

Appropriate Assessment for Orkney Island Council capital dredge and deposit of material, construction of jetty and slipway at Island of Faray, Orkney Islands. June 2024.

**MARINE DIRECTORATE - LICENSING OPERATIONS TEAM'S  
ASSESSMENT OF THE PROJECT'S IMPLICATIONS FOR  
DESIGNATED SPECIAL AREAS OF CONSERVATION, IN VIEW OF  
THE SITES' CONSERVATION OBJECTIVES.**

APPLICATION FOR A MARINE LICENCE UNDER THE MARINE (SCOTLAND) ACT 2010 FOR CONSTRUCTION, CAPITAL DREDGING AND SEA DEPOSIT.

SITE DETAILS: ISLAND OF FARAY, ORKNEY ISLANDS

<b>Name</b>	<b>Assessor or Approver</b>	<b>Date</b>
Jacqui Cameron	Assessor	13 June 2024
Fiona Mackintosh	Approver	17 June 2024

## TABLE OF CONTENTS

<b>SECTION 1: BACKGROUND</b> .....	<b>2</b>
1 Appropriate assessment conclusion .....	2
2 Introduction .....	2
3 Details of proposed project .....	2
4 Consultation .....	3
5 Main points raised during consultation .....	4
<b>SECTION 2: INFORMATION ON EUROPEAN SITES</b> .....	<b>4</b>
6 Background information and qualifying interests for the relevant European site .....	4
<b>SECTION 3: ASSESSMENT IN RELATION TO REGULATION 48 OF THE CONSERVATION (NATURAL HABITATS, &amp;C.) REGULATIONS 1994</b> .....	<b>6</b>
7 Requirement for appropriate assessment .....	6
8 Appropriate assessment of the implications for the site in view of the site's conservation objectives. ....	7
9 In combination assessment .....	9
10 MD-LOT Conclusion .....	12
<b>SECTION 4: CONDITIONS</b> .....	<b>12</b>
11 Requirement for marine licence conditions .....	12

## LIST OF TABLES

Table 1 Name of European site affected and relevant link(s) to SiteLink .....	4
Table 2 Qualifying interests .....	5
Table 3 Conservation objectives .....	5

Appropriate Assessment for Orkney Island Council capital dredge and deposit of material, construction of jetty and slipway at Island of Faray, Orkney Islands. June 2024.

## **SECTION 1: BACKGROUND**

### **1 Appropriate assessment conclusion**

- 1.1 This appropriate assessment (“AA”) concludes that there will be no adverse effect on the site integrity of the Faray and Holm of Faray Special Area of Conservation (“SAC”) and Sanday SAC from the Orkney Islands Council (“OIC”) proposal either in isolation or in combination with other plans or projects, providing that the conditions set out in Section 4 are complied with.
- 1.2 Marine Directorate – Licensing Operations Team (“MD-LOT”) considers that the most up to date and best scientific advice available has been used in reaching the conclusion that the OIC proposal will not adversely affect the integrity of the Faray and Holm of Faray SAC or Sanday SAC and is satisfied that no reasonable scientific doubt remains.

### **2 Introduction**

- 2.1 This is a record of the AA undertaken by MD-LOT in regards to the OIC proposal to carry out marine construction, dredging at Scammalin Bay, Faray, Orkney Islands and the associated dredge spoil deposit activities (“Scammalin Bay, Faray Project”) as required under Regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Habitats Regulations”). MD-LOT, as the ‘competent authority’ under the 1994 Habitats Regulations, has to be satisfied that the project will not adversely affect the integrity of any European site (special areas of conservation and special protection areas), either alone or in combination with other plans or projects, before it can grant consent for the project.
- 2.2 NatureScot, operating name of Scottish Natural Heritage, has been consulted.

