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| cid:image001.png@01D27AFB.3D00AC80 | **Offshore Petroleum Regulator for Environment & Decommissioning**  **Department for Energy Security & Net Zero**  AB1 Building  Crimon Place  Aberdeen AB11 1BJ  **E:** [opred@energysecurity.gov.uk](mailto:opred@energysecurity.gov.uk)  [**Department of Energy Security & Net Zero**](https://www.gov.uk/government/organisations/department-for-energy-security-and-net-zero) |
| **14 November 2023** |  |

**THE Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001**

**Post Implementation Review Survey 2023**

Dear operator/owner

As part of its regulatory requirements in respect to the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (as amended), OPRED is required to undertake a periodic post implementation review of the Regulations.

As part of this review, we are seeking information from industry through responses to the attached Survey relating to the Regulations.

We would appreciate comprehensive responses to better inform the review and request that they be submitted by **12 December 2023** to [opred@energysecurity.gov.uk](mailto:opred@energysecurity.gov.uk).

**The Offshore Petroleum Activities (Conservation of Habitats) Regulations**

**Post Implementation Review Survey**

**Introduction and Background**

In accordance with regulation 22(1) - (5) of the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, the Secretary of State (SoS) is required to undertake a periodic (usually five-yearly) Post Implementation Review (PIR) of the Regulations and set out the conclusions of the review in a PIR report which must be published. The report of the review must also**:**

**(a)** set out the objectives intended to be achieved by the Regulations;

**(b)** assess the extent to which those objectives have been achieved; and

**(c)** assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in a less burdensome way.

The information below on the Wild Birds and Habitats Directives and the transposing Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (“the 2001 Habitats Regulations”) (including historical information and various amendments) may be beneficial to read prior to answering the PIR Survey.

*Wild Birds and Habitats Directives*

Council Directive 79/409/EEC on the protection of wild birds, commonly known as the Birds Directive, was adopted in 1979, and aims to protect all wild birds and their most important habitats across the EU. Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, commonly known as the Habitats Directive, was adopted 13 years later in 1992. It introduces very similar measures but extends the protection to around 1,000 other rare, threatened or endemic species of wild animals and plants, often collectively referred to as species of European importance. It also, for the first time, introduced protection for some 230 rare or important habitat types. The Birds Directive was subsequently amended by Directive 2009/147/EC, a codified version of the original Directive.

Together, the Birds and Habitats Directives provide a strong legislative framework to protect the EU’s most vulnerable species and habitat types across their entire natural range within the EU, irrespective of political or administrative boundaries. The overall objective of the two Directives is to ensure that the species and habitat types they protect are maintained at, or restored to, a favourable conservation status throughout their natural range within the EU. They therefore not only aim to halt any decline, but also aim to ensure that the qualifying species and habitats recover sufficiently to enable them to flourish over the long-term.

*The 2001 Habitats Regulations*

The 2001 Habitats Regulations implemented the main provisions of the Directives in relation to offshore oil and gas activities in the UK Continental Shelf (UKCS), and were amended by**:**

**(a)** The Offshore Petroleum Activities (Conservation of Habitats) (Amendment) Regulations 2007 which amended and extended some of the provisions in the 2001 Habitats Regulations.

**(b)** Article 3 of the Energy Act 2008 (Consequential Modifications) (Offshore Environmental Protection) Order 2010 which extended the scope of the 2001 Habitats Regulations [subject to geographical limitations reflecting the devolution settlements] so that the provisions could also be applied to gas unloading and storage plus CO2 storage activities.

**(c)** The Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015 (“the 2015 Fees Regulations”) which inserted fee charging provisions within the 2001 Habitats Regulations (as amended). The 2015 Fees Regulations were subsequently amended from 2016 to 2022 which changed the charging provisions within the 2001 Habitats Regulations (as amended).

**(d)** The Energy (Transfer of Functions, Consequential Amendments and Revocation) Regulations 2016 which inserted (via regulation 8) ‘Post Implementation Review’ provisions into the 2001 Habitats Regulations (as amended).

