

Date: 17th September 2014

Environmental Liability Directive Consultation.
Marine Policy Branch,
Welsh Government,
Cathays Park,
Cardiff
CF10 3NQ

Dear Sir,

Consultation on amending the Environmental Damage (Prevention and Remediation) Regulations 2009 in England and Wales to transpose Article 38 of the Offshore Safety Directive 2013

Response by Cyfoeth Naturiol Cymru/Natural Resources Wales

Thank you for consulting Natural Resources Wales on the Welsh Governments proposals for amending the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 transpose the requirements of Article 38 of the Offshore Safety Directive 2013 into domestic regulation.

We work as a regulator, partner and advisor to businesses, non-governmental organisations, Local Authorities and communities to help deliver Welsh Government and European Union policies and priorities. Our purpose is to ensure that the environment and natural resources of Wales are sustainably maintained, used and enhanced, now and in the future. We take an ecosystem approach to promoting sustainable development on land and sea that delivers social, economic and environmental benefits to the people of Wales.

We welcome the changes set out in this consultation as an important mechanism to support the achievement of Good Environmental Status under the Marine Strategy Framework Directive. We believe that the MSFD will be a critical driver for the achievement of sustainable development in the marine waters around Wales and the rest of the UK. Our responses to the specific questions raised in the consultation are set out below.

We would answer the specific questions raised by in the consultation as follows:

Question 1: do you have any comments on the way in which we propose to transpose Article 38 of the OSD as set out?

We welcome the proposed method of transposing the requirements of Article 38 of the Offshore Oil and Gas Operations Directive by extending the geographical scope of the Environmental Liability Directive, to include damage to marine waters as defined in the Marine Strategy Framework Directive (2008/56/EC). Aligning definitions in these directives reduces both complexity and risk of ambiguity for both permit holders and regulators.

Question 2: do you have a view on whether the definition of operator under the EDR adequately captures licensees in the offshore oil and gas industries, as required by the Directive? If not, please explain your reasons.

We would not wish to make changes to the current definition of “operator” as detailed in the EDR that in anyway limit the current implementation of these regulations. However we would welcome the proposal to extend the definition of “operator” to take specific account of offshore arrangements in respect of oil and gas operators and licensees, as required by Article 7 of the OSD.

Question 3: do you have any views on the likelihood of potential damage in marine waters affecting their environmental status as defined under the MSFD?

We agree with the findings of the original Impact Assessment for transposition of the ELD that sets out that a number of activities have the potential to cause damage in the marine environment. It is more difficult to translate this potential to cause damage to understanding the potential for damage to Good Environmental Status under the MSFD given the scale at which GES must be achieved. Understanding of the scale of impact on the status of the 11 descriptors for the MSFD will develop over time as our understanding of this legislation increases.

Whilst we agree that significant environmental damage (at a level that would impinge upon the requirement to achieve GES of our marine waters) should happen very rarely in the offshore marine environment we also agree that there will be significant challenges to monitoring, detecting and enforcing offshore damage. Nevertheless, we believe that it is important that the purpose of the MSFD is recognised within the context of the Environmental Liability Directive and that there is a mechanism to enforce potential damage by offshore activities on the status of marine water as defined under the MSFD.

Question 4: what do you consider to be the potential costs to industry should damage to marine waters occur that triggers action under the amendment Regulations?

This is largely a question for Industry to consider. However, we would emphasise the need to look at the body of work that exists focusing on valuing ecosystem goods and services in the marine environment, so that the full economic impact of damage to marine ecosystems is incorporated into these costs.

Question 5: do you have any other comments on the proposed transposition of Article 38 of the OSD?

We have no additional comments to make on this consultation.

NRW is content for this response to be made publicly available.
Cyfoeth Naturiol Cymru / Natural Resources Wales

I trust that you will find these comments helpful. If you have further queries relating to our comments, please contact Simon Neale, simon.neale@cyfoethnaturiolcymru.gov.uk

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Isobel Moore', written in a cursive style.

Isobel Moore
Head of Business Regulation and Economics