

Ms. Hennessy
Mr. Nugent
Rúnaí Aire

Decision Sought:

The Minister approves:

- ***An Appropriate Assessment for the Rig-Site Clearance Survey – SW Kinsale, Ballycotton and Seven Heads Gas Fields (“the Survey”) is not required as it can be excluded on the basis of objective scientific information, following screening under the European Communities (Birds and Natural Habitats) Regulations, SI No. 477 of 2011 (as amended), that the Rig-Site Clearance Survey, individually or in-combination with other plans or projects, will have a significant effect on a European site;***

and,

- ***That the assessment for Annex IV Species has been found to be of an acceptable standard to be satisfied that there would be no significant adverse effects on Annex IV species, should approval be granted for the Rig-Site Clearance Survey.***

Background

1. The Kinsale Gas Area gas field is in the Celtic Sea approximately 50km off the south coast of Ireland. An indenture of agreement hereinafter referred to as the Parent Agreement was entered into on 13th January, 1959 (“**Parent Agreement**”) between the then Minister for Industry and Commerce and Ambassador Oil Corporation/Ambassador Irish Oil Ltd (the Minister for Communications, Climate Action and Environment (the “**Minister**”) and PSE Kinsale Energy Ltd (“**KEL**”) being the successors thereto) wherein, the Minister, *inter alia*, undertook to grant Ambassador Oil an Exploration Licence.
2. The Kinsale Gas Area was initially developed by Marathon Petroleum Company (Ireland) Ltd (“**Marathon**”) under a Petroleum Lease dated 7th May, 1970 between the Minister for Industry and Commerce, the Minister for Finance and Marathon Petroleum Company (Ireland) Ltd hereinafter referred to as the Petroleum Lease. Commercial production commenced in 1978.
3. The gas field was enlarged in subsequent years to include the satellite “**Ballycotton Gas field**” and the “**Southwest Kinsale Gas field**”, which are both included by way of amendment to the Petroleum Lease. An addendum to the Lease dated 29th November 2006 provided for the use of the Southwest Kinsale Gas field as a gas storage facility. This operation ceased in April 2017 as it was no longer commercially viable.

4. In 2009, Marathon transferred its entire legal and 100% beneficial interest in the Lease to PETRONAS, Malaysia’s national oil company. The gas field is now operated by PSE Kinsale Energy Ltd (KEL), a wholly owned subsidiary of PETRONAS.
5. The Seven Heads gas field is adjacent to the Kinsale Gas Area. In November 2002, a Petroleum Lease was granted to Rambo Seven Heads Ltd, Island Petroleum Development Ltd, Northern Exploration Ltd and Sunningdale Oils (Ireland) Ltd to develop the Seven Heads gas field. The field has been developed as a subsea tie-back to the facilities on the Kinsale Head Alpha platform. Production commenced in 2002 under a Petroleum Lease dated 13th November 2002, although the level of production declined significantly after the first year of operation. The current interests in the Petroleum Lease are as follows:

Lessee	Equity interest
PSE Seven Heads Ltd. (Operator) ¹	86.5%
Island (Seven Head) Ltd	12.5%
Sunningdale Oils (Ireland) Ltd	1%

6. Cessation of production in both the Kinsale and Seven Heads gas fields occurred on 5th July 2020. Upon cessation of production, decommissioning of the facilities will commence subject to the receipt of all necessary regulatory and environmental approvals

Policy Background

7. On 17th December 2019, a Policy Statement on Petroleum Exploration and Production Activities, as part of Ireland’s Transition to a Low-Carbon Economy, was published. The policy statement sets out a vision for the development of natural gas resources in the Irish Offshore as a key component of Ireland’s energy mix as the country transitions to a low-carbon economy and the underpinning principles for petroleum exploration and production in the broader context of the Government’s Climate Action Plan. All applications for activities under a lease or licences are considered in this policy context.

Site Survey Application

8. An application for consent to undertake an offshore rig-site clearance survey was received from PSE Kinsale Energy Ltd. (KEL) on 6th March 2020. It is planned that the survey will take place within the period of April to December 2020 and it is expected to be complete in approximately 7.5 days. The survey is required to assist in the siting of a semi-submersible drilling unit for the decommissioning of the offshore subsea wells (13 in total as outlined in Figure 1).

¹ PSE Seven Heads Limited is a wholly owned subsidiary of PETRONAS, the Malaysian Oil and Gas Company.