**(e)** The Conservation of Offshore Marine Habitats and Species Regulations 2017 (“the 2017 Marine Habitats Regulations”) which implemented other requirements contained in the Habitats and Wild Birds Directives. Whilst the 2017 Marine Habitats Regulations revoked the previous Offshore Marine Conservation (Natural Habitats &c.) Regulations 2007 (“the 2007 Marine Habitats Regulations”), the 2017 Marine Habitats Regulations retained regulation 75 of the 2007 Marine Habitats Regulations in relation to the 2001 Habitats Regulations (as amended).

**(f)** Part 4 of the Offshore Petroleum Production and Pipe-lines (Environmental Impact Assessment and other Miscellaneous Provisions) (Amendment) Regulations 2017 which**:**

**(i)** introduced into the 2001 Habitats Regulations (as amended) provisions relating to the review of existing decisions; and

**(ii)** amended Article 3 of the Energy Act 2008 (Consequential Modifications) (Offshore Environmental Protection) Order 2010.

**(g)** The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 which made amendments to the 2001 Habitats Regulations (as amended) so that they would remain effective and appropriate from day one of the UK’s exit from the EU.

**(h)** The Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020 which made a minor consequential amendment to the 2001 Habitats Regulations (as amended).

Regulations 4 and 5 of the 2001 Habitats Regulations (as amended) contain the following fundamental provisions in respect to environmental submissions to the Department for Energy Security & Net Zero’s Offshore Petroleum Regulator for Environment & Decommissioning (OPRED) *[hereinafter all Departmental references will be to OPRED]***:**

* Regulation 4(1) which requires the issue of consent for geological surveys relating to offshore oil and gas activities. Regulation 4(3) defines a consent for the purposes of regulations 5 and 7 to include**: (i)** geological surveys granted under regulation 4(1); and **(ii)** consents granted pursuant to a Petroleum Act license (including consents for offshore combustible gas and carbon dioxide unloading and storage activities).
* Regulation 5(1) which requires that, before the grant of any licence, consent, authorisation or approval involving a proposed activity that is likely to have a significant effect on a relevant site, whether individually or in combination with any other plan or project, the Secretary of State must make a Habitats Regulation Assessment of the potential implications of the proposed activity on the site in view of the site’s conservation objectives. OPRED is therefore required to undertake a Habitats Regulations Assessment which may constitute a likely significant environmental effects assessment, or ‘screening’ exercise, and / or a more in-depth ‘Appropriate Assessment’ of the proposed activity where likely significant effects cannot be ruled out.

*Specific Points to Note in respect to this Survey*

**(i) PART E of this Survey contains three questions which ask:**

* **if the current JNCC noise mitigation guidelines are effective and fit for purpose;**
* **if there are any other observations that respondents would like to offer in respect to the 2001 Habitats Regulations (as amended); and**
* **whether there is anything else (i.e. not covered elsewhere within the Survey) that respondents would like to raise in relation to the 2001 Habitats Regulations (as amended).**

**(ii) Question 1 under PART A** **of this Survey** contains links to the regulatory provisions on definitions within the 2001 Habitats Regulations and subsequent amendments. Respondents may therefore wish to keep the respective links open - as necessary - to navigate through the other regulatory provisions when addressing the proceeding questions within the Survey.

**The Survey**

**Demographic Questions**

1. Organisation name

2. Organisation size

a. < 50 employees

b. 50-99 employees

c. 100-249 employees

d. 250 + employees

3. Organisation type

a. Production Installation Operator & Well Operator

b. Well Operator only

c. Non-Production Installation Owner

d. Offshore Survey Contractor

e. Other

If Other, please describe the type of organisation you belong to.

4.How many of the following does your organisation own or operate that are within Special Areas of Conservation (SACs) and / or Special Protection Areas (SPAs)?

Production Installations Non-Production Installations

a. 1

b. 2-4

c. 5-9

d. 10-15

e. 16-20

f. 21-30

g. 30+

h. Not Applicable

5. Have you undertaken activities as defined under Regulation 4(1) and 4(3) within SACs and / or SPAs? If so, can you estimate how many in the past year?