### **3 Details of proposed project**

- 3.1 Construction of an extended slipway and new landing jetty to facilitate the construction and further servicing of a community owned wind farm on the island of Faray, Orkney (“Faray Wind Farm Development”).
- 3.2 There is an existing slipway, which is 20m long and 3.5m wide. The proposal is to demolish/remove part of the existing slipway by excavator. Once

Appropriate Assessment for Orkney Island Council capital dredge and deposit of material, construction of jetty and slipway at Island of Faray, Orkney Islands. June 2024.

unsuitable material has been removed, mass precast concrete stepped retaining walls will be installed. The area between the walls will be infilled with 300m<sup>3</sup> cobbles before topping out with precast (on site) reinforced concrete slab to create a slipway a maximum 36m long by 8m wide to accommodate vessels up to 385 gross tonnage. The resulting slipway will occupy 288m<sup>2</sup> seabed.

- 3.3 A new landing jetty is to be constructed to the north of the slipway with a causeway 55m long by 10m wide, terminating in a square docking structure 20m x 20m to accommodate vessels up to 3,360 gross tonnage. The causeway will be created by dredging the footprint followed by placement of rock armour boulders and cobbles capped off with concrete batched on site. The docking structure will be constructed using 28 sheet piles. Piling will be over a 21 day period between 01 May and 15 August 2025 inclusive using a 30 kj driving hammer from a floating barge. A total of 6,250m<sup>3</sup> cobbles and 2,750m<sup>3</sup> boulders will be used to create and infill the combined structure.
- 3.4 Capital dredging to a maximum depth of 1m, over a 12 month period is currently planned to start during April 2025. Dredging will be carried out using a backhoe and two hopper barges. Up to a maximum of 3,870 wet tonnes of sediment will be removed and subsequently deposited at the registered Stromness A (FI040) deposit site.

#### **4 Consultation**

- 4.1 NatureScot (“NS”) were consulted on the marine licence applications and supporting information, including the Environmental Impact Assessment Report (“EIA Report”) on 24 September 2021 and provided a representation on 21 October 2021 including a completed Natura Appraisal Form.
- 4.2 NS also cross referenced and provided a copy of the representation it had submitted to Orkney Islands Council (“OIC”) in relation to the planning application for the Faray Wind Farm Development (“NS Planning Representation”) and noted the advice contained with this was also applicable to the Scammalin Bay, Faray Project.
- 4.3 Clarification from NS was requested on 17th June 2022 and NS responded on 21st June 2022.

Appropriate Assessment for Orkney Island Council capital dredge and deposit of material, construction of jetty and slipway at Island of Faray, Orkney Islands. June 2024.

**5 Main points raised during consultation**

- 5.1 NS advised that the proposal is likely to have a significant effect on the grey seal qualifying interest of the Faray and Holm of Faray SAC. NS advised that an AA was required.
- 5.2 NS also advised that the proposal is likely to have a significant effect on the harbour seal qualifying interest of the Sanday SAC. NS advised that an AA was required.
- 5.3 NS confirmed that the comments contained within the NS Planning Representation relative to the maintenance of the onshore Faray Wind Farm Development were not relevant to the marine licence applications. The conditions regarding maintenance visits during the operational phase of the onshore Faray Wind Farm Development and an Operational Management Plan, are not therefore considered within this AA and are instead matters for OIC to consider as part of the associated planning application.

**SECTION 2: INFORMATION ON EUROPEAN SITES**

**6 Background information and qualifying interests for the relevant European site**

- 6.1 This section provides links to the NatureScot SiteLink website (“SiteLink”) where the background information on the site being considered in this assessment is available. The qualifying interests for the site are listed, as are the conservation objectives.

**Table 1 Name of European site affected and relevant link(s) to SiteLink**

<p><b>Faray and Holm of Faray SAC</b> <a href="https://sitelink.nature.scot/site/8254">https://sitelink.nature.scot/site/8254</a></p> <p><b>Sanday SAC</b> <a href="https://sitelink.nature.scot/site/8372">https://sitelink.nature.scot/site/8372</a></p>
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Appropriate Assessment for Orkney Island Council capital dredge and deposit of material, construction of jetty and slipway at Island of Faray, Orkney Islands. June 2024.

