

MD-LOT European Protected Species Case Handling Report

Licence Number: 00010686

Licensing Officer: Redacted

Site	Flora Offshore Wind Farm Proposed Export Cable Corridor and Array Survey Area
Company	BP North East Offshore Wind Limited Chertsey RoadSunbury on Thames Middlesex United Kingdom TW16 7BP
Applicant	Redacted
Brief Description of Project	Geophysical and Geotechnical Survey
Associated Licences	

Species	harbour porpoise (<i>Phocoena phocoena</i>);bottlenose dolphin (<i>Tursiops truncatus</i>);minke whale (<i>Balaenoptera acutorostrata</i>);white-beaked dolphin (<i>Lagenorhynchus albirostris</i>);fin whale (<i>Balaenoptera physalus</i>)
Inshore/Offshore	Inshore

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TEST 1	Purpose of licence
	Imperative reasons of overriding public interest (including those of a social or economic nature and beneficial consequences of primary importance for the environment)
Comments	
<ul style="list-style-type: none"> • Is a specific need being addressed? <p>The applicant has outlined that the proposed development will have beneficial consequences of primary importance for the environment and that the general public will benefit through development of renewable energy infrastructure and a reduction of national and global emissions.</p> <ul style="list-style-type: none"> • What benefit does the activity provide or what need does it address – social, economic, environmental, health and safety etc? (they should give some details) <p>The applicant has outlined that the proposed development is a critical requirement to contribute towards achieving targets of 50GW and 11GW (UK and Scotland) of renewable energy generated through offshore wind by 2030, and the 2050 UK net zero target (BEIS, 2021).</p> <ul style="list-style-type: none"> • Why is the activity essential? <p>The applicant has outlined that there is a strong need for the proposed development. The applicant has outlined that in order to proceed with assessments, construction, and licensing, there is an essential requirement for data collection on physical and biological properties of the seabed within the array area and along the export cable corridor. Furthermore, the data obtained from the proposed survey activities will provide a greater understanding of the potential pathways for impact on biological receptors, validate desk-based assessments, and will inform route selection so that any impacts can be minimised.</p> <ul style="list-style-type: none"> • What public interest is served? <p>The applicant states that the proposed development will provide an environmental benefit on both national and international scales and help to deliver environmental policies in relation to climate change, renewable energy targets, and the reduction of greenhouse gas emissions.</p> <ul style="list-style-type: none"> • Is the activity in relation to any government targets or policies? <p>The activity supports Scotland's National Marine Plan, including (but not limited to) policies GEN 2, GEN 3, and GEN 5. The activity supports GEN 2 and GEN 3 by creating work within the region and creating economic opportunities through development of sustainable marine infrastructure. The project supports GEN 5 by contributing to a shift from non-renewable fuel sources, thereby reducing the drivers of climate change.</p> <ul style="list-style-type: none"> • Is the applicant undertaking a statutory function? <p>No. Applicant has not stated this</p> <p>Test 1 has been satisfied based on the above.</p>	
Test 1 satisfied?	YES

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TEST 2	Satisfactory alternatives
Comments	

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- Has the applicant demonstrated that reasonable effort has been made to consider alternatives that would achieve the same result but with less / no impact on EPS?

- o Details have been provided for various alternatives that the applicant considered – please see section below for more information.

- They should explain what alternatives were considered and justification for considering they are unsatisfactory.

- o Do nothing approach has been considered. The application outlines that it is not advisable for the Flora project to proceed without the proposed geophysical survey going ahead as there is an essential requirement to obtain data on the physical and biological properties of the seabed in order to proceed with assessments, construction and licensing of the array area and export cable corridor. The data obtained from the survey would inform export cable route selection so that impacts can be minimised, as well as provide a greater understanding of the potential impacts on biological receptors and also validate desk-based assessments.

- o The applicant discusses alternative equipment and states that the use of SBP and USBL are likely to cause disturbance to EPS, however the impact would be low. The proposed equipment is also of a sufficient frequency to achieve the required depth and resolution required for the proposed geophysical survey. The applicant has stated that a reduction in the acoustic properties of the survey equipment would affect their functionality and capacity to undertake the work required. The applicant states that no other equipment including, for example, pressure transducers, provides the level of accuracy required for design assessment. In addition, the applicant outlines that the use of other equipment, such as MBES, cannot be used to generate unique perspectives of the seafloor, whereas SBP can.

- o The applicant has considered alternative sites to conduct the surveys and outlines that the survey area outlined in the application encompasses a larger area than will be required to construct the export cable. The applicant outlines that the proposed survey area accounts for possible cable routes between Aberdeen and Peterhead, variations in landfall sites at both locations and cable routing to the potential landfall sites pre-identified from desktop studies. In addition, the applicant states that the final landfall is currently under assessment with surveys being required before a decision can be made. The survey strategy therefore covers a broad area to allow for the surveying of multiple potential landfall areas.

