

**THE CONSERVATION (NATURAL HABITAT, &c.) REGULATIONS 1994 (AS AMENDED)**

**LICENCE TO DISTURB MARINE SPECIES**

**Public Case Handling Report for Licence Number: EPS/BS-00011009**

<b>Site</b>	Hunterston Construction Yard, West Kilbride
<b>Company</b>	Clydeport Operations Limited (Peel Ports)  16 Robertson Street Glasgow  G2 8DS
<b>Brief Description of Project</b>	Hunterston Construction Yard Upgrade & Capital Dredging
<b>Associated Licences</b>	Basking Shark Licence No. 00011010 Marine Licence No. 00010868 & 00010872

<b>Species</b>	harbour porpoise ( <i>Phocoena phocoena</i> );bottlenose dolphin ( <i>Tursiops truncatus</i> );minke whale ( <i>Balaenoptera acutorostrata</i> );short beaked common dolphin ( <i>Delphinus delphis</i> );killer whale ( <i>Orcinus orca</i> )
<b>Inshore/Offshore</b>	Inshore

<b>TEST 1</b>	<b>Purpose of licence</b>
	Imperative reasons of overriding public interest (including those of a social or economic nature and beneficial consequences of primary importance for the environment)

<b>Comments</b>
<p>The applicant, Clydeport Operations, has identified that upgrading the Hunterston Construction Yard into a harbour facility with a large working platform and deeper berthing area is a requirement to support the technical requirements for future tenants. The applicant has stated that the site is not suitable for this use in its current configuration. This development would see the upgrade of the existing Hunterston Construction Yard into a harbour facility to support both the long-term sustainable development of various industrial users and future offshore wind industry activities. The applicant has stated that the piling works and dredging are necessary to facilitate this upgrade.</p> <p>The proposed development will facilitate the site to be used to support the offshore wind sector. In association with this the development and future use will create jobs and business opportunities for local population. Environmentally, the development will aid in the process of transition to green renewable energy. The benefits are both short and long term.</p> <p>The applicant has confirmed that the proposed site forms part of the Hunterston Strategic Asset which is one of</p>

six National Projects which is named in NPF4. These classes of development support the redevelopment and reuse of existing strategic assets and land contributing to a net zero economy. It also supports delivery of the Scottish Government's spatial strategy by stimulating investment in the west of Scotland, potentially contributing to the wider aim of tackling inequalities. Hunterston Offshore wind is facing large demand with limited supply, where there is a shortage of adequate facilities to manufacture, assemble and store offshore wind assets prior to Scottish supply. The proposed development would be of significant value as a facility for Fabrication and Manufacturing or Marshalling and Assembly of Offshore wind projects. This will also have a positive economic & social impact on North Ayrshire and the UK.

The North Ayrshire Local Development Plan adopted by North Ayrshire Council in 2019 identifies that the area adjacent to the proposed site suffers from poverty in some communities with significant numbers of the population travelling out with the area for work on a daily basis amongst other things. It is supportive of Hunterston becoming a key employment location through maximising its economic potential of the port's access to marine, road and rail networks.

The proposed development aligns with the priorities of the National Marine Plan. Under section 13.10 of the Plan, it supports Scottish ports to handle products as well as the servicing industry boats and infrastructure.

NPF4 sets out six overarching principles to support the Scottish Government's planning of future places. In applying these principles, the national spatial strategy, as set out in NPF4, will support the planning and delivery of:

- Sustainable places, where we reduce emissions, restore and better connect biodiversity
- liveable places, where we can all live better, healthier lives; and
- productive places, where we have a greener, fairer and more inclusive wellbeing economy.

The above spatial strategy goes on to define eighteen national developments within NPF4, including Hunterston Strategic Asset which:

supports reuse (of) the port and wider site, engaging in new technologies and creating opportunities from nuclear decommissioning to make best use of existing infrastructure and provide local benefits.

NPF4 defines the Hunterston Strategic Asset national development as comprising Hunterston Port, the former nuclear power station sites and marketable employment land at Hunterston Estate.

With regards to the narrative around the National development status of Hunterston Strategic Asset, NPF4 states:

This national development supports the repurposing of Hunterston Port as well as the adjacent former nuclear power station sites and marketable business land of the Hunterston Estate. Hunterston has long been recognised as a strategic location for the port and energy sectors given its deepwater access and existing infrastructure. Hunterston is a key site, anchoring other opportunities around the Firth of Clyde.

