Offshore Petroleum Regulator
for Environment & Decommissioning

WILD BIRDS (NESTING) ADVICE NOTE
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Contents

1 Purpose of Document

This advice note provides advice to industry regarding what measures need to be taken to ensure the protection of birds nesting on oil and gas installations, in accordance with The Conservation of Offshore Marine Habitats and Species Regulations 2017 (OMH 2017). The advice note will be relevant to, to those operators involved in the removal of offshore installations from the UKCS or where there is a requirement to undertake any works on an installation where birds are nesting. It also introduces what legal protection is offered to nesting birds offshore and outlines how operators should manage, plan and undertake their activities such that nesting birds, their eggs and chicks are protected and that offences are not unwittingly committed by operators. Although this advice note focuses on Kittiwakes (as the dominant nesting bird species at oil and gas installations in the UKCS), it can also be considered applicable for other species such as Great Black-Backed Gulls and Herring Gulls.

2 Introduction

Oil and gas installations in the UKCS, are being utilised by wild birds for a range of purposes such as roosting, resting (loafing) and nesting. The management of bird activity on offshore installations has long been an important task, for example, in support of safe helicopter operations and to prevent guano build up. However, the increase in decommissioning activity in recent years and specifically the removal of offshore structures from the UKCS means there is an increasing need to ensure nesting birds are protected offshore and that offences are not committed under the OMH 2017.

All offshore-nesting birds are legally protected, with safeguards that closely mirror those established for onshore-nesting species. Recent decommissioning activities have highlighted that offshore operations can pose significant risks to nesting birds. As a result, it is essential that operators of offshore structures develop and implement robust installation specific bird management plans to ensure their activities do not cause an offence. Bird management plans for decommissioning activities are recommended regardless of the presence/absence of birds as birds can start nesting on installations unexpectedly.

The greatest risk to birds nesting on offshore installations comes during the dismantlement and removal phase, when the installations are physically lifted out of the water, onto a heavy lift vessel and brought to shore. If nests have or are being built during the removal window, the combination of physical removal and translocation to shore will ultimately prevent birds from successfully rearing young i.e. it will result in the failure of any eggs or young birds (associated with the nest) from surviving or prevent eggs from being laid.

This advice note is therefore primarily targeted at those involved in the decommissioning of installations and should be considered by those operators approaching Cessation of Production (COP). There may, however, be some circumstances where activities on operational installations could also impact nesting

birds, for example in the use of mobile rigs and jack up barges which work alongside existing installations and obstruct access to live nests.

The information available to inform OPRED's understanding of offshore nesting birds is continually evolving. Each breeding season provides more information on the size and distribution of nesting colonies, along with the effectiveness of the measures used to survey and deter nesting birds. This advice note will therefore be periodically updated and should be considered as a progression from the previously produced advice notes which continue to remain valid. Resources to be considered alongside this document are published on OPRED's webpage:

https://www.gov.uk/guidance/oil-and-gas-offshore-environmental-legislation#conservation-of-offshore-marine-habitats-and-species-regulations-2017

- JNCC Seabird Survey Methods for Offshore Installations: Black-legged kittiwakes
- 3 sign posting documents - Information and resources: Black-legged kittiwakes, Herring Gull and Great Black-Backed Gull

Note the seabird survey methods document is authored by the Joint Nature Conservation Committee (JNCC) who function as statutory advisors to government and regulators on nature conservation.

3 Overview of Regulations and Offences

The Conservation of Offshore Marine Habitats and Species Regulations 2017 (OMH 2017 Regulations)

The above regulations, particularly Part 3, ensures the protection of wild birds, their eggs and nests in the offshore marine area. For the purposes of this advice note and clarity, these regulations provide protection to wild birds, their nests, eggs and chicks on any oil and gas installation anywhere in the UKCS.

An operator is therefore guilty of an offence if they undertake an act stated in regulation 40:

> **Protection of wild birds, their eggs and nests**
>
> **40.**—(1) Subject to regulations 41 and 55, a person who deliberately—
>
> (a) captures, injures, or kills any wild bird,
>
> (b) takes, damages or destroys the nest of any wild bird while that nest is in use or being built, or
>
> (c) takes or destroys an egg of any wild bird,
>
> is guilty of an offence.

Note: The acts above are considered an offence if they are undertaken either intentionally or through not taking enough care.

The challenges associated with the protection of wild birds, their nests, eggs and chicks will usually come at the end of the installation's life, at the decommissioning

stage, where wells are Plugged & Abandoned (P&A), and the installations are removed. Issues arise when these activities are to be undertaken on an installation with nesting birds and that activity will either directly or indirectly impact nesting birds. For example, equipment such as scaffolding may have to be installed in areas where nests are present, or a rig may need to be located alongside the installation blocking access to any nests, or the installation is to be removed when the nests are active. In these situations, nesting birds, eggs and chicks may be in the path of equipment requiring them to be removed/moved or even destroyed. The restricted access created by a rig positioned adjacent to the installation could prevent adult birds attending existing nests, indirectly causing death of any chicks or eggs. The greatest impact arises when an installation is removed, and nesting birds are present. In this situation, the act of removing the installation will also remove the active nesting sites preventing birds from laying eggs, preventing already laid eggs from hatching and/or preventing adults from feeding the chicks.

Please note that the temporary removal of an active nest to somewhere else on an installation, which is then relocated back to its original location, is an offence under the OMH 2017 Regulations

All examples given above are offences under the OMH 2017 Regulations. The penalties are clear under the regulations – any person found guilty, whether on summary conviction or on indictment, is liable to a fine, and this may apply to the individual who committed the offence or their organisation. There is no specified upper limit to the fine and the courts are required to consider any financial benefit gained from the offence when determining the amount. Failure to comply with the regulations can also result in reputational damage for the company itself and the oil and gas sector.

