

Wylfa Newydd Project

6.5.18 ES Volume E - Off-Site Power Station Facilities: AECC, ESL and MEEG App E9-2 - Off-Site Power Station Facilities Protected and Legally Controlled Species Compliance Report

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Contents

1	Introduction	1
2	Scope	2
3	European Protected Species licence tests	6
4	Methodology	7
5	Bats	8
6	Reptiles.....	12
7	Birds	14
8	Otter.....	17
9	Water vole	20
10	Schedule 9 Invasive Species.....	23
11	References	25

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1 Introduction

1.1 Document purpose

1.1.1 The purpose of this document is to assess the likelihood that the construction of the Off-Site Power Station Facilities, described in section 1.5 of this report, would contravene the following legislation:

- Conservation of Habitats and Species Regulations 2017
- Wildlife and Countryside Act 1981 (as amended); and
- Environmental Protection Act 1990 (in relation to the disposal of controlled plant species only).

1.1.2 This document considers species that are protected or controlled according to the above legislation, but it does not constitute legal advice. It forms one of several reports prepared as part of the planning application for the Proposed Development.

1.2 Background

1.2.1 Further detail of the Off-Site Power Station Facilities can be found in chapter E1 (proposed development) (Application Reference Number: 6.5.1).

2 Scope

2.1 Scope of the report

- 2.1.1 The offences considered in this report are only those that could occur as a result of the construction and operation of the Off-Site Power Station Facilities. Offences relating to cruelty, possession, transport, sale and certain methods for capturing/taking and killing have not been considered as they do not form a defined part of the implementation of the construction and operation of the Off-Site Power Station Facilities.
- 2.1.2 *The Hedgerows Regulations 1997* provide a definition as to what constitutes important hedgerows. Planning authorities must consider the impacts of the removal of hedgerows that fall under these Regulations where applications are made to do so. However, these Regulations do not apply here as the Proposed Development would only be taken forward if a Development Consent Order was granted under the *Planning Act 2008*, meaning any important hedgerow removal would be considered to be permitted work under regulation 6(1)(e) of *The Hedgerows Regulations 1997*.
- 2.1.3 In relation to the offence of introducing non-native species to the wild, the disposal of waste following control of species such as Himalayan balsam is covered by section 33 ((1a) and (1b)) of the Environmental Protection Act 1990. No other aspects of the Environmental Protection Act 1990 are considered within this report as they are not considered relevant to the receptors present and potentially affected by the Off-Site Power Station Facilities.
- 2.1.4 The relevant legislation and potential offences that could occur as a result of the construction and operation of the Off-Site Power Station Facilities are set out in table 2-1.

2.2 Licences

- 2.2.1 Within this report, licences have been referred to and, depending on the protected species in question, are defined as set out in the following paragraphs.
- 2.2.2 If an offence is considered likely under the *Conservation of Habitats and Species Regulations 2017* [RD1] (as listed in table 2-1) then it can be derogated via a European Protected Species (EPS) licence. Natural Resources Wales (NRW) issues licences under Regulation 55 to allow the Proposed Development to be implemented within the law.

Offences under the Wildlife and Countryside Act 1981 (as amended) (as listed in table 2-1) (also referred to as schedule 5 offences) are not licensable in the same way and the legal defences are as set out in s10(3)(c), s4(2A)(a) and s14(3). This means that a developer who has development consent must make a reasonable effort to avoid committing an offence. Unusually, where offences relating to water vole require animals to be moved, NRW can issue a conservation licence to permit the translocation of the animals. However,

steps should be made to avoid offences before resorting to animal translocation.

Table 2-1 Potential offences under UK legislation

General descriptor	Conservation of Habitats and Species Regulations 2017	Wildlife and Countryside Act 1981 (as amended)
Capturing, killing, and injuring	To deliberately capture, injure or kill any wild animal of an EPS (Reg. 43(1)(a)).	To intentionally kill, injure or take any wild bird (s1(1)). To intentionally kill, injure or take any wild animal included in Schedule 5. (s9(1)).
Disturbing (affecting ability to survive, breed or rear young)	To deliberately disturb wild animals of an EPS [wherever they are occurring] (Reg. 43(1)(b)) Reg. 43(2)(a)(i) For the purposes of Reg. 43(1)(b), disturbance of animals includes in particular any disturbance which is likely to impair their ability to survive, to breed or reproduce, or to rear or nurture their young.	-
Disturbing (impairing ability to migrate or hibernate)	To deliberately disturb wild animals of an EPS [wherever they are occurring] (Reg. 43(1)(b)) Reg. 43(2)(a)(ii) For the purposes of Reg. 43(1)(b), disturbance of animals includes in particular any disturbance which is likely to impair their ability, in the case of animals of a hibernating or migratory species, to hibernate or migrate.	-
Disturbing (affecting local distribution or abundance)	To deliberately disturb wild animals of an EPS [wherever they are occurring] (Reg. 43(1)(b) and Reg. 43(2)(b)) For the purposes of Reg. 43(1)(b), disturbance of animals includes in particular any disturbance which is likely to affect significantly the local distribution or abundance of the species to which they belong.	-
Disturbing (whilst occupying a structure or place used for shelter or protection)	-	To intentionally or recklessly disturb any wild bird included in Schedule 1 while it is building a nest or is in, on or near a nest containing eggs or young; or to disturb dependent young of such a bird (s1(5)(a)). To intentionally or recklessly disturb any wild animals specified in Schedule 5 while it is occupying a structure or place which it uses for shelter or protection (s9(4)(b)).