6. Would you be willing to be contacted by OPRED to discuss any of your responses for purposes of clarification?

Yes

No

If Yes, please provide contact details (name, e-mail, phone number).

**PART A - Policy Objective Questions**

The 2001 Habitats Regulations (as amended) implement the Habitats and Wild Birds Directives in respect to offshore oil and gas activities - including gas unloading and storage plus CO2 storage. The Regulations aim to protect important habitats from specific offshore hydrocarbon sector operations to ensure the conservation of a wide range of rare, threatened, or endemic animal plus plant species and wild bird species.

The following statements / questions concern the policy objectives of the 2001 Habitats Regulations (as amended).

**Question 1**

**Statement:** The definitions\* in the following provisions of the 2001 Habitats Regulations (as amended) are clearly understood and remain appropriate**:** [regulation 2(1) of the 2001 Habitats Regulations](https://www.legislation.gov.uk/uksi/2001/1754/regulation/2/made) as amended by [regulation 2(2) of the Offshore Petroleum Activities (Conservation of Habitats) (Amendment) Regulations 2007](https://www.legislation.gov.uk/uksi/2007/77/regulation/2/made); [regulation 75(a) of the Offshore Marine Conservation (Natural Habitats &c.) Regulations 2007](https://www.legislation.gov.uk/uksi/2007/1842/regulation/75/made); [Article 3(3)(b) & 6 of the Energy Act 2008 (Consequential Modifications) (Offshore Environmental Protection) Order 2010](https://www.legislation.gov.uk/uksi/2010/1513/article/3/made); [regulation 8(2) of the Energy (Transfer of Functions, Consequential Amendments & Revocation) Regulations 2016](https://www.legislation.gov.uk/uksi/2016/912/regulation/8/made) and [regulation 74 of the Conservation of Habitats & Species (Amendment) (EU Exit) Regulations 2019](https://www.legislation.gov.uk/uksi/2019/579/part/5/made).

Please state to what extent you agree or disagree with the above statement.

Strongly Agree

Agree

Neither Agree or Disagree

Disagree

Strongly Disagree 

Please provide supporting comments.

**\*** Some of the **‘Key definitions’** within the 2001 Habitats Regulations (as amended) are**:**

“appropriate nature conservation body” means such body with responsibilities for providing relevant advice on nature conservation in relation to the land or waters within or adjacent to the relevant site, which the Secretary of State considers appropriate;

“approval” means approval of an abandonment programme pursuant to Part IV of the 1998 Act;

“authorisation” means an authorisation granted pursuant to section 14 of the 1998 Act relating to the construction or use of a pipe-line;

“consent” is to be construed in accordance with regulation 4(3);

“designated area” means any area for the time being designated under section 1(7) of the Continental Shelf Act 1964;

“Petroleum Act licence” and “Energy Act licence” means a licence which is granted under or has effect as if granted under the 1998 Act or Energy Act or a licence which is to be granted under those Acts;

“relevant area” means an area comprising any of the following -

**(a)** UK waters;

**(b)** waters in a designated area; or

**(c)** the seabed and subsoil under the waters referred to in paragraphs (a) and (b) above;

“relevant project” means any plan or project which relates to offshore oil and gas activities;

“relevant site” means—

**(a)** a special area of conservation,

**(b)** a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive,

**(c)** an area classified, as a special protection area, before exit day pursuant to Article 4(1) or (2) of the Wild Birds Directive or classified as such after exit day under any of the retained transposing regulations, or

**(d)** a site included in the list of sites which has been transmitted to the Commission by the United Kingdom pursuant to Article 4 of the Habitats Directive;

“UK waters” means parts of the sea in or adjacent to the United Kingdom from the low water mark up to the seaward limits of territorial waters.

**Question 2**

**Statement:** The 2001 Habitats Regulations (as amended) have achieved, and continue to achieve, their core objective of protecting important habitats from specific offshore hydrocarbon sector operations thereby ensuring the conservation of a wide range of rare, threatened, or endemic animal plus plant species and wild bird species.