The location and infrastructure offers potential for electricity generation from renewables, and a variety of commercial uses including port, research and development, aquaculture, the circular economy, and environmental and economic opportunities around nuclear decommissioning expertise. As a point of principle, the proposed development is defined as having National Development status under NPF4 due to the inclusion of Hunterston Strategic Asset within NPF4. The proposed works within the current planning application therefore benefit from the support within NPF4 and accord with the requirements of NPF4.

PeelPorts - owners of ClydePort - are the Statutory Harbour Authority for a large proportion of the Firth of Clyde, including the area for development.

<b>Test 1 satisfied?</b>	YES
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<b>TEST 2</b>	<b>Satisfactory alternatives</b>
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**Comments**

The applicant has demonstrated that reasonable effort has been made to consider alternatives that would achieve the same result but with less / no impact on EPS, including the 'do nothing alternative'.

On the basis of the technical requirements for the future use of the site, the economic benefits identified related to Hunterston Construction Yard being in productive use and the associated future environmental benefits related to supporting the offshore wind sector, the applicant considers that the no development option is not viable and would have an impact on the potential for meeting the Scottish Governments National Development objectives.

The applicant has demonstrated consideration of alternative locations and methodologies for the works:

**Option 1**

The HCY benefits from having existing port infrastructure in place and has immediate access to deep water. The HCY also has an existing area of available land which can provide a suitable working and storage platform for the operation as a port facility.

**Option 2**

There is existing development land located within the former coal terminal area. Like the HCY this benefits from having a large potential working and storage platform area, however there is no existing port infrastructure present in this area and no direct access to deep water. To facilitate this there would require to be extensive marine and civil engineering works including work that would directly impact the existing Southannan Sands SSSI.

**Option 3**

The existing deep water jetty at Hunterston provides access to deep water and has existing port infrastructure. The jetty however does not have an existing large storage and working platform area in close proximity, to provide this would result in significant land reclamation works.

**Preferred Option**

On the basis of the review of the development areas within the Hunterston estate, the HCY is the preferred location as it presents the lowest potential for environmental impact to achieve the requirements for the proposed development.

To upgrade the port facility for the proposed future use installation of a new quay wall and mooring dolphins is a requirement. Given the existing ground conditions at the site impact and vibration piling are considered the only viable option in relation to the construction works. A number of dredging options have been considered for the site, however all of these would result in the presence of vessels and therefore the potential of disturbance to EPS.

On the basis of this assessment no alternative construction and dredging options have been identified by the applicant that would remove the potential for disturbance to EPS.

<b>Test 2 satisfied?</b>	YES
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<b>TEST 3</b>	<b>Favourable conservation status</b>
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## Comments

NatureScot has concluded in its advice of 16 December 2024 that there was insufficient information to complete an impact assessment for mobile Priority Marine Features (PMFs). NatureScot stated that the proposal could have a significant impact on the national status of PMFs and it therefore objected to the proposal until further information is provided by the Applicant and considered by the Marine Directorate.

In response to the Additional Information provided by the Applicant, NatureScot advised on 23 January 2025 that the following European Protected Species (EPS) and PMF species are all found within the Firth of Clyde: harbour porpoise, bottlenose dolphin, common dolphin, minke whale, harbour seal, grey seal and basking shark. It advised that the proposed activities could go ahead, with appropriate mitigation measures being fully implemented, without causing injury or significant disturbance to marine mammals. Some residual disturbance may still occur, which is likely to need an EPS licence, and Wildlife and Countryside Act licence for basking shark, which will require consultation with the Marine Directorate.

NatureScot disagreed with the Applicants conclusion that marine mammals (both seals and cetaceans) have low sensitivity to underwater noise. However, even if the sensitivity score is increased to High (for Permanent Threshold Shifts) and Medium (for disturbance), it agreed that, with mitigation in place, the magnitude is negligible or low, so the overall conclusion of minor significance remains the same. For other impacts (vessel disturbance, collision, dredging noise, pollution), it agreed with the conclusions of the impact assessments.

