

Note of the Marine Offshore European Protected Species (EPS) Licensing meeting 5 April

European protected species (EPS) licences are issued to allow an activity to go ahead that would otherwise be an offence under the Conservation of Habitats and Species Regulations 2010 and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (as amended). It is an offence to deliberately capture, injure, kill or disturb an EPS under this legislation.

The Joint Nature Conservation Committee (JNCC), Natural England (NE) and Countryside Council for Wales (CCW) have been developing guidance, currently in draft, on 'The protection of marine European protected species from injury and disturbance'. The guidance will assist developers and regulators:

- to assess the likelihood of an offence being committed
- to avoid the offence (if possible)
- the conditions under which the activity could go ahead under licence if an offence cannot be avoided.

The final version of this document has yet to be published, but draft copies are available on request.

Different regulators across the UK have been implementing a regulatory system associated with noisy activities and have started to issue EPS licences. There was a need identified for UK regulators and statutory nature conservation bodies' (SNCB) advisors to work together to ensure awareness of ongoing activities and to ensure consistency in advice.

Since October 2009, there have been four meetings to discuss EPS licensing held between:

- Department of Energy and Climate Change (DECC)
- Marine Management Organisation (MMO)
- Marine Scotland
- Welsh Assembly Government (WAG)
- JNCC
- NE
- CCW
- Scottish Natural Heritage (SNH).

The purpose of this note is to feed back to industry the outcome of the main themes of these discussions and to outline future work in this area.

EPS licensing decisions

The main purpose of these meetings was to address the need for consistency in SNCBs' advice and regulators' decision making. Licences can only be issued if the regulator is satisfied that there are no satisfactory alternatives and that the activity would not impact on the favourable conservation status of the population of the species concerned.

To help advice and decision making when issuing an EPS licence under the legislation, a certain level of evidence and information is required. Lack of appropriate and sufficient evidence poses a risk to the consenting process. To help reduce the risk of the consenting process, the SNCBs and regulators discussed the following areas of work:

- The development of the Joint Cetacean Protocol in order to increase auditable baseline information on the distribution and abundance of cetaceans.

- A noise register to record noisy activities.
- Modelling work to assess the potential cumulative impacts of licensable activities on populations (see below).
- Noise characterisation of different foundation types in different circumstances and engineering solutions for source noise reduction.
- Field observations of species behavioural response to pile driving.

Geophysical surveys

DECC have an established PON14 process for survey (seismic and geophysical) applications from the oil and gas industry under the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (as amended) in which details of the operations are provided. The PON14 form is currently being amended to include, among other things, the requirement for a risk assessment process to be carried out in line with the JNCC guidance on 'The protection of marine European protected species from injury and disturbance'. This assessment does not need to be onerous but should acknowledge the level of risk of committing an injury or disturbance offence and provide an audit trail that the risk of the activity has been assessed.

For offshore wind, geophysical site investigation surveys are not covered by the same regulations and the process is therefore not defined. The development of a voluntary geophysical survey notification form in line with the PON14 type process is therefore being taken forward by the other regulators including the MMO and Marine Scotland. This will also help to facilitate the wider monitoring of noisy activities in the marine environment.

Monitoring noisy activity through the licensing process

There is a need to develop cross-sector monitoring of noisy activities in order to effectively monitor potential cumulative impacts. Notification of activities across sectors is also important in order to raise awareness of potential conflicting activities being carried out simultaneously over the same area. Discussions have been focussed on regulators developing a database recording EPS licences and notifications of noisy activities, and also a system through which this information can be shared between regulators. A preliminary plan to develop a UK wide noise register in order to record this information and provide a database for assessing potential cumulative impacts was also discussed. This will also link in with the Marine Strategy Framework Directive noise indicators.