Please state the extent to which you agree or disagree with the above statement.

Strongly Agree

Agree

Neither Agree or Disagree

Disagree

Strongly Disagree 

Please provide supporting comments.

**Question 3**

**Statement:** There are no unintended consequences or unexpected outcomes to the way in which the 2001 Habitats Regulations (as amended) have been introduced and are being applied.

Please state the extent to which you agree or disagree with the above statement.

Strongly Agree

Agree

Neither Agree or Disagree

Disagree

Strongly Disagree 

Please provide supporting comments.

**Question 4**

**Statement:** The current 2001 Habitats Regulations (as amended) encourage - in respect to offshore hydrocarbon sector operations - the protection of offshore habitats and species within Special Areas of Conservation (SACs) and Special Protection Areas (SPAs).

Please state the extent to which you agree or disagree with the above statement.

Strongly Agree

Agree

Neither Agree or Disagree

Disagree

Strongly Disagree 

Please provide supporting comments.

**Question 5**

Do you believe there’s a way to impose less regulation and still meet the objectives of the 2001 Habitats Regulations (as amended) for protecting - in respect to offshore hydrocarbon sector operations - offshore habitats and species within SACs and SPAs?

Yes

No

Please provide supporting comments.

**PART B - Consent and Licensing System**

The following statement / question relates to the consent and licensing system introduced by the 2001 Habitats Regulations (as amended).

**Question 6**

**Statement:** The current system of undertaking a Habitats Regulations Assessment process prior to the Secretary of State agreeing to the grant of consents set out in regulations 4(1) and 4(3) provides appropriate protection - in respect to offshore hydrocarbon sector operations - for offshore habitats and species within Special Areas of Conservation (SACs) and Special Protection Areas (SPAs).

Please state to what extent you agree or disagree with the above statement.

Strongly Agree

Agree

Neither Agree or Disagree

Disagree

Strongly Disagree 

Please provide supporting comments.

**PART C - Impact Assessment Questions - Costs**

A Regulatory Impact Assessment was prepared for the initial 2001 Habitats Regulations which estimated the costs of implementing the main provisions of the Wild Birds and Habitats Directives for both the Government and the offshore hydrocarbons sector (for example, the costs to the offshore hydrocarbons sector associated with the preparation of applications for geological survey consents and the costs to Government for assessing applications and granting consents). The following questions ask about the current costs to your organisation of complying with the requirements of the 2001 Habitats Regulations (as amended). **Please do not include any fees charged by OPRED for the provision of regulatory services in relation to the 2001 Habitats Regulations (as amended)**.

**Question 7**

What is the typical cost to your organisation for the preparation of each application for a geological survey consent?

Less than £1,500 per consent application

£1,500 - £4,000 per consent application

£4,001 - £8,000 per consent application

£8,001 - £12,000 per consent application

Greater than £12,000 per consent application

Any further details - including an estimated figure if > £12,000? Please provide here.

**Question 8**

For the typical cost given in response to Question 7, how many consent applications does that cost apply to annually, on average?

1 consent application

2 consent applications

3 consent applications

4 consent applications

Greater than 4 consent applications

Any further details - including an estimated figure if > 4? Please provide here.

**Question 9**

What are your company’s typical annual costs for complying with the conditions of a geological survey consent?

Less than £25,000 per annum

£25,001 - £40,000 per annum

£40,001 - £55,000 per annum

£55,001 - £70,000 per annum

£70,001 - £85,000 per annum

£85,001 - £100,000 per annum

Greater than £100,000 per annum

Any further details - including an estimated figure if < £25,000 or > £100,000? Please provide here.

**PART D - Specific questions relating to regulations 4 to 8B of the 2001 Habitats Regulations (as amended)**

The following statements / questions relate to specific provisions within the 2001 Habitats Regulations (as amended).