General descriptor	Conservation of Habitats and Species Regulations 2017	Wildlife and Countryside Act 1981 (as amended)
Taking eggs	To deliberately take or destroy the eggs of such an EPS animal (Reg. 43(1)(c)).	To intentionally take or destroy an egg of any wild bird. (s1 (1)(c)).
Obstructing access	-	To intentionally or recklessly obstruct access to any structure or place which any animal specified in Schedule 5 uses for shelter or protection. (s9 (4)(c)).
Damage or destruction of a breeding site or resting place.	To damage or destroy a breeding site or resting place of a wild animal of a EPS (Reg. 43(1)(d)).	To intentionally take, damage or destroy the nest of a wild bird included in Schedule ZA1 (s1 (1)(aa)). To intentionally take, damage or destroy the nest of any wild bird while that nest is in use or being built (s1 (1)(b)). To intentionally or recklessly damage or destroy any structure or place which any wild animal specified in Schedule 5 uses for shelter or protection. (s9 (4)(a)).
Introducing non-native species.	-	To plant or otherwise cause to grow in the wild any plant which is included in Part II of Schedule 9. (s14 (2)). Waste produced from management of some species would be “controlled waste” and managed accordingly under the Environmental Protection Act 1990 (s33 (1a) and (1b)).

3 European Protected Species licence tests

3.1.1 An EPS licence can only be granted by NRW if the following three tests can be met:

- test 1: the purpose of the work meets one of those listed (see below) in the Conservation of Habitats and Species Regulations 2017;
- test 2: there is no satisfactory alternative; and
- test 3: the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

3.1.2 Under test 1 the specific set of purposes referred to includes:

- “preserving public health or public safety or other imperative reasons of overriding public interest, including those of a social or economic nature, and beneficial consequences of primary importance for the environment;
- scientific and educational purposes;
- ringing or marking or examining any ring or mark on, wild animals;
- conserving wild animals or wild plants or introducing them to particular areas;
- protecting any zoological or botanical collection;
- preventing the spread of disease; and
- preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries”.

3.1.3 A review of the Proposed Development against the three tests concluded the following.

- test 1: the purpose of the Proposed Development is considered to be “preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment”.
- test 2: there is no satisfactory alternative to the Proposed Development. The Proposed Development has been subjected to a staged optioneering process which has informed the identification and selection of a final, optimised design solution. Chapter E2 (alternatives and design evolution) (Application Reference Number: 6.5.2), provides further information on the need for the Off-Site Power Station Facilities, the alternatives considered and the design evolution.
- test 3: this would be met via implementation of the proposed strategy relating to the EPS described in this report.

4 Methodology

4.1.1 The legislation under which species are protected or controlled, as set out in table 2-1, has been reviewed to identify the potential for the construction and operation of the Off-Site Power Station Facilities to result in an offence.

4.1.2 The review took the form of identifying whether or not a protected or controlled species was present within the area affected by the construction of the Off-Site Power Station Facilities.

4.1.3 The baseline information is based on a desk-based study which included consultation with North Wales Environmental Information Service (Cofnod), and field survey work.

4.1.4 Data from Cofnod were requested in June 2017 and are unpublished [RD1]. These comprised all protected and notable species records from within 2.5km of the centre of the Off-Site Power Station Facilities site. Data from fieldwork are presented in the baseline terrestrial ecology survey report in appendix E9-1 Terrestrial ecology survey at proposed MEEG site, Llanfaethlu (Application Reference Number: 6.5.17).

4.1.5 The baseline data collected have recorded evidence of the following species or groups for which the legislation listed above, applies:

- Protected species:
 - bats;
 - reptiles;
 - breeding birds (all species);
 - otter (*Lutra lutra*); and
 - water vole (*Arvicola amphibius*).
- Controlled species:
 - Himalayan balsam (*Impatiens glandulifera*).

4.1.6 The proposed strategies presented in this report to avoid offences are in addition to those outlined in the chapter E9 terrestrial and freshwater ecology (Application Reference Number: 6.5.9), which seek to minimise likely effects on terrestrial and freshwater ecology, and which would be included within the contractual documentation associated with construction of the Off-Site Power Station Facilities.

4.1.7 The following sections provide an assessment of the potential to cause an offence in relation to each species or group, as well as the approach to mitigation to avoid offences being committed, or that are required to secure an EPS licence.