- o The applicant has also considered conducting the surveys at different times of the year. The applicant notes that conducting the survey in the winter, in order to avoid peak minke whale numbers, could extend survey time due to poor weather, therefore extending the time the vessel is on site and the subsequent localised disturbance to EPS. The applicant acknowledges that the proposed survey times does overlap with peak minke whale numbers within the Southern Trench MPA, however notes that minke whale presence is heavily skewed to the northwest of the MPA and therefore out with the proposed survey area.

- They should always consider the ‘do-nothing’ alternative.

- o The applicant has considered this.

- Possible alternatives may be equipment, methods, locations and timing.

- o See sections above

Test 2 has been satisfied based on the above.

Test 2 satisfied?	YES
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TEST 3	Favourable conservation status
Comments	
<p>NatureScot advice - European Protected Species (EPS)</p> <p>Auditory injury</p> <p>The sound frequency information provided indicates that the following equipment will operate above the generalised hearing range of all cetaceans, based on NMFS (2018) and Southall et al (2019), and so mitigation is not required for the use of this equipment:</p> <ul style="list-style-type: none">• MBES and SBES - 200-700 kHz	
<p>The following equipment will operate at a sound pressure level below the PTS-onset auditory injury thresholds based on NMFS (2018) and Southall et al (2019), and so mitigation is not required for the use of this equipment:</p> <ul style="list-style-type: none">• USBL - indicative SPL (dB re 1µPa) 200 (peak) / 188 (rms)	
<p>The following equipment will operate at a sound pressure level that could cause injury to VHF cetaceans only in very close proximity (<10m) to the sound source. In Scottish waters the key species from this group is harbour porpoise, however they are unlikely to be found in very close proximity to the sound source due to their behavioural avoidance of vessels and other human activity, and so mitigation is not required for the use of this equipment:</p> <ul style="list-style-type: none">• Sparker - indicative SPL (dB re 1µPa) 205	
<p>However the following equipment will be audible to all cetaceans and will operate with a sound pressure level above the PTS-onset auditory injury thresholds based on NMFS (2018) and Southall et al (2019), as such there is a potential risk of auditory injury from use of the following equipment:</p> <ul style="list-style-type: none">• SSS - 100-420 kHz and indicative SPL (dB re 1µPa) 190-230• SBP - 30-42 kHz and indicative SPL (dB re 1µPa) >246• SBP - 85-115 kHz and indicative SPL (dB re 1µPa) >243	
<p>Mitigation</p> <p>We advise that mitigation against auditory injury should be secured and implemented, following JNCC guidelines (JNCC, 2017), as outlined by the applicant in Section 5.5 of the supporting EPS Risk Assessment:</p> <ul style="list-style-type: none">• use of Marine Mammal Observers (MMOs);• pre-source Start Search – using 30 minute pre-source start search period, 500m mitigation zone, and 20 minute delay period if an animal is detected;• soft start - power for the acoustic source will be built up slowly, where practical.	
<p>In addition to the mitigation measures specified by the applicant, we recommend that Marine Directorate also secure:</p> <ul style="list-style-type: none">• Adherence to the Scottish Marine Wildlife Watching Code (SMWWC); and• Reporting via JNCC Standard Forms and to MD-LOT and NatureScot.	
<p>Disturbance</p> <p>We advise an EPS licence under the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) to cover disturbance is required. The equipment capable of disturbing the species is:</p> <ul style="list-style-type: none">• USBL;• Sparker;• SSS;• both SBPs.	

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SCANS-IV has been used as the primary source of cetacean abundance and density estimates, and the proposed survey areas lies within SCANS Block NS-D. Data from this SCANS Block has been used to generate a worst-case estimate of the number of animals likely to be present within the proposed survey area. Where possible this has been used to calculate the percentage of the relevant reference population that will be impacted.

All species capable of being disturbed by the activity have been correctly identified in Table 6 of the EPS Risk Assessment, section 3a of the EPS Application Form, and in your consultation email:

- Harbour porpoise
- Bottlenose dolphin
- Minke whale
- White-beaked dolphin
- Fin whale

We advise under the offshore regulations (The Conservation of Offshore Marine Habitats and Species Regulations 2017) that an EPS licence for disturbance is not required.

Due to the scale of the activity, we agree there is a limited risk of significant disturbance that could result in a detrimental effect on FCS. We conclude that this proposal is not capable of having a detrimental effect on the FCS of any of the EPS concerned.

