

Executive Order on impact assessment regarding international nature conservation areas and the protection of certain species in connection with preliminary investigations, offshore exploration for and production of hydrocarbons, storage in the subsoil, pipelines, etc.¹⁾

Pursuant to sections 2 a, 28 c, 28 d(2) and 38(2) of Act on the Use of the Danish Subsoil, see Consolidated Act No. 960 of 13 September 2011, as amended by Act No. 535 of 29 April 2005, and sections 1 a, 4 d(1) and (2) and 5(3) of Act on the Continental Shelf, see Consolidated Act No. 1101 of 18 November 2005, as last amended by Act No. 427 of 18 May 2016, and in pursuance of the State sovereignty over the territorial sea, the following is provided:

Scope

1. (1) This Executive Order concerns impact assessment regarding international nature conservation areas and protection of certain species in connection with projects referred to in subsection (2) in Danish territorial waters, in the Danish exclusive economic zone and on the Danish continental shelf.

(2) The Executive Order applies to:

- (i) Projects for preliminary investigations, exploration, production and transportation of hydrocarbons and geothermal energy covered by the Act on the Use of the Danish Subsoil (the "Subsoil Act").
- (ii) Other projects covered by the Subsoil Act, including projects on the use of the subsoil for storage or other purposes than production.
- (iii) Projects on the continental shelf for the exploration of the seabed or its mineral and other non-living resources of the seabed subsoil, where the exploration is not undertaken with a view to exploitation, see section 2(1), first sentence, of the Act on the Continental Shelf (the "Continental Shelf Act").
- (iv) Projects on the continental shelf for the establishment of pipelines for the transportation of hydrocarbons, see section 4(1) of the Continental Shelf Act.
- (v) Projects in the territorial sea for the establishment of pipelines for the transportation of hydrocarbons produced outside Danish territory, see the Executive Order on certain pipeline installations for the transportation of hydrocarbons in Danish territorial waters and on the Danish continental shelf.

2. For projects covered by section 1(2)(v), sections 4(2), 4 a-4 c, 4 e, first sentence, 4 f, first sentence, 6 a and 6 b of the Continental Shelf Act are also applicable.

¹⁾The Executive Order contains provisions implementing parts of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the "Habitats Directive"), Official Journal 1992, L 206, page 7, as last amended by Council Directive 2006/105/EC of 20 November 2006, Official Journal 2006, L 363, page 368, parts of Directive 2009/147/EC of the European Parliament and Council of 30 November 2009 on the conservation of wild birds (the Wild Birds Directive), Official Journal 2010, L 20, page 7, parts of Council Directive 2011/92/EU of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (the "EIA Directive"), Official Journal 2012, L 26, page 1, and parts of Directive 2013/30/EU of the European Parliament and Council on safety of offshore oil and gas operations and amending Directive 2004/35/EC, Official Journal 2013, L 178, page 66.

3. (1) In connection with exploration drillings, see Annex 2, 2.(d) to Act No. 425 of 18 May 2016 on environmental impact assessment of plans and programmes and of specific projects (EIA), performed on the basis of licences issued after 18 July 2013, where the exploration target is hydrocarbons and which are to be performed from non-production facilities, and where no public participation has taken place regarding the potential effects on the environment of the planned offshore oil and gas activities according to other regulations, a public consultation about the potential effects on the environment must be conducted.

(2) Information about an application for approval of exploration drillings must be published on the website of the Danish Energy Agency, www.ens.dk, and be submitted to relevant authorities, organisations and the part of the public that is affected or likely to be affected by, or has an interest in, a decision to permit exploration operations, including relevant non-governmental organisations such as those promoting environmental protection, and other relevant organisations.

(3) The publication under subsection (2) must also include information about

(i) the right to participate in the decision making

(ii) time limits for submitting comments or questions

(iii) the person(s) to whom comments are to be submitted and questions may be addressed during the period for public consultation

(4) Information about the application must be submitted for a public consultation for a period of not less than 4 weeks, which must be stated in the publication, see subsection (2).

(5) The information required to be published under subsection (2) for the purpose of consulting with the public may be inserted on the website of the Danish Energy Agency alone.

(6) Information about the decision concerning the application must be published by the Danish Energy Agency on its website, www.ens.dk. The information must describe the decisions and the reasons and considerations on which the decisions are based, including information about the public consultation process.

