

UK Guidance on disturbance - Information note for ASCOBANS AC 15 March 2008

The deliberate disturbance of marine European Protected Species

- Guidance for English and Welsh territorial waters and the UK offshore marine area -

In the UK (except Scottish territorial waters), the implementation of the Habitats Directive with regards to the protection of marine European Protected Species from disturbance has been addressed by two main pieces of legislation that came into force in 2007 (known as the Habitats Regulations, HR and the Offshore Marine Regulations (OMR)). These have a revised definition of disturbance and the OMR extend the offence to areas of UK jurisdiction beyond 12 nm. It is now an offence to deliberately disturb a European Protected Species in such a way as to be likely significantly to affect: a) the ability of any significant group of animals of that species to survive, breed, or rear or nurture their young; or b) the local distribution or abundance of that species. In this context, European Protected Species are those listed on the Annex IV to the Habitats Directive and include all species of cetaceans and turtles occurring in European waters and the Atlantic sturgeon.

The Joint Nature Conservation Committee (JNCC) is required to provide advice on interpreting this offence from the point of view of nature conservation. JNCC, working with other agencies has drafted guidance for those carrying out activities in the marine environment to help determine when an offence might be committed. Guidance is given on how an offence might be avoided and, if appropriate, when a “licence to disturb” might be required. Some of the questions those carrying out activities should be asking when assessing the risk of disturbance are addressed already through current impact assessment processes. However, this new guidance will formalise the disturbance risk assessments.

A public consultation on the disturbance guidance begun in the UK on 12 March 2008 and will run until 4 June 2008. The Guidance documents are available to be consulted online at www.jncc.gov.uk/page-4227. The Guidance is divided into sections. The first sections introduce the offence; provide some of the background to JNCC’s advice on the interpretation of the law and present guidance on how to assess the risk of disturbing marine EPS. The next sections focus on species- and activity- specific guidance. Guidance is provided per species on what would constitute a ‘significant group’ and what species/populations would be most sensitive to the effects of disturbance on their “local distribution and abundance”, in UK waters. The section on activities provides information on known impacts, highlights active areas of research and makes links to existing good practice guidelines currently being applied (or under development) in UK waters. Specific guidelines on mitigating for disturbance from seismic surveys, pile driving associated with offshore windfarms, and explosive use are also included. The guidance will be finalised once the consultation ends, and after consideration of responses received, by July 2007.

In the context of the Habitats Directive, disturbance occurs when there is some ecological impact to the species that **is significant in relation to the objectives of the Directive**, i.e. in relation to maintaining and restoring populations of species at favourable conservation status in their natural range. Therefore, the JNCC guidance states that ‘significant group’ should be interpreted as the fraction of the population that, if exposed to disturbance in a way that that would adversely affect the animals, would result in detrimental effects at the **population level** (should be no higher than potential population growth rate). The actual numbers comprising a

significant group will depend mainly on the size of the (sub) populations of each species; for small populations, significant groups will be small (e.g. coastal bottlenose dolphins), for large populations large (e.g. harbour porpoise). Along the same lines, 'local distribution or abundance' should be considered in the context of the natural range of populations. Deviation from a population's natural variability in distribution and abundance could result in detrimental effects at the population level. This could occur if a significant number of animals of a population known to persistently use an area were to be displaced from that area, or from a large fraction of their natural range, for long periods of time, particularly so if the animals were displaced from essential to less suitable habitats. Most vulnerable to impacts on their local abundance and distribution are those animals in areas identified as important for the population (e.g. Special Areas of Conservation).

The onus of assessing the risk of causing significant disturbance is on those carrying out activities in the marine environment. The JNCC guidance states that the following points should be considered in advance of the activity starting: 1) the characteristics of the activity and the potential factors of disturbance; 2) the mitigation measures in place to avoid disturbance; 3) the likelihood that a significant group of a cetacean species will be adversely affected; and 4) the likelihood that the local distribution or abundance of a cetacean species will be significantly affected.

In practice it is likely to be almost impossible to prove cause and effect when it comes to significant disturbance due to: i) uncertainty regarding the long-term population effects of disturbance, ii) difficulties in studying cetaceans, and iii) the natural variability inherent to their populations. Consequently, efforts should focus on avoiding the risk of disturbance, applying mitigation and following and enforcing good practice guidelines on those activities for which there are real concerns and in areas of high cetacean density.

The process of assessing the risk of committing a disturbance offence should help identifying gaps in knowledge and foster research on the impacts of certain activities in order to reduce uncertainty in future risk assessments. The results of new research will feed into any future reviews of the guidance, so that this remains relevant and appropriate. Any feedback on the efficiency of implementation, mitigation and enforcement, and results of surveillance and monitoring will also be used in future reviews.

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