EPS advice summary

Therefore, we advise that:

- the applicant has correctly identified all the species capable of being disturbed by the activity and all the equipment capable of disturbing the species;
- if the proposed JNCC (2017) mitigation is secured and applied, then the risk of auditory injury can be mitigated and an EPS licence for injury will not be required;
- an EPS licence under the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) to cover disturbance is required;
- an EPS licence under the Conservation of Offshore Marine Habitats and Species Regulation 2017 to cover disturbance is not required;
- there will be no detrimental effect on favourable conservation status of any EPS species from disturbance under these Regulations.

NatureScot advice - basking shark

According to Popper et al. (2014), sound from geophysical surveys is unlikely to have a significant impact on basking sharks. However, increased vessel activity as a result of the proposed surveys has the potential to disturb basking sharks.

We note the applicant's position that basking shark sightings are rare in the proposed survey area, that USVs are smaller than traditional survey vessels and travel at low speeds, and that survey duration is short-term. We are content with their conclusion that a basking shark licence is not required for this proposal.

NatureScot advice – protected sites

Buchan Ness to Collieston Coast Special Protection Area (SPA), Ythan Estuary, Sands of Forvie and Meikle Loch SPA

The proposed survey area plus 5km buffer directly overlaps the above SPAs, which are designated for the

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protection of breeding and non-breeding seabird populations. Protected breeding seabird populations may be vulnerable to disturbance from the proposed activities if they take place during the breeding season. The proposed survey activities may take place throughout the breeding season. We therefore advise that there is connectivity between the survey activity and the protected features of these sites.

However, due to the short term and localised nature of the works we advise that no likely significant effects arise on any qualifying interest of these European sites.

Moray Firth SAC - bottlenose dolphin

The proposed activity takes place within inshore waters on the Scottish East Coast. Although there is no overlap with the proposed survey area and the Moray Firth SAC, we know from photo-ID studies that the bottlenose dolphin qualifying feature travel along the coastline. There is therefore potential connectivity between the proposed survey area and bottlenose dolphins from the Moray Firth SAC.

The survey equipment will operate at levels that could cause auditory injury to bottlenose dolphin and as such this activity is likely to have a significant effect on the bottlenose dolphin qualifying interest of the Moray Firth SAC. Consequently, Marine Scotland, as competent authority, is required to carry out an appropriate assessment in view of the site's conservation objectives for this qualifying interest.

However, the proposed survey activity is both short in duration and localised in scale and the mitigation outlined above for EPS will minimise auditory injury risk to bottlenose dolphin. Therefore in our view there will be no adverse effect on site integrity for bottlenose dolphin as a qualifying interest of the Moray Firth SAC.

Moray Firth SAC - subtidal sandbanks

We advise that the proposed survey has no connectivity to the subtidal sandbanks feature of this European site, and so likely significant effects do not arise.

Southern Trench ncMPA – minke whale

The proposed survey area partially overlaps the eastern end of the Southern Trench ncMPA, for which minke whale is a qualifying interest.

The proposed surveys could take place at any time of year. June to October is the most sensitive time for minke whale in the Southern Trench ncMPA. It is not clear when or for how many days the survey could take place within the Southern Trench ncMPA. We would recommend, if possible, that works within the Southern Trench ncMPA are timed to take place outside the most sensitive period for minke whale.

However, with or without this timing, we advise that the proposal is capable of affecting the minke whale feature of the Southern Trench ncMPA. However, these effects are insignificant. Further assessment is therefore not required. This advice takes into account the short term and localised nature of the survey works and that the proposed mitigation outlined above for EPS will minimise the risk of injury and disturbance to this species.

Southern Trench NC MPA – benthic features

We advise that the proposed geophysical survey programme is not capable of affecting the benthic features (burrowed mud, fronts, shelf deep, geomorphology features) of the Southern Trench ncMPA either directly or indirectly. Further assessment is therefore not required.

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No other protected sites are expected to be affected by the proposed activities.

Test 3 satisfied?	YES
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Date application received: 05/04/2024

Consultation start date: 11/04/2024

Consultation end date: 16/05/2024

Notes

Date	Text	Created By
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Awaiting Information

Start date	End date	Duration (days)	Waiting for	Waiting on Information From
29/01/2024	05/04/2024	67	Awaiting updated application form - See CHR for details.	Applicant

Licence issue date: 30/05/2024

Date report due: 30/06/2028

Licence start date: 01/06/2024

Licence end date: 31/05/2028

National Marine Plan considerations:

The decision is: In accordance and no further action required

Comments:

Reviewed and signed by:

Signed:

Redacted

Date: 29/05/2024