Whilst most risks to nesting birds are created by the operation and decommissioning of the installation, there are examples related to research programmes which require the tagging and ringing of birds. As this activity includes the *capture* of birds, which is defined in regulation 40 above, this activity would also be considered an offence and would require a licence.

The regulations do not require all activities on installations with nesting birds to obtain licences, and it is common for operations to continue on installations with active nests and there be no adverse impact on the nesting birds. For example, routine maintenance or light intervention works which do not directly interfere with nests, can often take place close to nests. However, a precautionary approach should be taken, and personnel working in the vicinity of live nests should be cautious and maintain a suitable distance as birds can abandon their nests due to the close presence of personnel. In these circumstances, the operator should discuss the planning of these activities with OPRED, and a nesting birds risk assessment should be undertaken.

4 Wild Bird Licences, the Relevant Administration & the Offshore Marine Area

Wild birds are now nesting regularly on UKCS oil and gas installations, and there will be instances where an offence listed in regulation 40 may be unavoidable to safely operate or decommission the installation. For example, the breeding season for birds on offshore oil and gas installations is usually from March/April to the end of September, which is also when the removal of installations are usually scheduled, due to weather conditions being more favourable for heavy lifting. In those situations, where the risk of an offence is unavoidable, operators may apply for a licence allowing them to undertake an activity which would otherwise represent an offence.

Regulation 55 provides the '*power to grant licences*' by the '*relevant administration*' in the offshore marine area under certain conditions and circumstances. Regulation 2 of the OMH 2017 regulations describes the offshore marine area as:

> (a) any part of the seabed and subsoil situated in any area designated under section 1(7) of the Continental Shelf Act 1964(15); and
>
> (b) any part of the waters within British fishery limits (except the internal waters of, and the territorial sea adjacent to, the United Kingdom, the Channel Islands and the Isle of Man);

The relevant administration which can grant licences under regulation 55 (see more detail below) is defined in regulation 55(15)(a) and (b) for activities listed in regulation 55(16), which includes oil and gas activities licensed under the Petroleum Act 1998 and Energy Act 2008. OPRED is the relevant administration for the granting of licences under regulation 55 to oil and gas operators anywhere in the UKCS. The grant of licences under regulation 55 is applicable across the UKCS, and includes territorial waters, by virtue of regulation 3 in The Offshore Petroleum Activities (Conservation of Habitats) Regulation 2001. Regulation 3 requires the Secretary of State to go beyond the requirements of the OMH 2017 Regulations to ensure that oil and gas activities are carried out in a manner that is consistent with the requirements of the Habitats and Wild Birds Directives.

4.1 Wild Bird Licences

If an activity is likely to result in one of the outcomes listed in regulation 40 i.e. killing eggs, chicks or destroying nests, then an operator can apply to OPRED for a wild bird licence under regulation 55. This licence would allow an activity to be undertaken which would otherwise be considered an offence. It should be noted that the licence applications are only approved if the application meets certain specific requirements and criteria. In approving a licence under Regulation 55, OPRED will ensure compliance with requirements in the Wild Birds Directive, and the 2001 and 2017 Habitats regulations described above. Please note that Regulation 42 prohibits certain

methods of capturing or killing wild birds and these will not be permitted under a wild birds licence from OPRED.

There are two routes for applying for a wild bird licence: either under regulation 55(1) or under regulation 55(3).

4.1.1 Licences under Regulation 55 (1)

Regulation 55(1) is not normally relevant for OPRED regulated activities but permits the operator to undertake an activity, if the activity is undertaken for the following reasons:

Power to grant licences

55.—(1) Regulations 40, 42 and 43 do not apply to anything done under and in accordance with the terms of a licence granted by the relevant administration under this paragraph, and—

(a) in the interests of preserving public health, public safety or air safety;

(b) for the purpose of preventing serious damage to fisheries;

(c) for the purpose of protecting flora or fauna;

(d) for scientific or educational purposes; or

(e) for the purposes of the re-population of an area with, or the re-introduction into an area of, wild birds (including any breeding necessary for those purposes).

(2) The relevant administration must not grant a licence for any purpose mentioned in paragraph (1) unless satisfied that, as regards that purpose, there is no other satisfactory solution.

The additional criteria for granting a licence under Reg 55(1) is Reg 55(2). Under this regulation OPRED must be satisfied that the operator has demonstrated that all other options have been exhausted and that there are no other satisfactory solutions (to avoid the requirement for a wild bird licence). Reg 55(1) can be used for scientific/research purposes, for example for ringing and tagging birds.

4.1.2 Licences Under Regulation 55(3) and 55(4)

Regulation 55(3) (see box below) is the most common route and allows the operator to undertake an activity, if it has been demonstrated to OPRED that the activity meets the criteria specified in regulation 55(4) (a) and (b) below:

(3) The relevant administration may grant a licence to permit the capture, keeping or other judicious use of certain wild birds notwithstanding that the licence is not for a purpose within paragraph (1).

(4) The relevant administration must not grant a licence under paragraph (3) unless satisfied that—

(a) there is no other satisfactory solution than granting the licence; and

(b) the grant of the licence would be consistent with the restrictions in Article 9(1)(c) of the Wild Birds Directive (namely "under strictly supervised conditions and on a selective basis" and in respect of a small number of birds).