**Table 2 Qualifying interests**

<p><b>Faray and Holm of Faray SAC</b></p> <ul style="list-style-type: none"> <li>• Grey seal (<i>Halichoerus grypus</i>)</li> </ul> <p><b>Sanday SAC</b></p> <ul style="list-style-type: none"> <li>• Intertidal mudflats and sandflats</li> <li>• Common seal (<i>Phoca vitulina</i>)</li> <li>• Reefs</li> <li>• Subtidal sandbanks</li> </ul>
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**Table 3 Conservation objectives**

<p><b>Faray and Holm of Faray SAC</b></p> <p>To avoid deterioration of the habitats of the qualifying species (listed above) or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained and the site makes an appropriate contribution to achieving favourable conservation status for each of the qualifying features; and</p> <p>To ensure for the qualifying species that the following are maintained in the long term:</p> <ul style="list-style-type: none"> <li>➤ Population of the species as a viable component of the site</li> <li>➤ Distribution of the species within site</li> <li>➤ Distribution and extent of habitats supporting the species</li> <li>➤ Structure, function and supporting processes of habitats supporting the species</li> <li>➤ No significant disturbance of the species</li> </ul> <p><b>Sanday SAC</b></p> <ol style="list-style-type: none"> <li>1. To ensure that the qualifying features of Sanday SAC are in favourable condition and make an appropriate contribution to achieving Favourable Conservation Status.</li> <li>2. To ensure that the integrity of Sanday SAC is restored in the context of environmental changes by meeting objectives 2a, 2b and 2c for each qualifying feature:</li> </ol>
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Appropriate Assessment for Orkney Island Council capital dredge and deposit of material, construction of jetty and slipway at Island of Faray, Orkney Islands. June 2024.

*Reefs, intertidal mudflats and sandflats, subtidal sandbanks:*

- 2a. Extent and distribution of the habitat within the site.
- 2b. Structure and function of the habitat and the supporting environment on which it relies.
- 2c. Distribution and viability of typical species of the habitat

*Harbour seal:*

- 2a. Harbour seal are a viable component of the Sanday SAC.
- 2b. The distribution of harbour seal throughout the site is maintained by avoiding significant disturbance.
- 2c. The supporting habitats within the site relevant to harbour seal are maintained.

### **SECTION 3: ASSESSMENT IN RELATION TO REGULATION 48 OF THE CONSERVATION (NATURAL HABITATS, &C.) REGULATIONS 1994**

#### **7 Requirement for appropriate assessment**

*7.1 Is the project directly connected with or necessary to the conservation management of the site(s)?*

The project is not directly connected with or necessary to the conservation management of the site.

*7.2 Is the project likely to have a significant effect on the qualifying interest(s)?*

7.2.1 Within the NS Planning Representation and the Natura Appraisal Form, NS advised that due to the distance between the proposal and the Sanday SAC, there would be no likely significant effect on the intertidal mudflats and sandflats, subtidal sandbanks or reefs qualifying interests of the Sanday SAC.

7.2.2 NS advised that the proposal would have a likely significant effect on the harbour seal qualifying interest of the Sanday SAC. NS advised that whilst the SAC is approximately 10.7 kilometres ("km") away from the proposal it is within the 40-50 km foraging range of harbour seals. NS therefore advised that

Appropriate Assessment for Orkney Island Council capital dredge and deposit of material, construction of jetty and slipway at Island of Faray, Orkney Islands. June 2024.

the proposal has the potential to damage and disturb harbour seals foraging and resting around Faray.

7.2.3 NS advised that the proposal is likely to have a significant effect of the grey seal population of the Faray and Holm of Faray SAC due to disturbance and loss of habitat.

7.2.4 MD-LOT agrees with NS advice, included in the NS Planning Representation and has undertaken an AA for the impacts on the harbour seal qualifying interest of the Sanday SAC and the grey seal qualifying interest of the Faray and Holm of Faray SAC.