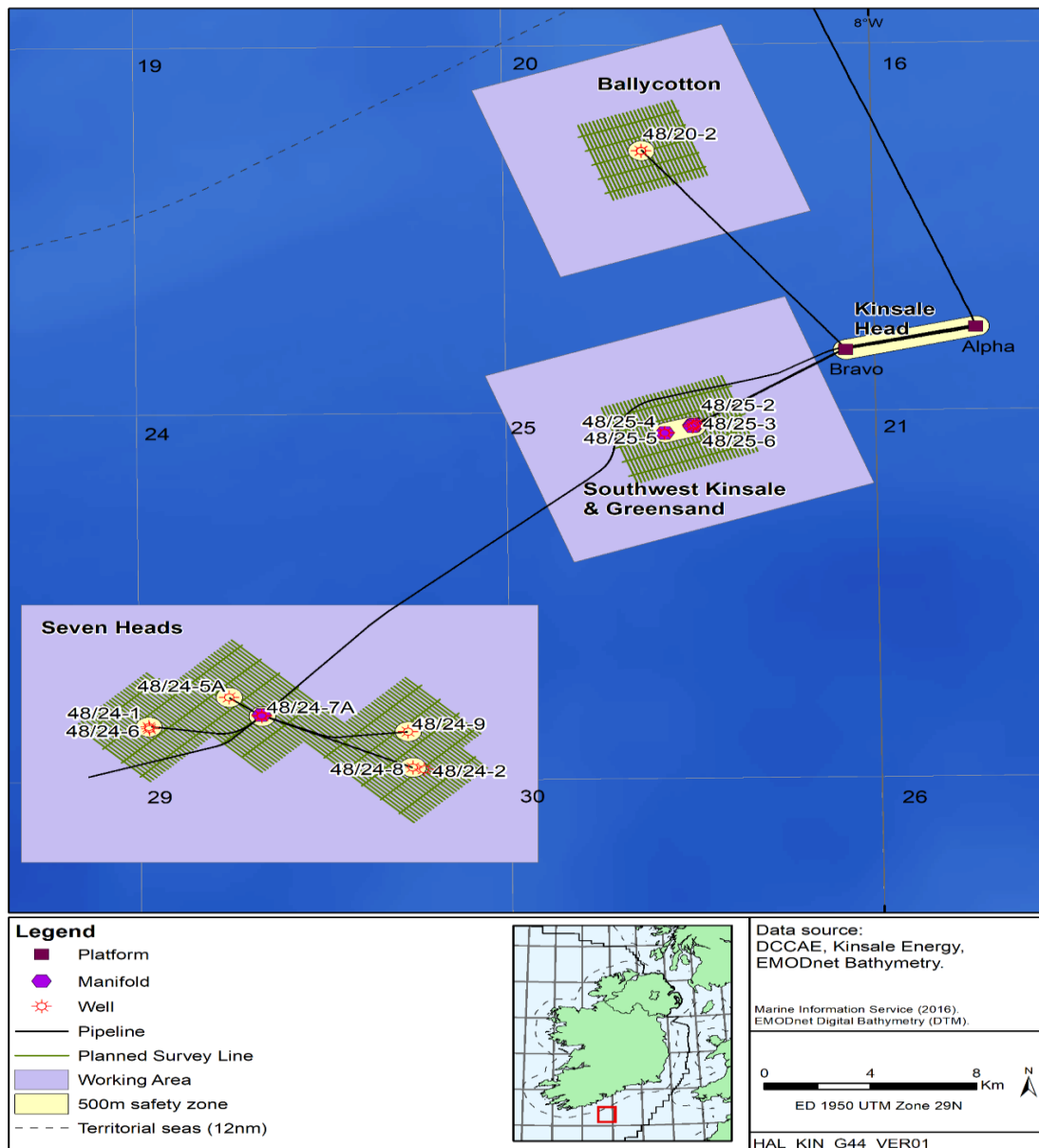


Figure 1 – Location of Offshore Subsea Wells

9. The applicant proposes to decommission these wells, either using a semi-submersible mobile offshore drilling unit and/or a light well intervention vessel. In order to facilitate well abandonment, the applicant has indicated that a better understanding of the offshore anchoring conditions is required in those areas where the drilling unit will be deployed as well as the identification of any obstructions in these areas. The following documents (TAB A1-A4) were received as part of the application:

- Application to conduct an offshore survey (TAB A1);
- Environmental Impact Assessment for Annex IV Species (TAB A2);
- Appropriate Assessment Screening Report (TAB A3); and
- Pre-survey Fisheries Assessment (TAB A4).