The requirements specified in regulations 55(4) are commonly referred to as the '3 tests' which must be met when applying for a wild bird licence**.** The operator must demonstrate

1) that there is no other satisfactory solution and that the application meets the additional criteria in regulation 55(4)(b).
2) that operators must be specific in their descriptions of the species affected including the quantification of the small number of birds, nests and chicks affected.
3) that suitable controls and monitoring must be in place throughout the activity.

In order to meet the first test, the operator for example, must demonstrate to OPRED in the licence application, the actions that have been taken to try and undertake the activity outside of the breeding season, and where this is impossible, summarise the rationale for not undertaking the activity outside of the breeding season. Information including why the activity has to be undertaken within the breeding season, and therefore what deterrents and mitigation have been used must also be discussed. Using the reasoning that a heavy lift vessel (HLV) cannot work outside of the breeding season or that the operator is not in control of the scheduling contract of the HLV are not sufficient justifications to demonstrate that test 1 above has been met. The decommissioning of the asset due to OSPAR requirements is also not a justification used to meet the test.

In order to meet the second test, the operator should specify the species nesting, colony size and age (number of years present), and details of all bird surveys undertaken.

Test 3 should discuss what actions will be undertaken by the operator and/or specialist contractor etc. to ensure that a licence approved by OPRED will be strictly adhered to and should include a monitoring and reporting strategy to ensure compliance with the licence.

The demonstration of compliance with each test should be discussed in the Environmental Assessment Justification (EAJ) document and the Bird Management Plan (details in section 6 below).

4.2 Licence Conditions: Regulation 56(3)

Regulation 56(3) (below) allows OPRED to place conditions on the approved licence to restrict/limit the operations and ensure the details of the activity are enforced.

> 56 (3) A licence under regulation 55(1) or (3) must specify— (a) the species of wild birds in respect of which, the circumstances in which, and the conditions subject to which, any action authorised by the licence may be taken; and
>
> (b) the methods, means or arrangements which are authorised or required for the taking of the action.

4.3 Role of JNCC: Regulation 55(13)

JNCC have an important role in circumstances which involve nesting birds offshore, specifically where operators must apply for a licence under OMH 2017. The OMH 2017 regulations refer to the 'Joint Committee' which is JNCC, and this role is outlined in Regulation 55(13) for offshore nesting birds. JNCC are an advisor to OPRED and will help to guide operators and provide agreement to those circumstances where a licence may be granted. The role of JNCC for these specific activities is described in various sections below.

5 Disturbance

OPRED issue disturbance licences (referred to as 'DL' in the Portal) under the OMH 2017 Regulations, and the use of the term disturbance licence in this capacity relates to marine mammals where significant disturbance to the population is considered an offence. This can cause confusion for operators as applications related to wild birds in the portal also come under the heading 'Disturbance licence'. The intention is that disturbance licences and wild bird licences will be differentiated in the portal, as the term disturbance is not applicable to a licence approved under Regulation 55 for wild birds, their nests, eggs and chicks. For this reason, we have emphasised the term 'wild bird licence' in this advice note for licences relating to nesting bird offences.

Whilst there is no use of the word 'disturb' or 'disturbance' in Regulation 40 when describing possible offences, regulation 38(6) does consider disturbance of birds in a site protected for that species as a possible offence, and the use of the word 'disturb' in this capacity is discussed below for clarity.

Regulation 38(6) of the OMH 2017 Regulations, states the following:

(6) A person is guilty of an offence if—

(a) without reasonable excuse, that person intentionally disturbs any wild bird whilst it is in a site which has been classified as a special protection area under regulation 12 or 13 and which is of a species of bird for which the site was so classified; and

(b) the disturbance—

(i) is such as is likely to impair the bird's ability to survive, breed, or rear or nurture its young; or

(ii) significantly affects the local distribution or abundance of the species to which the bird belongs.

The OMH 2017 regulations do not provide a regulation (unlike regulation 55 in relation to the offences listed in regulation 40) where a licence can be granted by OPRED to intentionally 'disturb' a wild bird where the activity is in a Special Protection Area (SPA) and where that species of bird is a species of bird for which the site was classified. For clarity, this means that there is no provision for OPRED to licence that disturbance activity, and therefore a licence cannot be granted by OPRED for the offences listed in regulation 38(6). This is why there is a distinction with the terms used within this advice note. To reiterate, it is the intention of OPRED to change the portal infrastructure so that operators can apply for a wild bird licence in connection with the offences listed in regulation 40 and the granting of a licence listed in regulation 55.

6 Bird Management Plan (BMP)

6.1 Responsibility of Operator

It is the responsibility of the operator to determine whether activities to be undertaken at an oil and gas installation can be undertaken without committing an offence and determine if a wild bird licence is required. This section sets out steps that the operator should consider to determine whether a licence is required or not. As previously explained, it is usually at the decommissioning stage that a licence may be required e.g. topsides being removed, but it can also include any activities where nesting birds may be affected. For example, where jack up barges are used to undertake P&A work alongside an installation where birds may be nesting.

To assess if an application for a wild bird licence is applicable, the operator must gather evidence to investigate whether there are birds nesting on the installation. This will include undertaking bird surveys to assess whether mitigation to prevent nesting is required. If required these mitigation measures will be carefully planned and deployed prior to when the activity is due to be undertaken. This process will often span several years and OPRED suggests that the evidence gathering, and mitigation/deterrent measures are recorded in a Bird Management Plan (BMP). The BMP is used to inform the wild bird licence application process, however it can also be submitted to OPRED in the pre-application stages for discussion.