## **8 Appropriate assessment of the implications for the site in view of the site's conservation objectives.**

8.1 The EIA Report contains an outline Construction Environment Management Plan ("CEMP") containing mitigation proposed regarding impacts on a number of receptors including seals. The methods it contains will be adhered to by the future Principal Contractor in developing construction method statements and other relevant plans.

8.2 The outline CEMP includes a commitment to adhere to the Joint Nature Conservation Committee protocol for minimising the risk of injury to marine mammals from piling noise (2010) ("JNCC Piling Protocol). Other proposed mitigation includes the use of air bubble curtains that will reduce the zone of underwater noise impacts. In addition, the CEMP states that no piling will take place later than 15 August.

### **8.3 Sanday SAC assessment**

8.3.1 Within the NS Planning Representation, NS advised that Construction Method Statements should be submitted for approval to confirm procedures to minimise disturbance of harbour seals prior to works commencing.

8.3.2 NS further advised that the following mitigation measures must be adhered to :-

- Piling activities should be undertaken in line with the JNCC Piling Protocol. This must include the use of Marine Mammal Observer, pre-



Appropriate Assessment for Orkney Island Council capital dredge and deposit of material, construction of jetty and slipway at Island of Faray, Orkney Islands. June 2024.

- start search and delayed start to ensure no seals are in the vicinity before piling commences and soft start of pile driving; and
- An air bubble curtain must be employed when undertaking piling activities to further minimise any damage and disturbance to harbour seals foraging or resting nearby

8.3.3 Within the Natura Appraisal Form, NS advised that the proposed works will cause, a short-term and reversible displacement of harbour seals from a small area of potential foraging or resting habitat.

8.3.4 The Natura appraisal form clarifies NS view that providing the mitigation measures detailed in the outline CEMP which includes those detailed in section 8.3.2, the risk to harbour seals will be negligible.

#### **8.4 Faray and Holm of Faray SAC assessment**

8.4.1 Within the NS Planning Representation, NS advised that Construction Method Statements should be submitted for approval to confirm procedures to minimise disturbance of grey seals prior to works commencing.

8.4.2 NS further advised that the following mitigation measures must be adhered to :-

- Piling activities should be undertaken in line with the JNCC Piling Protocol. This must include the use of Marine Mammal Observer, pre-start search and delayed start to ensure no seals are in the vicinity before piling commences and soft start of pile driving; and
- An air bubble curtain must be employed when undertaking piling activities to further minimise any damage and disturbance to grey seals foraging or resting nearby.
- No works can take place during the grey seal breeding season (15 September to 31 December) to avoid disturbance of adult and young grey seals when they are most vulnerable.

8.4.3 Within the Natura Appraisal Form, NS notes that there would be a small loss of potential foraging area under the pier footprint however this would be negligible compared with the wide foraging range of grey seals. NS noted that the area around the current pier and slipway is used as a haul-out by only a small proportion of the Faray and Holm of Faray grey seal population. In

Appropriate Assessment for Orkney Island Council capital dredge and deposit of material, construction of jetty and slipway at Island of Faray, Orkney Islands. June 2024.

addition, this area will for the most part still be suitable for the purpose of haul out following the completing of the construction. NS advised therefore that the proposed works would, at most, cause short term and reversible displacement of seal from a small area of habitat.

8.4.4 The Natura appraisal form clarifies NS view that providing the mitigation measures detailed in the outline CEMP which includes those detailed in section 8.4.2 and the additional commitment to avoid piling after 15 August in any year, the risk to grey seals will be negligible.

## 8.5 In insulation assessment conclusion

8.5.1 MD-LOT agrees with the advice and assessment provided by NS and concludes that the Scammalin Bay, Faray Project alone will have no adverse effect on the site integrity of the Sanday SAC or the Faray and Holm of Faray SAC provided the measures set out in the outline CEMP, including the mitigation measures detailed by NS, are fully implemented.