10. The offshore survey will be conducted using industry standard equipment. Although the specific equipment to be used in the survey has not been finalised, the applicant has indicated that it will more than likely include a mix of:

- sub-bottom profilers (towed and hull-mounted);
- side scan sonar;
- single beam and multi-beam echo sounders;
- magnetometer; and
- USBL (ultra-short baseline acoustic positioning; hull-mounted with transponder on towed devices).

All sensors will be located on the support vessel to be procured by the applicant.

11. A decision is required by the Minister as to whether an Appropriate Assessment is required for the Rig-Site Clearance Survey – SW Kinsale, Ballycotton and Seven Heads Gas Fields.

Regulatory Context

12. The Kinsale Petroleum Lease OPL-1 and the Seven Heads Petroleum Lease were granted under Section 13 (1) of the Petroleum and Other Minerals Development Act, 1960 (“POMDA”) which provides that every lease shall be granted upon such terms and conditions as the Minister thinks fit and specifies therein.

13. The application has been considered in accordance with the above legislation, and in accordance with the following EU and national legislation:

Environmental Impact Assessment

- Directive on the assessment of the effects of certain public and private projects on the environment (Directive 2011/92/EU) as amended by Directive 2014/52/EU (‘the EIA Directive’).
- The Petroleum and Other Minerals Development Act, 1960, as amended.

Appropriate Assessment

- Directive 2009/147/EC on the conservation of wild birds (commonly referred to as the Birds Directive);
- Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (commonly referred to as the Habitats Directives); and
- The European Communities (Birds and Natural Habitats) Regulations 2011-2015 as amended.

Ministerial Considerations in carrying out a screening for Appropriate Assessment

14. In carrying out a screening for Appropriate Assessment, the Minister is to assess whether the rig-site clearance survey which is not directly connected with or necessary to the management of the site as a European site, in view of best scientific knowledge and in view of the

conservation objectives of the site, individually or in combination with other plans or projects is likely to have a significant effect on a European site as required by Regulation 42 of the European Communities (Birds and Natural Habitats) Regulations SI 477/2011 (the “**Regulation**”) and Article 6(3) of the Habitats Directive 92/43/EEC (“**Habitats Directive**”). In addition, the Habitats Directive requires consideration of the potential effects on species listed under Annex IV of the Directive (termed Annex IV species). Under Article 12, Annex IV species are afforded strict protection throughout their range, both inside and outside of designated protected areas.

15. In accordance with the Regulation and the relevant case law, in making such a decision the Minister must be satisfied:
 - a. That the information provided catalogues the entirety of habitat types and species for which a site is protected, and identifies and examines both the implications of the proposed project for the species present on that site, and for which that site has not been listed, and the implications for habitat types and species to be found outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site.
 - b. That the decision does not take account of measures intended to avoid or reduce harmful effects of the plan on a European site.
 - c. That the information provided present complete, precise and definitive findings such that it can be concluded that no reasonable scientific doubt remains as to the absence of significant effects and it can thus be excluded that the proposed development will have a significant effect on a European site.

16. The Minister is required to carry out a screening for Appropriate Assessment before consent for the survey is given in accordance with the Regulation and the Habitats Directive. The Minister shall only determine that an Appropriate Assessment of the rig-site clearance survey is not required where the rig-site clearance survey is not directly connected with or necessary to the management of the site as a European Site and if it can be excluded on the basis of objective scientific information following screening under the Regulation, that the survey or project, individually or in combination with other plans or projects, will have a significant effect on a European site.

Ministerial Considerations in carrying out an Annex IV Species Assessment

17. Article 12 of the Habitats Directive provides that:

“Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV (a) in their natural range, prohibiting:

- (a) all forms of deliberate capture or killing of specimens of these species in the wild;*
- (b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;*
- (c) deliberate destruction or taking of eggs from the wild;*
- (d) deterioration or destruction of breeding sites or resting places.”*

18. Regulation 29 of the Regulation transposes Article 12 of the Habitats Directive into Irish law and provides that:

“29. (1) Where the Minister has reason to believe that any activity, either individually or in combination with other activities, plans or projects, is of a type that may—

- (a) have a significant effect on a European Site,*
- (b) have an adverse effect on the integrity of a European Site,*
- (c) cause the deterioration of natural habitats or the habitats of species or the disturbance of the species for which the European Site may be or has been designated pursuant to the Habitats Directive or has been classified pursuant to the Birds Directive, insofar as such disturbance could be significant in relation to the objectives of the Habitats Directive,*
- (d) cause pollution or deterioration of habitats within the meaning of the second sentence of Article 4(4) of the Birds Directive, or*
- (e) have an adverse effect on the conservation status of—*