The BMP will start to form after the results of the initial bird surveys, and the presence/absence of nesting birds will determine the next steps. The BMP is a live document that will evolve as more data is collected, and the risks are better understood. The BMP will be used initially as a strategic document to set out the operator's plan for managing the process to include timing of surveys, actions from surveys, mitigation/deterrent options, trials, results and options to present to OPRED. At the end of each step, it is recommended that the operator contacts OPRED to discuss the results and the next steps. The BMP (and subsequent versions) should be submitted to OPRED (via email) for review/discussion and is normally updated and discussed with OPRED well in advance of applying for a wild bird licence.

If the operator determines that there is a requirement for a wild bird licence, the BMP will also form the basis for a wild bird licence application. If the operator determines that there is a requirement for a wild bird licence, then the operator must meet the '3 tests' in the regulation boxes above, and that *there is no other satisfactory solution (other than to apply for a licence)*. This means that the operator should have exhausted all options available, such as timing of operations outside of the breeding season and the use of mitigation options to deter birds from nesting. The BMP will provide the information required to fulfil these requirements.

The following sections provide advice on the steps which are required for the BMP.

6.2 Step 1– Confirmation of the presence or absence of nesting birds

Step 1A – Presence of Birds

The initial step is to investigate whether the installation has nesting birds present. The Kittiwake breeding season is approximately from March/April to the end of September, so it is advised that surveys are undertaken during these months (this is similar for other bird species). It is also advised that more than one survey is conducted throughout these months especially if works are being timed to avoid the nesting season, as the start and end of the offshore breeding season can vary depending on location. Undertaking surveys at different times throughout the breeding season will help identify when nesting is likely to commence or have ceased. The following information should be recorded:

- Presence/Absence of birds – when birds started arriving at the installation/prospecting for nest building;
- Number of active nests, with nests, eggs and chicks recorded throughout the breeding season;
- Fledgling assessment – dates chicks leave the nests and;
- Nest abandonment – dates the fledglings and adults leave the nests (not to be confused with sub-adult birds prospecting new breeding sites in Oct/Nov)

The use of cameras to record the nesting activities throughout the season can be really helpful and efficient, but they must be installed around the installation where nesting birds are likely to nest or have previously nested. **These surveys should be undertaken at least 2 years prior to the scheduled activity.** If there is evidence

(anecdotal or otherwise) of a major colony of nesting birds (300+) on an installation, then it is advised that surveys should be undertaken at least 3 years prior to the scheduled activity.

It is advisable that the surveys be undertaken by personnel on board the installation, who are familiar with JNCC's Seabird Survey Methods for Offshore Installation Advice Note. The advice note illustrates what kittiwakes look like (chicks, immature adults and adult), where they can be found on installations and methods used to survey and record nest, eggs and chicks. Trained personnel do not need to be ornithologists, but they must be trained for identifying species of birds, and their key nesting behaviours. It is advised that ornithological training is provided to the personnel undertaking the surveys, to ensure the correct information is accurately collated. The surveys are to establish presence/absence of birds. Survey forms must be completed with diagrams describing where birds are present in addition to photographic evidence (see OPRED's webpage for the form to complete) here. It is important to record the dates of first sightings of the birds, when they began to build nests, when eggs were laid, when chicks hatched, and finally when chicks fledged. It is also important to note when the adult birds left the installation. Operators should seek expert bird advice to confirm species of birds, nests and eggs and to review photographic evidence.

JNCC has produced Kittiwake survey guidance which can also be used at the initial stage of planning and executing bird surveys *(*link here to OPREDs webpage*)*. Please note that birds that are using the installation for resting (loafing) and roosting are not nesting birds. The use of Unmanned Aerial Vehicles (UAV/drones) to undertake bird surveys is to be used with caution as UAVs can collide with birds as they try to evade the perceived threat (from the UAV). The use of drones to undertake bird surveys should be discussed in advance with OPRED.

Step 1 B – The Absence of Birds

If the initial surveys indicate that there are no nesting birds, then OPRED advise that additional surveys should still be undertaken each year, until the year that the scheduled activity is due to take place. The reason for this is that as more installations are removed from the UKCS, there is the potential for birds to be displaced, with more birds looking for new nesting/breeding sites, and relocating to other sites (installations). Birds often prospect for new sites meaning there is also the potential for birds to start nesting on an installation in any given breeding season. It is important that the operator is assured that there are no nesting birds on the installation before activities start and they should be confident that nesting birds are absent before the heavy lift vessel arrives to remove it. The operator may risk assess the situation and decide that no further surveys are required, and that no mitigation is needed if nests have never been observed. In these cases, please discuss this with ORPED. It should be noted that if the operator chooses not to undertake further survey work (after the initial survey at least 2 years in advance), and there are no mitigation/deterrents in place, and discovers nesting birds on the installation just before the scheduled work is due to commence**, it is unlikely that the proposed activity will be permitted to commence**. This is because the operator will a) have to apply at short notice for a wild bird licence application that has a usual minimum 28 day turnaround and b) will not

have met the ‘3 tests’ to satisfy OPRED that the operator has undertaken all the work necessary to prevent the need for a licence (surveys, deterrents, mitigation scheduling options) and minimise the number of birds impacted.

OPRED strongly advises that a final survey is undertaken nearer to the time of the scheduled activity, to confirm if there are nesting birds present or not. Given the specifics and requirements of the regulations, wild bird licences cannot be granted on a ‘just in case’ basis.

At the end of step 1, it is advised that you contact OPRED to discuss the survey results and any next steps.