4.1.8 Conclusions are presented for each protected and controlled species in relation to legislative compliance.

5 Bats

5.1 Relevant legislation

5.1.1 The legislation relevant to the protection of bats comprises:

- Wildlife and Countryside Act 1981 (as amended) – Schedule 5 species; and
- The Conservation of Habitats and Species Regulations 2017 – Schedule 2 species.

5.2 Baseline information

5.2.1 Six buildings were identified as having the potential to support roosting bats within or adjacent to the Off-Site Power Station Facilities (see appendix E9-1, Application Reference Number: 6.5.17). No bats were recorded emerging from or re-entering any of the buildings surveyed within the proposed site boundary. Noctule (*Nyctalus noctula*), common pipistrelle (*Pipistrellus pipistrellus*) and brown long-eared bat (*Plecotus auritus*) were recorded foraging and commuting in the area.

5.3 Potential to commit an offence

5.3.1 Building M3 would require demolition as part of the Off-Site Power Station Facilities. Building M3 was not specifically surveyed for emerging or re-entering bats as it was outside of the survey boundary at the time of survey. However, Building M3 had a moderate potential to support roosting bats, and could become a roost in the intervening period between the 2016 surveys and demolition. In the event that bats were found in Building M3 prior to its demolition, the possible breaches of wildlife legislation are provided in table 5-1.

Table 5-1 Bats – potential to commit an offence in absence of proposed strategy

Legislation	Relevant section of legislation	Offence likely in the absence of proposed strategy
The Conservation of Habitats and Species Regulations 2017	To deliberately capture, injure or kill any wild animal of an EPS. (Reg. 43(1)(a)).	Yes – if bats are present in Building M3 prior to its demolition.
	To deliberately disturb wild animals of an EPS [wherever they are occurring]. (Reg. 43(1)(b)) Reg. 43(2)(a)(i). For the purposes of Reg. 43(1)(b), disturbance of animals includes in particular any disturbance which is likely to impair their ability to survive, to breed or reproduce, or to rear or nurture their young.	Yes – if bats are present in Building M3 prior to its demolition.
	To deliberately disturb wild animals of an EPS [wherever they are occurring] (Reg43(1)(b)) Reg. 43(2)(a)(ii). For the purposes of Reg. 43(1)(b), disturbance of animals includes in particular any disturbance which is likely to impair their ability, in the case of animals of a hibernating or migratory species, to hibernate or migrate.	No offence likely – Building M3 is not considered suitable to support hibernating bats.
	To deliberately disturb wild animals of an EPS [wherever they are occurring]. (Reg. 43(1)(b)) Reg. 43(2)(b). For the purposes of Reg. 43(1)(b), disturbance of animals includes in particular any disturbance which is likely to affect significantly the local distribution or abundance of the species to which they belong.	No offence likely – the habitat on site is considered to be of negligible potential for bats and as such any loss is unlikely to affect the conservation status of bats in the area.
	To damage or destroy a breeding site or resting place of a wild animal of an EPS. (Reg. 43(1)(d)).	Yes – if bats are present in Building M3 prior to its demolition.
	To intentionally or recklessly disturb any wild animal specified in Schedule 5 while it is occupying a structure or place which it uses for shelter or protection. (s9(4)(b)).	Yes – if bats are present in Building M3 prior to its demolition.
Wildlife and Countryside Act 1981 (as amended)	To intentionally or recklessly obstruct access to any structure or place which any animal specified in Schedule 5 uses for shelter or protection. (s9(4)(c)).	No offence likely – works would not involve any obstruction of access points for bats to Building M3.

5.4 Proposed strategy

5.4.1 The following steps would be taken during construction to ensure legislation protecting bats, outlined in paragraph 5.1.1, would not be contravened:

- pre-construction surveys;
- European Protected Species Mitigation Licencing, if needed; and
- supervision of works by an ECoW.

Pre-demolition survey

5.4.2 It is considered that Building M3 offers moderate potential to support roosting bats (see appendix E9-1, Application Reference Number: 6.5.17). A pre-demolition survey would take place at Building M3. In accordance with best practice guidance [RD2] this would consist of a dusk emergence survey and a separate dawn re-entry survey. If no bats were recorded leaving or entering the building then it would be demolished. If bats were recorded using the building then demolition would be postponed until a European Protected Species Mitigation Licence was obtained to derogate from the offences described in table 5-1.

European Protected Species Mitigation Licensing

5.4.3 Should an EPSML be required, the application would include methods to avoid killing or injuring bat, and provide compensation for the loss of a roost. Methods to avoid killing and injury could include exclusion from the roost structure, and would follow best practice measures such as those set out in the Bat Conservation Trust guidelines [RD2]. To offset the loss of a roost, bat boxes would be provided on the nearest retained trees or purposely installed poles. Bat boxes to compensate for roost loss would be specific in design to the species and status of that roost e.g. maternity, transitory.

Supervision of works by an ECoW

5.4.4 If no bats were recorded emerging or re-entering the building but there was significant bat activity in the area following the pre-demolition survey then the ecologists may recommend that demolition takes place under the supervision of an ECoW. The ECoW would be licensed to handle bats and would intervene in the extremely unlikely event that a bat is found.

