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Conservation (Natural Habitats, &c.) Regulations 1994 (as amended)

Application for a licence to disturb or injure marine European protected species (EPS) for one of the following purposes

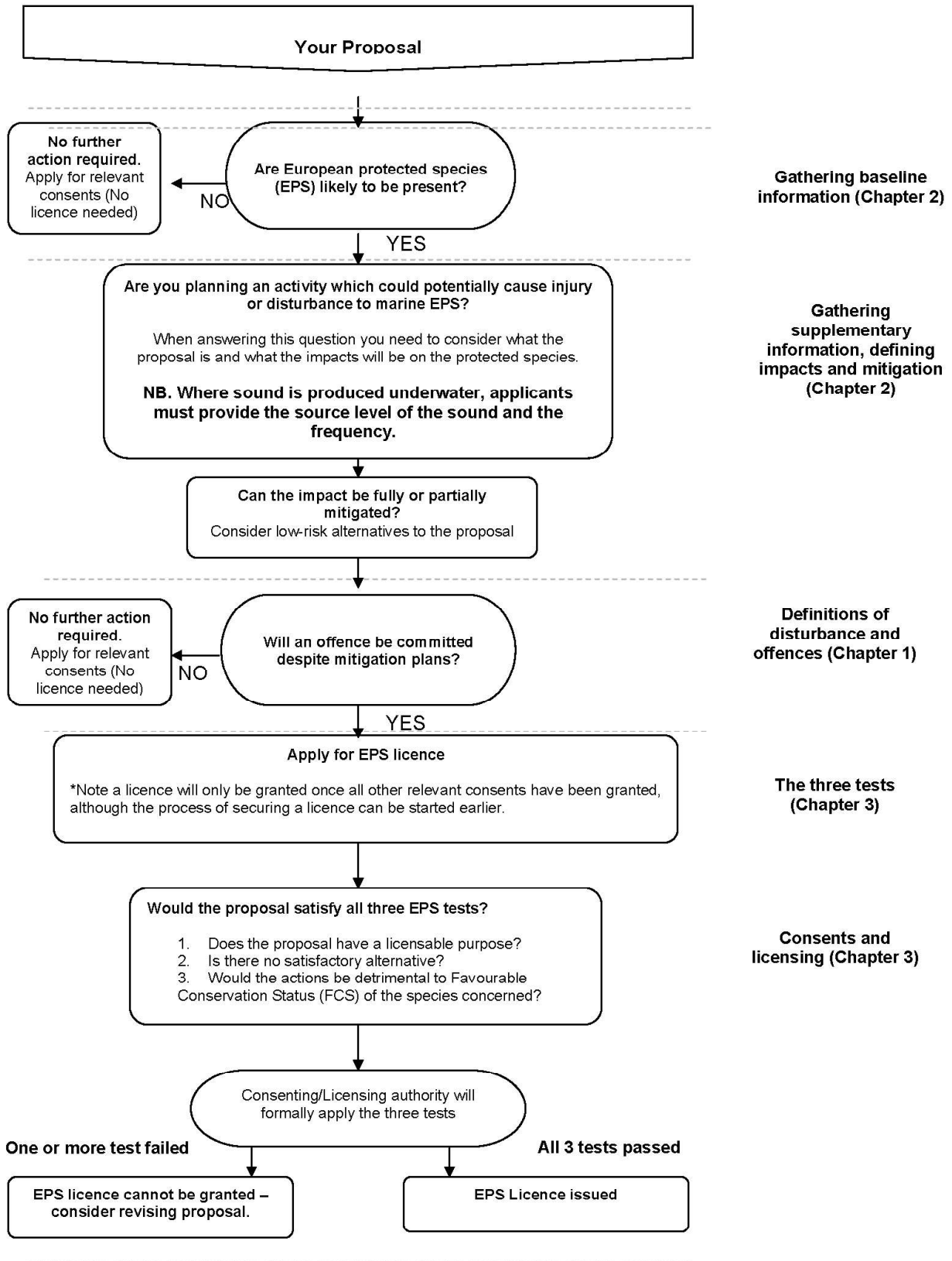
- For preserving public health or public safety
- For an imperative reason of overriding public interest (including those of a social or economic nature and beneficial consequences of primary importance for the environment)
- For preventing the spread of disease
- For preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property, or to fisheries.