6.3 Step 2 – Confirmation of the presence of nesting birds and repeated surveys

If the initial surveys show the presence of nesting birds, it is important that repeated surveys are undertaken to monitor the situation, and again the use of cameras installed on the installation can be beneficial and negate the requirement for vessels or personnel. It is imperative that surveys record the timing of arrival of the nesting birds and the departure of the last fledging chicks, in addition to the evidence listed in step 1A. This provides the operator with evidence to define a window for the timing of removal/activity operations. For example, operators often carry out surveys at the end of the summer season to identify a date by which they can be confident that chicks have fledged and nests are no longer active. They then schedule their works to begin after these fledging dates.

OPRED strongly encourages operators to consider undertaking activities that may cause an offence under the OMH 2017 regulations outside of the breeding season, so a wild bird licence is not required. It is however acknowledged by OPRED that some scheduled activities are required to be undertaken at certain times of the year and there is little flexibility.

It is important to note that nests are considered active when wild birds have started to place material at the nesting site. This activity indicates the beginning of the breeding season and will vary at each installation. Inactive nests (found outside of the breeding season) are not protected by these regulations and can be destroyed as the nests are no longer in use.

The operator should have continued engagement with OPRED to discuss the survey results, the strategy for further surveys and further development of the BMP to explore options for deterrent, mitigation and potential trials.

6.4 Step 3 – Avoid, Mitigate, Deter and Minimise

Once birds have been confirmed as nesting on the installation, attention should be given to how the scheduled activity proposed to be undertaken will not breach the regulations. OPRED require operators to follow the hierarchy of:

1. AVOID causing any impact to nesting birds by planning the activity outside of the breeding season i.e. topside removal from end of September to March.

2. MITIGATE the risk of an offence. If it is not possible to avoid working in the breeding season, the operator must prevent or deter birds from nesting in areas where the birds will be impacted.

3. MINIMISE the number of nests effected. In the undesirable situation where bird nests may have to be moved/removed/destroyed, the operator must take every practicable effort to minimise the impact.

Avoidance

For installations with large numbers of nesting birds, it is advised to plan for installations to be removed outside of the breeding season. Undertaking these complex works outside the breeding season does represent challenges, specifically the increased risk of unfavourable weather conditions. However modern heavy lift vessels and jack-up barges have been proven capable of undertaking decommissioning works in these more challenging months and operators are now specifically scheduling the removal of topsides and jackets with known breeding colonies for the autumn and winter months. OPRED advise operators to fully appraise the opportunities and risks for their particular installation.

Mitigation/Deterrents

Prior to building and establishing a nest site, birds will be present at the installation prospecting potential nesting sites and holding their territories i.e. occupying locations on the installation, before pairing and building nests.

If the activities must take place in the breeding season, the period of time prior to nest building is a **critical time window**, and efforts from operators need to be made to deter and prevent birds from building nests using this time window for deterrents to be used which avoid habituation and maximise efficacy It is **not** an offence to use mitigation and deterrents before nest construction, and a range of methods are available, some of which are outlined here:

- **Aerial deterrents:**

These can be birds of prey deployed from the installation or a support vessel, where the sight of a bird of prey will cause birds to leave the potential nest site. This approach can be effective in deterring birds over large areas, however the effect is often short lived with birds returning soon after the threat has left. It therefore needs to be undertaken repeatedly and when using birds of prey, can be a labour-intensive tool and best used in short, targeted time windows.

These types of aerial deterrents need careful planning. as the birds of prey have the potential to injure or kill birds, and there can be significant logistical and safety issues for crews undertaking the deterrent work.

UAVs can also be used as deterrents where birds perceive the presence of a UAV as a predator and/or threat. UAVs can also be fitted with bioacoustics and flashing lights to scare the birds from a distance. Trials have only recently been undertaken using

drones as a deterrent method, and the use of a UAV as a deterrent should be discussed with OPRED prior to use.

- **Acoustic deterrents**

Emitting sounds which are unpleasant, or replicate predator calls or distress calls, can cause birds to leave their location. The way these sounds are deployed can range from fairly crude devices, which can be limited in their effectiveness, to more complex bespoke systems which can have a greater degree of success. An offshore, more complex system, emit sounds specifically designed to distress the species being targeted, and can emit multiple different sounds to create a multi threat environment. These solar powered systems can be timed to only switch on during the prospecting (deterrent) period, and works with the other units positioned around the installation to create the multi threat environment. These more complex systems incur higher costs, and installation challenges with no certainty of effectiveness. Operators should be aware that acoustic deterrent systems have been designed for a variety of birds species in different environments and settings. The deterrents used offshore should be managed and designed carefully, ensuring that the system is designed for offshore use, using sounds specifically tailored for Kittiwakes, and not for other bird species.

- **Visual Deterrents**

There is an array of tools which can be used to frighten birds visually, and can be figures which replicate people, similar to a scarecrow, or models representing predators and dead birds. Other tools include shining lasers near birds which can cause them to startle. The effectiveness of these visual deterrents is not particularly high in isolation, and is often species specific, for example, Kittiwake show minimal threat response to lasers, whereas large gulls tend to show a stronger response.

- **Physical and Movement interventions**

There are many ways in which birds can be physically prevented from nesting on an installation. Examples include spikes and wires installed on surfaces, commonly seen on onshore installations and buildings to prevent birds settling. Birds often favour the horizontal surfaces created by the ‘I’ beams commonly found on offshore installations, and obstructions can be manufactured and fitted onto these beams to make them unsuitable for nest building. Examples used offshore have included plates or blocks directly fitted onto the beams. The physical modifications to the installation can be highly effective in a specific location, however where there are large numbers of potential nesting opportunities and where accessibility is difficult, such large-scale interventions may not be physically possible. Other physical interventions include the use of water sprays which are sometimes used offshore to prevent roosting and congregating birds.

