applicant during the call on 29 October 2024, and as set out in our Deadline 4 response [REP4-105], that where there is site-specific information on breeding season age class proportions then this should be applied for the site in question in the in-combination assessments, otherwise taking the precautionary principle, it should be assumed that all birds are adults.
- The Applicant has included different figures for the Mona project alone in the in-combination assessments to those predicted in the project alone assessments. This is because different apportionment approaches have been taken for the alone and in-combination assessments in REP4-030/031 (different non-breeding season apportionment approach and use of Furness (2015) stable age structures for age class apportionment in the breeding season in the in-combination).
- We also consider that the figures included for the Morgan Generation and Morecambe Generation Assets projects should be updated to account for the best available evidence for these projects, i.e. update the PEIR figures to the submission figures. Please see our Deadline 5 response to REP4-027 for further details.

Paragraph 4.1.7 Q a): Based on submissions to date it may not be possible for the competent authority to exclude AEoI on all European sites beyond reasonable scientific doubt. As such, and in line with the relevant NPS EN-1 (paragraph 5.4.27), should the Applicant be unable to reach agreement with NRW (A) and JNCC that there would be no AEoI on all European sites from the project alone or in-combination with other plans or projects by Deadline 5, the ExA considers that a derogations case is required. This is to enable the ExA to examine the information during the Examination and make a recommendation to the Secretary of State, and so that the Secretary of State has all information available to them at the point of decision.

a) The Applicant, NRW (A) and JNCC are requested to confirm at Deadline 5 whether an AEoI on all European sites from the project alone or in-combination with other plans or projects can be excluded.

17. We can confirm that we can agree that an AEoSI can be ruled out for the following:

Project Alone:

- Skomer, Skokholm and seas off Pembrokeshire SPA: Manx shearwater, storm petrel, lesser black-backed gull, puffin, seabird assemblage (including named components: guillemot, razorbill, kittiwake)
- Grassholm SPA: Gannet

- Aberdaron Coast and Bardsey Island SOA: Manx shearwater

In-combination:

- Skomer, Skokholm and seas off Pembrokeshire: Storm petrel, lesser black-backed gull, puffin

18. As noted in our response to the question on paragraph 3.4.6 above (paragraph 16), as the Applicant has still not presented in-combination totals following all of our advice, we unfortunately are currently unable to comment on the potential significance of in-combination impacts presented at this stage for the remaining features and Welsh designated sites. However, NRW (A) and JNCC had a productive call with the Applicant on 22 November 2024 to discuss these issues and a potential approach to rectifying them. On 28 November 2024, the Applicant sent both NRW (A) and JNCC some updated in-combination tables for the sites of relevance to NRW (A) and JNCC which we are currently reviewing. We understand that the Applicant will be submitting this information into the examination at Deadline 5. Therefore, we hope to be able to provide advice on levels of in-combination impact and site integrity for Welsh sites following Deadline 5 submissions.

19. NRW (A), therefore, cannot rule out AEOsI until all of its comments on methodology and CEA have been addressed and we have had the opportunity to fully review the information provided by the Applicant at Deadline 5. NRW (A) is actively engaging with the Applicant on this and has an agreed way to attempt to address these points. We anticipate that the remaining issues are capable of being resolved before the close of Examination, and therefore derogation and compensation may not be required for Welsh designated sites. This is subject to a full and comprehensive review of submissions made by the Applicant at Deadline 5.

20. With regard to Liverpool Bay SPA and the potential impacts to the red-throated diver (RTD) and common scoter features of the site, we welcome and agree with the mitigation measures proposed by the Applicant, as set out in the '*Measures to Minimise Disturbance to Marine Mammals and Rafting Birds*' document, REP3-020/021, which includes the seasonal restriction on cable laying activities. However, we note our concerns raised in our Deadline 4 response (see Section 1.1.1 of REP4-105) regarding the lack of clarity over what extent the measures to minimise disturbance to rafting birds (including the seasonal restriction) would apply to pre-commencement activities, including UXO clearance. The Applicant has since confirmed in REP4-062 (see response to point REP3-084.3) that the seasonal restriction outlined in REP3-020/021 only covers export cable installation. The Applicant has noted that activities during this season of the year would be unlikely due to more challenging weather conditions, however they require flexibility to undertake pre-construction works at any time of year, to avoid impacts on the project delivery programme. We note that the UXO Clearance Position Statement [REP4-086] describes a Maximum Design Scenario (MDS) of up to 22 UXOs to be cleared within the Mona Array Area and Offshore Cable Corridor and Access Areas. However, we note that this MDS for UXO clearance has not been assessed by the Applicant within Volume 2, Chapter 5 Offshore Ornithology F03 [REP4-007] or within the Liverpool Bay SPA assessment within the updated HRA Stage 2 ISAA Part 3 (SPAs and Ramsars) F02 [REP2-010]. We consider that this

