

# Comments on ‘Guidance for assessing the significance of noise disturbance against Conservation Objectives of harbour porpoise SACs’

**2 September 2019**

## About Energy UK

Energy UK is the trade association for the GB energy industry with a membership of over 100 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership covers over 90% of both UK power generation and the energy supply market for UK homes. We represent the diverse nature of the UK’s energy industry – from established FTSE 100 companies right through to new, growing suppliers and generators, who now make up over half of our membership.

Our members turn energy sources into electricity for over 27 million homes and every business in Britain. Over 680,000 people in every corner of the country rely on the sector for their jobs, with many of our members providing long-term employment as well as quality apprenticeships and training for those starting their careers. The energy industry invests over £12.5bn annually, delivers around £84bn in economic activity through its supply chain and interaction with other sectors, and pays £6bn in tax to HM Treasury.

## Comments on the guidance

We welcome the opportunity to provide comments on the guidance in writing, and also via the workshop held on the 12 July 2019. The appropriate implementation of this guidance will be critical to the successful deployment of a large number of consented and planned windfarms in the Southern North Sea, in addition to potential new offshore sites coming through the new Crown Estate leasing round. Therefore, it is important that clear guidance is developed in conjunction with the relevant industries including the offshore wind, oil and gas sectors and efforts are made to ensure that the proposed implementation of the guidance in terms of how it will be implemented and regulated is clearly set out. It is therefore disappointing that the guidance, as currently drafted, lacks details on deliverability and implementation. We would therefore suggest that future workshops should focus on how the proposed guidance will be implemented and the respective regulatory responsibilities. Given the number of consented offshore wind projects within the Southern North Sea Special Area of Conservation (SAC), this should be progressed as a matter of priority.

## Process considerations

- There remains a risk that due to the different regulatory regimes, Offshore Wind Farm (OWF) activities could face consenting risks due to the different timelines for licencing oil and gas. Marine licencing for offshore wind typically takes 12 weeks whereas Oil and Gas (O&G) are generally granted in 28 days or less. This can result in considerable challenges for Offshore Wind projects where O&G activities are approved within shorter timeframes, despite OWF applications being submitted earlier. Therefore, there needs to be a process, where a ‘line is drawn’ whereby a project no longer has to keep amending the in-combination assessment as new applications are received.
- Given the uncertainties of constructing in a challenging offshore environment, developers will require an envelope to allow for possible variables such as vessel availability, weather downtime and other potential delays which ultimately present difficulties with scheduling. We therefore recommend a mechanism is developed to facilitate “giving back the envelope or headroom” once works have started or have been refined, to allow other applications to be determined.

However, it is important that the project giving back “headroom” should not need to then reconsider their cumulative assessment for any subsequent applications.

- It is also important to understand what would happen in the situation whereby if one project carries out an activity that exceeds the noise thresholds. There would be serious implications if all projects have to stop as a result of an exceedance.

#### *Adaptative Management*

- The approach recommended by the Statutory Nature Conservation Bodies (SNCBs) aims to encourage best practice mitigation for noise reduction and is intended to be adaptive (i.e. can be updated as new evidence becomes available through monitoring).
- Although this adaptive approach to mitigation would be appropriate and welcomed in order to allow changes as new evidence becomes available, adaptive management needs to be carefully considered if a project is in, or approaching, construction as it may not necessarily be possible to adapt at that point (i.e. if a Marine Mammal Monitoring Programme (MMMP) is signed off and then the advice changes). It will be very important for all parties to understand at what point a “line has been drawn”, and no further changes can be made. It would be useful to understand the platform for this and process (e.g. is there a set period for review, is there provision somewhere for standardising data or specifying need/format?).
- Developers will have foundations piling programmes at least two or more ahead of piling and a potential requirement to amend that programme at a later date is a significant issue as there is often very limited option to amend without cost implications.
- Developers would also need clarification that those with approved plans or projects (i.e. those in, or prior to, construction with all pre-construction documents signed off and contracts placed) would not be required to retrospectively reassess in light of any new evidence and how this would be managed.
- Adaptative management should also be supported by relevant strategic monitoring undertaken by regulators as part of the management of the sites. If developers are required to undertake monitoring (e.g. marine mammal monitoring or underwater noise monitoring), objectives of the monitoring could be considered in relation to the ongoing strategic monitoring undertaken by regulators.