Spikes can be an effective deterrent, but these should also be used with caution. There are examples of Kittiwakes nesting on top of the spikes and during wet weather, the nests can ‘settle’ with the weight of the wet nest material. Birds can become impaled on the spikes and die, therefore the use of plates or blocks on I beams make these deterrents more favourable than the use of spikes.

Nets can be deployed over areas of potential nesting sites, which seal off areas of the installation and prevent birds accessing and building nests behind them. This can be

an effective method of preventing birds from accessing a large and complex area of potential nesting sites, where other deterrents may fail. For example, netting has been successfully used offshore to prevent access to one side of an installation occupied by hundreds of Kittiwakes. In this example, the remaining 3 open sides of the installation were extensively occupied by nesting birds, whereas the netted side (which was secured tightly against the side of the installation), remained free of nests. Whilst potentially highly effective, netting has significant risks and challenges. Birds can become entangled or trapped behind nets, which has the potential to cause an offence. A properly deployed net should be securely fitted and flush to the installation. It should be restricted to areas where birds are likely to nest, and designed to prevent birds from getting behind it or becoming entangled. Nets can be damaged, become loose or dislodged, creating openings within the netting, and birds are likely to utilise these openings to gain access to nesting sites behind the nets. The use of nets requires careful planning and deployment, along with consultation with recognised experts and OPRED. Due to the risks above, nets will not be suitable for many installations, particularly large ones.

Factors to consider before deploying nets:

- Due to the risk of entanglement and injury to birds (which may in itself cause an offence), nets must be a last resort after other mitigation options have been exhausted and deployed;
- Operators should review how the impact of removing/damaging nests compares with the potential impact of entangling mature breeding birds in nets, when evaluating their bird management options;
- Once nets have been installed, they must be regularly checked and maintained to ensure they remain effective i.e. they have not become loose or torn, allowing birds to adequately bypass them or become entangled;
- If it has been identified that nets are required and can be safely installed and monitored, it may be necessary to apply for a wild bird licence to account for the worst case scenario where an offence is caused by birds becoming entangled in the net. Operators should discuss this requirement with OPRED.

Movement deterrence based on flying, spinning and static decoys, can be effective when used in conjunction with other deterrents mentioned above e.g. bioacoustics. A multi modal approach is often more effective, where layering of different types of deterrents are used to complement one another to reduce habituation and increase effectiveness.

In summary, deterring birds from offshore installations is very difficult, there is no one technique which will work in all situations, and the solution will likely involve utilising multiple approaches and tools tailored to the installation. Due to the uncertainty and continually evolving technology and understanding surrounding offshore bird deterrents, trials of mitigation techniques are recommended. Note: As soon as birds start to build nests, new deterrent and preventative measures must not be installed, and birds of prey and UAV’s cannot continue (if using) to be used as deterrents. These new deterrents could be considered an offence when used on active nests.

An operator can undertake a trial(s) of mitigation methods (usually at least 1 year prior to the scheduled activity to be undertaken) to assess the effectiveness of the proposed methods. If employed correctly trials do not require a wildlife licence, as the mitigation methods are deployed prior to the breeding season and should not result in an offence being committed. However, the operator must discuss with OPRED the options and methods to be used prior to the trials commencing. The BMP should be updated and submitted to OPRED. The results of the trial should be well documented, with JNCC survey forms completed, photographs taken and evidence collected. The results of the trial should be discussed with ORPED and the BMP updated with next steps.

6.5 Step 4 – Apply for a Wild Bird Licence

It is expected that an operator will have liaised with OPRED from Step 1 above, undertaken multiple surveys, and in some cases, trialled mitigation devices and submitted and updated a BMP to OPRED. This means that the operator should be in a position (for the year the scheduled activity is to be undertaken), to decide what mitigation options will be used, and whether a wild bird licence will be required. It is acknowledged by OPRED that mitigation/deterrents will not be 100% effective, and that a licence may be required for nesting birds that have not been deterred from nesting when the activities are scheduled. Please remember that in order for OPRED to approve a wild bird licence application, the '3 tests' referred to above, must be met.

7 Application and Licencing Process

A licence application will be submitted to OPRED using the Portal Environmental Tracking System (PETS). Please be aware that these applications will take longer to assess, and OPRED recommends that operators submit their applications at least 6-8 weeks in advance of the scheduled activity.

JNCC are statutory consultees, however, OPRED will engage with JNCC prior to the application process, on cases where it is likely that mitigation/deterrents will be used. JNCC may be invited to joint OPRED/Operator meetings to discuss mitigation options available to the operator, survey results, draft EAJ documents and the BMP. JNCC attendance at meetings will be on a case-by-case basis, at the invitation of OPRED and/or the operator. As discussed in section 4.1, JNCC, under regulation 55(13), is an advisor to OPRED to agree the circumstances for which a licence should be granted for the purpose in the application. OPRED encourage operators to proactively liaise with JNCC and OPRED from the earliest stages of the preparatory works to ensure issues are addressed early.

Licences will only be granted on a case-by-case basis, with specific conditions, and ensuring that the licence application meets the test criteria specified in regulation 55 (4)(a) and (b).

7.1 Information required for a wildlife licence application

Where an operator is applying for a wild birds licence, there will have been multiple meetings with OPRED (and usually JNCC), discussing the iterations of the BMP,

survey results, photographs, data, and possible trials of mitigation methods. This information is required to be used in the EAJ document to inform the application and that is uploaded with the application in PETS.