should be assessed and note the RIES question to the Applicant in point 3.39 of Table 3.3 regarding pre-commencement works, UXO surveys and clearance and guarding vessels, and the request for the Applicant provide evidence as to why it considers no AEOI would occur from these activities. Until this information is provided by the Applicant, we are unable to rule out an adverse effect on site integrity on the RTD and common scoter features of the Liverpool Bay SPA from either the project alone or in-combination. However, we do note that if the seasonal restriction on cable installation works was to also include pre-commencement activities, such as UXO clearance, then we would be able to agree that an AEOI could be ruled out for these features of the SPA from the project alone and in-combination. Further details on this can be found in our Deadline 5 response to REP4-086. However, we understand from recent correspondence with the Applicant (02 December 2024), that it is their intention to remove high-order clearance options from the draft development consent order (dDCO), its associated deemed Marine Licence (dML), and the stand alone Marine Licence, and that the seasonal timing restriction on the cable activities within Liverpool Bay SPA will also be applied to the low-order UXO clearance. Once this information is submitted into the examination at Deadline 5, we will provide further advice with respect to the above.

1.1.3 Detailed Comments on RIES

21. **Table 2.3:** We note that the Aberdaron Coast and Bardsey Island SPA / Glannau Aberdaron ac Ynys Enlli SPA has been listed under a joint England/Wales site, when it should be listed as a Welsh site only.
22. **Paragraph 2.5.16:** We note that our Deadline 4 comment in REP4-105 - that we were unable to replicate the Applicant's values in REP3-059 - was specific to being unable to replicate the Applicant's values in the in-combination assessments. We were able to make conclusions on project alone impacts on site integrity for Welsh sites in REP4-105.
23. **Table 2.4, point 2.4.14:** The ExA refers to a breeding season adult kittiwake proportion of 95.23% from the site-specific surveys in this point. However, we note that this proportion has been amended slightly by the Applicant to 95.36% in their updated version of the apportioning technical report in REP2-022. We understand that the Applicant has amended all apportioned kittiwake figures to account for this and therefore we agree that this matter is resolved.
24. **Paragraph 3.3.17** notes that following the Applicant's Deadline 4 documents that were aimed to address the concerns raised by NRW (A) and JNCC in meetings and correspondence external to the Examination, '*the Applicant maintained that an AEOI on all European sites considered can be ruled out, from the project alone or in-combination with other plans or projects.*' We note that our responses on these Deadline 4 documents from the Applicant will be submitted into the Examination at Deadline 5.
25. **Table 3.3, point 3.3.4:** We do agree that the Applicant has now undertaken PVAs for site/feature combinations where the predicted in-combination mortality across the range of SNCB advised rates is predicted to exceed 1% of baseline mortality

of the respective population. However, we note that as the in-combination mortalities are currently not agreed due to concerns with some of the Applicant's approaches, there remains a small possibility that any amendments to the Applicant's approach could result in further site/feature combinations triggering the requirement for further consideration through PVAs.

26. **Table 3.4, points 3.4.1 and 3.4.2:** We do not consider these matters to be resolved. This is because in REP4-027 the Applicant has essentially just summarised whether the Mona project has been included in the other projects cumulative/in-combination assessments or not, and listed how the project has been included (i.e. quantitatively or qualitatively) and then summarised the projects in question's conclusions in terms of significance of cumulative/in-combination totals. We do not consider this is appropriate as if quantitative figures are available for these additional projects, and there is potential connectivity for these projects with the populations potentially also impacted by Mona (i.e. located within the same respective BDMPS area or within foraging range of a relevant colony), then the quantitative figures should also be included into Mona's cumulative/in-combination assessments. We consider this to be particularly important regarding inclusion of updated figures for the Morgan Generation and Morecambe Generation Assets projects to the best available evidence currently in the public domain (i.e. the submission documents rather than the PEIR figures that were based on only 12 months of data). We again stress that as the Mona, Morgan Generation and Morecambe Generation Assets projects are all located in the Irish Sea and are in examination at the same time, there is a need for all projects to be undertaking cumulative and in-combination assessments covering the same list of projects and assessing the same cumulative/in-combination totals. Otherwise, there will be the potential for different conclusions as to the levels of significance depending on the total impacts considered.

