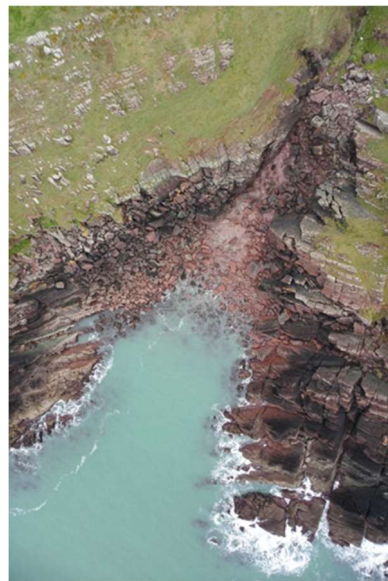




mWave Marine Energy Device and Onshore Infrastructure

ENVIRONMENTAL STATEMENT



June 2019

APPENDIX 3.1: Policy and Legislation

A.3.1 Policy Context

A.3.1.1 National Policy Statements

Overarching National Policy Statement for Energy (EN1)

- A.3.2.1.1. Whilst the mWave project is not a Nationally Significant Infrastructure Project, the guidance provided in the National Policy Statements provide a good framework.
- A.3.2.1.2. This Overarching National Policy Statement (NPS) for Energy (EN-1) is part of a suite of NPSs which were issued by the Secretary of State for Energy and Climate Change in 2011. It sets out the Government's policy for delivery of major energy infrastructure. A further five technology-specific NPSs for the energy sector cover: fossil fuel electricity generation (EN-2); renewable electricity generation (both onshore and offshore) (EN-3); gas supply infrastructure and gas and oil pipelines (EN-4); the electricity transmission and distribution network (EN-5); and nuclear electricity generation (EN-6). These should be read in conjunction with this NPS where they are relevant to an application.
- A.3.2.1.3. The Planning Act 2008 sets out the thresholds for nationally significant infrastructure projects (NSIPs) in the energy sector. The Act empowered the Infrastructure Planning Commission (IPC) to examine applications and make decisions on nationally significant infrastructure projects, and of relevance to marine renewable projects.:
- electricity generating stations generating more than 50 megawatts onshore and 100 megawatts offshore. This includes generation from fossil fuels, wind, biomass, waste and nuclear. For these types of infrastructure, the Overarching NPS (EN-1) in conjunction with the relevant technology-specific NPSs (EN-2 on fossil fuel generating stations, EN-3 on renewable energy infrastructure or EN-6 on nuclear power generation as appropriate) will be the primary basis for IPC decision making;
- A.3.2.1.4. The Planning Act 2008 enables the Secretary of State (previously IPC) to issue a development consent order including consent for development which is associated with the energy infrastructure listed above (subject to certain geographical and other restrictions set out in Section 115 of the Act). The Secretary of State has issued guidance to which the Planning Inspectorate and the appropriate decision maker must have regard in deciding whether development is associated development. EN-1, in conjunction with the relevant technology-specific NPS, will be the primary basis for decision making on associated development. The IPC will examine all applications (other than as specified in this paragraph) for nationally significant infrastructure projects in England and the offshore Renewable Energy Zone (REZ) (except any part in relation to which Scottish Ministers have functions).
- A.3.2.1.5. In Wales, The Wales Act 2017 devolves power to the Welsh government for areas including consenting new energy projects, fracking, marine licencing and harbours. It allows development consent for all electricity generating stations in Wales and in Welsh territorial waters insofar as such projects (not including onshore wind powered generating stations) do not exceed a capacity of 350 MW; and for all

onshore wind powered generating stations. It will remain possible for Welsh Ministers to consent offshore wind farms in territorial waters adjacent to Wales under the Transport and Works Act 1992 if applicants apply to them rather than the IPC.

- A.3.2.1.6. The generation of electricity from renewable sources other than wind, biomass or waste is not within the scope of this NPS. Insofar as this NPS relates to the development of new nuclear power stations, it only has effect in relation to applications for the development of new nuclear power stations on the sites listed in EN-6.

