

DRAFT REGULATORY IMPACT ASSESSMENT

1. Title

The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001.

2. Purpose and Intended Effect of the Measure**2.1 Objective**

The geographical scope of the Habitats Directive was clarified in the High Court last November (R v Secretary of State for Trade and Industry ex parte Greenpeace) when Maurice Kay J. found that it applies beyond the UK 12-mile territorial limit (which defines the scope of the current UK Regulations implementing the Directive), and extends to the UK Continental Shelf (UKCS). Since then the Government has been considering how to give proper effect to the judgement.

The objective of these Regulations is to ensure that the Secretary of State exercises his functions, in relation to the licensing of oil and gas activities on the UKCS and the granting of consents carried out under petroleum licences, in a manner consistent with the requirements of EC Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and, insofar as Articles 3 and 7 of the above Directive are concerned, the EC Directive 79/409/EEC on the Conservation of Wild Birds.

The Regulations are structured to fit within the existing regulatory regime for petroleum licensing and oil and gas activities on the UKCS. They apply solely to such activities on the UKCS.

The Regulations do not cover the process by which the UK will establish Special Areas of Conservation (SACs) or Special Protection Areas (SPAs). The Department of the Environment, Transport and the Regions (DETR) will be proposing separate Regulations which will include measures to establish SACs and SPAs and provide a framework for legislation covering other marine activities on the UKCS.

2.2 Risk assessment

Failure to apply the Directives in relation to the UKCS would not be consistent with the High Court judgement and would heighten the risk of infraction proceedings being brought by the EU Commission.

Although a substantial environmental regime exists, the Habitats Directive provides particular environmental protection for certain species and habitats. The failure to make regulations on the detailed application of the Directive risks some possible harm to these.

The prospect of court proceedings would undermine the attractiveness of the UKCS as an exploration and production province as would the halting of licensing activity for a prolonged period to avoid such an outcome.

The application of the Directives to offshore oil and gas activities will result in compliance cost implications to both industry and HMG. Industry will be expected to bear the costs resulting from directions given by the Secretary of State - such directions can apply to both new and existing licences, authorisations, approvals and consents. Government will be expected to bear the administration costs, as well as costs associated with providing the Secretary of State with all relevant environmental information.

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The cost of the site designation and management process will fall to separate Regulations to be brought forward by DETR.

2.3 Issues of Equity or Fairness

The requirements of the Habitats Directive are equally applicable onshore as offshore. The Regulations will not introduce a regime that is any less equitable or fair than that which already applies to land based industrial activities whether oil and gas related or not.

3. Options

3.1 – Four options have been identified

- **Option 1** - Do nothing.
- **Option 2** - Amending the Conservation (Natural Habitats, etc.) Regulations 1994 (SI 1994/2716) by extending their geographical scope and specifically including oil and gas activities within the UKCS.
- **Option 3** - Comprehensive Regulations by DETR to apply both Directives to all marine activities.
- **Option 4** - Drafting new Regulations specifically for oil and gas activity.

Option 1: Doing nothing is not regarded as a real option since the Directive improves the protection provided to the Marine Environment and failure to apply it would be likely to lead to infraction proceedings being brought by the European Commission and would run counter to the High Court judgement.

Option 2: The Conservation (Natural Habitats) Regulations SI 1994/2716 were drafted to implement the Habitats Directive for on-shore and near-shore activities and are designed to facilitate integration with the wider onshore environmental protection regime. The offshore marine environmental regime for oil and gas activities, while offering a high degree of environmental protection, does not fit well with the framework of the 1994 Regulations and would require the introduction of a parallel approach within the same Regulations.

Option 3: A comprehensive set of regulations dealing with all marine activity will be lengthy and much more complex to draft. They would apply to a greater number of interested parties, thus requiring specific sections tailored to address the different sectors of activity. It is unlikely that this process will be complete until next year at the earliest. Such a delay would present a number of risks as mentioned in paragraph 2.2 above.

Option 4: Specific regulations to deal with oil and gas activities would fit well with the current regulatory regime. Such activities are discrete and are already subject to strong environmental and licensing controls. The Government considers that for such activities it is more appropriate to meet the requirements of the Directive by means of regulations specifically tailored to fit with the existing regime. This approach has been taken previously with the implementation of the Assessment of Environmental Effects Directive in 1998 and 1999 (Council Directive 85/337/EC as amended by Council Directive 97/11/EC) and has been found to be administratively and operationally efficient and effective. Such regulations can be introduced earlier than the other options, thus reducing a number of risks.

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It is, therefore, appropriate that separate regulations are devised for these discrete activities but with the common, overarching powers for site designation etc. incorporated in the more general DETR Regulations.

The Regulations would be made using powers in the European Communities Act 1972.

4. Benefits

4.1 Identify the benefits

The environmental protection aspects of the Regulations would be the same under each of Options 2, 3 and 4.

Environmental benefits would arise from the proposed Regulations by ensuring species and habitats (as specified in the Habitats Directive and the Wild Birds Directive) are identified and afforded appropriate protection - as required within a statement of their specific conservation needs and associated environmental management plans. The Regulations will ensure that nature conservation information is collected and considered in the oil and gas licensing and authorisation process. Sites which are likely to be accorded SAC or SPA status will be afforded similar protection to fully designated SACs or SPAs (this follows the approach taken in the Amendment (SI 2000/192) to the 1994 Regulations (SI 1994/2716)). In due course, under separate DETR regulations, sites will be nominated to the European Commission for selection as sites of community importance and subsequent UK designation as SACs under the Habitats Directive or SPAs under the Wild Birds Directive.