5.4.5 Should a bat be found within Building M3 during its demolition, all works would cease and the roosting feature would be reinstated if it had been damaged. The bat would then be returned to it and the building made safe. If a bat is injured then the Bat Conservation Trust would be contacted to determine where the nearest vet or bat carer is in relation to the site, which the bat would then be taken to. Demolition works would then not resume until an EPSML had been obtained from NRW.

Avoiding Schedule 5 offences

5.4.6 The measures set out in the preceding paragraphs would result in the Schedule 5 offences, disturbance and obstruction, being avoided.

5.5 Conclusion

5.5.1 Bats have not been recorded in Building M3 but at present there is the potential for breaches in the legislation protecting them, as described in paragraph 5.1.1. With the measures proposed in this report, the risk of bats being found would be negligible, but in the event that they are found, works would be delayed until an EPSML had been obtained from NRW to derogate from the relevant offence.

6 Reptiles

6.1 Relevant legislation

6.1.1 The legislation relevant to the protection of the species of reptile which could be affected during construction of the Off-Site Power Station Facilities comprises:

- Wildlife and Countryside Act 1981 (as amended) – Schedule 5 species (protection from killing/injury only s9 (1)).

6.2 Baseline information

6.2.1 Cofnod provided two records of common lizard (*Lacerta vivipara*), 2.5km west of the Off-Site Power Station Facilities site, both from coastal habitats, in 2014 and 2017 [RD1].

6.2.2 The baseline terrestrial ecology survey report (see appendix E9-1, Application Reference Number: 6.5.17) identified small areas of habitats within the boundary of the Off-Site Power Station Facilities site with the potential to support reptiles. These areas include field boundaries, rock outcrops and stands of tall ruderal vegetation.

6.2.3 There have not been surveys completed to establish presence or likely absence of reptiles in these habitats, but their potential presence is assumed given the presence of suitable habitat.

6.3 Potential to commit an offence

6.3.1 The risk of committing an offence occurs if reptiles are present in the areas of habitats to be cleared i.e. areas of tall vegetation and boundary features (walls and hedgerows). The activity under the Wildlife and Countryside Act 1981 (as amended) which could result in potential offences is shown in table 6-1.

Table 6-1 Reptiles – potential to commit an offence in absence of proposed strategy

Wildlife and Countryside Act 1981 (as amended)	Offence likely in absence of proposed strategy
To intentionally kill, injure or take any wild animal included in Schedule 5 (s9(1)).	Yes – during removal of suitable habitat.

6.4 Proposed strategy

6.4.1 Steps would be taken prior to construction to ensure legislation protecting reptiles would not be contravened. A summary of the measures that would be undertaken is provided below and expanded upon in the subsequent sections:

- habitat manipulation would be used to encourage dispersal of reptiles away from habitats that would be removed during construction of the Off-Site Power Station Facilities, into areas of adjacent suitable habitat that would not be affected; and

- supervision of destructive works by an Ecological Clerk of Works (ECoW) to capture and move any reptiles encountered, and releasing them into areas of adjacent suitable habitat that would not be affected.

Habitat manipulation

6.4.2 The primary approach to reptile mitigation would be displacement. Habitat manipulation would be utilised to displace reptiles from areas subject to clearance into adjacent undisturbed areas of suitable habitat in order to protect animals from injury and mortality. This would be achieved by cutting and clearance of vegetation in stages, in the direction of existing retained habitats such as hedgerows, woodland edge, tussocky grassland and scrub. This will only be completed during the active period for reptiles (March to October) when they are not in hibernation, and during suitable weather conditions i.e. over 10°C and no precipitation.

6.4.3 Vegetation to be cleared would first be cut with hand tools (e.g. strimmers/brush cutters and chain saws) down to a height of approximately 150mm, with cut material removed from the site. After a rest period of between two and seven days (to allow any reptiles present to relocate naturally) the remaining habitat would be cleared with machinery to ground level, under the supervision of an ECoW, as described below.

Supervision of destructive search by an ECoW

6.4.4 The second stage in removing reptiles would be a destructive search under the supervision of an ECoW. This would comprise the removal of all remaining habitat features e.g. tree stumps, concrete waste and other debris, which reptiles could use for shelter. The ECoW would undertake a finger-tip search of these features before the contractors remove them. All reptiles found would be relocated to adjacent suitable habitat.

6.4.5 These works would also only be undertaken during the active period for reptiles when they are not in hibernation.

6.5 Conclusion

6.5.1 The construction of the Off-Site Power Station Facilities could result in killing or injuring reptiles and would therefore result in a breach of the Wildlife and Countryside Act 1981 (as amended), as set out in paragraph 6.1.1. The strategy described above would result in this offence being avoided.

7 Birds

7.1 Relevant legislation

7.1.1 The legislation relevant to the protection of species of bird with the potential to be affected during construction of the Off-Site Power Station Facilities comprises:

- Wildlife and Countryside Act 1981 (as amended).