Impact assessment regarding international nature conservation areas

4.(1) If a project covered by section 1(2) is likely to have a significant effect on designated international nature conservation areas (habitat areas, bird protection areas and Ramsar areas) within or outside Danish territory, licences for and approvals of projects pursuant to sections 10(2) and (3), 17(1), 23 d(2) and (4), 23 k(1), 23 u(1) and 28 of the Subsoil Act, sections 2(1), first sentence, and 4 of the Continental Shelf Act and section 2 of the Executive Order on certain pipeline installations for the transportation of hydrocarbons in the territorial waters and on the continental shelf may be granted only if

(i) an assessment of the effects of the project on the area is available, taking into account the conservation objectives for the area; and

(ii) the assessment shows that the project will not have an adverse effect on the international nature conservation area.

(2) Subsection (1) also applies where a project in combination with other projects or plans is likely to have significant effects on designated international nature conservation areas.

(3) Licences under sections 3, 5, 23 and 24 of the Subsoil Act are subject to the availability of an impact assessment in connection with applications for subsequent licences or approvals pursuant to sections 10(2) and (3), 17(1), 23 d(2) and (4), 23 k(1), 23 u(1) or 28 of the Subsoil Act for the project concerned, where this is required pursuant to subsections (1) and (2).

(4) It is for the Danish Energy Agency to decide whether an impact assessment is required under subsections (1) and (2) in connection with application for a licence for or approval of a project.

(5) The applicant must submit the required information on the project concerning effects on international nature conservation areas for the purpose of the decision by the Danish Energy

Agency under subsection (4).

5.(1) The applicant must prepare and submit the impact assessment to the Danish Energy Agency in connection with the application for a licence for or approval of the project where such assessment is required under section 4. The assessment may form part of a common document including an EIA report for projects covered by section 17(4) of Act No. 425 of 18 May 2016 on environmental assessment of plans and programmes and of specific projects (EIA). If the assessment is included in a common document with the EIA report, it must appear clearly in which parts the impact assessment is included.

(2) As a minimum, the impact assessment must include the information and assessments listed in Annex 1. Furthermore, the applicant must prepare a non-technical summary of the impact assessment.

(3) The Danish Energy Agency may decide that additional material is to be provided for the assessment of the impact of the project on a designated international nature conservation area, taking into account the conservation objectives for the area.

6.(1) It is for the Danish Energy Agency to decide whether it is deemed necessary to hold a public consultation on the impact assessment for a project applied for and covered by section 1(2).

(2) The provisions of sections 35-37 of Act No. 425 of 18 May 2016 on environmental assessment of plans and programmes and of specific projects (EIA) apply, *mutatis mutandis*, in case of consultations with the public on impact assessments. The Danish Energy Agency may decide, however, that publication is not to be inserted in national newspapers, but only on the website of the Danish Energy Agency, www.ens.dk.

(3) If an EIA report is prepared for the project applied for, public announcement of the consultation on the impact assessment must be made together with the public announcement of the EIA report.

Protection of certain species

7.(1) In connection with projects covered by section 1

- (i) the animal species listed in Annex IV(a) in Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) should not be deliberately disturbed in their natural range, particularly during periods of breeding, rearing, hibernation or migration, with harmful effects on the species or the stock; and
- (ii) the breeding sites or resting places listed in Annex IV(a) to the Habitats Directive should not be damaged or destroyed in the natural range of those species.

(2) Subsection (1)(i) applies to all stages of life of the animals covered.

8.(1) Licences and approvals pursuant to sections 10(2) and (3), 17(1), 23 d(2) and (4), 23 k(1), 23 u(1) and 28 of the Subsoil Act, sections 2(1), first sentence, and 4 of the Continental Shelf Act and section 2 of the Executive Order on certain pipeline installations for the transportation of hydrocarbons in the territorial waters and on the continental shelf will not be granted if the project applied for

- (i) will deliberately disturb the animal species listed in Annex IV(a) of the Habitats Directive in their natural range, particularly during periods of breeding, rearing, hibernation or migration; or
- (ii) will damage or destroy the breeding sites or resting places in the natural range of the species listed in Annex IV(a) of the Habitats Directive.

(2) Subsection (1)(i) applies to all stages of life of the animals covered.

(3) In connection with applications for licences or approvals, the applicant must submit the required information and assessments concerning the matters listed in subsection (1) for the

purpose of the decision about the application.

9.(1) The Danish Energy Agency may derogate from section 8 if there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range. Derogation is permitted only

- (i) to protect wild fauna and flora and preserve natural habitats;
- (ii) to prevent serious damage, particularly to crops, fisheries, water and other types of property;
- (iii) in the interests of public health and safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment; or
- (iv) for the purpose of research and education, of repopulating and reintroducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants.