National Policy Statement for Renewable Energy Infrastructure (EN3)

- A.3.2.1.7. This National Policy Statement (NPS) is part of a suite of energy NPSs. It should be read in conjunction with EN-1 which covers:
- the high-level objectives, policy and regulatory framework for new nationally significant infrastructure projects that are covered by the suite of energy NPSs and any associated development (referred to as energy NSIPs);
 - the need and urgency for new energy infrastructure to be consented and built with the objective of contributing to a secure, diverse and affordable energy supply and supporting the Government's policies on sustainable development, in particular by mitigating and adapting to climate change;
 - the need for specific technologies, including the infrastructure covered by this NPS;
 - key principles to be followed in the examination and determination of applications;
 - the role of the Appraisal of Sustainability in relation to the suite of energy NPSs;
 - policy on good design, climate change adaptation and other matters relevant to more than one technology-specific NPS; and
 - the assessment and handling of generic impacts that are not specific to particular technologies.
- A.3.2.1.8. This NPS does not seek to repeat the material set out in EN-1, which applies to all applications covered by this NPS unless stated otherwise. The reasons for policy that is specific to the energy infrastructure covered by this NPS are given, but where EN-1 sets out the reasons for general policy these are not repeated.

UK Marine Policy Statement

- A.3.2.1.9. This Marine Policy Statement (MPS) is the framework for preparing Marine Plans and taking decisions affecting the marine environment. It will contribute to the achievement of sustainable development in the United Kingdom marine area. It has been prepared and adopted for the purposes of Section 44 of the Marine and Coastal Access Act 2009.

A.3.2.1.10. The Secretary of State, Scottish Ministers, Welsh Ministers and the Department of the Environment in Northern Ireland are jointly adopting the MPS. This is a key step towards achieving the vision shared by the UK Administrations (UK Government, Scottish Government, Welsh Government and Northern Ireland Executive) of having 'clean, healthy, safe, productive and biologically diverse oceans and seas'.

A.3.2.1.11. The MPS will facilitate and support the formulation of Marine Plans, ensuring that marine resources are used in a sustainable way in line with the high-level marine objectives and thereby:

- Promote sustainable economic development;
- Enable the UK's move towards a low-carbon economy, to mitigate the causes of climate change and ocean acidification and adapt to their effects;
- Ensure a sustainable marine environment which promotes healthy, functioning marine ecosystems and protects marine habitats, species and our heritage assets; and
- Contribute to the societal benefits of the marine area, including the sustainable use of marine resources to address local social and economic issues.

A.3.2.1.12. These objectives will be achieved by:

1. Achieving a sustainable marine economy
 - a. Infrastructure is in place to support and promote safe, profitable and efficient marine businesses.
 - b. The marine environment and its resources are used to maximise sustainable activity, prosperity and opportunities for all, now and in the future.
 - c. Marine businesses are taking long-term strategic decisions and managing risks effectively. They are competitive and operating efficiently.
 - d. Marine businesses are acting in a way which respects environmental limits and is socially responsible. This is rewarded in the marketplace.
 - e. Ensuring a strong, healthy and just society
 - f. People appreciate the diversity of the marine environment, its seascapes, its natural and cultural heritage and its resources and act responsibly.
 - g. The use of the marine environment is benefiting society as a whole, and contributing to resilient and cohesive communities that can adapt to coastal erosion and flood risk, as well as contributing to physical and mental wellbeing.
 - h. The coast, seas, oceans and their resources are safe to use.
 - i. The marine environment plays an important role in mitigating climate change.
 - j. There is equitable access for those who want to use and enjoy the coast, seas and their wide range of resources and assets and recognition that for some island and peripheral communities the sea plays a significant role in their community.
 - k. Use of the marine environment will recognise, and integrate with, defence priorities, including the strengthening of international peace and stability and the defence of the UK and its interests.
2. Living within environmental limits
 - a. Biodiversity is protected, conserved and where appropriate recovered and loss has been halted.