Please use this application form if you wish to undertake works/activities that would affect European protected species in the Scottish inshore marine area (0 – 12nm).

IMPORTANT: Before completing this form, please read these notes carefully

Applicants are advised to read these notes in conjunction with [The Protection of Marine European Protected Species from injury and disturbance: Guidance for Scottish Inshore Waters](#). If further clarification is needed please contact Marine Scotland Licensing Operations Team (MS-LOT) on 0300 244 5046 or email: ms.marinelicensing@gov.scot

Flowchart showing the decision-making process
 Please refer to the relevant chapter of [The Protection of Marine European Protected Species from injury and disturbance: Guidance for Scottish Inshore Waters](#)



Please complete all relevant sections of the form.

Please ensure that you answer questions fully in order to avoid delays.

The completed application should be sent to Marine Scotland Licensing Operations Team (MS-LOT) at the address below or emailed to ms.marinelicensing@gov.scot.

We will not process unsigned application forms.

Please ensure that you provide appropriate information to support your application. Applicants can provide this supporting information in the form of an EPS Risk Assessment. Guidance can be found in [The Protection of Marine European Protected Species from injury and disturbance: Guidance for Scottish Inshore Waters](#). Please contact MS-LOT if you wish to discuss the level of supporting documentation required for your application. Failure to provide sufficient supporting information may delay the consultation and licensing process.

MS-LOT will aim to determine whether a licence should be issued **within 6 to 8 weeks of acceptance of a completed application**. However, please note that for large scale or complex projects, the determination period may be longer.

If you experience any problems filling in this form, please contact MS-LOT.

Please use this application form if you wish to undertake works/activities that would affect European protected species in the Scottish marine area (0 – 12nm).

Please note that European protected species are also protected in the offshore marine environment (between 12 and 200 nautical miles). Species in this area are protected under The Conservation of Offshore Marine Habitats and Species Regulations 2017.

Do not use this form if your application relates to scientific, research, conservation or educational purposes. Please contact Scottish Natural Heritage (SNH Licensing, Great Glen House, Leachkin Road, Inverness IV3 8NW, Telephone 01463 725000, email licensing@snh.gov.uk or visit [their website](#)) for a licence application for these purposes. SNH also issues licences for the purposes of marking animals or plants in relation to conservation or introducing them to particular areas for conserving natural habitats, and for protecting zoological or botanical collections.

Before a licence can be granted, it is essential that other relevant licences or consents have been secured for the proposed activity (eg Marine licence).

It is the responsibility of the applicant to obtain any other consents or authorisations that may be required.

Part A

Section 1 Personal details

Please provide details of the individual, company or partnership you wish to be named on the licence. The licensee is responsible for ensuring compliance with the licence and its conditions. Under the Conservation (Natural Habitats) Regulations 1994 (as amended) it is an offence to fail to comply with the terms and conditions of a licence.

Section 2 Previous applications

Please provide details of any previous relevant licences.

Part B
Section 3

Species

Please provide details of the species that will be affected by the work, the number likely to be affected and a description of how this number was determined. This information can be described in detail in your supporting information. You will need to provide detailed proposals (to be included in the 'Supporting information') of all the mitigation work that you plan to carry out which will affect European protected species.

