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Marine Scotland - Licensing Operations Team
Scoping Opinion

Stornoway Port Authority (per Envirocentre)
Arnish Deep Water Port
Arnish, Stornoway

THE MARINE WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND) REGULATIONS 2017 (AS AMENDED)

SCOPING OPINION FOR THE PROPOSED MARINE LICENCE APPLICATION(S) TO CONSTRUCT WORKS, CARRY OUT DREDGING AND DEPOSIT THE ASSOCIATED DREDGE SPOIL WITHIN THE SCOTTISH MARINE AREA

Contents

1. Executive Summary

This is the scoping opinion adopted by the Scottish Ministers, under regulation 14 of The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) ("the 2017 MW Regulations"), as to the scope and level of detail of information to be provided in the Environmental Impact Assessment report ("EIA report") for the proposed construction and extension to the Arnish Deep Water Port, Arnish, Stornoway, in the Outer Hebrides. The scoping opinion has been requested by Envirocentre on behalf of the applicant, Stornoway Port Authority ("the applicant").

This scoping opinion is based on the information provided in the applicant's request, dated 15 December 2017, for the Scottish Ministers to adopt a scoping opinion. The request included the submission of a scoping report. The Scottish Ministers have consulted on the scoping report and the responses received have been taken into account in adopting this scoping opinion. The matters addressed by the applicant in the scoping report have been carefully considered and use has been made of professional judgment (based on expert advice from stakeholders and Marine Scotland in-house expertise) and experience in order to adopt this opinion.

The main potential issues identified are:

- Impacts to marine ecology, in particular noise impacts to marine mammals and fish; and
- Reduced water quality associated with sediment disturbance during construction.

Detailed information is provided in the specialist topic sections. Matters are not scoped out unless specifically addressed and justified by the applicant and confirmed as being scoped out by the Scottish Ministers. Table 1 summarises the Scottish Minister's advice on whether topics are to be scoped in or out.

Table 1: Scottish Minister's opinion as to whether topics are to be scoped in or out.

Topic	Reason for scoping in / out
Landscape and visual	Scoped IN. Based on the proposed scale and immediate surroundings, Scottish Ministers agree potential likely significant impacts.
Ecology – marine mammals	Scoped IN. Scottish Ministers agree impacts from underwater noise and increased sedimentation effects on marine mammals are potentially significant.
Ecology - fish	Scoped IN. Scottish Ministers agree impacts from underwater noise and increased sedimentation effects on fish are potentially significant.

Ecology - birds	Scoped OUT. Lack of sensitive receptors and negligible magnitude of effect. Scottish Ministers agree no likely significant impacts.
Cultural heritage and archaeology	Scoped OUT. Lack of vulnerable marine features. A protocol for archaeological discoveries should be included within the site specific Schedule of Mitigation ("SoM").
Noise	Scoped IN. Scottish Ministers agree impacts from underwater noise and increased sedimentation effects on marine mammals and fish are potentially significant. Marine aspect to be assessed in the appropriate Ecology section.
Air quality	Scoped OUT. Provided dust control are mitigated through a SoM, Scottish Ministers agree no likely significant impacts.
Water Environment – coastal processes	Scoped IN. Scottish Ministers will undertake a more robust assessment when more details on reclamation are available.
Water Environment – flooding	Scoped IN. Based on vulnerability of site and potential magnitude of effect, Scottish Ministers agree potential likely significant impacts.
Water Environment – water quality	Scoped IN. Scottish Ministers agree impacts from increased contaminants on benthic ecology receptors are potentially significant.
Water Environment – dredge and disposal	Scoped IN. Scottish Ministers agree impacts from dredge and disposal on benthic ecology receptors are potentially significant.
Traffic and transport	Scoped IN. Based on the navigation risk to other vessels, Scottish Ministers agree potential likely significant impacts.
Climate change – Greenhouse Gas Emissions ("GHG")	Scoped OUT. Provided pollution and emissions control are mitigated through a SoM, Scottish Ministers agree no likely significant impacts.
Impacts from major accidents and disasters	Scoped OUT. Provided use of a Safety Management System, Scottish Ministers agree no likely significant impacts.
Cumulative impacts	Scoped IN. Applicant proposed scoping out, but with particular concern over potential noise and vibration effects on marine mammals and fish, water quality / benthic impacts and marine traffic, Scottish Ministers advise scoping in.

For the avoidance of doubt, the adoption of this scoping opinion by the Scottish Ministers does not preclude the Scottish Ministers from requiring the applicant to submit additional information in connection with any EIA report submitted with their application for a marine licence relative to the proposed works.

In the event that an application is not submitted by the applicant for the proposed works within 12 months of the date of this scoping opinion, the Scottish Ministers recommend that the applicant seeks further advice from them regarding the potential to update the scoping opinion.

2. Introduction

2.1 Background to scoping opinion

2.1.1 We refer to your email of 15 December 2017 requesting a scoping opinion from the Scottish Ministers, under Regulation 14 of the 2017 MW Regulations. Your request included a scoping report which contained a description of the location of the works, including a plan sufficient to identify the area in which the works are proposed to be sited, and a description of the nature and purpose of the proposed works and their likely impact on the environment. The Scottish Ministers consider that they have been provided with sufficient information to adopt a scoping opinion.

2.2 The requirement for Environmental Impact Assessment

2.2.1 Under the 2017 MW Regulations, the Scottish Ministers, as the consenting authority, must not grant a regulatory approval for an EIA project unless an environmental impact assessment has been carried out in respect of that project and in carrying out such assessment the Scottish Ministers must take the environmental information into account. The works described in your scoping report fall under Schedule 1, paragraph 8(1) of the 2017 MW Regulations and therefore the works are automatically subjected to an EIA because their environmental effects are presumed to be significant.

2.3 The content of the Scoping Opinion

2.3.1 In regards to your request for a scoping opinion on the proposed content of the required EIA report, the Scottish Ministers have, in accordance with the 2017 MW Regulations, considered the documentation provided to date and consulted with the appropriate consultation bodies (see Appendix I) and scientific advisors (Appendix II) in reaching their scoping opinion.

2.3.2 The EIA process is vital in generating an understanding of the biological, chemical and physical processes operating in and around the proposed works location and those that may be impacted by the proposed activities. We would however state that references made within the scoping opinion with regard to the significance of impacts should not prejudice the outcome of the EIA process. It is therefore expected that these processes will be fully assessed in the EIA report unless scoped out.

3. Description of works

3.1 Background to the works

3.1.1 The proposal by the applicant is to develop a new multi-purpose Deep Water Port at Arnish Point Industrial Estate, located approximately 1.5 – 2km south of Stornoway, on the Isle of Lewis, in the Outer Hebrides. As well as requiring a marine licence, the works will also require planning permission and a harbour revision order and it is the applicants intention to complete a single EIA Report to cover all these requirements.

3.1.2 The proposed works comprise of the following main components:

- Construction of a quay consisting of a wall and finger pier;
- Excavation of rock from behind the quay to clear the area, with some re-use for reclamation and rock armour;
- Construction of a freight ferry berth, marshalling area, heavy lift area, laydown, storage and works land, with an access corridor connecting Arnish Yard to the new quay; and
- Back hoe or suction dredging with some re-use for reclamation and potentially some for sea disposal.

4. Aim of this Scoping Opinion

4.1 The scoping process

4.1.1 Scoping provides the first identification, and likely significance, of the environmental impacts of the proposal and the information needed to enable their assessment. The scoping process is designed to identify which impacts will or will not need to be addressed in the EIA report. This includes the scope of impacts to be addressed and the method of assessment to be used. The scoping process also allows consultees to have early input into the EIA process, to specify their concerns and to supply information that could be pertinent to the EIA process. In association with any comments herein, full regard has been given to the information contained within the documentation submitted with the scoping opinion request.

4.1.2 The Scottish Ministers have also used this opportunity to provide advice in relation to the licensing requirements, in addition to the EIA requirements (see Appendix III).

5. Consultation

5.1.1 On receipt of the scoping opinion request documentation, the Scottish Ministers, in accordance with the 2017 MW Regulations, initiated a 30 day consultation process, which commenced on 22 December 2017. The following bodies were consulted, those marked in **bold** provided a response, those marked in *italics* sent nil returns or stated they had no comments:

- British Shipping
- Caledonian Maritime Assets Limited
- **Comhairle nan Eilean Siar ("CnES")**
- The Crown Estate
- Defence Infrastructure Organisation
- Fisheries Management Scotland
- The Health and Safety Executive
- **Historic Environment Scotland ("HES")**
- Hebridean Whale and Dolphin Trust
- Inshore Fisheries Group
- Marine Scotland Fishery Office – Stornoway
- Marine Scotland Planning and Policy
- **Maritime Coastguard Agency ("MCA")**
- Marine Safety Forum
- **The Northern Lighthouse Board ("NLB")**
- Outer Hebrides Fisheries Trust
- Royal Society for the Protection of Birds
- **The Royal Yachting Association ("RYA")**
- **Scottish Environment Protection Agency ("SEPA")**
- Scottish Fishermen's Federation
- **Scottish Natural Heritage ("SNH")**
- Scottish Wildlife Trust
- Stornoway Angling Association
- Transport Scotland
- UK Chamber of Shipping
- Whale and Dolphin Conservation

5.1.2 From the list above, a total of 7 responses were received. Advice was also sought from Marine Scotland Science ("MSS"). The purpose of the consultation was to obtain advice and guidance from each consultee or advisor as to which potential effects should be scoped in or out of the EIA.

5.1.3 The Scottish Ministers are satisfied that the requirements for consultation have been met in accordance with the 2017 MW Regulations. The sections below

highlight issues which are of particular importance with regards to the EIA report and any marine licence application(s). Full consultation responses are attached in Appendix I and each should be read in full for detailed requirements from individual consultees. MSS advice is attached in Appendix II. The Scottish Ministers expect all consultee concerns to be addressed in the EIA report unless otherwise stated.

6. Contents of the EIA report

6.1 Requirements of the 2017 MW Regulations

6.1.1 An EIA report must be prepared in accordance with regulation 6 of the 2017 MW Regulations.

6.1.2 The 2017 MW Regulations require that the EIA report is prepared by competent experts and must be accompanied by a statement from the applicant outlining the relevant expertise or qualifications of those experts.

6.1.3 The EIA report must be based on this scoping opinion and include the information that may be reasonably required for reaching a reasoned conclusion, which is up to date, on the significant effects of the works on the environment, taking into account current knowledge and methods of assessment.