- b. Healthy marine and coastal habitats occur across their natural range and are able to support strong, biodiverse biological communities and the functioning of healthy, resilient and adaptable marine ecosystems.
 - c. Our oceans support viable populations of representative, rare, vulnerable, and valued species.
3. Promoting good governance
 - a. All those who have a stake in the marine environment have an input into associated decision-making.
 - b. Marine, land and water management mechanisms are responsive and work effectively together, for example through integrated coastal zone management and river basin management plans.
 - c. Marine management in the UK takes account of different management systems that are in place because of administrative, political or international boundaries. Marine businesses are subject to clear, timely, proportionate and, where appropriate, planned regulation.
 - d. The use of the marine environment is spatially planned where appropriate and based on an ecosystems approach which takes account of climate change and recognises the protection and management needs of marine cultural heritage according to its significance.
4. Using sound science responsibly
 - a. Our understanding of the marine environment continues to develop through new scientific and socio-economic research and data collection.
 - b. Sound evidence and monitoring underpins effective marine management and policy development.
 - c. The precautionary principle is applied consistently in accordance with the UK Government and Devolved Administrations' sustainable development policy.

Draft Welsh National Marine Plan

A.3.2.1.13. The draft Welsh National Marine Plan introduces a framework to support sustainable decision-making for the marine environment and includes policies specific to the ports and renewables sectors. Welsh Government are currently reviewing responses to the consultation on the draft Welsh National Marine Plan which ended 29th March 2018. In July 2018 Welsh Government produced a *Consultation - Summary of Response* document (Welsh Government, 2018) which outlines the *Next Steps* that will be taken, namely:

1. The Summary of Responses document provides a high-level overview of the responses received and our initial views on the response;
2. Policy officials will consider the responses and discuss options to address any concerns that have been raised. We will also work with the Marine Planning Stakeholder Reference Group to consider how best to develop the final plan;
3. The Cabinet Secretary will publish a statement in the Autumn 2018 detailing how they intend to proceed with the WNMP; and

4. The WNMP will be adopted when Welsh Ministers (with the agreement of the Secretary of State with regard to retained functions) decide to publish the plan.

A.3.2.1.14. The mWave Project will consider the policies within the developing draft Welsh National Marine Plan through the EIA process.

Well Being and Future Generations Act 2015

A.3.2.1.15. The Well-being and Future Generations (Wales) Act 2015 (WBFGA, 2015) places a duty on public bodies to place the principles of sustainability and sustainable development at the heart of its decision-making processes. The objectives of the WBFGA 2015 are set out as follows:

A Prosperous Wales

- Promoting resource-efficient and climate change resilient settlement patterns which minimise land take and urban sprawl, especially through the reuse of suitable previous development land and buildings, and wherever possible avoiding development of greenfield sites;
- Play an appropriate role to facilitate sustainable building standards;
- Play an appropriate role in securing the provision of infrastructure to form the physical basis for sustainable communities; and
- Support initiative and innovation and avoid placing unnecessary burdens on enterprise to enhance the economic success of both urban and rural areas, helping businesses to maximise their competitiveness.

A Resilient Wales

- Contributing to the protection and improvement of the environment, to improve the quality of life and protect local and global ecosystems.

A Healthier Wales

- Contribute to the protection and, where possible, the improvement of people's health and wellbeing as a core component of achieving the well-being goals and responding to climate change.

A More Equal Wales

- Promoting access to, inter alia, employment, shopping, education and community facilities and open and green space, maximising opportunities for community development and social welfare;
- Promote quality, lasting, environmentally-sound and flexible employment opportunities; and
- Respect and encourage diversity in the local economy.

A Wales of Cohesive Communities

- Locating development to minimise the demand for travel, especially by private car;

- Fostering improvement to transport facilities and services which maintain or improve accessibility to services and facilities, secure employment, economic and environmental objectives, and improve safety and amenity; and
- Fostering social inclusion by ensuring that full advantage is taken of the opportunities to secure a more accessible environment for everyone that the development of land and buildings provides. This includes helping to ensure that the development is accessible by means other than the private car.

A Wales of Vibrant Culture and Thriving Welsh Language

- Helping to ensure the conservation of the historic environment and cultural heritage.

A Globally Responsive Wales

- Support the need to tackle the causes of climate change by moving towards a low carbon economy.

Environment (Wales) Act 2016

A.3.2.1.16. The Environment (Wales) Act puts in place the legislation needed to plan and manage Wales' natural resources in a more proactive, sustainable and joined-up way.