- (i) animal species listed in Annex IV (a) to the Habitats Directive in their natural range pursuant to Article 12 of the Habitats Directive,*
- (ii) plant species listed in Annex IV (b) to the Habitats Directive pursuant to Article 13 of the Habitats Directive,*
- (iii) species of wild fauna and flora listed in Annex V to the Habitats Directive pursuant to Article 14 of the Habitats Directive,*
- (iv) naturally occurring birds in the wild state,*

the Minister shall, by notice, subject to paragraph (2), where he or she considers appropriate, direct that the activity shall not be carried out, caused or permitted to be carried out or continue to be carried out by any person in the European Site or part thereof or at any other specified land or may restrict or regulate the activity in the European Site or part thereof or at any other specified land, and each such notice shall be accompanied by a statement of the Minister’s reasons for making the decision.”

Consultation and Process

19. In assessing the application against the criteria outlined above, the Department engaged the support of RPS Consultants for independent environmental advice and assessment.

20. Although public participation is not required during the screening process under either the EIA Directive or Birds and Habitats Directives, the Department, mindful of the requirements of the Aarhus Convention and the public participation requirements in Article 6 of the EIA Directive, conducted a thirty-day public consultation period.

21. The AA Screening Report together with the rig-site clearance application form, Environmental Impact Assessment Report and Pre-survey Fisheries Assessment were posted on the Department's website on 16th March 2020 and parties were invited to make comments on the submission before 14th April 2020. On 6th April, the public consultation period was extended to 24th April 2020 to facilitate public participation in light of the restrictions imposed due to the COVID-19 situation.
22. The following bodies were notified of the proposed survey activities by in accordance with the Department's ***Rules and Procedures Manual for Offshore Petroleum Exploration and Appraisal Operations***:
- Development Applications Unit, National Parks and Wildlife Service;
 - Irish Maritime Administration, Department of Transport, Tourism and Sport;
 - Ship Source Pollution Prevention Unit Irish Maritime Administration, Department of Transport, Tourism and Sport;
 - Irish Coast Guard (& National Maritime Operations Centre), Department of Transport, Tourism and Sport;
 - Sea Fisheries Protection Authority;
 - Sea Fisheries Policy Division, Department of Agriculture, Food and the Marine;
 - Department of Defence;
 - Mission Support Facility, Irish Air Corps;
 - Naval Headquarters;
 - Marine Institute; and
 - Director of e-Navigation and Maritime Services, Commissioner of Irish Lights.
23. Observations were received on the screening for Appropriate Assessment from the Ship Source Pollution Prevention Unit Irish Maritime Administration, Department of Transport, Tourism and Sport and a private individual.
24. Having reviewed the application and submissions received from the public consultation, RPS submitted its Rig-Site Clearance Survey Screening for Appropriate Assessment and Article 12 Screening Assessment Technical Review (**TAB B**). Taking the recommendation from RPS' review, further information was sought from the Applicant on 14th May 2020 (**TAB C**) on the basis that insufficient information had been provided to conclude beyond reasonable scientific doubt that the proposed development, individually or in combination with other plans or projects will not have likely significant effect on European sites.
25. The Applicant provided further information (**TAB D**) on 8th June 2020. On 9th June 2020, this information was posted on the Department's website for comment by 23rd June 2020. Observations were received from the Department of Culture, Heritage and the Gaeltacht on behalf of the National Parks and Wildlife Service and the Irish Coast Guard (& National Maritime Operations Centre), Department of Transport, Tourism and Sport.
26. RPS completed their review by providing an AA Screening Technical Review Addendum (**TAB E**).

27. A total of four responses were received in the consultation with the public and prescribed bodies on the application in respect of the rig-site clearance survey, with one of them relevant to the AA Screening Report. A summary of these responses and how they were dealt with is set out below.