Location

Describe the location of the proposed works. Include a list of the latitude and longitude co-ordinates (WGS84) of the boundary points of the proposed project. WGS84 is the World Geodetic System 1984 and the reference co-ordinate system used for marine licence applications. Co-ordinates taken from GPS equipment should be set to WGS84. Coordinates taken from recent admiralty charts will be on a WGS84 compatible datum. Ordnance survey maps do not use WGS84. In a few cases, (e.g. laying of cables or pipelines) it may only be practicable to supply co-ordinates for the start and end points.

Example: For positions read from charts the format should be as in the example: 55°55.555'N 002°22.222'W (WGS84). The decimal point specifies that decimals of minutes are used and the datum is stated explicitly. If seconds are used then the format should be as in the example: 55°55'44"N 2°22'11"W (WGS84).

It is important that the correct positions, in the correct format, are included with this application, as any errors will result in the application being refused or delayed.

Section 4 Consideration of designated sites

Please provide details of any designated sites affected by your proposals. You are advised to consult Scottish Natural Heritage, or other appropriate regulator, if the work you propose to do affects a Natura site, an MPA or a Site of Special Scientific Interest.

Section 5 Activities to be licensed

Please indicate the activities you intend to undertake that would otherwise be unlawful. Provide details of the proposed commencement and completion dates of the activities. **The licence start date will not be backdated, since to commence a project for which a licence has not been obtained may constitute an offence resulting in appropriate legal action.**

It is the licensee's responsibility to apply for any further licences or an extension prior to the expiry of the initial licence.

Section 6 Purpose of the licence application

Please indicate the purpose of the licence application, the first of the legal tests.

Please complete the relevant Annex to provide justification for the licensing purpose. This is the [legal basis of the application](#).

Section 7 Satisfactory alternatives

Please provide your consideration of why there is no satisfactory alternative. This must include all other options that have been evaluated, the alternative sites that were considered by you and why they were rejected (if no other sites were considered, you must provide the reasons why), as well as all alternative methods of carrying out the work and alternatives dates / timings.

In relation to each alternative considered, please provide an explanation of why you consider it to be satisfactory or unsatisfactory. In respect of any alternative sites please provide the location(s) and details of the alternative site(s), or your views on how the activity/proposal might have been achieved differently, and any other helpful information; e.g., pros and cons of alternative sites, or whether there is likely to be demand for all suitable sites to be used to meet an identified need. Please explain how this conclusion was reached.

Section 8 Summary of the planning / licensing position

Detail all consents and licences required for the proposed project and indicate those that you have applied for or received.

Section 9 Noise Monitoring

Under the Marine Strategy Regulations (2010), there is now a requirement to monitor loud, low to mid frequency (10Hz to 10kHz) impulsive noise. This includes use of seismic airguns, other geophysical surveys (<10kHz), pile driving, explosives and certain acoustic deterrent devices. This monitoring requires completion of a form at the application stage (giving details of the proposed work) as well as completion of a 'close-out' form (giving details of the actual dates and locations where the activities occurred). The close-out form should be returned within 12 weeks of completing the 'noisy' activity or, in the case of prolonged activities such as piling for harbour construction or wind farms, at quarterly intervals or after each phase of foundation installation.

These forms are available at: <https://mnr.jncc.gov.uk/>

Section 10 Privacy notice

This section briefly describes the Scottish Ministers responsibilities in relation to Data Protection based on the requirements of the data protection laws and the Environmental Information (Scotland) Regulations 2004 and the Freedom of Information (Scotland) Act 2002.

Part D

Section 11 Declaration and warning

It is important to read the Declaration and Warning sections before signing the application form.

Site visits and compliance checks

It is possible that the licensing authority may undertake a site visit prior to the issue of a licence. The majority of site visits will be arranged several days in advance and will be conducted in the presence of the licensee (or applicant) however there may be occasions when a site visit will be made at short notice.

Licensees should be aware that they may receive a request for a site visit by the licensing authority, or a person authorised by the licensing authority, to assess site conditions against the conditions of the licence. It is essential that if any of the agreed mitigation measures contained in the application and supporting information are changed for any reason, the licensing authority is informed as soon as possible.