A.3.2.1.17. The key parts of the act are:

- Part 1: Sustainable management of natural resources – enables Wales' resources to be managed in a more proactive, sustainable and joined-up way. It also helps to tackle the challenges faced and is focused on the opportunities the resources provide;
- Part 2: Climate change – provides the Welsh Ministers with powers to put in place statutory emission reduction targets, including at least an 80% reduction in emissions by 2050 and carbon budgeting to support their delivery. This is vital within the context of the existing UK and EU obligations and sets a clear pathway for decarbonisation. It also provides certainty and clarity for business and investment;
- Part 3: Charges for carrier bags – extends the Welsh Ministers' powers so that they may set a charge for other types of carrier bags such as bags for life. It also places a duty on retailers to donate the net proceeds from the sale of carrier bags to good causes;
- Part 4: Collection and disposal of waste – improves waste management processes by helping to achieve higher levels of business waste recycling, better food waste treatment and increased energy recovery. This will help to decrease pressure on natural resources while also contributing towards positive results for both the economy and the environment;
- Parts 5 & 6: Fisheries for shellfish and marine licensing – clarifies the law in relation to shellfisheries management and marine licensing; and
- Part 7: Flood & Coastal Erosion Committee and land drainage – clarifies the law for other environmental regulatory regimes including flood risk management and land drainage.

Natural Resources Policy

- A.3.2.1.18. The Natural Resources Policy (NRP) is the second statutory product of the Environment (Wales) Act.
- A.3.2.1.19. The focus of the NRP is the sustainable management of Wales' natural resources, to maximise their contribution to achieving goals within the Well-being of Future Generations Act (discussed above). The policy sets out three National Priorities. These are:
- Delivering nature-based solutions;
 - Increasing renewable energy and resource efficiency; and
 - Taking a place-based approach.

Wales Spatial Plan Update 2008

- A.3.2.1.20. The Wales Spatial Plan identifies 'Pembrokeshire - The Haven', comprising the 'Haven Towns' of Haverfordwest (including Merlin's Bridge) Milford Haven, Neyland, Pembroke and Pembroke Dock, as a strategic Hub that perform an important regional role and should be a focus for future investment.

Planning Policy Wales Edition 9 (November 2016)

- A.3.2.1.21. Planning Policy Wales (PPW) Edition 9, Paragraph 7.1.1 defines economic development as development of land and buildings for activities that generate wealth, jobs and incomes. Economic land uses include the traditional employment land uses (offices, research and development, industry and warehousing), as well as uses such as retail, tourism, and public services.
- A.3.2.1.22. Paragraph 7.1.3 states the planning system should support economic and employment growth alongside social and environmental considerations within the context of sustainable development.
- A.3.2.1.23. Paragraph 7.2.2 states local planning authorities (LPAs) are required to ensure that the economic benefits associated with a proposed development are understood and that these are given equal consideration with social and environmental issues in the decision-making process and should recognise that there will be occasions when the economic benefits will outweigh social and environmental considerations.
- A.3.2.1.24. Paragraph 7.6.1 states LPAs should adopt a positive and constructive approach to applications for economic development.

Technical Advice Note 5: Nature Conservation and Planning (2009)

- A.3.2.1.25. Technical Advice Note (TAN) 5 Paragraph 1.4.1 states that nature conservation as referred to in statute¹ means the conservation of flora, fauna, geological and physiographical (also called geomorphological) features. Nature conservation, as referred to throughout this TAN, includes the conservation of biodiversity and geodiversity including the natural systems and processes that continue to change the land form, rivers and coasts of Wales.
- A.3.2.1.26. Paragraph 1.4.3 states that "Conservation" in the context of this TAN, involves preservation, protection, wise use, sustainable management and restoration of the natural heritage. 'Conserving biodiversity' is also defined in statute as including, in relation to a living organism or type of habitat, the restoration or enhancement of a population or habitat.
- A.3.2.1.27. Paragraph 1.4.4 states that Section 40(1)) of Natural Environment and Rural Communities (NERC) Act 2006 places a duty on every public authority, in exercising its functions, to *"have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity"*. This TAN sets out the manner in which planning authorities should comply with this duty.
- A.3.2.1.28. Paragraph 1.6.1 states that biodiversity conservation and enhancement is an integral part of planning for sustainable development.
- A.3.2.1.29. Paragraph 2.1 states that the town and country planning system in Wales should:
- Integrate nature conservation into all planning decisions looking for development to deliver social, economic and environmental objectives together over time; and
 - Ensure that the UK's international and national obligations for site, species and habitat protection are fully met in all planning decisions.
- A.3.2.1.30. Paragraph 2.3 states that development policies and, where appropriate, supplementary planning guidance, should promote opportunities for the incorporation of wildlife and geological features within the design of development and green infrastructure.