1.2 Marine Mammals

1.2.1 General comments

27. We confirm that the RIES is a comprehensive and balanced account of the key HRA issues encountered so far with respect to Marine Mammals.

1.2.2 Responses to specific questions

Table 2.6: 2.6.1 Q.b) Further to the Applicant's response at Deadline 4, Can NRW (A) provide comment as to whether it considers there to be any in-combination LSEs to marine mammals and if so, provide details?

28. NRW (A) confirms that we are in agreement with the Applicant, and that we do not consider there to be any in-combination LSEs to marine mammals. With reference to our previous response from the ExA's first set of questions (Q 1.10.3), we would like to clarify that our previous response was due to a misunderstanding.

2.6.3 Are JNCC/NRW content that a LSE can be excluded for the European sites listed in Table 2.2 of the RIES?

29. NRW (A) confirms that for marine mammals an LSE can be excluded for the European sites listed in Table 2.2 of the RIES that are within NRW (A)s remit.

2.6.6 Further to the Applicant's Deadline 4 submissions, can NRW (A) and JNCC advise whether it considers there to be a LSE to any qualifying feature(s) of any European site(s) in addition to those captured in Table 1.125 of the revised HRA Screening Report [REP2-012] and the lesser-black backed gull from Skomer, Skokholm and the Seas off Pembrokeshire / Sgomer, Sgogwm a Moroedd Penfro SPA? (Please refer to IDs 2.4.4 and 2.6.1 of this RIES where relevant).

30. NRW (A) confirms that for marine mammals, we do not consider there to be an LSE to any qualifying feature(s) of any European site(s) in our remit in addition to those captured in Table 1.125 of the revised HRA Screening Report [REP2-012].

Table 3.2, item 3.2.5 Q. The ExA understands this matter to be resolved, however would appreciate confirmation from NRW (A) and JNCC as to whether the outline MMMP and UWSMS can be considered fit for purpose and sufficiently detailed to provide confidence that an AEol on harbour porpoise can be excluded.

31. As noted in our Relevant Representation [RR-011] and our written representation [REP1-056], we agree, in principle, with the commitment to develop an Underwater Sound Management Strategy (UWSMS) and Marine Mammal Mitigation Protocol (MMMP) and that these should identify all potential noise sources associated with the project with further detail provided in associated mitigation plans. We therefore confirm that the UWSMS and MMMP are fit for purpose and that they provide confidence that an AEoSI on harbour porpoise can be excluded. Whilst we acknowledge that further significant detail cannot be populated at this time, we consider it likely that the UWSMS and MMMP will reduce the magnitude of impacts to an acceptable level. We welcome the commitment of the Applicant to continue to engage with NRW (A) to develop the USWMS and MMMP during examination and post-consent, and as part of our written representations have provided a number of observations and recommendations on the draft outline UWSMS as provided with the application [APP-202]. These have since been adopted into the UWSMS. For further comments on the matters relating to UXO clearance, please see our Deadline 5 submission.

4.1.7 Q. Based on submissions to date it may not be possible for the competent authority to exclude AEol on all European sites beyond reasonable scientific doubt. As such, and in line with the relevant NPS EN-1 (paragraph 5.4.27), should the Applicant be unable to reach agreement with NRW (A) and JNCC that there would be no AEol on all European sites from the project alone or in-combination with other plans or projects by Deadline 5, the ExA considers that a derogations case is required. This is to enable the ExA to examine the information during the Examination and make a recommendation to the Secretary of State, and so that the Secretary of State has all information available to them at the point of decision.

a) The Applicant, NRW (A) and JNCC are requested to confirm at Deadline 5 whether an AEol on all European sites from the project alone or in-combination with other plans or projects can be excluded.