6.1.4 A gap analysis template is attached at Appendix IV to record the environmental concerns identified during the scoping process. This template should be completed and used to inform the preparation of the EIA report.

6.2 Non-Technical Summary ('NTS')

6.2.1 The EIA report must contain a Non-Technical Summary ("NTS") which should be concise and written in a manner that is appealing to read and easily understood. The NTS should highlight key points set out in the EIA report and must include (at least) the following:

- a description of the works comprising information on the site, design, size and other relevant features of the works;
- a description of the likely significant effects of the works on the environment;
- a description of the features of the works and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- a description of the reasonable alternatives studied by the applicant, which are relevant to the works and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the works on the environment; and
- a summary of the information provided under paragraphs 1 to 9 of Schedule 4 of the 2017 MW Regulations.

6.3 EU Guidance

6.3.1 EU guidance on the preparation of a EIA report identifies the following qualities of a good EIA report:

- A clear structure with a logical sequence that describes, for example existing baseline conditions, predicted impacts (nature, extent and magnitude), scope for mitigation, proposed mitigation measures, significance of unavoidable/residual impacts for each environmental factor.
- A table of contents at the beginning of the document.
- A description of the consent procedure for the works and how EIA fits within it.
- Reads as a single document with appropriate cross-referencing.
- Is concise, comprehensive and objective.
- Is written in an impartial manner without bias.
- Includes a full description and comparison of the alternatives studied.
- Makes effective use of diagrams, illustrations, photographs and other graphics to support the text.
- Uses consistent terminology with a glossary.
- References all information sources used.
- Has a clear explanation of complex issues.
- Contains a good description of the methods used for the studies of each environmental topic.
- Covers each environmental topic in a way which is proportionate to its importance.
- Provides evidence of effective consultations (if some consultations have already taken place).
- Provides basis for effective consultations to come.
- Makes a commitment to mitigation (with a programme) and to monitoring.
- Has a NTS which does not contain technical jargon.
- Contains, where relevant, a reference list detailing the sources used for the description and assessments included in the report.

6.4 Mitigation

6.4.1 Within the EIA report it is important that all mitigating measures are:

- clearly stated;
- accurate;
- assessed for their environmental effects;
- assessed for their effectiveness;
- fully described with regards to their implementation and monitoring, and;
- described in relation to any consents or conditions

6.4.2 The EIA report should contain a mitigation table providing details of all proposed mitigation discussed in the various chapters. Refer to Appendix I for consultee comments on specific baseline assessment and mitigation.

6.4.3 Where potential environmental impacts have been fully investigated but found to be of little or no significance, it is sufficient to validate that part of the assessment by detailing in the EIA report:

- the work has been undertaken;
- what this has shown i.e. what impact if any has been identified; and
- why it is not significant.

6.5 Design Envelope

6.5.1 The exact nature of the work that is needed to inform the EIA may vary depending on the design choices. Where flexibility in the design envelope is required, this must be defined within the EIA report and the reasons for requiring such flexibility clearly stated. To address any uncertainty the EIA report must consider the potential impacts associated with each of the different scenarios. The criteria for selecting the worst case, and the most likely scenario, along with the potential impacts arising from these must also be described. The Scottish Ministers will determine the application based on the worst case scenario. The EIA will reduce the degree of design flexibility required and that the detail will be further refined in a Construction Method Statement ("CMS") to be submitted to the Scottish Ministers, for their approval, before works commence. Please note however the information provided in section 9 below regarding multi-stage regulatory consent. The CMS will freeze the design of the project and will be reviewed by the Scottish Ministers to ensure that the worst case scenario described in the EIA report is not exceeded.

7. Interests to be considered within the EIA report

7.1 Introduction

7.1.1 The scoping report considered the likely impacts of the works on the environment under the headings and topics addressed below. This section also contains a summary of the main points raised by consultees and the Scottish Ministers' opinion on whether EIA topics should be scoped in or out. The consultation responses are contained in Appendix I and the advice from MSS is in Appendix II and the applicant is advised to carefully consider these responses and use the advice and guidance contained within them to inform the EIA report.

7.2 Landscape and Visual

7.2.1 The applicant proposed scoping in Landscape and Visuals. The methodology of an impact assessment was agreed with CnES, based on the site and immediate surroundings, and presented in the scoping report. The proposed works did not raise any concerns with SNH who noted the report correctly identified there are no landscape designations on site (or likely to be affected by the works). SNH welcome the commitment to carry out an assessment and note the methodology proposed by the applicant looks to be appropriate.

7.2.2 The Scottish Ministers agree that landscape and visuals should be scoped into the EIA report.

7.3 Ecology – Marine Mammals

7.3.1 The applicant proposed scoping in noise and vibration associated with construction and operational phases.

7.3.2 The scoping report noted that the EIA report will assess the potential direct and indirect impacts arising from the works on marine mammals and provided information on the two marine designated sites near the works i.e.

- the Inner Hebrides and the Minches candidate Special Area of Conservation ("cSAC"), which is within 1km of the works and is selected for its harbour porpoise (*Phocoena phocoena*) interest; and
- the North East Lewis proposed Marine Protected Area ("pMPA"), which is less than 1km east of the proposed works, and is designated for Risso's dolphin (*Grampus griseus*) and sandeel habitat.

7.3.3 The scoping report also included information on which species of marine mammal have been recorded in the area. The applicant noted that underwater noise

generated during the construction of the works had the highest potential to impact the marine ecology in the area and that during operation impacts may arise from the construction leading to changes in the hydrodynamic regime in the area.

7.3.4 The scoping report provided details of how an assessment of the impacts will be carried out, which will include a desk top study of literature and data sets for marine mammals. The requirement for surveys to determine the presence/absence, abundance and other behavioural aspects of marine mammals using the area will be agreed with SNH and the Scottish Ministers. The need for underwater noise studies will be discussed with the Scottish Ministers.

7.3.5 The applicant notes that a Marine Mammal Protection Plan ("MMPP") will be required and this will include details of mitigation and the use of Marine Mammal Observers ("MMO") and Passive Acoustic Monitoring ("PAM"). The applicant notes that if mitigation is not possible or appropriate and an impact on European Protected Species ("EPS") is envisaged then an EPS licence will be required.

7.3.6 In their consultation response SNH note that the works could affect the conservation objectives of the cSAC as there will be impacts from underwater noise as noted above. SNH note that the Scottish Ministers will be required to carry out an appropriate assessment as required by the Conservation (Natural Habitats, &c.) Regulations 1994 and advise that the impacts on marine mammals are scoped in and that the EIA report contains sufficient information to carry out this assessment.

7.3.7 SNH also note that although the pMPA does not currently have policy protection current advice (Marine Scotland's MPA Management Handbook) is to take such sites into account through any licensing or consenting process. SNH notes there is potential for the proposed protected feature (Risso's dolphin) to be affected by the works. SNH also provide a list of cetacean species and seals that they consider should be included in any assessment.

7.3.8 SNH provided advice on otters and noted that although no otters were identified during surveys, they acknowledge that otter activity can change over time. SNH advise that otter surveys are repeated if more than 18 months elapse between the original survey and commencement of the works.

7.3.9 The applicant submitted a proposed strategy for underwater noise modelling to the Scottish Ministers on 02 February 2018. MSS provided advice on the proposed noise model (Appendix II) and provided detail on what they considered should be provided in the EIA report. SNH noted that the model should be extended to consider impact on all cetaceans and seals that occur regularly in the North Minch. SNH further commented that the model should inform the MMPP, and if required, appropriate mitigation should be put forward based on relevant best practice guidance. MSS notes that dredging and disposal work also has the potential

to cause non-acoustic injury to marine mammals, and this should be scoped in to the EIA report. MSS note the potential for effects on the harbour porpoise feature of the cSAC.

7.3.10 The response from SNH and the advice provided by MSS provide useful information and references to support carrying out an assessment of underwater noise and the applicant is advised to take this into consideration.

7.3.11 The Scottish Ministers agree:

- with SNH that otter surveys should be repeated if more than 18 months elapses between the original survey and commencement of works.
- that impacts from underwater noise and increased sedimentation effects on marine mammals are scoped into the EIA.
- that consideration should be given to the impact of the works on the features of the cSAC and of the pMPA.

7.4 Ecology – Fish

7.4.1 The applicant noted that outward migrating salmon smolts and returning adult salmon and sea trout may be present in the work area. The applicant note that the mouth of the River Creed is near the proposed works and has a Grade 1 watercourse grading which means it has an 80% probability of meeting its conservation limits. The applicant notes there are limitations to the data used to extrapolate the grading of Scottish rivers but that the methods are well established and recognised internationally. The applicant proposes to use other sources of empirical data where they are available to assess the impact on salmonids in the area. The impacts on fish identified are underwater noise during construction and pollution directly originating from the construction. The scoping report states that Atlantic salmon should be scoped into the EIA and that river lamprey (*Lampetra fluviatilis*), sea lamprey (*Petromyzon marinus*) and European eel (*Anguilla Anguilla*) will also be considered.

7.4.2 As part of the CnES response they provide advice provided by the Western Isles District Salmon Fisheries Board which welcomes and agrees with the proposed scope of the EIA but note that the River Creed should be considered Category 2 as this is the proposed conservation limit that will apply to the river during the harbour development. CnES also note that baseline data for the Glen River and River Creed is readily available from the Outer Hebrides Fisheries Trust.

7.4.3 MSS note that information on when salmon and sea trout are likely to be present will come from the local Fisheries Trust, District Salmon Fisheries Board and Angling Club. MSS note that what was recommended for marine mammals in

relation to underwater noise will also cover the needs of diadromous fish.

7.4.4 MSS comment in relation to dredging and reclamation works causing non-acoustic injury to marine mammals also applies to diadromous fish and this should be addressed in the assessment and mitigation actions. There may need to be consideration of whether high levels of suspended sediment which can be injurious to salmonids may be generated by dredging and disposal work and whether mitigation actions to address this may be needed.

7.4.5 The Scottish Ministers agree:

- that impacts from underwater noise and increased sedimentation effects on diadromous fish should be scoped into the EIA.

7.5 Ecology – Birds

7.5.1 The applicant considered it unlikely that birds will be significantly impacted by the site preparation or construction activities as no habitat sites are expected within the proposed work areas.