## 9 In combination assessment

MD-LOT has carried out an assessment to ascertain whether the Scammalin Bay, Faray Project will have a cumulative effect with other plans or projects which, in combination, would have the potential to affect the harbour seal protected feature of the Sanday SAC or the grey seal protected feature of the Faray and Holm of Faray SAC.

9.1 The following projects currently have an active marine licence, section 36 consent or European protected species licence and associated AA which identified a likely significant effect on the harbour seal population of the Sanday SAC or the grey seal population of the Faray and Holm of Faray SAC.

### 9.2 Scottish Hydro Electric Transmission ("SHET") - Cable Installation from Shetland to Caithness

9.2.1 SHET propose to install a 254km high voltage direct current cable between Wesidale Voe in Shetland and Noss Head in Caithness. The whole project including the pre- and post- cable installation surveys, preparatory works and cable installation will take place over a period of approximately three years. SHET have identified a 200m wide installation corridor in which

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Appropriate Assessment for Orkney Island Council capital dredge and deposit of material, construction of jetty and slipway at Island of Faray, Orkney Islands. June 2024.

the cable will be installed. Between 238.5km and 250.8km of the cable will be trenched and where burial is not achievable the cable will be protected by rock placement, concrete mattresses or cable protection such as polymer duct or cast-iron half shells depending on which solution is the most suitable based on the location and seabed type. SHET estimates that 3km of seabed features will require pre-sweep or pre-lay rock placement. Objects encountered that are identified as isolated or discarded shall be cleared using an orange peel grab or grapnel, respectively.

### **9.3 Orbital Eday 3 - Fall of Warness Tidal Test Site, European Marine Energy Centre ("EMEC")**

9.3.1 The Orbital Eday 3 proposal is to construct, alter or improve one Orbital O2-X tidal energy device at the EMEC Fall of Warness Tidal Test Site.

### **9.4 Pentland Floating Offshore Wind Farm**

9.4.1 A floating offshore windfarm with an installed capacity of around 100 megawatts ("MW") within the Pentland Firth, approximately 7.5 kilometres ("km") seaward of mean high water springs ("MHWS") at Dounreay, Caithness. The windfarm will consist of up to 6 floating offshore wind turbine structures and associated floating substructures. Offshore construction activities are anticipated to commence in 2027. Project will take 14 months to complete and will be operational for a period of 25 years.

### **9.5 Removal of OpenHydro Platform from Berth 4, Fall of Warness, EMEC**

9.5.1 Removal of the OpenHydro tidal research platform from the seabed at Berth 4, Fall of Warness Tidal Test Site, EMEC, Orkney.

### **9.6 SHEPD - North Coast and Orkney Islands Geophysical Surveys - BS Licence**

9.6.1 Geophysical surveys of 24 cable routes contained within 17 cable corridors in the North Coast and Orkney region with a maximum total survey area of 240 square kilometres. Survey activity is expected to be complete by 30 September 2028.

### **9.7 SHEPD - North Coast and Orkney Islands Geophysical Surveys - EPS Licence**

Appropriate Assessment for Orkney Island Council capital dredge and deposit of material, construction of jetty and slipway at Island of Faray, Orkney Islands. June 2024.

9.7.1 Geophysical surveys of 24 cable routes contained within 17 cable corridors in the North Coast and Orkney region with a maximum total survey area of 240 square kilometres. Survey activity is expected to be complete by 30 September 2028.

## **9.8 Assessment of in combination effects on the Sanday SAC**

9.8.1 The following projects have an active marine licence, section 36 consent, European protected species licence or seal licence that identified a likely significant effect on the qualifying interests of the Sanday SAC:

- Scottish Hydro Electric Transmission ("SHET") - Cable Installation from Shetland to Caithness (section 9.2)
- Orbital Eday 3 - Fall of Warness Tidal Test Site, European Marine Energy Centre ("EMEC") (section 9.3)
- Pentland Floating Offshore Wind Farm (section 9.4)
- Removal of OpenHydro Platform from Berth 4, Fall of Warness, EMEC (section 9.5)
- SHEPD - North Coast and Orkney Islands Geophysical Surveys - BS Licence (section 9.6)
- SHEPD - North Coast and Orkney Islands Geophysical Surveys - EPS Licence (section 9.7)

9.8.2 Activities associated with the geophysical surveys are likely to be completed prior to the OIC proposal starting but will be short in duration so disturbance would only have a short overlap, if at all with the OIC proposal.