**Question 10**

**Regulations 4(1), (2) & (3) [Consent for geological surveys]** of the 2001 Habitats Regulations (as amended) states**:**

4(1). In so far as they relate to offshore hydrocarbon activities, the following activities or procedures should not be carried out in a relevant area without the prior written consent of the Secretary of State -

(a) prospecting or carrying out geological surveys by physical or chemical means;

(b) drilling for the purpose of obtaining geological information about strata; or

(c) testing the surveying or drilling equipment to be used in the activities or procedures falling within (a) or (b).

4(2). Paragraph (1) above shall apply notwithstanding any provision in any Petroleum Act licence.

4(3). For the purposes of regulations 5 and 7 of the 2001 Habitats Regulations (as amended), “consent” means –

(a) a consent granted pursuant to paragraph (1) above; or

(b) a consent granted pursuant to a Petroleum Act or Energy Act licence, including any consent required pursuant to the Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020.

**Statement:** The regulations make it sufficiently clear when a person (e.g. an operator) needs to obtain consent for specified activities in accordance with the 2001 Habitats Regulations (as amended).

Please state to what extent you agree or disagree with the above statement.

Strongly Agree

Agree

Neither Agree or Disagree

Disagree

Strongly Disagree 

Please provide supporting comments.

**Question 11**

Do you have any specific issues in relation to **regulations 4(1), (2) & (3) [Consent for geological surveys]** of the 2001 Habitats Regulations (as amended)?

Yes

No

Please provide supporting comments.

**Question 12**

**Regulation 5 [Appropriate assessments]** of the 2001 Habitats Regulations (as amended) provides that prior to agreeing to the grant of any Petroleum Act or Energy Act licence, any consent, any authorisation, or any approval, the Secretary of State (“the SoS”) must conduct an Appropriate Assessment (AA) of the effects of certain offshore hydrocarbon activities where it is considered that the activities are likely to have a significant effect on a relevant site, whether individually or in combination with any other plan or project, including but not limited to any other relevant project. Regulation 5 also requires the SoS - in connection with an AA - to consult the appropriate nature conservation body and, if appropriate, the public. If the SoS ascertains as part of the AA that any activity undertaken pursuant to any such licence, consent, authorisation or approval would not have an effect on the integrity of the relevant site, the SoS must then agree to the grant of the relevant licence, consent, authorisation or approval.

**Statement:** The provisions of this regulation and the AA process more generally are clear and remain appropriate for the purpose of protecting offshore habitats and species within Special Areas of Conservation (SACs) and Special Protection Areas (SPAs).

Please state to what extent you agree or disagree with the above statement.

Strongly Agree

Agree

Neither Agree or Disagree

Disagree

Strongly Disagree 

Please provide supporting comments.

**Question 13**

**Regulation 6 [Projects which should be carried out for imperative reasons of overriding public interest (IROPI)]** of the2001 Habitats Regulations (as amended) provides a derogation from the requirement in regulation 5(3). This means that the Secretary of State (“the SoS”) may agree to the grant of a licence / consent / approval in connection with a relevant offshore hydrocarbons project where an activity carried out pursuant to such a project has an adverse effect on the integrity of a relevant site if**: (i)** in the opinion of the SoS there is no satisfactory alternative; and **(ii)** the SoS has certified that the project should be carried out for IROPI. Before making such a certification in relation to a site hosting a priority natural habitat type or a priority species, the SoS is required to consult the stakeholders listed in paragraph 2 of that regulation. Regulation 6 also places requirements on the SoS to**:** **(a)** secure that any necessary compensatory measures are taken to ensure the overall coherence of relevant sites (i.e. SACs and SPAs) are protected and to consult the appropriate nature conservation body about such measures; **(b)** instigate any pertinent investigations into the effects of offshore hydrocarbon activities on the conservation status of offshore habitats and species; and **(c)** determine, in the light of investigations, whether any relevant power should be exercised for protecting such habitats or species.

**Statement:** The provisions of this regulation are clear and remain appropriate for the purpose of enabling certain offshore hydrocarbon projects to proceed and ensuring that appropriate measures are taken to protect offshore habitats and species within SACs and SPAs.

Please state to what extent you agree or disagree with the above statement.

Strongly Agree

Agree

Neither Agree or Disagree

Disagree

Strongly Disagree 

Please provide supporting comments.