7.5.2 SNH provided advice that noted that no assessment of the effect upon birds are required as part of the EIA process due to the lack of sensitive features within the area and the minimal potential for impacts of the works.

7.5.3 The Scottish Ministers agree that birds can be scoped out of the EIA report.

7.6 Cultural Heritage and Archaeology

7.6.1 The applicant did not report any known marine features of archaeological importance within site boundary. HES noted one scheduled monument within the terrestrial area that is outside the proposed site boundary.

7.6.2 The Scottish Ministers advise the applicant that providing no archaeological materials are discovered during benthic surveys, the marine aspect of Cultural Heritage and Archaeology can be scoped out of the EIA report. A protocol for archaeological discoveries should be included within the site specific Schedule of Mitigation ("SoM") (either separate or contained within a Construction Environmental Management Plan ("CEMP") to ensure it is utilised in the event of an archaeological find.

7.7 Air Quality

7.7.1 The applicant considered that construction of the proposed works is a temporary impact and can be controlled through developing a site-specific Dust

Management Plan as part of a CEMP. CnES agreed that air quality/dust should be scoped out.

7.7.2 Provided mitigation is put in place through a Dust Management Plan, the Scottish Ministers agree that air quality can be scoped out of the EIA report.

7.8 Water Environment

7.8.1 The applicant considered that the proposed land reclamation, construction of new walls, dredging and subsequent increased surface water run-off will have the potential to affect changes in the:

- local wave climate;
- local flood risk and drainage;
- contamination of coastal water and sediments through spillages and/or sediment transfer (oil, fuels and suspended solids); and
- interactions between water environment impacts and associated ecology.

7.8.2 The proposed land reclamation has the potential to alter wave direction and local geomorphological characteristics. A Transitional and Coastal Morphological Impact Assessment System was undertaken by the Scottish Ministers to screen the proposed works for their likely impact to coastal morphology. The impact was deemed insignificant, however the Scottish Ministers will undertake a more robust assessment when more details on reclamation are available.

7.8.3 The applicant proposed to carry out a flood risk assessment and the findings, including wave overtopping and surface water drainage with climate change scenarios, should identify mitigation measures. SEPA provided two responses, one to the Council's consultation, and a further one after a stakeholder meeting with the applicant. In SEPA's initial council consultation response, they responded that there would be a medium to high risk of flooding at the proposed site.

7.8.4 The applicant proposes to re-use dredged material for reclamation. SEPA noted in their second response that more detail is required on the disposal options of waste generated, and what alternatives are available to minimise dredging works. Not all dredge material will be used to infill the land reclamation, and in order to minimise the potential effects, the applicant should consider the following mitigations:

- sediment contamination;
- correct disposal of hazardous waste and contaminated water;
- storage of chemicals and hydrocarbons in secondary containment, where applicable;
- adequate spill response equipment on site;

- installation of adequate surface water management facilities;
- regular maintenance to be undertaken on equipment; and
- designated wash down areas for concrete contaminated equipment and tools.

7.8.5 SEPA advised in their second response that the removal of underlying geology should also be minimised and alternative waste sources be investigated for any additional fill material.

7.8.6 The Scottish Ministers advise that:

- impacts from flooding are scoped in
- water quality is scoped in
- seabed sampling should be undertaken in line with the Pre-Disposal Sampling Guidelines as referenced in Appendix V. The results of this will be used to assess any potential impacts of mobilising historic contamination in the seabed.
- dredge and disposal options be scoped into the EIA report.

7.9 Traffic and Transport

7.9.1 The applicant noted that during the construction phases of the proposed works, safe operation of the harbour will need to be considered to reduce the navigation risk to other vessels. The MCA recommended the implementation of a robust Safety Management System ("SMS") to manage any incidents and risks, including severe storms and transport accidents. The NLB responded with requirements for modifications to lightings and markings, which they will advise further on at application stage.

7.9.2 With respect to impacts to recreational users, the Royal Yachting Association ("RYA") noted their concern over losing the best anchorage points at Arnish. The Scottish Ministers note their concern and advise the applicant to have on-going discussions with the RYA to agree their requirements to mitigate any potential impact.

7.9.3 The Scottish Ministers conclude Traffic and Transport within the EIA report should be scoped into the EIA report.

7.10 Other Issues

Climate Change

7.10.1 It is the view of the applicant that GHG emissions associated with construction are not anticipated to be significant. The applicant proposes that in order to reduce GHG emissions during construction, plant and vessels will be appropriately maintained.

7.10.2 The Scottish Ministers agree with the applicant that impacts from increased GHG emissions will be negligible, and provided pollution and emissions control could be mitigated through a SoM or CEMP, this can be scoped out.

7.10.3 The Scottish Ministers note the vulnerability of the works to climate change are to be covered within the modelling and impact assessment within the Water Environment chapter.

Impacts from Major Accidents and Disasters

7.10.4 Impacts from natural disasters were considered in the scoping report within the context of the potential risk associated with the location and proposed site use. The applicant proposed scoping out impacts from major accidents and disasters, noting that flooding/tidal surges are considered within the Water Environment section. The MCA recommended the works and implementation of a robust SMS for construction and operation to manage any incidents and risks, including severe storms and transport accidents.

7.10.5 Provided mitigations through a SMS are implemented, the Scottish Ministers agree with the applicant that impacts from major accidents and disasters can be scoped out of the EIA report.

Cumulative Impacts

7.10.6 The Scottish Ministers do not agree with the applicant that cumulative impacts should be scoped out. Details of the phasing of the proposed works and the proposed Newton Marina, as well as the proposed Western Isles HVDC link should be addressed. Cumulative impacts of particular concern are noise and vibration effects on marine mammals and fish, coastal processes and marine traffic, these should be addressed within the EIA report and are therefore scoped in.

Population and Human Health

7.10.7 The scoping report does not consider the potential for effect on 'population and human health', which is now a requirement under Regulation 5(3)(a) of the 2017

MW Regulations. The Scottish Ministers advise the applicant to follow recommendations of CnES as to the content and approach, and therefore conclude population and human health to be scoped into the EIA report.

8. Marine Planning

8.1 Background

8.1.1 The development of projects subject to EIA should be in accordance with the UK Marine Policy Statement and the National Marine Plan ("NMP").

8.2 The UK Marine Policy Statement 2011

8.2.1 The UK Administrations share a common vision of having clean, healthy, safe, productive and biologically diverse oceans and seas. Joint adoption of a UK-wide Marine Policy Statement provides a consistent high-level policy context for the development of marine plans across the UK to achieve this vision. It also sets out the interrelationship between marine and terrestrial planning regimes. It requires that when the Scottish Ministers make decisions that affect, or might affect, the marine area they must do so in accordance with the Statement.

8.3 Scotland's NMP 2015

8.3.1 Developed in accordance with the Marine (Scotland) Act 2010 and the Marine and Coastal Access Act 2009 (as amended), the NMP provides a comprehensive statutory planning framework for all activities out to 200 nautical miles. This includes policies for the sustainable management of a wide range of marine industries. The Scottish Ministers must make authorisation and enforcement decisions, or any other decision that affects the marine environment, in accordance with the NMP. The NMP sets out a presumption in favour of sustainable works and use of the marine environment when consistent with the policies and objectives of the Plan.

8.4 Application and EIA Report

8.4.1 It should be noted that any changes produced after the EIA report is submitted may require further environmental assessment and public consultation.

9. Multi-Stage Regulatory Approval

9.1 Background

9.1.1 The 2017 MW Regulations contains provisions regulating the assessment of environmental impacts. A multi-stage approval process arises where an approval procedure comprises more than one stage, one stage involving a principal decision and one or more other stages involving an implementing decision(s) within the parameters set by the principal decision. While the effects which works may have on the environment must be identified and assessed at the time of the procedure relating to the principal decision if those effects are not identified or identifiable at the time of the principle decision, assessment must be undertaken at the subsequent stage.

9.1.2 The definition in the 2017 MW Regulations is as follows: "application for multi-stage regulatory approval" means an application for approval, consent or agreement required by a condition included in a regulatory approval where (in terms of the condition) that approval, consent or agreement must be obtained from the Scottish Ministers before all or part of the works permitted by the regulatory approval may be begun".

9.1.3 A marine licence, if granted, by the Scottish Ministers for your works at Arnish Deep Water Port may have several conditions attached requiring approvals etc. which fall under this definition, for example the approval of a CMS.

9.1.4 When making an application for multi-stage approval the applicant must satisfy the Scottish Ministers that no significant effects have been identified in addition to those already assessed in the EIA report. In doing so, the applicant must account for current (meaning at the time of the multi-stage application) knowledge and methods of assessment which address the likely significant effects of the works on the environment so to enable the Scottish Ministers to reach a reasoned conclusion which is up to date.

9.1.5 If during the consideration of information provided in support of an application for multi-stage regulatory approval the Scottish Ministers consider that the works may have significant environmental effects which have not previously been identified in the EIA report (perhaps due to revised construction methods or updated survey information), then information on such effects and their impacts will be required. This information will fall to be dealt with as additional information under the 2017 MW Regulations, and procedures for consultation, public participation, public notice and decision notice of additional information will apply.

10. Judicial review

All decisions may be subject to judicial review. A judicial review statement should be made available to the public.

11. Gaelic Language

If the proposed works are located in an area where Gaelic is spoken, the applicant is encouraged to adopt best practice by publicising details of the proposed works in both English and Gaelic.

Signed

Lorraine Gray
09 March 2018
Authorised by the Scottish Ministers to sign in that behalf

Appendix I: Consultee Responses

Local Authority – Comhairle nan Eilean Siar - Planning Department

From: Morag Ferguson - Dev | G <mferguson@cne-siar.gov.uk> Sent: Wed 24/01/2018 10:26
To: Gray L (Lorraine)
Cc: MS Major Projects; Rachel Macleod
Subject: 17/00610/MLCON : Marine Licence and Harbour Revision Order Scoping Consultation: Deep Water Port and Newton Marina
Message Newton Basin scoping (planning).pdf Arnish Deep water scoping (planning).pdf

I refer to the requests received on 22 December 2017 for consultation comments on Scoping in relation to Marine Licence and Harbour Revision Order for the above.

Please note that both these projects have been subject to Scoping for the aspects of the development requiring Planning Permission.