Observation / Submission	Response
Ship Source Pollution Prevention Unit Irish Maritime Administration, Department of Transport, Tourism and Sport	
<p>Regarding correspondence from PSE Kinsale Energy Ltd in respect of two site surveys applications they have submitted to the Petroleum Affairs Division, DCCAE.</p> <p>In this regard, I wish to inform you that (prospective) licensees and their employees and contractors are reminded that they should be aware of ship-source pollution prevention provisions which are in place to protect human health and the marine environment and apply to all shipping activity. These provisions are obligatory independently of particular licence terms and conditions. Under the MARPOL Convention and EU law, as applicable in national law, ships may not cause pollution either by discharge to water or emissions to air, when at sea or when at berth in port. Ships include Floating Production, Storage and Offloading vessels (FPSOs), also called a "unit" or a "system"; and Floating Storage Units, (FSUs). Ships berthed at terminals at sea are also obliged to conform to the law.</p> <p>Management of ship waste (mainly oil, hazardous and polluting substances, sewage, garbage and polluting emissions to air) and of all cargo residues must be ensured as required under international (IMO), EU and national law. Under existing provisions ships are obliged to discharge waste and cargo residues at port and ports are obliged to provide adequate facilities for their reception from ships</p>	<p>RPS noted this submission.</p>
Private Individual	
<p>Please do not allow any more fossil fuels to be explored, exploited and expatriated from Irish waters, soils and seas</p>	<p>RPS noted this submission.</p>
Irish Coast Guard (& National Maritime Operations Centre), Department of Transport, Tourism and Sport	
<p>In terms of observation from the IRCG, please be advised we would like to highlight and draw attention to the statutory obligations of operator(s) in respect to the various Sea Pollution Acts, specifically the requirements of effective preparedness and response arrangements and the required permits for specialised operations such as</p>	

"Ship to Ship" (STS) transfers etc. within the Exclusive Economic Zone (EEZ).	
Department of Culture, Heritage and the Gaeltacht (DCHG) Development Applications Unit (DAU)	
<p>NPWS have reviewed the appropriate assessment screening report and environmental impact assessment report for Kinsale Alpha & Bravo shallow survey and have no additional comments. The equipment planned for survey use, pinger or chirp system, is outside 1,500m from the entrance of enclosed bays, inlets or estuaries and thus the "Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters" (DAHG 2014) is not applicable.</p> <p>We have reviewed the appropriate assessment screening report and environmental impact assessment report for Kinsale area rig-site geophysical survey and have no additional comments. The equipment planned for survey use, (pinger/chirp system, side-scan sonar, multi-beam echosounder, single beam echosounder) is outside 1,500m from the entrance of enclosed bays, inlets or estuaries and thus the "Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters" (DAHG 2014) is not applicable.</p>	RPS noted this submission.

28. An Article 12 (Annex IV Species) Assessment was contained within the EIA Screening Report submitted by KEL. The findings of the Article 12 Assessment prepared by KEL state that:

"The assessment considered relevant Annex IV Species (Table 3.5) likely to be present in the survey area and concluded that effects were not likely for relevant species of marine turtle and cetaceans (see Section 5.1.2)."

29. RPS carried out an assessment of the information submitted for the purposes of the Article 12 (Annex IV Species) Assessment as detailed in the RPS Report and concluded

"[...] it is concluded that the proposed survey will not give rise to significant impacts to species listed under Annex IV of the Habitats Directive."

30. Accordingly, the assessment for Annex IV Species has been found to be of an acceptable standard such that the Minister can be satisfied that there would be no significant adverse effects on Annex IV species, should approval be granted for the rig-site clearance survey.

31. In their AA Screening Technical Review, RPS has concluded as follows:

"In carrying out the technical review of the Screening for AA and to arrive at a definitive determination under Article 6(3) of the Habitats Directive and Regulation 42 of the European Communities (Birds and Natural Habitats) Regulations, SI No. 477 of 2011 (as

amended), as to whether the survey, on its own or in combination with other plans and projects, is likely to have a significant effect on a Natura 2000 site, RPS took into account the following:

- *Appropriate Assessment Screening Report (March 2020);*
- *Environmental Impact Assessment Screening/ Environmental Risk Report (March 2020);*
- *Response to Request for Further Information (PSE Kinsale Energy Limited (June 2020);*
- *Pre-survey Fisheries Assessment;*
- *Cover Letter;*
- *Application Form;*
- *Evidence of Notification of Statutory Consultees;*
- *Submissions and observation received as part of the consultation; and*
- *Relevant European and Irish case law.*

Based on the information available on the project and further information provided, it can be excluded on the basis of objective scientific information, following screening under the European Communities (Birds and Natural Habitats) Regulations, SI No. 477 of 2011 (as amended), that the Kinsale Area subsea wells rig site geophysical survey, individually or in combination with other plans or projects, will have a significant effect on a European site, therefore it can be determined that an AA of the project is not required.”