9.8.3 There is the potential for in combination effects with the SHET cable installation however providing the conditions of the AAs for both projects are adhered to, any in combination effects are unlikely to be significant.

9.8.4 MD-LOT concludes that there is a possibility of cumulative effects with SHE Transmission cable, however, providing the conditions of all AAs are adhered to, there will be no adverse effect on the Sanday SAC from in combination effects

## **9.9 Assessment of in combination effects on the Faray and Holm of Faray SAC**

Appropriate Assessment for Orkney Island Council capital dredge and deposit of material, construction of jetty and slipway at Island of Faray, Orkney Islands. June 2024.

9.9.1 The following projects have an active marine licence, section 36 consent, European protected species licence or seal licence, which identified a likely significant effect on the qualifying interests of the Faray and Holm of Faray SAC:

- Scottish Hydro Electric Transmission ("SHET") - Cable Installation from Shetland to Caithness (section 9.2)
- Orbital Eday 3 - Fall of Warness Tidal Test Site, European Marine Energy Centre ("EMEC") (section 9.3)
- Pentland Floating Offshore Wind Farm (section 9.4)
- Removal of OpenHydro Platform from Berth 4, Fall of Warness, EMEC (section 9.5)
- SHEPD - North Coast and Orkney Islands Geophysical Surveys - BS Licence (section 9.6)
- SHEPD - North Coast and Orkney Islands Geophysical Surveys - EPS Licence (section 9.7)

9.9.2 MD-LOT concludes that providing the conditions of all AAs are adhered to, there will be no adverse effect on the Faray and Holm of Faray SAC from in combination effects

## 10 MD-LOT Conclusion

10.1 MD-LOT concludes that providing the conditions listed in Section 4 are adhered to, there will be no adverse effect on the site integrity of the Sanday SAC or the Faray and Holm of Faray SAC from the OIC proposal either in isolation or in combination with other projects.

## SECTION 4: CONDITIONS

### 11 Requirement for marine licence conditions

11.1 The following conditions are required to ensure the project will not adversely affect the site integrity of the Sanday SAC or the Faray and Holm of Faray SAC.

11.1.1 The Licensee must submit a Construction Environmental Management Plan ("CEMP") to the licensing authority for its written approval at least two months prior to commencement of the works, or less if agreed by the licensing

Appropriate Assessment for Orkney Island Council capital dredge and deposit of material, construction of jetty and slipway at Island of Faray, Orkney Islands. June 2024.

authority. It is not permissible for any works to commence prior to approval of the CEMP. The CEMP must be consistent with the marine licence application and supporting documents and must contain, but not be limited to, the following:

- a) An offshore piling procedure including the adherence to the JNCC protocol for minimising the risk of injury to marine mammals from piling noise (JNCC, 2010) including employment of a MMO, pre-start search and delayed start to ensure that no seals are in the vicinity before piling commences, soft start of pile driving
- b) Use of an air-bubble curtain.

- 11.1.2 All works must proceed in accordance with the approved CEMP. Any updates or amendments made to the CEMP must be submitted, in writing, to the licensing authority for its written approval no later than two months or at such a time as agreed with the licensing authority, prior to the planned implementation of the proposed amendments. It is not permissible for any works to commence prior to approval of the CEMP.
- 11.1.3 The Licensee must ensure that no works take place during the grey seal breeding season (15 September to 31 December inclusive).
- 11.1.4 The Licensee must ensure that no piling takes place after 15 August in any calendar year.