Technical Advice Note 14: Coastal Planning (1998)

- A.3.2.1.31. TAN 14 Paragraph 3 states that generally the coastal zone is an area of land and adjacent sea that are considered to be mutually independent. It is a complex and dynamic zone. The physical processes which together produce the beaches, sand dunes, mudflats, cliffs and rocky shores can be defined as land, intertidal and subtidal, whilst littoral and sublittoral zones are categorisations of biological criteria relating to the influence of maritime conditions. Legal criteria such as land, foreshore and seabed definitions reflect man's use of the coastal zone.

¹ Section 39 Natural Environment and Rural Communities Act 2006.

A.3.2.1.32. Paragraph 4 states that it is for each LPA to consider and define the most appropriate coastal zone in its area. Because the boundaries of local authorities may not equate with coastal features and processes, this should be done in consultation with neighbouring authorities and in the knowledge that the overall limits of the coastal zone are determined by the geographical extent of coastal physical processes and human activities related to the coast. For land-use planning purposes the seaward limit of the coastal zone is generally mean low water mark, but between high and low water mark the planning system usually needs to operate in tandem with a range of sectoral controls over coastal and marine development.

A.3.2.1.33. Paragraph 5 states that decision on development proposals below low water mark are generally outside the scope of the planning system and are instead regulated according to the type of activity.

A.3.2.1.34. Paragraph 8 states that planning consideration will vary depending on the nature of the coastline, but there are a number of specific issues in relation to the coastal zone that the planning system should address. These are, in terms of:

1) Proposals for Development:

- a) The nature of the conditions and physical processes and the potential need for remedial and defence work;
- b) Likely effects on physical and biological processes along the coast;
- c) The potential effects on mineral, water and conservation resources; as well as high-quality agricultural; and
- d) Any potential visual impact from both land and sea.

2) Nature and Landscape Conservation:

- a) The role of physical and biological processes in creating, maintaining and altering features of nature and landscape conservation value;
- b) The effects of statutory and other nature and landscape conservation policies in the coastal zone, which may not always be contiguous with the low water mark; and
- c) The importance of the integrity and special features of Marine Nature Reserves, candidate SACs and coastal SACs, SPAs and Ramsar sites. EC Directives relevant to planning in the coastal zone should always be borne in mind.

Technical Advice Note 18: Renewable Energy (2005)

A.3.2.1.35. TAN 18 Paragraph 1.3 states that energy policy is a reserved function that is not devolved to the Welsh Government. Nevertheless, all decisions relating to renewable energy in Wales must take account of the Welsh Government's policy.

A.3.2.1.36. Paragraph 1.6 states that as well as developing new sources of renewable energy which are essential to meeting the targets set by energy policy, the Welsh Government is fully committed to promoting energy efficiency and energy conservation. The land use planning system is one of a number of mechanisms which can help deliver improved energy efficiency and LPAs are expected to consider matters of energy efficiency when considering planning policy and applications.

A.3.2.1.37. Paragraph 3.2 states that other onshore technologies provide energy in the form of electricity and heat. Some of the 2010 renewable electricity target will be met from these technologies, but the likelihood is that it will only be a small proportion. This is, however, neither to underestimate their value nor a sign of any lack of the Welsh Government's commitment to their implementation.