A copy of the scoping response of the Authority in relation to the Planning aspects of these projects is attached and the responses to scoping contained therein should be taken into account and supplement the further comments below

- **Landscape and Visual impacts** - Proposed scope and approach agreed
- **Ecology** - Proposed scope and approach to acceptable subject to following advice:
  In relation to impacts on wild fish the following advice from the WIDSFB should be taken into account: WIDSFB welcome and agree with the proposed scope of the EIA especially the inclusion of Atlantic Salmon and broader aspects of fisheries and water quality. WIDSFB would like to reiterate that the River Creed should be considered category 2 as opposed to category 1 as this is the proposed conservation limit that will apply to the river during the harbour development. Baseline data for the Glen River and River Creed is readily available from the Outer Hebrides Fisheries Trust should this be required as part of the EIA.

  Ecology – It is noted that Inner Hebrides and Minches cSAC and North East Lewis Proposed Marine Protected Area have been identified as hosting Harbour Porpoise and Risso Dolphin respectively.

  Biodiversity - The Comhairle has only a part time resource with Biodiversity forming only part of the remit of the Environment Officer: contact details are Peter Coldwell, peter.coldwell@cne-siar.gov.uk Tel 01870 604990
- **Archaeology** – No response has been received from the Comhairle Archaeologist in relation to the current consultation but the Comhairle archaeologist (Kevin Murphy kevin.murphy@cne-siar.gov.uk Tel 07795824986) indicated satisfaction with the marine archaeology aspects in relation to the former consultation on scoping and confirmed that Marine archaeology should be scoped into the EIA.
- **Noise:** Environmental Health agree with the proposals as set out in the EIA scoping Report for Newton Basin and Arnish i.e. scope in Construction Noise for both, Scope out Operational noise for Marina and consider Operational noise for Deep water port further;
- **Air Quality/ Dust:** – Environmental Health agree with Scope Out
- **Transport** – Construction Phase : Agree to Scope in construction traffic impacts for both Newton and Deep Water port; Consider Operational Impacts once more information available.

I trust these comments are of assistance.

Historic Environment Scotland

HISTORIC ENVIRONMENT SCOTLAND | ÀRAINNEACHD EACHDRAIDHEIL ALBA

By email to: lorraine.gray@gov.scot; ms.majorprojects@gov.scot

Dr Lorraine Gray
Marine Licensing Casework Manager
Marine Scotland

Longmore House
Salisbury Place
Edinburgh
EH9 1SH

Enquiry Line: 0131-668-8716
HMConsultations@hes.scot

Our ref: AMN/16/W
Our case ID: 300023529

18 January 2018

Dear Dr Gray

Marine (Scotland) Act 2010 and the Marine Works (Environmental Impact Assessment) Regulations 2017 (as amended) ("The EIA Regulations") and the Harbours Act 1964 ("The 1964 Act")
Deep Water Port, Stornoway
Scoping Report

Thank you for your consultation which we received on 22 December 2017 about the above scoping report. We have reviewed the details in terms of our historic environment interests. This covers world heritage sites, scheduled monuments and their settings, category A-listed buildings and their settings, inventory gardens and designed landscapes, inventory battlefields and historic marine protected areas (HMPAs).

The relevant local authority archaeological and cultural heritage advisors will also be able to offer advice on the scope of the cultural heritage assessment. This may include heritage assets not covered by our interests, such as unscheduled archaeology, and category B- and C-listed buildings.

Proposed Development

I understand that the proposed development comprises a new multi-purpose Deep Water Port on the west shore of Glumaig Bay, a few kilometres south of Stornoway Harbour. The proposed site is across the bay from Arnish Fabrication Yard and load out quay. The first phase of the proposals consists of 400 metres of quay with 10 metres water depth at lowest tide, a new freight ferry berth and marshalling area, a heavy lift area 50m square, and 15ha of laydown, storage and development land behind the quay. The proposals also incorporate a 40m wide access corridor around the south side of Glumaig Bay, connecting Arnish Yard to the new quay.

HISTORIC ENVIRONMENT SCOTLAND | ÀRAINNEACHD EACHDRAIDHEIL ALBA

Scope of Assessment

We have reviewed the submitted scoping report and note the content of Cultural Heritage and Archaeology chapter (chapter 4.4). We note that there is one scheduled monument within the site boundary (SM 5347 Arnish Point, gun emplacements). However, it is understood that the scheduled gun battery will be outside the proposed construction footprint and will be subject to no direct impacts.
On this basis, I can confirm we are content with the approach to assessment set out in the Scoping Report and agree that cultural heritage and archaeology should be scoped into the EIA.

Further Information

Detailed guidance on the application of national policy is set out in our 'Managing Change in the Historic Environment' series available online at www.historicenvironment.scot/advice-and-support/planning-and-guidance/legislation-and-guidance/managing-change-in-the-historic-environment-guidance-notes/. Technical advice is available through our Technical Conservation website at www.engineshed.org.

We hope this is helpful. Please contact us if you have any questions about this response. The officer managing this case is Urszula Szupszynska and they can be contacted by phone on 0131 668 8653 or by email on Urszula.Szupszynska@hes.scot.

Yours sincerely

Historic Environment Scotland

Maritime and Coastguard Agency

From: Helen Croxson <Helen.Croxson@mcga.gov.uk> Sent: Tue 30/01/2018 10:46
To: MS Major Projects
Cc: Thomas Bulpit
Subject: FW: Scoping Report Consultation - Newton Marina and Arnish, Stornoway - Request for Opinion
Message 169438- Deep_Water_Port_Scoping_Report_Marine_Scotland and TS_final.pdf
169265- Newton_Marina_Scoping_Report_MSLOT TS-FINAL.PDF

Dear Lorraine,

Thank you for your email dated 22 December 2018 regarding the Stornoway Deep Water Port and Newton Marina Scoping Consultation. My apologies for the delay in replying to you.

We would expect the developers to consider any impact of the works on the safety of navigation, with appropriate risk mitigation measures. The various elements of the proposed works which fall below the mean high water mark will likely require a Marine Licence from Marine Scotland. The MCA is a statutory consultee to Marine Scotland and will consider any impact the works may have on vessels operating in the area, at that stage. We would expect the developers to notify the local HM Coastguard and local MCA Marine Office of the proposed works.

As the works fall within the jurisdiction of Stornoway Port Authority, we would like to point developers in the direction of the Port Marine Safety Code (PMSC). They will need to liaise and consult with Stornoway Port Authority to develop a robust Safety Management System (SMS) for the project under this code. The sections that we feel cover navigation safety under the PMSC and its Guide to Good Practice are as follows:

From the Guide to Good Practice, section 7 Conservancy, a Harbour Authority has a duty to conserve the harbour so that it is fit for use as a port, and a duty of reasonable care to see that the harbour is in a fit condition for a vessel to be able to use it safely. Section 7.7 Regulating harbour works covers this in more detail and have copied the extract below from the Guide to Good Practice.

7.7 Regulating harbour works

7.7.1 Some harbour authorities have the powers to license works where they extend below the high watermark, and are thus liable to have an effect on navigation. Such powers do not, however, usually extend to developments on the foreshore.

7.7.2 Some harbour authorities are statutory consultees for planning applications, as a function of owning the seabed, and thus being the adjacent landowner. Where this is not the case, harbour authorities should be alert to developments on shore that could adversely affect the safety of navigation. Where necessary, consideration should be given to requiring the planning applicants to conduct a risk assessment in order to establish that the safety of navigation is not about to be put at risk. Examples of where navigation could be so affected include:

- high constructions, which inhibit line of sight of microwave transmissions, or the performance of port radar, or interfere with the line of sight of aids to navigation;
- high constructions, which potentially affect wind patterns; and
- lighting of a shore development in such a manner that the night vision of mariners is impeded, or that navigation lights, either ashore and onboard vessels are masked, or made less conspicuous.

There is a British Standards Institution publication on Road Lighting, BS5489. Part 8 relates to a code of practice for lighting which may affect the safe use of aerodromes, railways, harbours and navigable Inland waterways.

We would also like to remind developers of any legal obligations, under part 9 of the Merchant Shipping Act 1995, to report all recoveries of wreck material to the Receiver of Wreck. Further guidance can be found at www.gov.uk/guidance/wreck-and-salvage-law.

Kind regards

Helen Croxson

Northern Lighthouse Board

Northern Lighthouse Board
84 George Street
Edinburgh EH2 3DA
Switchboard: 0131 473 3100
Fax: 0131 220 2093
Website: www.nlb.org.uk
Email: enquiries@nlb.org.uk

Your Ref: 169438 & 169265
Our Ref: PD/OPS/ML/S1_03_045

Dr Lorraine Gray
Marine Licensing Casework Manager
Marine Scotland – Marine Planning & Policy Division
Scottish Government
Marine Laboratory
375 Victoria Road
ABERDEEN
AB11 9DB

8 January 2018

Dear Lorraine,

MARINE (SCOTLAND) ACT 2010 & THE MARINE WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2017 (AS AMENDED) & THE HARBOURS ACT 1964 – STORNOWAY PORT AUTHORITY (PER ENVIROCENTRE LTD) – DEEP WATER PORT AND NEWTON MARINA SCOPING, STORNOWAY, ISLE OF LEWIS

Thank you for your email correspondence dated 22 December 2017 regarding the scoping opinion request submitted on behalf of **Stornoway Port Authority (per EnviroCentre Ltd)** in regards to their proposals for the Deep Water Port, Arnish and Newton Marina.

Northern Lighthouse Board has no objections to the proposed developments.

These developments will require some modifications to the lighting and marking arrangements within Stornoway Harbour. Northern Lighthouse Board will be happy to advise regarding these modifications, and will reply formally to any Marine Licence application.

Yours sincerely

[redacted]

Peter Douglas
Navigation Manager

Royal Yachting Association Scotland

RYA Scotland

Caledonia House
1 Redheughs Rigg
South Gyle
Edinburgh
EH12 9DQ

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Web: www.ryascotland.org.uk

11 January 2018

Dr Lorraine Gray
Marine Scotland Licensing Operations Team
Scottish Government
Marine Laboratory,
375 Victoria Road,
Aberdeen,
AB11 9DB

Lorraine.Gray@gov.scot ms.majorprojects@gov.scot
Dear Dr Gray,

Scoping Report Consultation - Newton Marina and Arnish, Stornoway

I have read the scoping reports on behalf of RYA Scotland. Fortuitously, the request came shortly after I had received a copy of the revised *Clyde Cruising Club Sailing Directions and Anchorages: Outer Hebrides*.