32. In reaching their conclusion, RPS confirms that no reliance is being placed on mitigation measures.

Other Relevant Information

33. Following the carrying out by the Minister of a screening assessment in relation to the rig-site clearance survey and the determination as to whether an AA is or is not required, the Department will publish the Minister’s decision in relation to the rig-site clearance survey which will include the reasons for the Minister’s decision in relation to AA screening and “access to justice” provisions on the Department’s website.

Reasoned Recommendation

34. A comprehensive due diligence exercise has been carried out by the Department on the application having taken independent external environmental advice and having carried out a public consultation.

35. The matters raised in the public consultation have been carefully considered.

36. It can be confirmed that the consent for the rig-site clearance survey has not been provided at this point.

37. It is recommended that the Minister can accept RPS' conclusions in respect of the rig-site clearance survey not requiring an Appropriate Assessment or any further Annex IV Species (European Protected Species) Impact Assessment (Article 12 Assessment).

Conclusion – Screening Determination

- The Minister to note that the rig-site clearance survey is not directly connected with or necessary to the management of a European Site;
- The Minister to have regard to the nature, scale and location of the rig-site clearance survey, the AA Screening Report, the RPS Rig-Site Clearance Survey Screening for Appropriate Screening and Article 12 Screening Assessment Technical Review;
- The Minister to accept and adopt the screening assessment carried out by RPS and the conclusion in the RPS report in respect of the identification of the European sites which could potentially be affected, and the identification and assessment of the potential significant effects of the rig-site clearance survey, either individually or in combination with other plans or projects, on these European sites in view of the sites' conservation objectives; and
- The Minister to accept the conclusions in relation to Annex IV species set out in the information submitted by KEL, and accept and adopt the Annex IV species assessment carried out by RPS and the conclusions in relation to that assessment in the RPS report and having considered that the Habitats Directive requires consideration of the potential effects on species listed under Annex IV of the Directive (termed Annex IV species). Under Article 12, Annex IV species are afforded strict protection throughout their range, both inside and outside of designated protected areas,

the Minister to determine that he is satisfied:

- a. That in view of best scientific knowledge and in view of the conservation objectives of the site, individually or in combination with other plans or projects, the survey will not have a significant effect on a European site as required by Regulation 42 of the European Communities (Birds and Natural Habitats) Regulations SI 477/2011 (the "Regulation") and Article 6(3) of the Habitats Directive 92/43/EEC ("Habitats Directive");
- b. That the information catalogues the entirety of habitat types and species for which a site is protected, and, identifies and examines both the implications of the rig-site clearance survey for the species present on that site, and for which that site has not been listed, and the implications for habitat types and species to be found outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site;
- c. That measures intended to avoid or reduce harmful effects of the rig-site clearance survey on a European site have not been taken into account at AA screening stage;
- d. That the information provided presents complete, precise and definitive findings such that it can be concluded that that no reasonable scientific doubt remains as to the absence of significant effects and it can thus be excluded on the basis of objective scientific

information that the rig-site clearance survey will have a significant effect on a European site;

- e. That the Minister is taking a decision on the screening for Appropriate Assessment before consent for the rig-site survey is given in accordance with the Regulation and the Habitats Directive.

It is recommended that being satisfied regarding the matters outlined above, the Minister can conclude:

An Appropriate Assessment for the rig-site clearance survey is not required, as it can be excluded on the basis of objective scientific information, following screening under the European Communities (Birds and Natural Habitats) Regulations, SI No. 477 of 2011 (as amended), that the rig-site clearance survey, individually or in-combination with other plans or projects, will have a significant effect on a European site;

and,

That the assessment for Annex IV Species has been found to be of an acceptable standard such that he can be satisfied that there would be no significant adverse effects on Annex IV species, should approval be granted for the rig-site clearance survey.

Maria O'Brien
Assistant Principal Officer
Petroleum Affairs Division - Policy and Regulation
16th July 2020

Documents forming part of submission

TAB A	<ul style="list-style-type: none">• Application form (TAB A1);• Environmental Impact Assessment (EIA) Screening Report (TAB A2);• Appropriate Assessment (AA) Screening Report (TAB A3);• Pre-survey Fisheries Assessment (TAB A4).
TAB B	RPS Screening for Appropriate Assessment and Article 12 Screening Assessment Technical Review
TAB C	PAD Letter Further Information Request sent to the Applicant
TAB D	Further Information submitted by the Applicant
TAB E	RPS AA Screening Technical Review Addendum