Pembrokeshire Coast National Park Local Development Plan (September 2010)

A.3.2.1.38. The Pembrokeshire Coast National Park Local Development Plan, adopted September 2010, Proposals Map identifies the coastal area of East Pickard Bay as within the Pembrokeshire Coast National Park planning jurisdiction (Policy 1) and within or close to Natura 2000 Sites. Elements of the Project (including the onshore infrastructure) are located within areas designated as Nature Conservation Designations (SAC and/or SSSI) and Heritage Coast.

A.3.2.1.39. Policy 1 'National Park Purposes and Duty (Strategy Policy)' states all development within the National Park must be compatible with:

- The conservation or enhancement of the natural beauty, wildlife and cultural heritage of the Park; and
- The public understanding and enjoyment of those qualities.

A.3.2.1.40. In determining proposals, due regard will be paid to the need to foster the economic and social well-being of the local communities within the Park provided this is compatible with the statutory National Park purposes embodied in the foregoing considerations.

A.3.2.1.41. Policy 8 Special Qualities (Strategic Policy) The special qualities of the Pembrokeshire Coast National Park will be protected and enhanced. The priorities will be to ensure that:

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- c) The pattern and diversity of the landscape is protected and enhanced – see Policy 14 and Policy 15.
 - d) The historic environment is protected and where possible enhanced.
 - e) Development restores or wherever possible enhances the National Park's ecosystems The protection of links between sites or the creation of links where sites have become isolated is of particular importance – see Policy 10 and Policy 11.
 - f) Development which would damage or destroy Geological Conservation Review sites or any other important geological resource is not permitted.
 - g) Local biodiversity action plan species and habitats are protected for their amenity, landscape and biodiversity value – see Policy 11.

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i) Development of the undeveloped coast is avoided and sites within stretches of the developed coast are protected for uses that need a coastal location – see Policy 17, Policy 18, Policy 33 and Policy 35.

- A.3.2.1.42. Policy 10 ‘Local Site of Nature Conservation or Geological Interest’ states that development that would be liable to significantly harm the nature conservation value of a Local Nature Reserve or other site of local nature conservation interest, or the main features of interest within a Regionally Important Geodiversity Site, will only be permitted if the importance of the development outweighs the local value of the site and mitigation, minimisation or off setting has been investigated.
- A.3.2.1.43. Policy 11 ‘Protection of Biodiversity’ states that development that would disturb or otherwise harm protected species or their habitats or the integrity of other habitats, sites or features of importance to wildlife and individual species including Local Biodiversity Action Plan species and habitats will only be permitted where the effects will be acceptably, minimised or mitigated through careful design, work scheduling or other measures.
- A.3.2.1.44. Policy 15 ‘Conservation of the Pembrokeshire Coast National Park’ states that development will not be permitted where this would adversely affect the qualities and special character of the Pembrokeshire Coast National Park by:
- Causing significant visual intrusion; and/or;
 - Being insensitively and unsympathetically sited within the landscape; and/or
 - Introducing or intensifying a use which is incompatible with its location; and/or
 - Failing to harmonise with, or enhance the landform and landscape character of the National Park; and/or
 - Losing or failing to incorporate important traditional features.
- A.3.2.1.45. Policy 17 ‘Shore Based Facilities’ states that development of shore-based facilities including those linked to proposals below mean low water, will be permitted within the developed areas of the coast where compatible with adjacent uses.
- A.3.2.1.46. Policy 33 ‘Renewable energy (Strategy Policy)’ states that small scale renewable energy schemes will be considered favourably, subject to there being no over-riding environmental and amenity considerations. Medium scale schemes also offer some potential and will be permitted subject to the same considerations. Large scale renewable energy schemes will only be permitted where they do not compromise the special qualities of the National Park. Where there are other renewable energy schemes already in operation in the area, cumulative impacts will be an important consideration.

- A.3.2.1.47. Policy 33 also states that onshore connections to offshore renewable energy generators will also be permitted subject to there being no over-riding environmental and amenity considerations. Developers requiring an undeveloped coastal location for onshore connections to offshore renewable energy installations will need to clearly justify this need in relation to Policy 8² with the least obtrusive approach to design being taken.

² **Policy 8i** Special Qualities – Development of the undeveloped coast is avoided and sites within stretched of the developed coast are protected for uses that need a coastal location – see Policy 17, Policy 18, Policy 33 and Policy 35