In relation to the deep water port, most of the *traffic and transport* section relates to road traffic although the last bullet point in 4.8.3 relates to the safe operation of the harbour. The CCC Sailing Instructions note that berthing alongside is usually preferable to anchoring in Stornoway Harbour but that one of the three potential anchorages is Glumaig Bay. It is probably the best place to anchor in the harbour. The plans suggest that anchoring here would still be possible although commercial traffic would clearly be busier than at present. The EIA should explore with the Stornoway Port Authority whether this anchorage for recreational craft can remain and, if not, what the alternative will be for skippers who do not wish, for whatever reason, to use a pontoon berth. Mitigation will involve publicising any changes to the Clyde Cruising Club for incorporation into Sailing Direction updates.

I welcome the development of the Newton Marina. RYA Scotland has been closely involved in the development of *Awakening the Giant* and this proposal will help achieve the plan's aspirations. The second anchorage listed in the Sailing Directions is northwest of Eilean na Gobhail and close to the entrance of the new marina. As in the previous case, the Stornoway Port Authority ought to consider which anchorages will be available to recreational sailors and publish this information.
Yours sincerely,

[redacted]

Dr G. Russell FRMetS MCIEEM
Planning and Environment Officer, RYA Scotland

Scottish Environment Protection Agency - Response 1
Council response received 03 October 2018

SEPA
Scottish Environment Protection Agency
Buidheann Dion Àrainneachd na h-Alba

Our ref: PCS/155182
Your ref: 17/00453/SCO_L

If telephoning ask for:
Susan Haslam

3 October 2017

Morag Ferguson
Comhairle Nan Eilean Siar
Council Offices
Balivanich
Isle of Benbecula
Western Isles
HS7 5LA

By email only to: planningconsultations-ben@cne-siar.gov.uk

Dear Mrs Ferguson

The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017
The Harbour Works (Environmental Impact Assessment) Regulations 1999 [excluding Part II] for Harbour Revision Orders or Harbour Empowerment Orders made under the Harbours Act 1964
The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017
Proposed multi-purpose deep water port on west shore of Glumaig Bay, Arnish Port, Arnish, Isle of Lewis

Thank you for consulting SEPA on the scoping opinion for the above development proposal by way of your email, which we received on 22 September 2017. We would welcome engagement with the applicant at an early stage to discuss any of the issues raised in this letter.

We note that as well as planning permission the development will also require a Marine Licence and it is intended to apply for a harbour revision order and it is the developer's intention to complete a single EIA Report to cover all these requirements. We welcome this approach and provided the following advice which is applicable to the development as a whole. We ask that the application include clear information outlining which elements are covered by each of the regulatory regimes. To be helpful this response is copied direct to Marine Scotland and Transport Scotland.

1. Works below Mean High Water Springs

1.1 For works below Mean High Water Springs, we generally do not provide site specific advice on works that will be regulated under The Marine (Scotland) Act 2010 or Harbours Acts. Instead, please refer to our standing advice on marine consultations within guidance document SEPA standing advice for The Department of Energy and Climate Change and Marine Scotland on marine consultations. Marine Scotland will be able to provide you with any site specific advice on marine impacts.

1.2 We welcome the proposals to re-use dredging spoil within the land reclamation works. We would specifically highlight our advice in Section 3.3 and 3.4 within the guidance document SEPA standing advice for The Department of Energy and Climate Change and Marine Scotland on marine consultations with regards the re-use of dredged material and remind the applicant to consider the potential risk of contaminants being present in the spoil.

2. Site layout

2.1 All maps must be based on an adequate scale with which to assess the information. This could range from OS 1: 10,000 to a more detailed scale in more sensitive locations. Each of the maps below must detail all proposed upgraded, temporary and permanent site infrastructure. This includes all temporary or permanent access tracks, excavations, buildings, borrow pits, site compounds, laydown areas, storage areas and any other built elements.

2.2 The layout should be designed to minimise the extent of new works on previously undisturbed ground. A comparison of the environmental effects of alternative locations or layouts may be required.

3. Surface water drainage

3.1 Surface water runoff must be treated by sustainable drainage systems (SUDS) therefore it is important to ensure that adequate space to accommodate SUDS is incorporated within the site layout.

3.2 We welcome the proposals to include oil interceptors. The proposals should meet the treatment requirements of CIRIA C753. A site plan showing the proposed SUDS treatment train must be submitted. Different areas of the development will require different levels of treatment. For example run-off from car parking or marshalling areas will require greater treatment than roof run-off.

3.3 The Simple Index Approach calculation (Section 26.7.1 of the guidance) should be used for the lower risk areas within the site. For yard areas, refuelling areas or areas where there is a higher pollution risk, a detailed risk assessment (Section 26.7.3 of CIRIA C753) must be submitted. We are likely to regulate discharges from high risk areas under The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (As Amended) (CAR).

3.4 In addition there may be existing surface (and foul) water drainage outfalls in the locality. Any redevelopment provides an opportunity to upgrade the treatment of these discharges and bring them in line with current practice. All existing discharges and their treatment systems must be shown on a site map.

3.5 Comments on the acceptability of post-development runoff rates for flood control should be sought from the local authority flood prevention unit, and not from SEPA. Comments from Scottish Water should be sought where the SUDS proposals would be adopted by them. We encourage the design of SUDS to Sewers for Scotland Second Edition standards and the adoption of SUDS features by Scottish Water as we are of the view that this leads to best standards and maintenance.

4. Impacts on the fresh water environment

4.1 The preliminary site layout should be amended to avoid direct impacts on the Allt Poll a'Choire watercourse, which should be protected by a 50 m no-development buffer.

4.2 Where the Allt Poll a'Choire requires a road crossing then this should be a bottomless culvert or traditional style bridge, shown to accommodate the 1 in 200 year flood event. Guidance on the design of water crossings can be found in our Construction of River Crossings Good Practice Guide.

4.3 If water abstractions or dewatering are proposed, a table of volumes and timings of groundwater abstractions and related mitigation measures must be provided.

4.4 Further advice and our best practice guidance are available within the water engineering section of our website.

5. Flood risk

5.1 The site lies partly within the medium likelihood (0.5% annual probability or 1 in 200 year) flood extent of the SEPA Flood Maps and may therefore be at medium to high risk of flooding. However we appreciate that this development needs to be located in this area for operational reasons.

5.2 Normally we request compensatory flood storage to be provided for lost functional floodplain volume. However, in undefended tidal areas, loss of floodplain capacity is unlikely to have any impact on water levels and provision of compensatory storage is not required. This applies to development where the use is compatible with the coastal location and the land reclamation is justified in wider policy terms.

5.3 All new development, including development on reclaimed land, should be above the estimated 1 in 200 year flood level for the area which is 3.4 m AOD, unless that particular aspect of the proposal needs to be lower for operational reasons. This will enable the developments to be more resilient during times of flood or storm events. We would also recommend a minimum 600mm freeboard is added to allow for modelling uncertainties and the use of water resistant materials and forms of construction as appropriate.

6. Habitat survey

6.1 In relation to our interests in wetland we are content that no further survey work is required. We are satisfied that there are unlikely to be significant effects on groundwater dependant terrestrial habitats, wetlands we both have a duty to protect under Water Framework Directive.

7. Material excavation and use

7.1 In accordance with Paragraphs 52 to 57 of Planning Advice Note 50 Controlling the Environmental Effects of Surface Mineral Workings (PAN 50) a Site Management Plan should be submitted which includes the following information on the excavation area:

a) A map showing the location, size, depths and dimensions.

b) A map showing any stocks of rock, overburden, soils and temporary and permanent infrastructure including tracks, buildings, oil storage, pipes and drainage, overlain with all lochs and watercourses to a distance of 250 metres. You need to demonstrate that a site specific proportionate buffer can be achieved. On this map, a site-specific buffer must be drawn around each loch or watercourse proportionate to the depth of excavations and at least 10m from access tracks. If this minimum buffer cannot be achieved each breach must be numbered on a plan with an associated photograph of

the location, dimensions of the loch or watercourse, drawings of what is proposed in terms of engineering works.

c) You need to provide evidence of the suitability of the material to be excavated for the proposed use, including any risk of pollution caused by degradation of the rock.

d) A ground investigation report giving existing seasonally highest water table including sections showing the maximum area, depth and profile of working in relation to the water table.

e) A site map showing cut-off drains, silt management devices and settlement lagoons to manage surface water and dewatering discharge. Cut-off drains must be installed to maximise diversion of water from entering quarry works.

f) A site map showing proposed water abstractions with details of the volumes and timings of abstractions.

g) A site map showing the location of pollution prevention measures such as spill kits, oil interceptors, drainage associated with welfare facilities, recycling and bin storage and vehicle washing areas. The drawing notes should include a commitment to check these daily.

h) A site map showing where soils and overburden will be stored including details of the heights and dimensions of each store, how long the material will be stored for and how soils will be kept fit for restoration purposes.

i) Where the development will result in the disturbance of peat or other carbon rich soils then the submission must also include a detailed map of peat depths (this must be to full depth and follow the survey requirement of the Scottish Government's Guidance on Developments on Peatland - Peatland Survey (2017)) with all the built elements and excavation areas overlain so it can clearly be seen how the development minimises disturbance of peat and the consequential release of CO_2. The application should investigate whether there are local opportunities to use any disturbed material in peatland restoration works, such as improvements to old peat cuttings. This could help mitigate impacts on peat.

j) Sections and plans detailing how restoration will be progressed including the phasing, profiles, depths and types of material to be used.

k) Details of how the rock will be processed in order to produce a grade of rock that will not cause siltation problems during its end use.

7.2 There is a waste management licence for the temporary storage of shotblast waste at the site. It was our understanding that this material was to be put to suitable use, probably in concrete, as part of the expansion works at the site. We ask that the assessment specifically covers the proposals for use of this material.

8. Pollution prevention during construction

8.1 One of our key interests in relation to developments is pollution prevention measures during the periods of construction. We note the applicant's proposals for a Construction Environmental Management Plan (CEMP). We can confirm that from our perspective, a CEMP need not be provided with the application. Instead, we expect the detailed site plans

we have requested in this letter to demonstrate how impacts on the environment have been minimised through site design and all mitigation should be detailed within a suitably robust schedule of mitigation.

8.2 The schedule of mitigation should be supported by the above site specific maps and plans. These must include reference to best practice pollution prevention and construction techniques (for example, limiting the maximum area to be stripped of soils at any one time) and regulatory requirements. They should set out the daily responsibilities of ECOWs, how site inspections will be recorded and acted upon and proposals for a planning monitoring enforcement officer. Please refer to the Guidance for Pollution Prevention (GPPs).