The Licensing authority will monitor compliance with licences issued based on the information included in licence reports.

Where to seek further information

Further information can be obtained from Licensing Operations Team at the address below.

If your proposal relates to one of the purposes for which SNH is the licensing authority, please contact your local office of SNH.

Licensing Operations Team
Marine Scotland
375 Victoria Road
Aberdeen
AB11 9DB

Tel: 0300 244 5046
Email: MS.marinelicensing@gov.scot

Disclaimer

While every effort has been made to ensure the information contained in this document is accurate, nothing in this document should be taken to replace the current legislation in force at this time. You are advised to obtain qualified legal advice in relation to your rights and responsibilities under the 1994 Regulations and other legislation.

Part B. The Application

3. Species

(a) Please indicate which species is / are affected by the proposed works.

Common name(s): Harbour porpoise, bottlenose dolphin, white-beaked dolphin, minke whale, common dolphin, Risso's dolphin, white-sided dolphin, killer whale, long-finned pilot whale, fin whale, humpback whale, sei whale.

Scientific name(s) Phocoena phocoena, Tursiops truncatus, Lagenorhynchus albirostris, Balaenoptera acutorostrata, Delphinus delphis, Grampus griseus, Lagenorhynchus acutus, Orcinus orca, Globicephala melas, Balaenoptera physalus, Megaptera novaeangliae, Balaenoptera borealis.

(b) How many individual animals will be affected by licensed work?

Numbers of individuals which have the potential for a behavioural response:
 Harbour porpoise - 47
 Bottlenose dolphin - 6
 White-beaked dolphin - 6
 Minke whale - 3

Please provide a description of how this number was calculated / estimated

The 5 km effective deterrence range for 'other geophysical surveys' (JNCC Report No. 654) was used to as the radius in the formula $area = \pi r^2$ to estimate the area of the zone of potential impact. The SCANS-IV density estimates (Gilles et al., 2023) were used to estimate the number of individuals of harbour porpoise, white-beaked dolphin and minke whale with potential to be present within the zones of potential impact. The number of bottlenose dolphins with potential to be impacted was estimated using an inferred density surface. See section 5 of the EPS Risk Assessment for details.

(c) **Location of proposed licensed action**

Latitude and Longitude co-ordinates (WGS84) defining the extent of the project. Please continue on a separate sheet if necessary.

LATITUDE								LONGITUDE								
		°			.		'N				°			.		'W
		°			.		'N				°			.		'W
		°			.		'N				°			.		'W
		°			.		'N				°			.		'W
		°			.		'N				°			.		'W
		°			.		'N				°			.		'W
		°			.		'N				°			.		'W
		°			.		'N				°			.		'W

Please refer to the additional coordinates form(s)

- (d) Provide a brief description of the proposed activity and the methods to be used.
Detailed information should be included in your Supporting Information
Please provide details of the source levels and frequencies of underwater noise if relevant

Inch Cape OWF are planning to undertake a geophysical survey to provide complete pre-construction survey data to inform clearance activities, refine cable routing, structure and cable installation.

The geophysical surveys will include the use of multi beam echo sounder (MBES), side scan sonar (SSS), single beam echo sounder (SBES), sub-bottom profiler (SBP) and ultra-short baseline system (USBL) equipment.

Pre-mitigation, use of the SBP and SSS (if used at 120 kHz) have the potential to induce the onset of auditory injury. This will be reduced through use of mitigation - see 3 (e) and section 6 of the EPS Risk Assessment.

The sound emitted by the USBL, SSS (if used at 120 kHz) and SBP falls within the hearing range of the marine mammals assessed and therefore has the potential to cause animals to respond behaviourally (see 5 and section 5.2.2.2 of the EPS Risk Assessment).

There is no potential for either auditory injury or behavioural changes in response to use of the MBES or SBES. Consequently, they are not subject to further consideration within the EPS licence application.