7.2 Baseline information

7.2.1 The baseline terrestrial ecology survey report (see appendix E9-1, Application Reference Number: 6.5.17) identified habitats with the potential to support breeding birds within the boundary of the Off-Site Power Station Facilities site. These included species-poor native hedgerows and interior and exterior features of the buildings. There is no evidence to suggest that these features support species listed on Schedule 1 of the Wildlife and Countryside Act 1981 (as amended).

7.3 Potential to commit an offence

7.3.1 The vegetation clearance phase of the construction of the Off-Site Power Station Facilities could result in an offence in relation to breeding birds under the Wildlife and Countryside Act 1981 (as amended). Details are provided in table 7-1.

Table 7-1 Birds – potential to commit an offence in absence of proposed strategy

Wildlife and Countryside Act 1981 (as amended)	Offence likely in absence of proposed strategy
To intentionally kill, injure or take any wild bird. (s1(1)).	Yes – to unfledged chicks during vegetation clearance.
To intentionally or recklessly disturb any wild bird included in Schedule 1 while it is building a nest or is in, on or near a nest containing eggs or young; or to disturb dependent young of such a bird. (s1(5)(a)(b)).	No – birds listed on Schedule 1 have not been recorded breeding within the areas where vegetation clearance is required.
To take or destroy an egg of any wild bird. (s1(1)(c)).	Yes – during removal of suitable nesting habitat.
To intentionally take, damage or destroy the nest of a wild bird included in Schedule ZA1. (s1(1)(aa)).	No offence likely – birds listed in Schedule 1 have not been recorded breeding within the areas where vegetation clearance is required.
To intentionally take, damage or destroy the nest of any wild bird while that nest is in use or being built. (s1(1)(b)).	Yes – during vegetation clearance.

7.4 Proposed strategy

7.4.1 The following steps would be taken during construction to ensure legislation protecting birds would not be contravened:

- timing of vegetation clearance;
- supervision of vegetation clearance; and
- protection of existing retained vegetation.

Timing of vegetation clearance

7.4.2 To avoid destroying an egg/eggs of a wild bird, or damaging or destroying the nest of a wild bird, vegetation suitable to support breeding birds would not be cleared during the bird breeding season (March-August inclusive). Where this was not possible, vegetation would only be cleared following pre-clearance checks and under the supervision of an ECoW, should it be determined that birds and/or active nests are not present.

Supervision of vegetation clearance

7.4.3 Pre-clearance checks would be carried out within all areas of vegetation clearance to assess for the presence of active bird nests. This would involve an ECoW checking vegetation prior to the arrival on site of clearance contractors to avoid the risk of disturbance to birds from excessive movement of vehicles/people or through the noise of the hand tools used during the clearance works. This would also include times outside the main breeding season (March–August inclusive) in habitats that support species that can breed before and/or after this period, such as barn owls (*Tyto alba*), corvids and pigeons.

7.4.4 Pre-clearance checks would firstly involve watching habitats to be cleared for birds frequently visiting the same area, which may indicate the presence of a nest. This stage would last for as long as the ECoW determines it is necessary. The second stage would be more intrusive and involve actively searching areas of thicker vegetation for nests.

7.4.5 If the pre-clearance check does not identify any active nests, then the clearance would be allowed to proceed but only with the continued supervision of the ECoW.

7.4.6 Should an active nest be identified, then works within its vicinity would stop and the ECoW would determine a suitable buffer zone around the nest within which no further clearance or other works would occur. This would be dependent on the type and density of vegetation surrounding the nest and the species present. A minimum buffer zone would be 5m from a nest but may be extended following advice from the ECoW. The buffer zone would be clearly marked using demarcation tape or fencing to ensure no works take place within that area. These would also be marked on an environmental constraints map and displayed in the site office as well as being issued to all contractors on site.

7.4.7 The ECoW would monitor activity at each nest to determine when it is no longer active so that works could continue. Once the ECoW determines that the nest is no longer active, the contractor would be allowed to proceed with vegetation clearance. The ECoW would be available on site should any further input/assistance be required.

Protection of retained vegetation

7.4.8 Areas of retained vegetation within construction working areas would be clearly demarcated to ensure no accidental incursion of construction work.

7.5 Conclusion

7.5.1 The construction of the Off-Site Power Station Facilities could result in the contravention of the legislation with respect to birds set out in paragraph 7.1.1. This would be from killing or injuring wild birds, destroying eggs and damaging or destroying nests. The strategy set out above would result in these offences being avoided.

8 Otter

8.1 Relevant legislation

8.1.1 The legislation relevant to the protection of otter with the potential to be affected during construction of the Off-Site Power Station Facilities comprises:

- Wildlife and Countryside Act 1981 (as amended) – Schedule 5 species; and
- Conservation of Habitats and Species Regulations 2017 – Schedule 2 species.

8.2 Baseline information

8.2.1 There was one record of otter provided by Cofnod [RD1]. This comprised a spraint found in a watercourse 2.5km southwest of the Off-Site Power Station Facilities site in 2012. Surveys of the study area did not find any evidence of otter (see appendix E9-1, Application Reference Number: 6.5.17), although the ditch within the boundary of the Off-Site Power Station Facilities site did have the potential to be used as foraging habitat by otter. This is supported by the 2010 Otter Survey of Wales [RD3] showing records nearby and suggesting that Anglesey has an expanding otter population.