(2) Decisions to derogate from section 8 must be notified to the Danish Nature Agency for the purpose of notifying the European Commission.

General provisions

10.(1) Before deciding whether to grant a licence for or approval of a project covered by section 8(1) or (2) or section 9(1), the Danish Energy Agency must to the extent necessary obtain the opinions of the Danish Nature Agency and the Environmental Protection Agency on impact assessments regarding international nature conservation areas or assessments of the protection of certain species.

11. (1) In licences or approvals pursuant to sections 10(2) and (3), 17(1), 23 d(2) and (4), 23 k(1), 23 u(1) and 28 of the Subsoil Act, section 2(1), first sentence, and section 4 of the Continental Shelf Act and section 2 of the Executive Order on certain pipeline installations for the transportation of hydrocarbons in the territorial waters and on the continental shelf, conditions may be established on the design, layout, construction and operation of the installations or activities applied for, e.g. in order to prevent and limit adverse effects on nature, environment and culture heritage, including conditions for monitoring and surveillance.

Penalties

12. (1) Any person who is in breach of section 7(1) will be liable to a fine unless the offence is punishable by a higher penalty under any other legislation.

(2) Companies etc. (legal persons) may incur criminal liability pursuant to the provisions of part 5 of the Danish Criminal Code.

Entry into force

13. (1) This Executive Order comes into force on 16 May 2017.

(2) Executive Order No. 1419 of 3 December 2015 on EIA, impact assessments regarding international conservation areas and the protection of certain species in connection with offshore exploration for and production of hydrocarbons, storage in the subsoil, pipelines, etc., is repealed.

The Danish Ministry of Energy, Utilities and Climate, 2 May 2017

LARS CHRISTIAN LILLEHOLT

/ Janni Torp Kjærgaard

Annex 1

Information and assessments to be provided in the impact assessment regarding international nature conservation areas

1. Information about designated international nature conservation areas (areas of habitat, bird protection areas and Ramsar areas) on which the project applied for is likely to have a significant impact, within or outside Danish territory, including information about:
 - (a) the geographical location of the area;
 - (b) the basis for the area designation, including whether the designation concerns priority natural habitat types or species;
 - (c) a description of the area and its state.
2. A description of the project applied for, including in particular:
 - (a) the content, extent and land-use requirements of the project during both the construction and the operational phases;
 - (b) the data required to identify and assess any significant effects, including possible damage, that the project is likely to have on designated international nature conservation areas.
3. Information on other possible projects or plans that, in combination with the project applied for, are likely to significantly affect designated international nature conservation areas, including:
 - (a) the content of the project or plan, extent and geographical location;
 - (b) the effect of the project or plan on the nature conservation area.

The information may be provided in the form of references to EIA-reports and impact assessments concerning the projects or plans in question.

4. Information on possible surveys, including:
 - (a) surveys conducted in relation to the project applied for;
 - (b) previous impact assessments for the affected area;
 - (c) other surveys or survey results of importance to the assessment of the project.
5. A reasoned assessment of the effects on the designated international nature conservation areas, including in particular:
 - (a) the direct and indirect effects of the project on the designation basis for the nature conservation area during both the construction and operational phases;
 - (b) the total effects in combination with other possible plans or projects;
 - (c) possible transboundary impacts;
 - (d) a description of possible alternative solutions if the project may have adverse effects;
 - (e) a description of any corrective measures to be taken in order to avoid, reduce and, if possible, remedy significant adverse effects on the designation basis for the area, as well as of any compensatory measures where the conditions stipulated by section 28 a(3)(ii) or subsection (4) of the Subsoil Act, or by section 4 a(2)(ii) or subsection (3) of the Continental Shelf Act are met. An assessment of the impact of the measures described must be included.

6. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information.

In exceptional cases, e.g. in connection with applications for projects of a very limited extent, or if an adequate impact assessment is already available, the scope of the minimum amount of information to be provided in the impact assessment of the specific project may be agreed upon with the Danish Energy Agency on the basis of the particulars set out above (1.-6.)

Annex 2

Advisory list of species included in Annex IV to the Habitats Directive occurring naturally in Danish territorial waters, in the Danish exclusive economic zone or on the Danish continental shelf

PREDATORS

Otter

Lutra lutra

WHALES

CETACEA

All species, including
Porpoises

Phocoena phocoena

FISH

Houting

Coregonus oxyrinchus