The estimated date of mobilisation for the geophysical survey will be 1st August 2024. The aim is to have completed the surveys by the 31st May 2025.

- (e) Briefly state how you will minimise the impact of your proposed work on European protected species.
Detailed information should be included in your Supporting Information.

Mitigation (as per the 2017 JNCC guidelines for minimising the risk of injury to marine mammals from geophysical surveys and the 2023 JNCC guidance for the use of Passive Acoustic Monitoring in UK waters for minimising the risk of injury to marine mammals from offshore activities) will be implemented to negate the potential for PTS. This mitigation will include pre-work searches for the sub-bottom profiler (SBP) and side scan sonar (SSS; if used at 120 kHz) by either a non-dedicated but fully briefed marine mammal observer (MMO) or a passive acoustic monitoring (PAM) operator depending on the conditions. Also, where equipment allows, soft starts will be employed.

Transit watches will also be conducted and actions in line with the Scottish Marine Wildlife Watching Code implemented.

See section 6 of the EPS Risk Assessment.

4. Consideration of designated sites

Designated Areas: National Nature Reserves (NNR), Sites of Specific Scientific Interest (SSSI), Special Protection Area (SPA), Special Areas of Conservation (SAC), Ramsar sites, Marine Protected Areas (MPA). Information on designated sites is available on Scottish Natural Heritage website (<http://gateway.snh.gov.uk/sitelink/>) or from your local SNH office.

- (a) Will any part of the proposed activity fall within /or adjacent to an area covered by a designated site eg SSSI, SAC, MPA? Yes No
- (b) Please give the name of the designated site(s) and either the outcome of your consultations or the reason why you have not consulted (see note 4). Please enclose any relevant correspondence.

The closest designated sites (SACs) for EPS (the Moray Firth SAC (designated for bottlenose dolphins) and the Southern North Sea SAC (designated for harbour porpoises)), are both >200 km from the Inch Cape OWF.

There are SACs for seals closer to the Inch Cape OWF. The Isle of May SAC (designated for grey seals) is approximately 4-5 km from the Inch Cape OWF (cable corridor) at its closest point whilst the Firth of Tay and Eden Estuary SAC (designated for harbour seals) is approximately 25 km from the Inch Cape OWF at its closest point.

5. Activities to be Licenced

Proposed Methods

(a) Please complete all relevant columns in the table below to indicate the methods you propose to use, the activity involved and the time period in which you propose to use each method. This information will be used when preparing the licence to cover activities that would otherwise be unlawful, and failure to give full details may result in an inappropriate licence being issued.

Activity to be licensed (please tick)					Method to be used, (e.g. piling)	Time period	
Capture	Kill (exceptional circumstances only)	Injure	Transport	Disturb/ Harass		From	To
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SBP	01/08/24	31/05/25
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SSS	01/08/24	31/05/25
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	USBL	01/08/24	31/05/25
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			

6. Purposes of the licence application (tick one box only)

A licence can only be issued if 3 specific legal tests are met. The section below relates to the first of these tests. The options shown are taken from the **Conservation (Natural Habitats, &c.) Regulations 1994 (as amended)**.

Please indicate which purpose relates to the proposed works

(a) Preserving public health or public safety (we will require evidence that there is a risk to public health or public safety e.g. an imminent risk of flooding) Regulation 44(2)(e)

Complete Annex A

(b) Imperative reasons of overriding public interest (*including those of a social or economic nature and beneficial consequences of primary importance for the environment*) Regulation 44(2)(e)

Complete Annex B

(c) Preventing the spread of disease Regulation 44(2)(f)

Complete Annex C

(d) Preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property, or to fisheries Regulation 44(2)(g).