The information required to inform the EAJ should include (but not be limited to):

- Summary of background information for the installation including location and legislative context i.e. which regulation operator is applying for a licence - 55(1) or 55(3).
- Project Description/Work Programme and scheduling of activities
- Relevant species information (using sign posting documents found here) including population and conservation status on a global and local (UK) level, breeding season (timing and nest formation, egg incubation and chick fledging times), behaviours, habitats and conservation status
- Assessment of scheduled activities (and their direct and indirect effects) on nesting birds, eggs and chicks
- Timing of activities and the effects on the above
- Summary of bird survey results and prevention strategy including the results of any mitigation trials, the numbers of nests built over the years, the dates the birds started nesting and when chicks fledged, and the location of nests on the installation
- The requirement for a wild bird licence – The licence application must include a clear demonstration and justification showing how the 3 'tests' have been met. The application should also specify the number of nests, eggs, and chicks that may be unavoidably destroyed as part of the proposed operation. These figures are critical, as the licence will set the maximum allowable number of nests, eggs and chicks that can be impacted. Exceeding these limits may constitute an offence. OPRED must be assured that the proposed figures represent an unavoidable scenario and that no further measures are available to reduce the number of birds impacted. If OPRED determines that the EAJ does not adequately demonstrate that all reasonable avoidance and mitigation measures have been considered and implemented, the application will be returned to the operator.
- The final version of the BMP can be added to the application as an appendix to the EAJ document.

Where an operator has applied for a wild birds licence, it is advised that the operator undertake a final survey close to the timing of when the activity is to be carried out, in order to confirm a more precise estimation of the number of nests, eggs and chicks required for the application. Licence applications which are often submitted 6-8 weeks in advance of the scheduled activity, often estimate the number of eggs, nests and chicks to be included based on survey data from previous years, and not on ‘live’ observations of nesting activity on the installation. The operator may have agreed with OPRED and JNCC to email a draft EAJ for OPRED and JNCC to assess prior to submitting the application in the portal, with the previous years’ data. The submitted EAJ can then be updated with the more precise ‘live’ numbers, once a final survey has been undertaken.

The application will follow the standard OPRED consultation process and will include JNCC, and depending on location of activities, also include Natural England, Natural Resources Wales or NatureScot. Licences granted will restrict the operator to directly or indirectly, injure, kill or dispose of nests, eggs and chicks for the specific species listed in the licence conditions. If it is likely that the licence conditions cannot be met, OPRED must be notified immediately, and operations should be stopped to avoid an offence being committed. Where an operator exceeds these numbers as specified in the licence granted, an offence will have been caused and ORPED must be contacted without delay.

8 Appendix A – Case Example

An operator undertook decommissioning operations at a normally unattended installation (NUI) located in the Southern North Sea. The installation had become a regular nesting site for kittiwakes, with operator-led bird surveys recording 55 nests in the summer of 2022, increasing to 65 in the summers of 2023 and 93 in 2024 (see Figure 1 below).

Aware that removing the installation during the breeding season would result in the loss of many nests, eggs and/or chicks, the operator scheduled the removal of the topside and jacket via a heavy lift vessel outside of the nesting season. However, prior to the lifting and removal campaign, plug and abandonment (P&A) operations and other topside preparations were required. This necessitated positioning a jack-up barge alongside the installation during the 2025 bird breeding season.

The operator recognised that the presence of the jack-up barge and associated topside activities could cause an offence under the OMH 2017 regulations. The birds had previously nested predominantly under the helideck, which would not cause any spatial issues with the planned activity. However, in the previous nesting season, a small number of nests had been established on the north face, which was the planned positioning location of the jack up barge. The barge would be positioned immediately adjacent to the installation, overshadowing and limiting access to nesting ledges. Additionally, some topside preparations, such as pad eye NDT, would be conducted near nesting areas.

The scheduled arrival date of the jack-up barge was near to the start of nest building season. Introducing obstructive or potentially disruptive activities after nests have already been established is more likely to result in an offence under the OMH 2017 regulations. If the jack up barge prevents the adult birds to fly to and from their nests, then that is an offence caused by indirectly disrupting the adult birds tending to their nests, preventing eggs from hatching, and/or chicks from fledging. To mitigate the risk of potential to cause an offence, the operator developed a comprehensive mitigation plan in 2024 aimed at preventing nest establishment in 2025. The plan included:

- Early consultation with OPRED and JNCC to establish current best practice for the use of deterrents;
- Visual deterrents/scarers installed near known nesting area;
- Audio deterrents using speakers that emitted sounds specifically designed to elicit a flee response in kittiwakes, positioned to ensure effective coverage of all potential nesting sites (see Figure 3 below) and;
- Physical obstacles installed in accessible nesting areas where planned works would be carried out. This consisted of sloped planks of timber fixed to ledges to prevent nest formation (see Figure 2 below).

The deterrents were installed in March 2025 and the jack up barge arrived a month later. At arrival, there were birds roosting on the weather deck and on top of the helideck, but no active nests detected. With the rig alongside the installation and during P&A operations, the birds did not land on the installation, but some remained on the sea around the installation.

This example clearly demonstrates that the operator was highly effective in deterring and preventing nesting bird offences. However, it remains unclear which specific aspect of the mitigation plan was most responsible for this success. Was it the use of sloping boards (which proved highly effective in the locations they were deployed), the acoustic deterrents, the early arrival of the jack-up installation prior to nesting season, or a combination of these factors?

Notably, the operator observed that the acoustic deterrents did not elicit a strong flee response from the birds and many remained on the installation or returned shortly after activation. Despite this, none of the birds ultimately chose to nest, in contrast to previous years when nesting was common. These observations suggest that kittiwake responses to acoustic deterrents may be more complex than previously understood, warranting further research to better interpret behavioral patterns. One hypothesis is that the birds on the installation possessed a relatively high threshold for startle or disturbance from sound stimuli, as crew members noted that the birds exhibited minimal or short-lived reactions to helicopter operations. Nevertheless, the deterrents may have induced a more subtle or chronic adverse response, leading the birds to avoid establishing nests in the area.