8.3 Potential to commit an offence

8.3.1 Otter use a number of watercourses in proximity to the Off-Site Power Station Facilities site. There is therefore a risk that a breeding site or resting place could be created in an affected area prior to the start of construction, constituting an offence if it is damaged or destroyed. Details are provided in table 8-1.

Table 8-1 Otter – potential to commit an offence in absence of proposed strategy

Conservation of Habitats and Species Regulations 2017	Wildlife and Countryside Act 1981	Offence likely in absence of proposed strategy
To deliberately capture, injure or kill any wild animal of an EPS (Reg. 43(1)(a)).	-	No offence likely – mobile species would avoid construction works.
To deliberately disturb wild animals of an EPS [wherever they are occurring] (Reg. 43(1)(b)). Reg. 43(2)(a)(i) For the purposes of Reg. 43(1)(b), disturbance of animals includes in particular any disturbance which is likely to impair their ability to survive, to breed or reproduce, or to rear or nurture their young.	-	No offence likely – no holts recorded and the limited nature of the works would not be considered to disturb at this scale.
To deliberately disturb wild animals of an EPS [wherever they are occurring] (Reg. 43(1)(b)).	-	No offence likely – no holts recorded and the limited nature of the works would not

Conservation of Habitats and Species Regulations 2017	Wildlife and Countryside Act 1981	Offence likely in absence of proposed strategy
Reg. 43(2)(a)(ii) For the purposes of Reg. 43(1)(b), disturbance of animals includes in particular any disturbance which is likely to impair their ability, in the case of animals of a hibernating or migratory species, to hibernate or migrate.		be considered to disturb at this scale.
To deliberately disturb wild animals of an EPS [wherever they are occurring] (Reg. 43(1)(b)). Reg. 43(2)(b) For the purposes of Reg. 43(1)(b), disturbance of animals includes in particular any disturbance which is likely to affect significantly the local distribution or abundance of the species to which they belong.	-	No offence likely – no holts recorded and the limited nature of the works would not be considered to disturb at this scale.
To damage or destroy a breeding site or resting place of a wild animal of an EPS (Reg. 43(1)(d)).	-	No offence likely - no holts or resting places have been recorded within the Off-Site Power Station Facilities footprint.
-	To intentionally or recklessly disturb any wild animal listed on Schedule 5 while it is occupying a structure or place which it uses for shelter or protection. (s9(4)(b))	No offence likely - no holts or resting places have been recorded within the Off-Site Power Station Facilities footprint.
-	To intentionally or recklessly obstruct access to any structure or place which any animal specified in Schedule 5 uses for shelter or protection. (s9(4)(c))	No offence likely - no holts or resting places have been recorded within the Off-Site Power Station Facilities footprint.

8.4 Proposed Strategy

8.4.1 No offences are considered likely to occur as no otter holts or resting places have been recorded within the Off-Site Power Station Facilities. However, widespread records of this species were recorded during the field survey and there is a minor risk that otters could create a holt in the intervening period before construction commences. The following steps would be taken during construction to ensure legislation protecting otter would not be contravened:

- pre-construction surveys; and
- supervision of works by an ECoW.

Pre-construction survey

- 8.4.2 A pre-construction survey would be completed before any works to ditches commence. This would cover areas up to 50m from the boundary of the Off-Site Power Station Facilities site, as these could be affected by indirect effects e.g. noise and vibration.
- 8.4.3 This pre-construction survey may extend in duration, delaying construction works starting, should features be found where their usage is unclear. This would include burrows or holes, and could involve the use of camera traps, for a period of time determined by the ECoW.
- 8.4.4 In the unlikely event that a holt or lay-up site is identified, any work which could affect it and lead to contravention of the legislation described in paragraph 8.1.1. would be put on hold. Natural Resources Wales would be consulted with regards to the need to obtain an EPSML to allow works to continue. Details on licensing requirements are given in section 3.

Supervision of works

- 8.4.5 Supervision of works would only be required in the event that a feature that could be a holt or lay-up site is found where reasonable effort has shown that risk of otter presence is negligible, but a residual risk remains. Supervision would be undertaken by an ECoW who would establish whether features were being used by otter and whether they were present.
- 8.4.6 In the unlikely event that a holt or lay-up site is identified, further work that could lead to contravention of the legislation described in paragraph 8.1.1. would be put on hold. Natural Resources Wales would then need to be consulted with regards to the need to obtain an EPSML to allow works to continue.

8.5 Conclusion

- 8.5.1 Although otters are present within the wider catchment, it is considered that there is currently a low risk that the legislation set out in paragraph 8.1.1 would be contravened. The proposed strategy provides measures to ensure that the risks are managed throughout construction.