Complete AnnexD

7. Satisfactory alternatives

This relates to the second of the legal tests which must be satisfied. Please explain why there is no satisfactory alternative to carrying out the proposed work affecting the species. You must describe all possible alternatives which were considered and why they were considered unsuitable. You must also consider the option of not undertaking the work. **It is not acceptable to state that 'there is no alternative'.**

Option 1: Do not undertake the surveys

This project will significantly contribute to the UK and Scottish Governments achieving their renewable energy targets. Without this development, the likelihood of achieving renewable energy targets will be negatively impacted. The aim of the geophysical survey is to provide complete pre-construction survey to inform clearance activities, refine cable routing, structure, and cable installation. A thorough understanding of the ground conditions of the development area and proposed export cable corridor is required to inform project design parameters/installation techniques which are key for development of the OWF. There will be no effect on EPS from the proposed survey work if the surveys are not undertaken. However, not undertaking the surveys is not a suitable option/satisfactory alternative because the data need to be collected to be able to progress the project. Using existing data on ground conditions is not a suitable alternative because they are not sufficiently detailed or fine-scale to suitably inform the project. Reliance exclusively on desk based data to establish what the ground conditions are is not suitable because one aim of the geophysical survey is to identify geohazards (e.g. pipelines, debris, anchors and buried objects) which have appeared since the last survey was undertaken. The project therefore proposes to apply the mitigation outlined under option 4 while it undertakes the proposed survey work to negate and reduce potential effects on EPS (PTS and behavioural responses respectively).

Option 2: Conduct the surveys when marine EPS are not present

This is not a satisfactory alternative because marine EPS, e.g., harbour porpoise, are present in the North Sea year round. This is also the case for the dolphin (and seal) species. Minke whales are present seasonally (between April and October). Although basking sharks are also present seasonally, they occur very infrequently at this latitude in the North Sea. It will not be possible to use an alternative survey location because the location of the Plan Option Area is fixed, and this is the location from which data need to be collected. The location of the cable corridor is driven by the location of suitable grid connection options, and is constrained by other factors. There is therefore no time of year when marine EPS are not present in the area surrounding the proposed survey location (or any area within the North Sea). Therefore, conducting the surveys when marine EPS are not present is not an option. The project therefore proposes to apply the mitigation outlined under option 4 while it undertakes the proposed survey work to negate and reduce potential effects on EPS (PTS and behavioural responses respectively). Undertaking the survey in the winter months would have the result of extending the duration of the survey as a result of reduced operability windows relating to the less favourable weather conditions in the winter.

Option 3: Do not use survey equipment which emits sound

The survey equipment proposed is industry standard and there are no suitable non-sound-emitting alternatives which could be used to obtain the same data. Not using equipment which emits sound equates to not undertaking the surveys because the same data cannot be obtained using alternative (i.e., non-sound-emitting) equipment e.g., video. Therefore, not using survey equipment which emits sound is not an option. The project therefore proposes to apply the mitigation outlined under option 4 while it undertakes the proposed survey work to negate and reduce potential effects on EPS (PTS and behavioural responses respectively).

Option 4: Restrict/reduce sound emitted by the survey equipment

The equipment that will be used is standardly used, and the noise emitted is a function of its purpose and therefore not able to be reduced if the objective of the survey is to be met. The Project does however intend to adhere to the following:

- High frequency equipment such as MBES, SSS and SBES to be operated at frequencies above the hearing range of marine mammals where possible i.e., above 200 kHz. This will negate the potential for effect (PTS or behavioural response).
- USBLs will only be used with a maximum source pressure level of <202 dB re 1 µPa @ 1 m.
- Mitigation (pre-work searches) will be undertaken by both a non-dedicated MMO or a PAM operator (depending on conditions) prior to use of the SBP (or other audible equipment with the potential for PTS) in order to reduce the potential for PTS and behavioural responses. See section 6 of the EPS Risk Assessment.
- Soft starts will be employed where SBP equipment has the capability.

