



The deliberate disturbance of marine European Protected Species
Guidance for English and Welsh territorial waters and the UK offshore marine area

By

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March 2008

5. Appendices

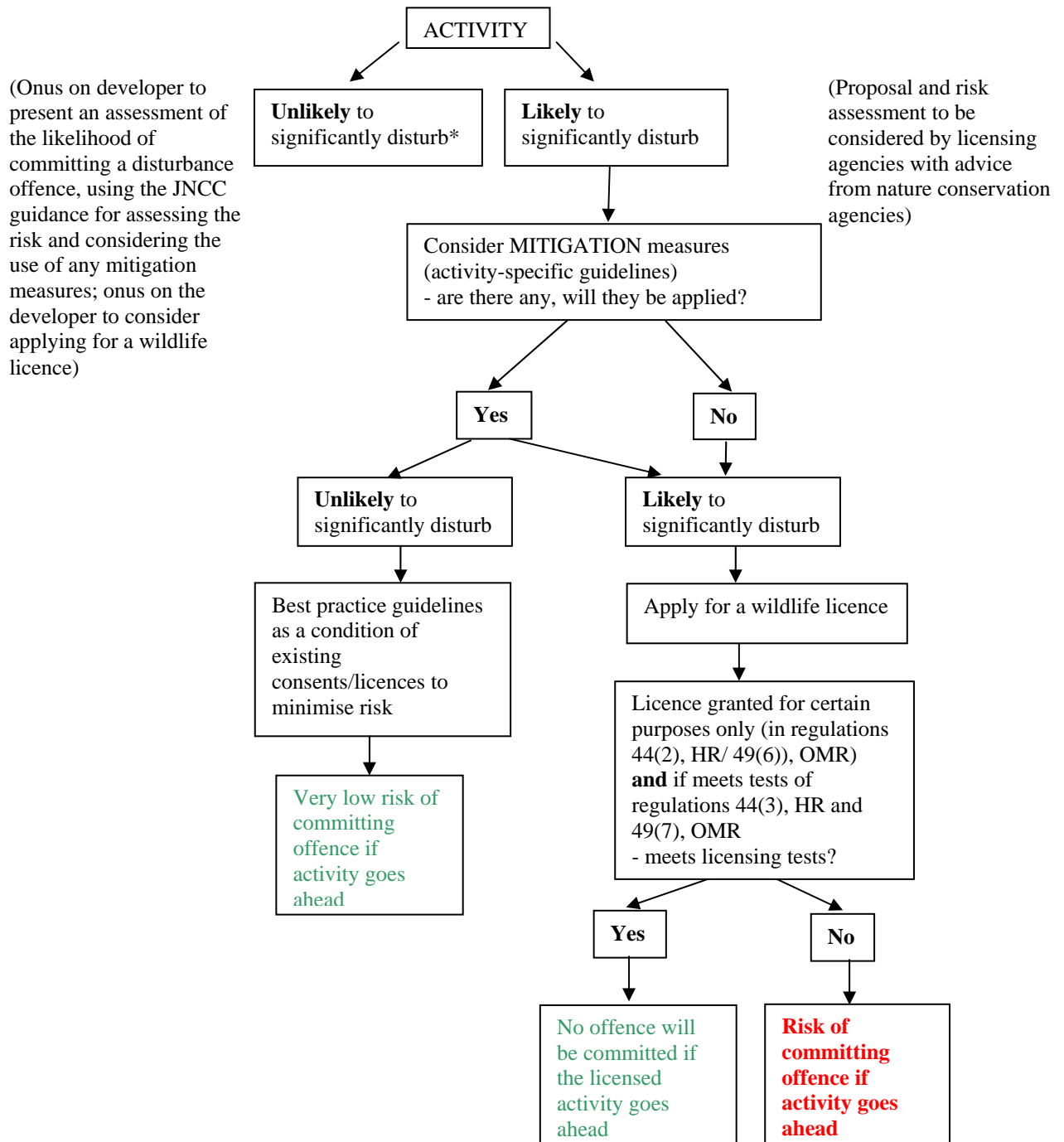
Appendix I - Context to the disturbance offence

The offence of intentionally disturbing wild animals was first introduced in the UK in section 9 of the Wildlife and Countryside Act 1981 ('WCA'), and applied to the species listed on Schedule 5 to the Act within territorial waters, i.e. <12nm. Section 9 of the WCA was subsequently amended by the Countryside and Rights of Way Act 2000 (CRoW) to include both intentional and reckless disturbance. Under the Act, disturbance is generally only an offence if the disturbed animal is occupying a structure or place which it uses for shelter or protection. However, this limitation does not apply to whales and dolphins (or basking sharks). In addition, disturbance is not defined or qualified in any way, so it does not imply 'significant' effects and covers the disturbance of individuals in all cases.