#### **Roles and responsibilities**

- The implementation of this guidance and clarity on the relevant regulatory processes is key to delivering the desired conservation benefits of SAC designation whilst managing the potential risks to industry. Clear leadership from Government is required to manage this.
- At present the Guidance is badged as SNCB guidance and is unclear whether this guidance is supported by the MMO and BEIS, as the key regulators. As both of these organisations are currently working through the issues raised by stakeholders on many aspects included within the draft guidance as part of the Review of Consents (RoC) and the Site Integrity Plan (SIP) wording finalisation, it would be useful if their input to the document could be confirmed. In addition, it may be appropriate that the draft guidance is not finalised until these key legislative processes are completed and the outcomes clear.
- There would also need to be clarity on requirements for underwater noise modelling techniques as it is understood that there is considerable variability in models used and thus outputs. The feasibility of assessing multiple noisy activities (e.g. two piling events) and how the parameters are set up for this modelling would need to be considered carefully both within a wind farm and also for cumulative effects of other wind farms. Work is needed to ensure that a clear approach is agreed and communicated to industry and stakeholders.
- The guidance sets out the proposed approach for a two-stage process: i.e. HRA as part of the application and then again under the Deemed Marine Licence (DML) condition which will include any changes/refinements based on what is known about the project design at that stage (which is consistent with the approach taken under the ongoing RoC for the Southern North Sea SCI/cSAC. We understand from the MMO and BEIS that this is expected to be finalised in the coming weeks and we are aware that consultation comments on the draft Habitats Regulations Assessment (HRA) are being reviewed. It would therefore be useful to understand if the conclusion of the RoC will result in any changes to the guidance or regulatory process, at the earliest possible point.
- Similarly, the final wording on the proposed SIP marine licence condition that would require further assessment immediately preceding the start of activities likely to result in a significant

effect on the integrity of a SAC, is still being considered by the MMO following consultation responses received. Again, a clear steer on any changes as a result of this would be welcome.

- As set out above, for application regimes with different regulators, a process needs to be in place whereby a 'line is drawn' and a project no longer has to keep amending its in combination assessment as it produces significant uncertainty and schedule risk for (and therefore disadvantages) projects that may have a longer lead time to obtaining consents.
- The guidance does not reflect the ability of industry to commit to timescales/design at the time of HRA. During updates developers can only use publicly-available information on other activities and up to date information from other industries is not always easy to access. In this respect, we would also welcome clarity on a possible tool for cross-sector notification.
- The guidance suggests that if a plan or project has been consented which could cause noise disturbance up to the allowable maximum daily threshold, then no other noise disturbance should be allowed to take place unless they can be scheduled to occur during days when no other noisy activities are occurring, whilst also ensuring the seasonal threshold is not exceeded. It would be valuable to have sight of information on how activities from other sectors / noise emitters (such as O&G) will be controlled and monitored to ensure this.
- The guidance notes that industries with relevant plans or projects requiring HRA should be encouraged to contribute to evidence gathering to inform such evaluations. It would be beneficial to understand how this will be achieved.
- The guidance recommends that careful planning is required within the HRA process to ensure that the threshold of 20% is not exceeded – it is important to note that this is actually via the Department of Marine Licencing rather than planning and would need to be associated with the marine licence condition control. It is therefore vital that information on how the MMO intend to manage this from a regulatory perspective is made available.