9 Water vole

9.1 Relevant legislation

9.1.1 The legislation relevant to the protection of the species of water vole with the potential to be affected during construction of the Off-Site Power Station Facilities comprises:

- Wildlife and Countryside Act 1981 (as amended) – Schedule 5 species.

9.2 Baseline information

9.2.1 There were two records of water vole provided by Cofnod [RD1]. These comprised live sightings of three individuals 875m north of the Off-Site Power Station Facilities site in 2008 and live sighting of three individuals 1,615m northwest of the Off-Site Power Station Facilities site in 2000.

9.2.2 The baseline terrestrial ecology survey report (see appendix E9-1, Application Reference Number: 6.5.17) identified ditches with the potential to support water vole within the boundary of the Off-Site Power Station Facilities site. An incidental record of a water vole sighting was made during surveys associated with the A5025 Off-Line Highway Improvements in the East Drain to the east of the Off-Site Power Station Facilities in 2014, approximately 375m from the Off-Site Power Station Facilities site.

9.3 Potential to commit an offence

9.3.1 Water vole are common on Anglesey and there potential for the ditch within the Off-Site Power Station Facilities to become populated by the species. There is therefore a risk that, should water vole move into the ditch, they could be disturbed, injured or killed, or that use of their protection or sheltering structures could be obstructed, damaged or destroyed, as detailed in table 9-1.

Table 9-1 Water vole – potential to commit an offence in absence of proposed strategy

Wildlife and Countryside Act 1981	Offence likely in absence of proposed strategy
To intentionally kill, injure or take any wild animal included in Schedule 5 (s9(1)).	Yes – if water vole are present within the Off-Site Power Station Facilities site.
To intentionally or recklessly disturb any wild animal specified in Schedule 5 while it is occupying a structure or place which it uses for shelter or protection (s9(4)(b)).	Yes – if water vole are present within the Off-Site Power Station Facilities site.
To intentionally or recklessly obstruct access to any structure or place which any animal specified in Schedule 5 uses for shelter or protection (s9(4)(c)).	Yes – if water vole are present within the Off-Site Power Station Facilities site.
To intentionally or recklessly damage or destroy any structure or place which any wild animal	Yes – if water vole are present within the Off-Site Power Station Facilities site.

Wildlife and Countryside Act 1981	Offence likely in absence of proposed strategy
specified in Schedule 5 uses for shelter or protection (s9(4)(a)).	

9.4 Proposed Strategy

9.4.1 The following paragraphs set out the steps that would be taken prior to the construction of the Off-Site Power Station Facilities to ensure the legislation protecting water vole, detailed in paragraph 9.1.1, was not contravened. In summary it would take the form of:

- pre-construction survey to update water vole activity in ditches affected by construction of the Off-Site Power Station Facilities; and
- supervision of works by an ECoW.

Pre-construction surveys

9.4.2 A pre-construction survey would be completed before any works to ditches took place to search for evidence of water vole, including burrows, latrines and feeding remains, and would include areas up to 50m from the boundary of the Off-Site Power Station Facilities site, as these could be affected by indirect effects e.g. noise and vibration.

9.4.3 The pre-construction survey may extend in duration should features be found where their origins are unclear. This would include burrows or holes, and could involve the use of camera traps to establish usage.

9.4.4 In the unlikely event that evidence of water vole presence is identified, any work which could lead to contravention of the legislation described in paragraph 9.1.1 would be put on hold. Natural Resources Wales would then need to be consulted with regards to the need to obtain a conservation licence to allow works to continue. Details on licensing requirements are given in section 2.2.

Supervision of works

9.4.5 Supervision of works would only be required in the event that a feature that could be a water vole burrow is found with unknown usage that would be directly affected by works. This would be completed by an ECoW who would supervise works and hand-search as necessary, to establish that features are not being used by water vole and that they are not present.

9.4.6 In the unlikely event that an active burrow is identified or a water vole is found, then work which could affect it would not be possible. Natural Resources Wales would then need to be consulted with regards to the need to obtain a conservation licence to allow works to continue. Details on licensing requirements are given in section 2.2.

Displacement and destructive searching

- 9.4.7 Should the pre-construction survey identify water vole burrows in the areas of the attenuation pond affected by works, then a conservation licence from NRW would need to be obtained. This would not only define the exact details of how water vole would be protected but also identify how enhancements for water vole would be provided. The methods available to undertake displacement and destructive searching are outlined below.
- 9.4.8 Displacement involves the removal of vegetation around water vole burrow systems (by strimming) with the aim of making the habitat unsuitable and therefore causing the water vole to relocate to adjacent unaffected habitat [RD4].
- 9.4.9 Displacement should occur in accordance with the Water Vole Mitigation Handbook [RD4] which recommends this technique between 15 February and 15 April, inclusive and would need to be completed prior to works to install drainage infrastructure. It is not appropriate to attempt to displace water voles over distances longer than 50m, but this would be unlikely to be an issue for the scale of the proposed works.
- 9.4.10 Following displacement through habitat manipulation, the area would be monitored for signs of water vole activity and, once it has been reasonably established that there is a low risk of occupancy of any burrows present by water vole, destructive searching would take place.
- 9.4.11 Any burrows found within the construction area would be excavated by hand and followed back to ensure that they are empty before being filled in. It is not considered likely that there would be a high density of burrows in the works area given the baseline information, and so it not anticipated that trapping or translocation of animals would be required.