32. NRW (A) confirms that for sites within NRW (A)s remit, and from a Marine Mammal perspective, an AEoSI on all European sites from the project alone or in-combination with other plans or projects can be excluded.

1.3 Fish and Shellfish

1.3.1 General Comments

33. NRW (A) confirms that the RIES is a balanced account of key HRA issues encountered so far for fish and shellfish ecology.

1.3.2 Detailed Comments

Table 3.1, item 3.1.1 Q. The ExA notes that these measures are intended to be secured in the separate TA ML. Can NRW (A) confirm whether it is content with the Applicant's proposed approach to securing the relevant mitigation for the Menai Strait and Conwy Bay/Y Fenai a Bae Conwy SAC?

34. Despite diadromous fish features being named within the detail of item 3.1.1, table 3.1, we advise that there are no designated fish features of Menai Strait and Conwy Bay Special Area of Conservation (SAC), and therefore this issue with regard to Management Plans is not applicable to diadromous fish.

2.6.6: Q. Further to the Applicant's Deadline 4 submissions, can NRW (A) and JNCC advise whether it considers there to be a LSE to any qualifying feature(s) of any European site(s) in addition to those captured in Table 1.125 of the revised HRA Screening Report [REP2-012] and the lesser-black backed gull from Skomer, Skokholm and the Seas off Pembrokeshire / Sgomer, Sgogwm a Moroedd Penfro SPA? (Please refer to IDs 2.4.4 and 2.6.1 of this RIES where relevant).

35. NRW(A) consider Table 1.125 to be complete in regard to fish receptors.

4.1.7 Q. Based on submissions to date it may not be possible for the competent authority to exclude AEoI on all European sites beyond reasonable scientific doubt. As such, and in line with the relevant NPS EN-1 (paragraph 5.4.27), should the Applicant be unable to reach agreement with NRW (A) and JNCC that there would be no AEoI on all European sites from the project alone or in-combination with other plans or projects by Deadline 5, the ExA considers that a derogations case is required. This is to enable the ExA to examine the information during the Examination and make a recommendation to the Secretary of State, and so that the Secretary of State has all information available to them at the point of decision.

a) The Applicant, NRW (A) and JNCC are requested to confirm at Deadline 5 whether an AEoI on all European sites from the project alone or in-combination with other plans or projects can be excluded.

36. NRW(A) are content that an AEoSI can be excluded for Welsh sites from the project either alone or in-combination with other plans or projects in regard to fish receptors.

1.4 Physical Processes

1.4.1 General Comments

37. We have no comments on the RIES from a Physical Processes perspective.

1.5 Benthic Subtidal and Intertidal Ecology

1.5.1 General comments

38. We advise that the key HRA issues relating to benthic ecology are covered as comprehensively as possible in the RIES when considered alongside the supporting application documents and advice.

1.5.2 Responses to specific questions

2.6.3 Q. Are JNCC/NRW content that a LSE can be excluded for the European sites listed in Table 2.2 of the RIES?

39. We agree that LSE can be excluded for the relevant Welsh sites – provided the mitigation and management plans are implemented as agreed with the Applicant, we do not consider that there is potential for LSE on the benthic features of the Menai Strait and Conwy Bay/Y Fenai a Bae Conwy SAC.

2.6.6: Q. Further to the Applicant's Deadline 4 submissions, can NRW (A) and JNCC advise whether it considers there to be a LSE to any qualifying feature(s) of any European site(s) in addition to those captured in Table 1.125 of the revised HRA Screening Report [REP2-012] and the lesser-black backed gull from Skomer, Skokholm and the Seas off Pembrokeshire / Sgomer, Sgogwm a Moroedd Penfro SPA? (Please refer to IDs 2.4.4 and 2.6.1 of this RIES where relevant).

40. NRW (A) confirms that there are no additional LSE to any qualifying features(s) of any European site(s) that are not already captured in Table 1.125 of the revised HRA Screening Report [REP2-012], with regard to benthic ecology.

Table 3.1: item 3.1.1: Q. The ExA notes that these measures are intended to be secured in the separate TA ML. Can NRW (A) confirm whether it is content with the Applicant's proposed approach to securing the relevant mitigation for the Menai Strait and Conwy Bay/Y Fenai a Bae Conwy SAC?