To account for the possibility that the mitigation plan might not be fully successful, the operator applied for a wild bird licence to cover any potential impact on nests, eggs and/or chicks. OPRED was satisfied that the operator had taken reasonable avoidance measures, including undertaking thorough surveys over multiple years, engaging directly with JNCC and OPRED, and working with relevant experts to develop the mitigation strategy. The licence was granted, although ultimately it was not required.

To note, the jack up barge arrived on 19th April 2025, which is at the start of the nesting building season. The audio deterrents were then switched off but the other deterrents remained in place.

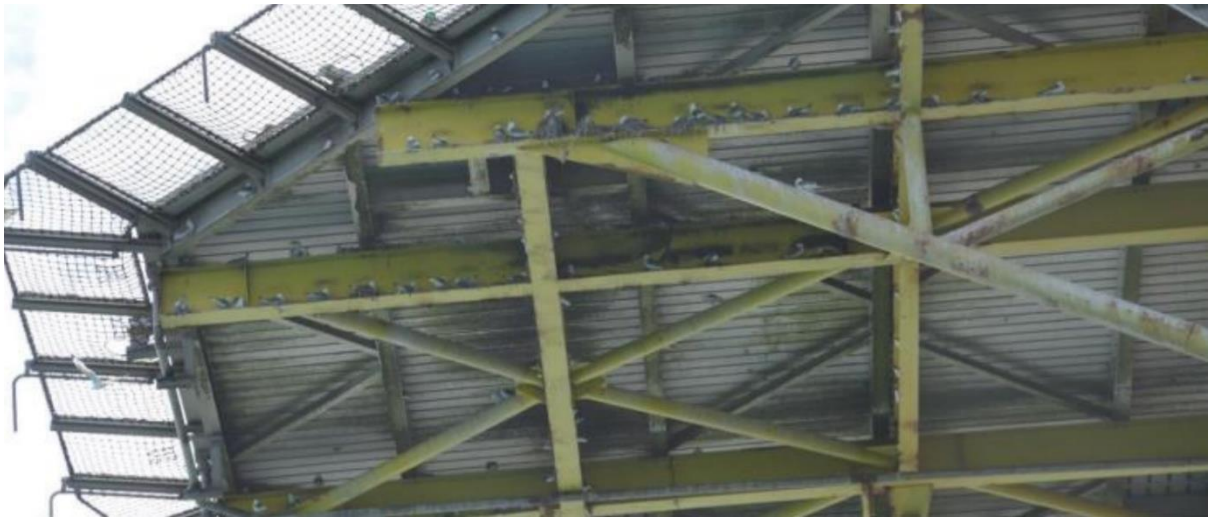

Figure 1: Kittiwakes nesting at the installation (taken in previous surveys) (copied with owner's permission)

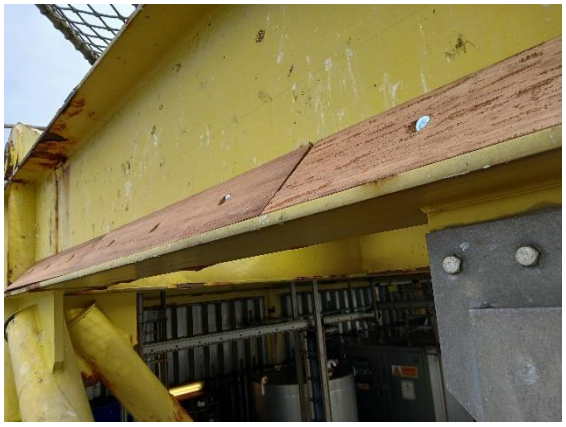

Figure 2: Sloping boards installed on ledges (copied with owner's permission)

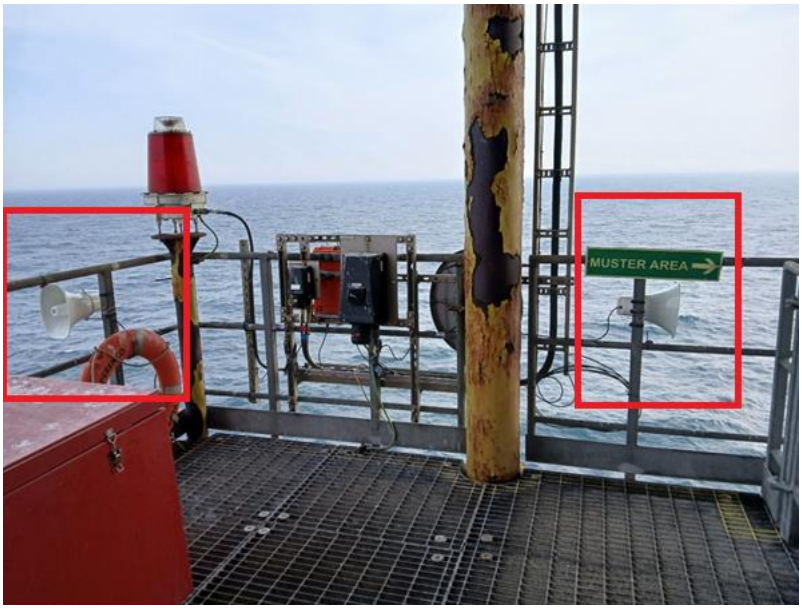

Figure 3: Acoustic deterrents installed with coverage on multiple sides of the installation (copied with owner's permission)