8.3 The scoping report confirms the potential for oil storage at the new facility. The developer should confirm the proposed inventory of hazardous substances and where it could lie in terms of falling under the scope of the COMAH regulations and associated Hazardous Substances Consent. Finally, if petrol is being handled then the oil storage terminal will need to have appropriate petrol vapour recovery infrastructure and have a Pollution Prevention and Control Part B permit.

Regulatory advice for the applicant

9. Regulatory requirements

9.1 Any proposed engineering works within the water environment above Mean High Water Springs or any proposed abstractions or discharges will require authorisation under The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended). Management of surplus peat, soils or dredging spoil may require an exemption under The Waste Management Licensing (Scotland) Regulations 2011. Proposed crushing or screening will require a permit under The Pollution Prevention and Control (Scotland) Regulations 2012.

9.2 If the proposed development is above the relevant threshold in COMAH then the COMAH Competent Authority should be contacted to discuss the regulatory requirements for such a facility.

9.3 Details of regulatory requirements and good practice advice for the applicant can be found on the Regulations section of our website. If you are unable to find the advice you need for a specific regulatory matter, please contact a member of the regulations team in your local SEPA offices at: 2 James Square, James Street, Stornoway, Isle of Lewis, HS1 2QN - Tel: 01851 706477. They would be very happy to discuss and agree the options available for the use of the shotblast waste before the planning application is submitted.

Should you wish to discuss this letter please do not hesitate to contact me on 01349 860359 or planning.dingwall@sepa.org.uk.

Yours sincerely

Susan Haslam
Senior Planning Officer
Planning Service

Ecopy: ms.marinelicensing@gov.scot; Yvonne.Edmond@transport.gov.scot (please redirect if necessary); mferguson@cne-siar.gov.uk

Scottish Environment Protection Agency - Response 2
Received 01 February 2018

SEPA
Scottish Environment Protection Agency
Buidheann Dion Àrainneachd na h-Alba

Our ref: PCS/156665
Your ref: 17/00453/SCO_L

Morag Ferguson
Comhairle Nan Eilean Siar
By email only to: planningconsultations-sty@cne-siar.gov.uk

If telephoning ask for:
Susan Haslam

1 February 2018

Lorraine Gray
Marine Scotland
By email only to: ms.majorprojects@gov.scot

Val Ferguson
Transport Scotland
By email only to: Val.Ferguson@transport.gov.scot

Dear Ms Ferguson, Ms Gray and Ms Ferguson

Harbours Act 1964
Marine (Scotland) Act 2010
The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017
The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017
Town and Country Planning (Scotland) Acts
Proposed multi-purpose deep water port on west shore of Glumaig Bay, Arnish Port, Arnish, Isle of Lewis

Following the informative meeting on 26 January 2018 SEPA takes the opportunity to provide the following further comments on the scoping of the project.

1. Site use

1.1 The scoping report suggested that the development would include "laydown and storage areas to service decommissioning projects." However, we understand from the meeting that decommissioning has more formally been identified as a use for the site and as a result the EIA will assess likely effects from the related activities. The development team has correctly identified that such works will require a Pollution Prevention and Control (PPC) authorisation from SEPA. Other works such as paint or chemical spraying and oil storage may also require PPC. We would welcome further clarification on what exactly is proposed for the site and how this will be assessed in the EIA. In the interim our general planning requirements for a development which is also be covered by PPC is that the planning application includes the following information for each process:

(a) A general description of the proposed process, techniques and technology choice.

(b) EITHER – details of proposed processes, techniques and technologies, an assessment of environmental impact associated with technology choice, including the process of producing a detailed list of receptors, a description of potential impact on sensitive receptors, proposed mitigation measures and emissions standards to be achieved;
OR – a demonstration that, assuming a worst-case scenario with sensitive receptors present, the development could reasonably achieve through existing technology agreed defined emissions standards.

(c) A statement relating to potential for abnormal or unusual events (e.g. non-routine emissions), the frequency and expected duration of the events, and the potential impact on sensitive receptors, in order to demonstrate the suitability of the location.

1.2 If necessary, we will provide further scoping advice on this aspect once we are clearer what is proposed.

2. Flood risk

2.1 We highlight the need to ensure that site level information is also provided to meters Above Ordnance Datum and draw your attention to the levels outlined in section 5.3 of our previous response.

3. Dredging

3.1 We suggest that dredging works should be minimised to those required to provide adequate access to the area and consideration be given to the use of suitable waste materials for infill works. The EIA Report should consider what alternatives are available. For example, opportunity to make use of waste materials for large quarries such as Glensanda or materials currently stored on the site or adjacent to it.

3.2 If the dredging works results in the generation of waste materials and it is proposed that that material will be disposed of on land then details of disposal options should also be outlined.

4. Quarrying

4.1 Similar to above, we suggest that on shore quarrying works should be minimise to those required to provide space for the development platform and alternative waste sources investigated for any additional fill material.

5. Water Framework Directive

5.1 To confirm SEPA will not provide advice on Water Framework Directive implications and assessment, but defer to MS-LOT on this issue.

6. Impacts on the freshwater environment

6.1 We highlight the need for a modification to the north access road to the site; this will need to be amended so that it is not on top of a watercourse.

6.2 We also reiterate our comments in relation to the need for amendments to Phase 4 of the development to ensure that impacts on the Allt Poll a'Choire are avoided. While we note that this is the same layout as proposed in the Stornoway Port Masterplan we highlight that SEPA was not consulted on the Masterplan and therefore this scoping process is our first opportunity to provide comment on its acceptability.

We would be very happy to provide advice on draft submissions covering those aspects of the development we have an interest, if this would be helpful.

Should you wish to discuss this letter please do not hesitate to contact me on 01349 860359 or planning.dingwall@sepa.org.uk.

Yours sincerely

Susan Haslam
Senior Planning Officer
Planning Service

Ecopy: CPotter@envirocentre.co.uk; mferguson@cne-siar.gov.uk

Disclaimer
This advice is given without prejudice to any decision made on elements of the proposal regulated by us, as such a decision may take into account factors not considered at this time. We prefer all the technical information required for any SEPA consents to be submitted at the same time as the planning or similar application. However, we consider it to be at the applicant's commercial risk if any significant changes required during the regulatory stage necessitate a further planning application or similar application and/or neighbour notification or advertising. We have relied on the accuracy and completeness of the information supplied to us in providing the above advice and can take no responsibility for incorrect data or interpretation, or omissions, in such information. If we have not referred to a particular issue in our response, it should not be assumed that there is no impact associated with that issue. Further information on our consultation arrangements generally can be found on our website planning pages.

Scottish Natural Heritage

Scottish Natural Heritage
Dualchas Nàdair na h-Alba
All of nature for all of Scotland
Nàdar air fad airson Alba air fad

BY EMAIL
FAO: Lorraine Gray
Marine Licensing Officer
Marine Scotland - Marine Planning & Policy
ms.marinelicensing@gov.scot

Date: 25 January 2018

Dear Lorraine

ARNISH DEEP WATER DEVELOPMENT, GLUMAIG BAY, ISLE OF LEWIS. SCOPING REQUEST – TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND) REGULATIONS 2017

Thank you for your consulting SNH on the above screening request which we received on 22nd December 2017. We provided EIA screening advice to CnES on 12 October 2017.

We advise that with regards to our interests the Scoping Report (December 2017) accurately identifies natural heritage receptors that may be significantly impacted by the proposal. We are in agreement with the report's recommendations on what should be scoped in to (and out of) the EIA Report.

The principal marine natural heritage issue arising from this development which will require further consideration in the EIAR is the potential effect of drilling/piling noise on marine mammals, particularly cetaceans, including harbour porpoise within Inner Hebrides and the Minches cSAC and the North East Lewis pMPA.

We are aware the proposed development contains elements which are above and below Mean High Water Springs (MHWS), and will therefore likely require consents from both the LPA and Marine Scotland. Given the complex regulatory regime covering the overall development we'd welcome the co-ordination of the EIA process between competent authorities. This response considers the entire scope of the proposed works associated with the development and not only those relevant to marine licensing.

In the absence of detailed proposals for the construction and operation of the Arnish Deepwater Port, the report commits to further consultation with SNH (and MS) to determine the scope of survey and /or other work that may be required to properly assess impacts on marine mammals and fish. This should be done before the marine licence is determined.

Annex A of this letter provides further detail to assist with the EIA process.

I hope you find the above comments useful, however should you wish to discuss the issues raised further, please don't hesitate to contact me.

ANNEX A – DETAILS TO ASSIST WITH THE EIA FOR ARNISH DEEPWATER PORT

We have a variety of guidance covering topics such as protected areas and protected species. We would expect the applicant to follow the latest guidance as published on our website via https://www.nature.scot/professional-advice/planning-and-development/natural-heritage-advice-planners-and-developers

Guidance on the EIA process is also available, including a link to our EIA handbook - https://www.nature.scot/professional-advice/planning-and-development/environmental-assessment/environmental-impact-assessment.

1. PROTECTED AREAS

Inner Hebrides and the Minches candidate Special Area of Conservation (cSAC)
The proposal (as defined by the EIA red line boundary) lies within 1 km of the Inner Hebrides and the Minches candidate Special Area of Conservation (SAC), selected for its harbour porpoise interest. Based on the information provided, the proposal could affect the conservation objectives of the site.

The most likely impact relates to disturbance to cetaceans (and seals) due to underwater noise generated during the construction phase of the project (principally from piling and/or drilling). Should any blasting be required this too will need consideration. Noise can adversely impact cetaceans (including harbour porpoise) by masking communication between animals, disturbing natural behaviour and distribution, impairing hearing or even, at close proximity, causing injury or death. The risk of such impacts is influenced by factors including location of the proposed activity, its duration, whether it is continuous or intermittent, time of day, and the methodology. However disturbance is possible over ranges of several kilometres from the actual operation

In addition to the EIA regulations, the site's status means that the requirements of the Conservation (Natural Habitats, &c.) Regulations 1994 as amended (the "Habitats Regulations") also apply. Consequently, Marine Scotland will be required to consider the effect of the proposal on the *cSAC* before it can be consented. Given what we currently know, our view is that this proposal is likely to have a significant effect on harbour porpoise within the cSAC. Consequently, Marine Scotland are likely to be required to carry out an appropriate assessment. It is important that the EIAR contains sufficient information to support this assessment. We therefore advised that this topic should be scoped in (as per the Scoping Report recommendation).