NatureScot advised the key activity of concern is the installation of the five dolphin structures, using impact driven piles. This activity has the potential to cause auditory injury and disturbance to marine mammal species. NatureScot carried out underwater noise modelling and made an assessment of the risks to marine mammals. The assessment does not give sufficient assurance that the risks will be mitigated as proposed. NatureScot does not agree that an extended soft start/ramp up procedure will provide appropriate mitigation, as injury can still occur even at reduced piling levels, and by extending the duration of the soft start additional noise is entering the environment. Therefore, NatureScot advised that, if the construction licence is granted, the applicant should provide a piling noise management plan, to be submitted and approved prior to any works commencing. The plan should be implemented. The piling noise management plan should include, for example:

- Details of the number of piles to be driven, the duration of piling, impact hammer energy.

- Details of timing of piling (e.g. seasonal, diurnal, tidal cycle).

- A quantitative assessment of the number of animals likely to experience auditory injury (PTS) and disturbance, for both an individual piling event and the full piling schedule (for those species where density estimates exist).

- An assessment of the magnitude of these impacts relative to the population of each species, in order to determine the effect on favourable conservation status (for those species where population estimates exist).

- A detailed, comprehensive mitigation plan, based on the JNCC guidance<sup>2</sup> (2010).

- Consideration of noise abatement systems to further reduce underwater noise levels, if needed.

Given that piling is also proposed in the construction of the quay NatureScot advised that this piling management plan includes piling proposed for both marine and terrestrial environments.

However, as there is currently uncertainty whether there will be any marine piling, NatureScot advised that, if the terrestrial piling takes place entirely behind a bund, such that there is no direct contact between the pile and the water column, then the risk of injury or disturbance from this activity will be low, and additional management or mitigation will not be required. Although there is still potential for noise to travel through the substrate, beyond the bund, and into the water column, this will not be at levels likely to cause injury and any disturbance will be highly localised around the site. Therefore, NatureScot are content that the noise management plan need only apply to the mooring dolphins.

NatureScot noted that section 5 of the EIAR Addendum confirms that post consent, and pre-construction, a Piling Noise Management Plan will be produced with respect to the construction of the mooring dolphins and

submitted to the regulators for agreement. The plan should incorporate the information requested above.

NatureScot clarified its response regarding the requirement for an EPS licence on 6 February 2025:

It advised that although the piling activity for installation of the mooring dolphins was NatureScot's main concern, other activities which produce underwater noise also need to be considered for EPS licensing.

The Hunterston Construction Yard Marine Mammal Risk Assessment (Envirocentre, May 2024- TA 5.6) concluded that an EPS licence would be needed for both impact piling and dredging. The noise modelling report (Hunterston Construction Yard Subsea Noise Technical Report 5.4 RPS) indicates that this activity has the potential to cause disturbance over a range of several kilometres (Table 6-12). It is expected that dredging will take place on up to 130 days.

So even if the mooring dolphins are no longer going ahead, NatureScot advised that the applicant will still need an EPS licence for disturbance from the proposed dredging activity. Based on the information provided, NatureScot also advised that there would be no detrimental effect on favourable conservation status of any

species from this activity. It also advised that an EPS licence for injury is not needed. Assuming that all the Quay wall construction works will take place behind a bund wall, NatureScot advised that an EPS licence is not required for those elements of the project.

<b>Test 3 satisfied?</b>	YES
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**Date application received:** 13/11/2024

**Consultation start date:** 15/11/2024

**Consultation end date:** 20/12/2024

### Notes

Date	title	Text
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#### National Marine Plan considerations:

The decision is: In accordance and no further action required

Comments: NPF4 defines the Hunterston Strategic Asset national development as comprising Hunterston Port, the former nuclear power station sites and marketable employment land at Hunterston Estate.

GEN 1 General planning principle: There is a presumption in favour of sustainable development and use of the marine environment when consistent with the policies and objectives of this Plan.

GEN 2 Economic benefit: Sustainable development and use which provides economic benefit to Scottish communities is encouraged when consistent with the objectives and policies of this Plan.

GEN 3 Social benefit: Sustainable development and use which provides social benefits is encouraged when consistent with the objectives and policies of this Plan.

GEN 5 Climate change: Marine planners and decision makers must act in the way best calculated to mitigate, and adapt to, climate change

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