41. NRW (A) confirms that we are content with the Applicant's proposed approach to securing the relevant mitigation for the Menai Strait and Conwy Bay/Y Fenai a Bae Conwy SAC and consider this matter to be resolved from a benthic ecology perspective.

4.1.7 Q. Based on submissions to date it may not be possible for the competent authority to exclude AEol on all European sites beyond reasonable scientific doubt. As such, and in line with the relevant NPS EN-1 (paragraph 5.4.27), should the Applicant be unable to reach agreement with NRW (A) and JNCC that there would be no AEol on all European sites from the project alone or in-combination with other plans or projects by Deadline 5, the ExA considers that a derogations case is required. This is to enable the ExA to examine the information during the Examination and make a

recommendation to the Secretary of State, and so that the Secretary of State has all information available to them at the point of decision.

a) The Applicant, NRW (A) and JNCC are requested to confirm at Deadline 5 whether an AEol on all European sites from the project alone or in-combination with other plans or projects can be excluded.

42. Subject to the proposed mitigation measures (as previously agreed) being developed in consultation with NRW (A), captured and secured appropriately as part of the conditions of the DCO and the standalone Marine Licence, and correctly adhered to, then we can confirm that AEoSI on all European sites, under NRW (A)'s remit, from the project alone or in combination with other plans or projects can be excluded with respect to benthic ecology.

1.6 Marine Water and Sediment Quality (MW&SQ)

2.6.3 Q. Are JNCC/NRW content that a LSE can be excluded for the European sites listed in Table 2.2 of the RIES?

43. NRW (A) confirms that LSE can be excluded for the European sites listed in Table 2.2 of the RIES for consideration of the pathways: changes in water quality; release of sediment bound contaminants; accidental pollution; and increases in Suspended Sediment Concentration (SSC) and associated deposition.

Table 3.1, item 3.1.1 Q. The ExA notes that these measures are intended to be secured in the separate TA ML. Can NRW (A) confirm whether it is content with the Applicant's proposed approach to securing the relevant mitigation for the Menai Strait and Conwy Bay/Y Fenai a Bae Conwy SAC?

44. NRW (A) confirms that the proposed approach by the Applicant to securing relevant mitigation for the Menai Strait and Conwy Bay/Y Fenai a Bae Conwy SAC is appropriate, for matters relating to water and sediment quality changes for the impact pathways of increased SSC and related deposition, release of sediment bound contaminants and accidental pollution.

4.1.7 Q. Based on submissions to date it may not be possible for the competent authority to exclude AEol on all European sites beyond reasonable scientific doubt. As such, and in line with the relevant NPS EN-1 (paragraph 5.4.27), should the Applicant be unable to reach agreement with NRW (A) and JNCC that there would be no AEol on all European sites from the project alone or in-combination with other plans or projects by Deadline 5, the ExA considers that a derogations case is required. This is to enable the ExA to examine the information during the Examination and make a recommendation to the Secretary of State, and so that the Secretary of State has all information available to them at the point of decision.

a) The Applicant, NRW (A) and JNCC are requested to confirm at Deadline 5 whether an AEol on all European sites from the project alone or in combination with other plans or projects can be excluded.

45. Subject to the proposed mitigation measures (as previously agreed) being developed in consultation with NRW (A), captured and secured appropriately as

part of the conditions of the DCO and the standalone Marine Licence, and correctly adhered to, then we can confirm that AEOsI on all European sites under NRW (A)'s remit, from the project alone or in combination with other plans or projects can be excluded with respect to marine and water sediment quality.

2 Marine Licensing

Table 3.2, item 3.2.1 Q. Can the Applicant explain why the dDCO was not amended to secure the approval of a Marine Mammal Mitigation Protocol (MMMP) for geophysical activities?

46. Although not directed at NRW MLT we refer the ExA to our response to Q1.7.5 provided in REP3-93 which detailed that Marine and Coastal Access Act 2009 Part 4 section 66 sets out Marine Licensable activities. These include deposit or removal of material or substance using a vehicle or vessel, or construction, alteration and improvement works. Geophysical activities do not normally fall within the definition of Marine Licensable activities and therefore would appear to be more appropriately controlled under other/ separate regulatory regimes.