We welcome the commitment to model underwater noise propagation to inform a Marine Mammal Protection Plan. To inform that process we advise that the following references should be considered:

- *Good Practice Guide for Underwater Noise Measurement*, National Measurement Office, Marine Scotland, The Crown Estate, Robinson, S.P., Lepper, P. A. and Hazelwood, R.A., NPL Good Practice Guide No. 133, ISSN: 1368-6550, 2014. http://www.npl.co.uk/upload/pdf/gpg133-underwater-noise-measurement.pdf

- Farcas A., Thompson P.M., Merchant N.D. (2016) Underwater noise modelling for environmental impact assessment. *Environmental Impact Assessment Review* Vol 57 pg 114-122 http://aura.abdn.ac.uk/bitstream/2164/7677/1/1_s2.0_S0195925515300202_main.pdf

Received levels, or acoustic thresholds, at which individual marine mammals are predicted to experience changes in their hearing sensitivity (either temporary or permanent) for acute, incidental exposure to underwater anthropogenic sound should be considered. For assessment of impact to marine mammals we advise that the EIAR consider both Southall and NOAA injury thresholds:

- National Marine Fisheries Service (2016) *Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing: Underwater Acoustic Thresholds for Onset of Permanent and Temporary Threshold Shifts.* U.S Dept. of Commer., NOAA. NOAA Technical Memorandum NMFS-OPR-55, 178p. http://www.nmfs.noaa.gov/pr/acoustics/Acoustic%20Guidance%20Files/opr-55_acoustic_guidance_tech_memo.pdf

- Southall B.L., Bowles A.E., Ellison W.T., Finneran J.J., Gentry R.L., Greene Jr. C.R., Kastak D., Ketten D.R., Miller J.H., Nachitgall P.E., Richardson W.J., Thomas J.A., & Tyack P.L. (2007) Marine Mammal Noise Exposure Criteria: Initial Scientific Recommendation. *Aquatic Mammals*, Vol 33 No 4 http://sea-inc.net/assets/pdf/mmnoise_aquaticmammals.pdf

Disturbance should also be assessed. We advise that there is currently no agreed disturbance threshold as such, but that assessments are moving away from identifying a fixed threshold, towards using a dose response curve as used in:

- Thompson P.M., Hastie G.D., Nedwell J., Barham R., Brookes K.L., Cordes L.S., Bailey H., & McLean N. (2013) Framework for assessing impacts of pile-driving noise from offshore wind farm construction on a harbour seal population *Environmental Impact Assessment Review* Vol 43 pg 73-85. https://www.abdn.ac.uk/lighthouse/documents/Thompson_et_al._2013_EIAR.pdf

However the NOAA interim disturbance thresholds may prove sufficient in this case: http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/threshold_guidance.html

While we expect the above guidance to be considered, the final assessment should be proportionate to the scale and risk of the works. We can provide further guidance on this aspect if required.

Appropriate mitigation should be put forward based on relevant best practice guidance including:

- Statutory nature conservation agency piling protocol (August 2010): http://jncc.defra.gov.uk/pdf/JNCC_Piling%20protocol_August_2010.pdf

Consideration should be given to the size of the noise mitigation zone and the best way to cover it. It is usual to apply a standard 500m radius, however consideration should be given to whether the harbour area, or a larger extent should be monitored. It should also consider the most appropriate viewpoints and the number of MMOs required.

Note: The proposed North East Lewis MPA mentioned in the scoping report (Table 4.12) has no policy protection at time of writing. However Marine Scotland advises that MPA proposals should be taken into account through any licensing or consenting process. The proposed protected features capable of being affected by the proposal are Risso's dolphin

The proposed site abuts the southern edge of the red line boundary for the development. Further information on development management and nature conservation MPAs is available at http://www.gov.scot/resource/0042/00428637.pdf. Our recommendation is that The EIAR also considers possible impacts on Risso's dolphins in this context.

2. PROTECTED SPECIES

Marine Mammals

Several species of cetaceans occur regularly in the North Minch including Risso's dolphin (*Grampus griseus*), Short-beaked common dolphin (*Delphinus delphis*), Killer whale (*Orcinus orca*), Minke whale (*Balaenoptera acutorostrata*), Humpback whale (*Megaptera novaeangliae*), Bottlenose dolphin (*Tursiops truncatus*) as well as Harbour porpoise (*Phocoena phocoena*). Harbour porpoise are resident in the region throughout the year while other species occur more frequently during the summer and autumn months. Grey (*Halichoerus grypus*) and Harbour (*Phoca vitulina*) seals are also sighted regularly. We recommend that the MMPP considers impact on all of the above cetacean species and seals. Although the hearing characteristics of these different species vary somewhat from harbour porpoise the advice given re the cSAC above, is also relevant to other marine mammals. It is possible that an EPS license will be required if the mitigation proposed in the MMPP is not possible or appropriate. Sufficient information should be provided in the EIAR to support such an application.

Birds

We are in agreement that impacts on birds can be scoped out of further assessment.

Otters

An otter survey has been carried out and did not find any sign of otters within the site. Although we have not seen the survey, if an appropriate methodology was followed we would agree with the Scoping Report that no further assessment is required (subject to confirmation on methodology). Otter activity can change over time and we recommend that otter surveys are repeated if more than 18 months elapses between the original survey and commencement of works (to avoid risk of an offence).

3. LANDSCAPE

In our view the proposed development does not raise any concerns with regard to landscape impacts of national importance. In addition the report correctly identifies there are no landscape designations on site (or likely to be effected by the development). The report recommends that a LVIA is undertaken as part of an EIA. We welcome that commitment as a matter of best practice for a development of this nature however we have no comment to make on its focus. The methodology proposed looks to be appropriate. Please note SNH does not act in an advisory capacity on Garden and Designed Landscape designations.

Appendix II - Advice from Marine Scotland Science

marinescotland
science

T: +44 (0)131 244 2500
MS_Renewables@gov.scot

The Scottish Government

Dr Lorraine Gray
Licensing Operations Team
Marine Scotland
375 Victoria Road
Aberdeen
AB11 9DB

STORNOWAY PORT AUTHORITY, NEWTON MARINA AND ARNISH DEEP WATER PORT, WESTERN ISLES - WESTERN ISLES COUNCIL RESPONSE

Marine Scotland Science has reviewed the submitted documents and has provided the following comments.

marine mammals

The example provided to illustrate an approach to assessment of underwater noise effects has some useful elements. However, there are several areas in which the approach, if taken in exactly the way, is likely to be inadequate. We provide a list of the elements that we recommend are addressed in the assessment:

1. A quantitative noise model should be used. This should account for the open water marine environment around the development, as opposed to the constrained freshwater environment of the River Tyne, as well as the water depth at the development (which will result in greater noise propagation than in the shallower river environment).
2. The example provided does not include assessment of piling activities, which MSS recommend should be the focus of the noise assessment, as these will be the noisiest activity undertaken. Dredging activities should also be included as they will generate noise, but note that dredging and disposal work also has the potential to cause non-acoustic injury to marine mammals, and this should be addressed in the assessment and in mitigation actions.
3. The species of concern in this development area include those in the example report, but also cover cetaceans, which are highly dependent upon hearing, including echolocation, to find food and navigate their environment. In particular, the assessment should consider effects to the harbour porpoise feature of the Inner Hebrides and the Minches cSAC, although several other cetacean species are also known to use the waters in the area.
4. All cetaceans are European Protected Species, which provides protection against killing, injury and disturbance. Guidance on EPS licensing in Scotland is available from http://www.scotland.gov.uk/Resource/0044/00446679.pdf. MSS recommend that the applicant undertakes an EPS risk assessment and applies for an EPS licence once more details of the project are available.

MSS considers that use of the NOAA/NMFS (2016) criteria for injury (PTS) to marine mammals is appropriate for the assessment (although we would also accept use of the Southall 2007 criteria). Exposure to noise levels sufficient to induce PTS in either seals or cetaceans is typically considered to be capable of causing injury, which is prohibited for both groups of species. If the assessment suggests that there is the potential for this, MSS would strongly recommend that suitable mitigation is put in place to avoid seals and cetaceans being exposed to noise sufficient to induce PTS.

MSS recommend that the applicant considers the findings of scientific studies of piling activities in the Cromarty Firth (Graham et al., 2017. Responses of bottlenose dolphins and harbour porpoises to impact and vibration piling noise during harbour construction. Ecosphere, 8(5): e01793). MSS can provide a copy if necessary.

diadromous fish
Outward migrating salmon smolts and returning adult salmon and sea trout may be present in the work area and the best information on when they are likely to be present or are present will come from local fisheries bodies such as the local Fisheries Trust, DSFB and Angling Club, or any direct observations. What is being recommended for marine mammals regarding underwater noise will also cover the needs of diadromous fish.

The marine mammal response notes that dredging and disposal work also has the potential to cause non-acoustic injury to marine mammals and that this should be addressed in the assessment and mitigation actions. This also applies to diadromous fish, and there may need to be consideration of whether high levels of suspended sediment which can be injurious to salmonids may be generated by dredging and disposal work and whether mitigation actions to address this may be needed.

Hopefully these comments are helpful to you. If you wish to discuss any matters further contact the MSS Renewables in-box at MS_Renewables@gov.scot

Yours sincerely

Paul Stainer

Marine Scotland Science

15 February 2018

Appendix III: Licensing Process

Application

The application letter must detail how many licences are being sought, what marine licensable activities are proposed and what legislation the application is being made under.

Applicants are required to submit two hard copies of EIA report together with an electronic copy in a user-friendly PDF format which will be placed on the Scottish Government website. If requested to do so by the Scottish Ministers the applicant must send to the Scottish Ministers such further hard copies of the EIA report as requested. Applicants may be asked to issue the EIA report directly to consultees and in which case consultee address lists should be obtained from the Scottish Ministers.

Requirement for Public Pre-Application Consultation ('PAC')

From 6th April 2014, applications received for certain activities are subject to a public pre-application consultation requirement. Activities affected will be large projects with the potential for significant impacts on the environment, local communities and other legitimate uses of the sea. This requirement allows local communities, environmental groups and other interested parties to comment on proposed works in their early stages and before an application for a marine licence is submitted.

The Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013 can be accessed via

http://www.legislation.gov.uk/ssi/2013/286/made

Guidance on marine licensable activities subject to Pre-application Consultation can be obtained at:

http://www.gov.scot/Topics/marine/Licensing/marine/guidance/preappconsult

The licensing authority reserves the right not to accept an application in the absence of an acceptable PAC report.

Pre-Dredge Sampling

Please note that if it is intended to dispose of any dredged material at sea, adequate pre-dredge sample analysis must be submitted in support of the EIA report and marine licence dredging application. The licensing authority reserves the right not to accept an application in the absence of acceptable sediment analysis data.

Please refer to the pre-dredge sampling guidance provided in Appendix V.

Ordinance Survey ("OS") Mapping Records

Applicants are requested at application stage to submit a detailed OS plan showing

the site boundary and location of all deposits and onshore supporting infrastructure in a format compatible with The Scottish Government's Spatial Data Management Environment ("SDME"), along with appropriate metadata. The SDME is based around Oracle RDBMS and ESRI ArcSDE and all incoming data should be supplied in ESRI shape file format. The SDME also contains a metadata recording system based on the ISO template within ESRI ArcCatalog (agreed standard used by The Scottish Government); all metadata should be provided in this format.

Advertisement

Where the applicant has provided the Scottish Ministers with an EIA report, the applicant must publish their proposals in accordance with Regulation 16 of the 2017 MW Regulations and ensure that a reasonable number of copies of the EIA report are available for inspection at any place named in the publication. Licensing information and guidance, including the specific details of the adverts to be placed in the press, can be obtained from the Scottish Ministers. If additional information is submitted further public notices will be required

EPS licence

European Protected Species ("EPS") are animals and plants (species listed in Annex IV of the Habitats Directive) that are afforded protection under The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) and The Conservation of Offshore Marine Habitats and Species Regulations 2017. All cetacean species (whales, dolphins and porpoise) are European Protected Species. If any activity is likely to cause disturbance or injury to a European Protected Species a licence is required to undertake the activity legally.

A licence may be granted to undertake such activities if certain strict criteria are met:

- there is a licensable purpose;
- there are no satisfactory alternatives, and;
- the actions authorised will not be detrimental to the maintenance of the population of the species concerned at favourable conservation status in their natural range.

Applicants must give consideration to the three fundamental tests and should refer to the guidance on the protection of marine European Protected Species for more detailed information in relation to Scottish Inshore Waters. Applicants may choose to apply for an EPS licence following the determination of the EIA application and once construction methods have been finalised, however it is useful to include a shadow EPS assessment within the EIA report.

Basking sharks are also afforded protection under the Wildlife & Countryside Act 1981 (as Amended by the Nature Conservation (Scotland) Act 2004).

Appendix IV: Gap Analysis

Applicant to complete:

Consultee	Summary of response (key concern)	Response from applicant	Action required	Evidence sent to MS LOT

Appendix V: Pre-Dredge Sampling Guidance

Scottish Government
Riaghaltas na h-Alba
gov.scot

Marine Scotland

Pre-disposal Sampling Guidance
Version 1 – January 2017

Table of Contents

1. Introduction

Sea disposal operations are controlled by:

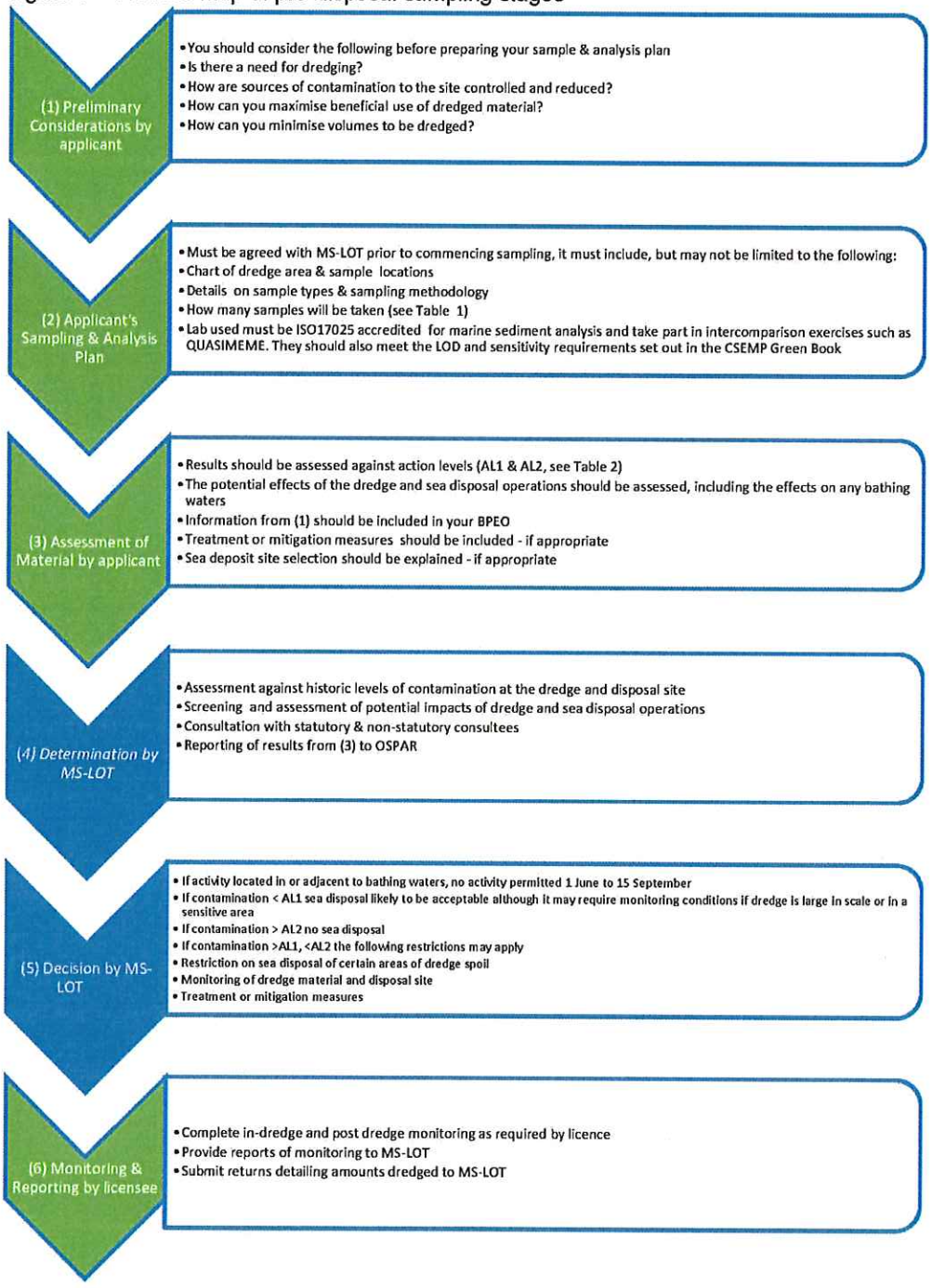
- Marine (Scotland) Act 2010;
- OSPAR Convention 1992, see also;
  - OSPAR Guidelines for the Management of Dredged Material at Sea;
  - JAMP Guidelines for Monitoring Contaminants in Sediments
- The EU Waste Directive;
- The London Convention & Protocol;
- The EU Water Framework Directive; and
- Scotland's National Marine Plan.

The requirements set out in this document will ensure applications are in compliance with the above. Deviations from these requirements are liable to result in delays in processing your application as well as the potential requirement for further sampling, analysis and assessment. Please retain **all** samples until determination of your application has been made in case further analysis is required.

2. Pre-disposal sampling stages

The process map (see Figure 1) shows the stages both applicant and MS-LOT must go through to determine a marine licence application for sea disposal activities.

Figure 1 – Process map of pre-disposal sampling stages



3. Sampling and analysis requirements

There are a minimum number of sample stations required for each dredge volume (see Table 1).

Table 1 – Minimum sample stations required by dredge volume

Proposed dredge volume (m^3)	No. of sample stations required
≤25,000	3
32,500	4
50,000	5
75,000	6
100,000	7
150,000	8
200,000	9
250,000	10
300,000	11
350,000	12
400,000	13
450,000	14
500,000	15
600,000	16
700,000	17
800,000	18
900,000	19
1,000,000	20
1,100,000	21
1,200,000	22
1,300,000	23
1,400,000	24
1,500,000	25
1,600,000	26
1,700,000	27
1,800,000	28
1,900,000	29
2,000,000	30
>2,000,000	Seek guidance from ms.marinelicensing@gov.scot

If you are dredging more than 1 metre in depth or in an area with known or suspected contamination you will be required to take core samples, cores should extend to the maximum dredge depth. Individual cores count as 1 station, so a 100,000m^3 dredge of over 1 metre would require 7 cores to be collected. When a core is collected you should sub-sample the surface layer (0-15cm) then every 50cm thereafter. Initially you should select sub-samples from the surface, middle and bottom of the core for analysis, with **all** sub-samples retained for further analysis.

Table 2 – Action Levels

Contaminant	Revised AL1 mg/kg dry weight (ppm)	Revised AL2 mg/kg dry weight (ppm)
Arsenic (As)	20	70
Cadmium (Cd)	0.4	4
Chromium (Cr)	50	370
Copper (Cu)	30	300
Mercury (Hg)	0.25	1.5
Nickel (Ni)	30	150
Lead (Pb)	50	400
Zinc (Zn)	130	600
Tributyltin	0.1	0.5
Polychlorinated Biphenyls	0.02	0.18
Polyaromatic Hydrocarbons		
Acenaphthene	0.1	
Acenaphthylene	0.1	
Anthracene	0.1	
Fluorene	0.1	
Naphthalene	0.1	
Phenanthrene	0.1	
Benzo[a]anthracene	0.1	
Benzo[b]fluoranthene	0.1	
Benzo[k]fluoranthene	0.1	
Benzo[a]pyrene	0.1	
Benzo[g,h,i]perylene	0.1	
Dibenzo[a,h]anthracene	0.01	
Chrysene	0.1	
Fluoranthene	0.1	
Pyrene	0.1	
Indeno(1,2,3cd)pyrene	0.1	
Total hydrocarbons	100	
Booster Biocide and		
Brominated Flame Retardents *		

*Provisional Action Levels for these compounds are subject to further investigation.

4. Submitting results

Results should be submitted to MS-LOT using the Pre-disposal Sampling Results form.