**Question 14**

**Regulation 7 [Control of activities under licence]** of the2001 Habitats Regulations (as amended) sets out the circumstances under which the Secretary of State (“the SoS”) will give directions to persons (e.g. operators) to avoid, reverse, reduce or eliminate adverse effects, or the deterioration or disturbance of certain habitats or species, from offshore hydrocarbon activities in relevant sites (i.e. SACs and SPAs). Prior to giving a direction, regulation 7 also requires the SoS to consult the appropriate nature conservation body as to the steps to be specified in a direction.

**Statement:** The provisions of this regulation are clear and remain appropriate for the purpose of protecting offshore habitats and species within SACs and SPAs.

Please state to what extent you agree or disagree with the above statement.

Strongly Agree

Agree

Neither Agree or Disagree

Disagree

Strongly Disagree 

Please provide supporting comments.

**Question 15**

**Regulation 8 [Review of directions given by the Secretary of State]** of the2001 Habitats Regulations (as amended) requires the Secretary of State to**:** **(i)** review the appropriateness of a direction - issued in accordance with regulation 7 [Control of activities under licence] - when a request for such a review has been made by the person (e.g. the operator) in receipt of a direction; and **(ii)** modify or revoke a direction where, following a review, it is deemed no longer appropriate.

**Statement:** The provisions of this regulation are clear and remain apposite in terms of ensuring the continued appropriateness of directions.

Please state to what extent you agree or disagree with the above statement.

Strongly Agree

Agree

Neither Agree or Disagree

Disagree

Strongly Disagree 

Please provide supporting comments.

**Question 16**

**Regulation 8A [Review of existing decisions]** of the2001 Habitats Regulations (as amended) requires the Secretary of State (“the SoS”) to**:** **(i)** review an existing decision in respect to an offshore hydrocarbons plan or project that is in a site which subsequently becomes a relevant site (i.e. a SAC or SPA); and **(ii)** where an existing decision is reviewed and it was made by the Oil & Gas Authority (OGA) [now the North Sea Transition Authority (NSTA)] or is treated as having been made by the OGA (NSTA), notify the OGA (NSTA) as to the outcome of the review and whether the OGA (NSTA) must affirm, revoke or modify the decision, or where the existing decision was made by the SoS affirm, modify or revoke the decision.

**Statement:** The provisions of this regulation are clear and remain appropriate for the purpose of maintaining the integrity of SACs and SPAs.

Please state to what extent you agree or disagree with the above statement.

Strongly Agree

Agree

Neither Agree or Disagree

Disagree

Strongly Disagree 

Please provide supporting comments.

**Question 17**

**Regulation 8B [Consideration on review]** of the 2001 Habitats Regulations (as amended) applies where an existing decision is reviewed in accordance with regulation 8A [Review of existing decisions] and requires the Secretary of State (“the SoS”) to affirm an existing decision if it appears that action taken or to be taken in respect to an offshore hydrocarbons plan or project would not adversely affect the integrity of a relevant site (i.e. a SAC or SPA). Where the avoidance of an adverse effect on the integrity of a relevant site may be secured in various ways, regulation 8B also requires the SoS to ensure that actions are undertaken in the least onerous way by those affected.

**Statement:** The provisions of this regulation are clear and remain appropriate for the purpose of maintaining the integrity of SACs and SPAs.

Please state to what extent you agree or disagree with the above statement.

Strongly Agree

Agree

Neither Agree or Disagree

Disagree

Strongly Disagree 

Please provide supporting comments.

**PART E - Additional Questions**

**Question 18**

In your opinion, are the current JNCC noise mitigation guidelines effective and fit for purpose?

Yes

No

Please provide supporting comments.

**Question 19**

Are there any other observations that you would like to offer in relation to the 2001 Habitats Regulations (as amended)?

Yes

No

If Yes, then please provide supporting comments.

**Question 20**

Is there anything else you would like to raise relating to the 2001 Habitats Regulations (as amended) that has not been covered in this Survey?

Yes

No

If Yes, then please raise them here.