In addition, watches for marine mammals, turtles and basking sharks will be conducted during all transits to and from work sites and actions in line with the Scottish Marine Wildlife Watching Code taken. This will reduce the potential for collisions with EPS and basking sharks.

8. Other Licences / Consents

Please detail below all licences / consents you have applied for or received. **Before a licence can be granted, it is essential that other relevant licences or consents have been secured for the proposed activity (eg Marine licence).**

Type of Licence / Consent (e.g. Marine Licence, Local Planning Authority, Local Works Licence)	Date Applied for	Reference no.	Date of issue of licence / consent
Section 36C	15/12/22		14/06/2023
Marine Licence (GS)	15/12/22	MS-00010140	14/06/2023
Marine Licence (OfTI)	30/03/23	MS-00010593	09/11/2023
Marine Licence (Cofferdam)	19/02/24		Ongoing
Marine Licence (Additional Landfall Works)	21/09/23	MS-00010672	15/1/2024

9. Noise Monitoring

Please indicate if any of the following noise generating activities will be taking place during the operations:

Use of explosives Piling Use of Acoustic Deterrent Devices
Survey equipment operating in the range 10 Hz – 10kHz

If you have ticked any of the above boxes please complete a Proposed Activity form in the Marine Noise Registry at: <https://mnr.jncc.gov.uk/>.

Please note the form must only be completed once for each activity. If you have already completed a form for this activity (eg through the marine licensing process) please give details.

AAN 3729 for 2024 geophys survey dates (01/08/2024 to 31/12/2024)
AAN 3730 for 2025 geophys survey dates (01/01/2025 to 31/05/2025)

EPS licence applications will not be accepted until this form has been completed and submitted.

10. Privacy notice

The Scottish Government's Marine Scotland Licensing Operations Team (MS-LOT) has a range of statutory responsibilities including determining applications for licences to disturb or injure marine European protected species (EPS) under the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) and The Conservation of Offshore Marine Habitats and Species Regulations 2017 and Basking shark licences under the Wildlife and Countryside Act 1981 (as amended).

MS-LOT will, where necessary, process personal information including: names, addresses, email addresses and telephone numbers to determine a licence application. Personal information will be stored securely in the Scottish Government's official corporate record.

A full privacy notice can be found at: <http://www.gov.scot/Topics/marine/Licensing/marine/PrivacyNotice>. If you are unable to access this, or you have any queries or concerns about how your personal information will be handled, contact MS-LOT at: Marine Scotland - Licensing Operations Team, Marine Laboratory, 375 Victoria Road, Aberdeen, AB11 9DB. Email: ms.marinelicensing@gov.scot

Have you remembered to enclose Supporting Information with your application, as described in the accompanying guidance? Please check

- | | |
|---|-------------------------------------|
| Completed Application form | <input checked="" type="checkbox"/> |
| Completed Annex | <input checked="" type="checkbox"/> |
| Map / Chart | <input checked="" type="checkbox"/> |
| Correct co-ordinates | <input checked="" type="checkbox"/> |
| Additional information / EPS risk assessment | <input checked="" type="checkbox"/> |

Annex C

Only to be completed if you selected for *Preventing the spread of disease* in Question 6 of the application form

Please complete all questions

What disease(s) is / are at risk of being spread if the proposed activity does not go ahead? Please give details of any expert advice received.

How will the proposed activity prevent the spread of disease? Please give details of any expert advice received.

Annex D

Only to be completed if you selected for *Preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property, or to fisheries* in Question 6 of the application form.

Please complete all questions

What serious damage has occurred or will occur if the proposed activity does not go ahead. Please give details of any expert advice received.

How will the proposed activity prevent serious damage? Please give details of any expert advice received.

Appendix A

A.1 Continuation of Section 8

Type of Licence / Consent (e.g. Marine Licence, Local Planning Authority, Local Works Licence)	Date Applied for	Reference no.	Date of issue of licence / consent
Forth Ports - Works Licence	15/1/2024		29/2/2024