In 1994, a similar but slightly wider offence was introduced by the HR transposing Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive) in England and Wales, and in Scotland. The HR prohibited deliberate disturbance of a European Protected Species (EPS, - a species in Annex IV to the Habitats Directive whose natural range includes any area in Great Britain) wherever it occurred with the 12nm limit. Marine EPS include all species of cetaceans, all species of marine turtles, the sturgeon (*Acipenser sturio*) and the otter (*Lutra lutra*). All of these species are also protected under the WCA ('Schedule 5 species') as amended by the CRoW.

The existence of two separate and different disturbance offences in the WCA and the HR/OMR presents a challenge in terms of interpretation and application. Neither regime can be dismissed as they both operate in rather different ways. The offence in the WCA (<12nm) applies to individual animals, and is subject to an "incidental disturbance defence" in the marine environment, where the disturbance was an incidental result of a lawful operation and **could not reasonably have been avoided**. The offence in the HR (<12nm) and the OMR (>12nm) only applies to disturbance which has significant effects ('significant disturbance'), and would seem unlikely to apply to individuals in practice (see section 1.3 on the definition and interpretation of significant group of animals), and it is not subject to an "incidental disturbance defence".

Appendix II - Application process



* 'significantly disturb' – means disturb in such a way as to constitute an offence under Regulation 39 of the Regulations (HR, England and Wales and OMR, UK offshore marine area), i.e. “disturb in such a way as to be likely to significantly affect that ability of any significant group of animals of that species to survive, breed or rear or nurture their young, or likely significantly to affect the local distribution or abundance of that species.”

Appendix III - Definition of the ‘Favourable Conservation Status’

in Article 1(i) of the Habitats Directive:

"conservation status of a species means the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within the territory referred to in Article 2. The conservation status will be taken as 'favourable' when:

- population* dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and*
- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and*
- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis."*

Favourable conservation status of a species can be assessed as favourable, unfavourable (bad or inadequate) and unknown.

* ‘Population’ is defined here as a group of individuals of the same species living in a geographic area at the same time that are (potentially) interbreeding (i.e. sharing a common gene pool).

**Appendix IV - Common cetacean species in Annex IV occurring in UK and adjacent waters
 - Draft Favourable Conservation Status assessment and best available population estimate ***

Latin name	Common name	FCS assessment	Population estimates (UK and adjacent waters)	Other relevant population estimates
<i>Balaenoptera acutorostrata</i>	Minke whale	Favourable	16,395 (UK and adjacent waters – shelf only) (some evidence of regional population structure)	c.80,000 - Northeast Atlantic stock (IWC 2004)
<i>Balaenoptera physalus</i>	Fin whale	Favourable	30,000 (eastern and central North Atlantic)	
<i>Delphinus delphis</i>	Common dolphin	Unknown	Unknown (100,000s)	
<i>Globicephala melas</i>	Long-finned pilot whale	Unknown	Unknown (10,000s)	
<i>Grampus griseus</i>	Risso's dolphin	Unknown	Unknown (100s, 1,000s)	
<i>Lagenorhynchus acutus</i>	White-sided dolphin	Unknown	Unknown (10,000s)	
<i>Lagenorhynchus albirostris</i>	White-beaked dolphin	Favourable	22,400 (UK and adjacent waters – shelf only)	
<i>Orcinus orca</i>	Killer whale	Unknown	Unknown (1,000s)	
<i>Phocoena phocoena</i>	Harbour porpoise	Favourable	328,200 (UK and adjacent waters – shelf only) (some evidence of regional population structure)	
<i>Physeter macrocephalus</i>	Sperm whale	Unknown	Unknown (1,000s)	
<i>Tursiops truncatus</i>	Bottlenose dolphin	Favourable	8,000 (UK and adjacent waters – shelf only) (some evidence of regional population structure)	Moray Firth - 129 [95% CI = 110-174]; Cardigan Bay - 213 [95% CI = 183-279]

*The report on the implementation of the Habitats Directive, containing the species and habitats FCS reports (including the best available population estimates), is undergoing a quality check during January/February 2008. Once this has been completed, the report will be available online at <http://www.jncc.gov.uk/page-4063>.

Appendix V - List of abbreviations

ADDs – Acoustic deterrent devices
AHD – Acoustic harassment devices
AMD – Acoustic mitigation devices
CCW – Countryside Council for Wales
CRoW - Countryside and Rights of Way Act 2000
EIA - Environmental Impact Assessment
EPS – European Protected Species
FCS – Favourable Conservation Status
HR – Habitats Regulations
JNCC – Joint Nature Conservation Committee
MoD – Ministry of Defence
NE – Natural England
OMR – Offshore Marine Regulations
SAC - Special Areas of Conservation
SNH - Scottish Natural Heritage
WCA – Wildlife and Countryside Act