The Regulations would also provide an explicit legal framework for applying the Directives to oil and gas activities, expressly requiring the Secretary of State to exercise his powers in such a way as to ensure that UKCS oil and gas activities are carried out in a manner that is consistent with the requirements of the Directives. This will increase the administrative efficiency of the operational environmental regime.

Economic benefits would result from increased clarity about future oil and gas activity in the region following the court ruling. The offshore industry would be better placed to plan ahead in anticipation of future exploration.

4.2 Quantify and value

It is not possible at this stage to quantify or evaluate the environmental or economic benefits. There is no market price for the protection of species and their environment and, as the offshore environment is not normally accessible to humans, the degree of success or failure of the Directive may not necessarily be gauged from willingness to pay for such environmental protection or not. Nevertheless, there is clearly a public interest in protecting species and their environment. Therefore, society in general will reap the environmental benefits of the Directive.

<i>Consultees' specific responses are sought on the benefits of the Directive.</i>

5. Compliance Costs for Business, Charities and Voluntary Organisations

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5.1 Business sectors affected

The only business sector affected by these Regulations will be the UK offshore oil and gas industry.

5.2 Compliance costs for a "typical" business

Administrative costs to industry should be kept to a minimum as the Regulations are designed to integrate with the existing environmental and operational regimes. The existing regime already places stringent environmental obligations on industry. The Habitats Directive, which focuses on specific sites and species, will build on these existing measures rather than conflict with them. The effect of these Regulations will thus be an incremental step for industry rather than a giant leap.

Compliance costs are expected in the following areas:

- Compliance with any resultant additional protection measures attached to licence or consent conditions - such as re-injection of produced water, removal of drill cuttings or reduction in discharges.
- Compensatory measures following a consent based on imperative reasons of overriding public interest.

The level of costs will be dependant on: the number of SACs and SPAs identified; their proximity to oil and gas activities; whether or not such activities are causing an adverse effect on the integrity of such sites; and the nature of the measures to be taken to reduce or eliminate such adverse effects.

We do not yet know the number of sites that will be designated, however for the purpose of estimating costs we have assumed that there may be as many as 100 SACs and 50 SPAs (depending on the satisfaction of relevant scientific criteria). However, the application of conditions to licences and certain projects to protect specific marine environmental features already occurs. Therefore, it is not expected that there will be significant cost implications for industry.

In addition, many of the measures likely to be needed may already be in place due to other existing environmental controls. Should mitigation measures be required these are unlikely to exceed those experienced under the Environmental Impact Assessment Regulations which have typically been in the region of £100,000 to £1 million per project.

5.3 Total compliance costs

(Figures to be revised following the consultation)

A rough indication of potential costs can be determined by allowing for a maximum 150 sites and the assumption that no more than 10% of such sites would require additional protection measures (ie over and above current practice regarding environmental protection measures). On this basis additional protection measures would be required for 15 sites.

It is expected that costs for additional measures could be in the range of £100,000 to £1 million. Therefore, total compliance costs may be expected to be in the range of £1.5 million to £15 million.

Consultees' specific responses are sought on the compliance costs of the Directive.

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5.4 Other Costs

Other compliance costs will fall to the public purse as the DTI, with external advice as appropriate, will need to ensure that all relevant environmental information is available for consideration by the Secretary of State. This procedure is already undertaken in the existing licensing regime, therefore additional costs should be very low. Additional costs for administration and enforcement will also fall to the public purse. It is estimated that the total cost for administration procedures will be in the region of £50,000 per annum.

In some cases the provisions and process of the Regulations may result in areas of the UKCS being withheld from licensing or subsequent activities not being authorised. In these cases there may be a loss of opportunity if resources are left undeveloped. In the absence of specific information regarding the quantity of reserves and their proximity to SACs/SPAs, it is not possible at this stage to estimate the value of this potential loss.

(The above figures will be reviewed following the consultation)

6. Impact on Small Business

There should be no impact on small businesses as all offshore licensees and operators are substantial organisations and are not regarded as small businesses.

7. Securing Compliance

The Regulations will be enforced by the Department of Trade and Industry and will be incorporated into the existing oil and gas licensing and consents procedures. The DTI will continue to seek the views of other Government Departments, Non-Government Organisations and other interested parties during licensing rounds and subsequent activities.

The Secretary of State will seek advice from the Joint Nature Conservation Committee and, where appropriate, from other environmental bodies and public consultation regarding the impact of oil and gas activities on SACs and SPAs and likely SACs and SPAs. Following such advice, the Secretary of State has powers to introduce additional protection measures by amending or revoking existing and future licences and consents.

The regulations introduce a number of offences to protect species and habitats. A person guilty of an offence under these Regulations shall, on summary conviction, be liable to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

8. Results of Consultations

Consultation is being held with the oil and gas industry, environmental groups, legal and environmental experts and members of the public. The results of these consultations will be added following the consultation.

9. Summary and Recommendations

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(To be reviewed post consultation)

It is recommended that the Habitats Directive is applied in relation to oil and gas activity across the UKCS by means of Option 4 under the powers available in the European Communities Act 1972. We consider that this is the best approach as it is the most timely and administratively efficient mechanism for formalising the protection provided by the Directive to oil and gas activities on the marine environment.

10. Monitoring and Evaluation

Monitoring will take place by way of administration of the Regulations, the results of which may or may not indicate that a Review of the Regulations is required. The existing oil and gas regulatory regime requires a number of specific consents during the exploration, development, production and decommissioning stages. The requirements of both Directives will be considered at each stage of this process.

Under separate regulations the DETR will have overall responsibility for the identification, selection and maintenance of SACs and SPAs. They will also be responsible for transmitting candidate SACs and SPAs formally to the European Commission.

Declaration:

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister

Date

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