

Update No. 13 Marine Licence Application

ORDML145 Swansea Bay Tidal Lagoon

This briefing note outlines the current position with regards to the Swansea Bay Tidal Lagoon Marine Licence applications.

Summary

- i) The marine licence application remains under determination. The outstanding issue under review is the impact to fisheries.
- ii) Given the consultation on the pSAC's and pSPA's it is necessary for the MLT to review the Habitats Regulations Assessment based on information previously submitted by the applicant.
- iii) A Statement of Understanding to facilitate the ongoing determination process has been drafted with ongoing input from NRW Technical Specialists, Cefas and TLSB. The MLT will continue to ensure that this is maintained to reflect ongoing discussions.
- iv) At a meeting on 27th January between NRW MLT, NRW Fisheries Technical Experts, alternative modelling scenarios were discussed that may address concerns raised by NRW Fisheries Technical Experts and Cefas.
- v) TLSB, NRW Technical Experts and Cefas will meet to discuss how the modelling approaches can be taken forward, identification over the potential impacts under the Water Framework Directive and Habitats and Wild Birds Directives and potential offsetting principles. These discussions are anticipated to take until the end of March.
- vi) Based upon these discussions the applicant will submit a report detailing the modelling scenarios and associated impacts to fisheries, outlining where there may be impacts which could cause WFD deterioration in class or adverse effect to European Protected Sites. The applicant will also propose outline offsetting, monitoring and mitigation for the potential predicted impacts.
- vii) The MLT will commence consultation on the submitted documents with NRW Fisheries Technical Experts, Cefas and the Public Representative for a period of 6 weeks, lasting until mid-May.

- viii) The MLT will review the information submitted and consider whether there is a need to re-advertise. If re-advertising goes ahead, the Public will be provided a period of 49 days to submit any comments. Following this period the MLT will need to review the comments received and ensure that if relevant, they have been appropriately addressed. If not, the MLT will need to further consult the applicant and consultation bodies, such as NRW Technical Experts on the submission. This may add a significant number of months to the process.
- ix) Following receipt of comments from the consultations as identified in point vii and viii, the MLT may need to update the WFD and HRA assessments to address the fisheries relevant impacts. This will then require consultation with NRW Technical Experts and Natural England for four weeks.
- x) The need for additional WFD 4(7) derogation case and HRA IROPI case will need to be considered, and if necessary information sought from the applicant, NRW Technical Advisors and potentially Natural England to compile these cases. Should this occur this will add a significant number of months to the determination timescales.
- xi) Once this process as concluded the MLT will consider all responses and draft the EIA Consent Decision and either a Marine Licence or Refusal letter dependant on the submissions and conclusions of the WFD and HRA assessments. This will take at least one month, lasting until July at the earliest. This is dependent upon the comments raised following consultations as outlined in points vii-x.

Migratory and Marine Fisheries Assessment

Update;

To facilitate the ongoing determination of the Marine Licence the MLT have drafted a 'Statement of Understanding. Comments have been received from Cefas and TLSB upon the latest draft. Comments are awaited from NRW Fisheries Technical Experts. The SoU will continue to be updated by all parties, coordinated by the MLT as positions further develop due to ongoing discussions or consultations.

A meeting was held on Wednesday 27th January between the MLT, NRW fisheries technical experts, Cefas and TLSB. At this meeting, the methodologies, such as modelling for the assessment of potential impacts to fish populations, the significance of these impacts and principles for offsetting these impacts were discussed.

As a result of the meeting it was agreed by all parties that further work upon modelling scenarios could be undertaken which could allow for increased confidence to be applied to the estimates on the impact to fisheries. This will likely comprise of the STRIKER model combined with additional alternative modelled scenarios. It was highlighted that it would be essential for any modelling scenario proposal that the assumptions made, and implications for these assumptions are clearly highlighted.

It was also highlighted to the applicant that the potential impacts to the Water Framework Directive Waterbody status and potential for adverse effects to European Protected site features, such as Shad should be clearly assessed utilising figures for impact from the updated modelling scenarios.

The potential for offsetting the identified impacts was also discussed within the meeting along with the need for achievable monitoring and mitigation strategies to be provided by the applicant.

To reduce the need for iterative consultations on the matters discussed in the meeting TLSB, Cefas and NRW Fisheries Technical Experts will enter into discussions to establish approaches to modelling scenarios, the impacts to the WFD waterbodies, adverse effects to European Protected Sites and potential opportunities for offsetting. It is hoped that this will expedite the agreement of the technical assessments.

During this period the MLT will be in the process of updating the Habitats Regulations assessment to take account of the pSAC's and pSPA's. The MLT have also sought legal advice over the need to update in Water Framework Directive assessment given the newly updated Western Wales River Basin Management Plan.

Following the conclusion of the discussions outlined above the applicant will submit a report detailing the modelling scenario, associated assumptions, impacts to waterbodies and European Site features and an outline strategy for offsetting to the MLT for consideration.

The MLT will then commence consultation on the submission with NRW Technical Experts, Cefas and the Public Representee for a period of 6 weeks. The MLT will also need to consider the need to re-advertise the application in light of the information submitted. Should this be the case the applicant will be instructed to publish a notice inviting the public to submit comments to the MLT for a period of 49 days. Any comments received will need to be addressed by the MLT, this may involve consultation with the applicant and Consultation Bodies.

Once the MLT has received advice from NRW Fisheries Technical Experts based upon the applicants' submission it may be necessary for the MLT to update the Habitats Regulations Assessment and Water Framework Directive assessment to take account of the impacts highlighted in the submission. Should this be necessary the MLT will be required to consult on the updated assessments for 4 weeks.

Should at any point deterioration in status of waterbodies be identified or adverse effects on European Protected sites be highlighted the MLT will be required to compile additional 4(7) WFD derogations and if necessary pull together an IROPI case for compliance with the Habitats Directive. This will require iterative consultation with the applicant, NRW technical advisors and if appropriate Natural England.

Following the conclusion of consultations the MLT will then draft an EIA consent Decisions and produce either a Marine Licence or Refusal letter. This will take a minimum of one month.

Should any option lead to a refusal the applicant would have a right to submit an appeal case to Welsh Ministers within six months of the determination. This would be handled by the Planning Inspectorate on their behalf. The determination would also have a window for Judicial Review of 3 months.

Background;

The assessment of the impact to migratory and marine fish within the Environmental Statement is provided through a combination of two models, IBM and STRIKER along with expert opinion. The IBM model identifies the position of fish in relation to the turbines (the number that would pass through the turbines) the results of this model is then combined with the STRIKER model to provide an assessment of the percentage of fish that would be struck by the turbines if they passed through.

Throughout the consultation concerns have been raised over the IBM model.

Following a meeting with the applicant, the applicant's consultants, Cefas fisheries expert, NRW Fisheries experts and NRW Marine Licensing Team on 13th October, the applicant disputed that any further work was required to the IBM model.

Fisheries experts from both NRW and Cefas continued to raise concerns over the confidence that can be given to IBM model. This dispute was not resolved.

However, it was determined that an estimate on the potential impact to Fisheries could be provided by the results of the STRIKER model alone, assuming that 100% of the fish passed through the turbines. To ensure that any estimate of the fish included fish entering and exiting the lagoon and to take account of multiple life stages of fish, along with the finalised turbine design the STRIKER results have been re-run and analysed by the applicants consultant and submitted to the MLT for consideration. The applicant is adamant that this method shows an unrealistic mortality rate, and is not a true representation of actual fish loss.

The meeting of the 27th January was scheduled to discuss this approach.