#### *Managing cumulative effects*

- There is still a lack of clarity on how the decision-making process will apply on two parallel applications/projects for the MMO to determine.
- Conditions which require the management of cumulative effects of projects or activities during construction requires careful consideration. The draft guidance refers to the monitoring of the daily threshold in real-time by industry or regulators. This would be extremely difficult to manage and therefore should be reconsidered. The issues that could arise from any restrictions based on the daily threshold need to be fully understood.
- In the example provided in section 3.3: "*Alternatively, in the summer area there could be two distant pile driving events (as in Figure 1A) or two adjacent/concurrent events plus one distant event (as in Figure 1B) for approximately half (91 days) of the summer season but with no further impulsive noise generated for the remaining 91 days*". We would welcome clarification as to whether this means that any other activity within the area is prohibited and how will this be managed and monitored.
- The draft guidance identifies that "*careful planning through the HRA process is essential. For example, if a plan or project has been consented which could cause noise disturbance up to the allowable maximum daily threshold, then no other noise disturbance should be allowed to take place unless they can be scheduled to occur during days when no other noisy activities are occurring, whilst also ensuring the seasonal threshold is not exceeded*". Within a project, it would potentially be feasible to manage noisy activities (both piling and geophysical activities) and float could be included for any delays in activities.
- However, where cumulative effects may arise from adjacent projects, there could be significant implications to both projects. This would require careful collaboration between projects in order to manage the noisy activities, and float included for delays. If there were delays outside those expected then this could lead to serious implications to both projects in terms of costs and programme. There may also be other projects in the vicinity that could result in noisy activities unknown at the time of planning to the individual projects. How do the regulators consider that this could be managed given the potential issues that could arise?
- We also note that suggestions made for undertaking works outside of key sensitive periods also need to consider the specifics of the proposed activity. For example, conducting UXO detonation activities outside of sensitive periods may not be feasible given the tight weather windows that UXO can be safely undertaken from a Health and Safety perspective.

## Technical Considerations

- There are several technical and operational issues which should be considered:
  - suggestions made in the guidance for undertaking works outside of the key sensitive periods would not always be feasible, particularly in the case of UXO surveys which are highly weather limited due to HSE risks
  - piling sequences cannot simply be altered as part of this process (example of known offshore wind farm, piling sequence is now fixed, and piling will not occur until 2021). Changes to this would require variations to all contracts.
  - vibropiling would always require a conventional hammer as a back-up, so developers would always need to assess the worst-case scenario which would not help bring the % contribution down potentially.
- The guidance focusses predominantly on monopiles; however, the approach is being attributed to pin piles too so we consider that the guidance should recognise that this applies to other piles.
- We welcome the acknowledgement within the guidance that there is opportunity to consider other Effective Deterrent Radius (EDR) with evidence. We also welcome the statement that “*it is likely that deterrence distances will vary on a case by case basis*”.
- We would query the statement within guidance that retrospective compliance monitoring, making use of data in the Marine Noise Registry for example, should take place to assess whether the regulatory processes are being effective in keeping noise below the advised area/time thresholds. We have concerns that this might not facilitate timely monitoring.

### Timescales

- In terms of contractual issues, a project will typically get approval of its piling schedule two years in advance within the post consent-preconstruction window.
- Commercially, OWF developers have key deadlines that must be met (e.g. Contract for Difference<sup>1</sup> Milestones) which then impact how activities can be scheduled and cannot often accommodate requests to be changed.
- The guidance rightly recognises that there should be sufficient time between the assessment and the start of construction to allow for the effective implementation of mitigation/management, however, the guidance also needs to consider the potential variability to piling schedules on a regular basis. For example, the HRA could be completed and then there is a subsequent delay. In this situation, at what point is a new HRA required? Or is there another means of control? How will this actually be enforced? This pushes the industry to be precautionary to buy time to enable works to be completed, if they are then completed early is there a mechanism for releasing the allocation?
- Early mitigation should be proportionate to the likely level of effect and the known technical capabilities of the mitigation to reduce potential effects rather than being overly precautionary.

## Next Steps

- Given the importance of this issue, we would welcome further engagement and action as a priority.
- We welcome further multi-stakeholder workshops with all interested parties able to input. This includes all affected offshore wind developers as well as ample representation from other noise-producing industries.
- Interim guidance will be vital to cover offshore activities taking place between now and the proposed threshold approach being formally implemented.

For further information, please contact:

### India Redrup

Policy Manager, Power  
Energy UK  
26 Finsbury Square  
London EC2A 1DS  
Tel: +44 20 7024 7635  
[india.redrup@energy-uk.org.uk](mailto:india.redrup@energy-uk.org.uk)

---

<sup>1</sup> <https://www.gov.uk/government/publications/contracts-for-difference/contract-for-difference>