9.5 Conclusion

- 9.5.1 Although water vole are present within the catchment, it is considered that the risk of water vole being recorded within the area required for construction is low, and the actions and commitments described above would ensure no offence is committed under the legislation set out in paragraph 9.1.1.

10 Schedule 9 Invasive Species

10.1 Relevant legislation

10.1.1 The legislation relevant to the control of invasive species of plant are:

- Wildlife and Countryside Act 1981 (as amended) – Schedule 9 species; and
- Environmental Protection Act 1990 (see section 2.1.3).

10.2 Baseline information

10.2.1 Himalayan balsam has been identified within the construction boundary of the Off-Site Power Station Facilities, as shown in the baseline terrestrial ecology survey report (see appendix E9-1, Application Reference Number: 6.5.17).

10.3 Potential to commit an offence

10.3.1 Himalayan balsam is a species listed on Schedule 9 of the Wildlife and Countryside Act 1981 (as amended). Table 10-1 describes the offence relating to Schedule 9 species and the risk of committing an offence as part of construction of the Off-Site Power Station Facilities.

Table 10-1 Invasive non-native species – potential to commit an offence in absence of proposed strategy

Wildlife and Countryside Act 1981 (as amended)	Environmental Protection Act 1990	Offence likely in absence of proposed strategy
To plant or otherwise cause to grow in the wild any plant which is included in Part II of Schedule 9. (s14 (2)).	-	Yes – by spread of existing plants within construction area or importation of plants from outside the Off-Site Power Station Facilities.
-	Section 33 (1a) and (1b) set out offences dealing with the deposit, treating, keeping or disposing of controlled waste without a permit. Section 33 (1)(c) makes it an offence to keep, treat or dispose of controlled waste in a manner likely to cause pollution of the environment.	Yes – by management and disposal of existing plants cleared from site.

10.4 Proposed strategy

10.4.1 In summary, the following steps would be taken prior to construction to ensure legislation relating to Schedule 9 species would not be contravened:

- pre-construction surveys;
- provision and implementation of a construction method statement; and
- monitoring and reporting.

Pre-construction surveys

10.4.2 Pre-construction surveys would be undertaken to record the location and extent of Schedule 9 species within the Off-Site Power Station Facilities site. An updated assessment of control measures required, including waste disposal, would then be made and incorporated into the Code of Construction Practice.

Code of Construction Practice

10.4.3 The Code of Construction Practice would include information detailing the control and, if necessary, eradication of the invasive species, using good practice guidance publications e.g. '*Guidance: Prevent harmful weeds and invasive non-native plants spreading*' [RD5]. Other measures to avoid accidental incursion into invasive species areas would include the following:

- fencing and/or clear demarcation with hazard warning tape.
- clear demarcation of haulage routes in areas with invasive species present. If haulage routes are required to pass through exclusion zones, appropriate methods to prevent contact with the soil would be implemented, such as the installation of temporary tracking.
- implementation of biosecurity measures to include prevention of introduction or transfer of invasive non-native species across construction working areas by machinery or personnel, and the suitable procurement and screening of planting stock to prevent accidental introduction of invasive species.

Monitoring and reporting

10.4.4 An ECoW would be employed to ensure that the implementation of the appropriate control measures would be undertaken during construction. Post-construction monitoring would be undertaken to confirm that non-native invasive species had not spread or re-established as a result of the Off-Site Power Station Facilities.

10.4.5 A report would be produced annually during construction, and for a specified period post-construction, in order to provide a review of the monitoring results and recommendations for remedial action if required.

10.5 Conclusion

10.5.1 The approach outlined above provides actions and commitments which would minimise the risk that an offence was committed under the legislation set out in paragraph 10.1.1.

11 References

ID	Reference
RD1	Cofnod. 2017. <i>Data search of protected species within 2km of Off-Site Power Station Facilities (National Grid Reference SH 3171 487187)</i> . Unpublished data provided by Cofnod to Horizon.
RD2	Collins, J. 2016. <i>Bat Surveys for Professional Ecologists: Good Practice Guidelines (3rd edition)</i> . Bat Conservation Trust.
RD3	Strachan, R. 2010. <i>Wales Otter Report 2009-10</i> . Natural Resources Wales.
RD4	Dean, M., Strachan, R., Gow, D. and Andrews, R. 2016. <i>The Water Vole Mitigation Handbook (The Mammal Society Mitigation Guidance Series)</i> . The Mammal Society: London.
RD5	Natural England, Department for Environment, Food & Rural Affairs, and Environment Agency. 2016. Guidance: <i>Prevent harmful weeds and invasive non-native plants spreading</i> . [Online] [Accessed: June 2017] Available from https://www.gov.uk/guidance/prevent-the-spread-of-harmful-invasive-and-non-native-plants .