



Briefing for the Public Petitions Committee

Petition Number: [PE01637](#)

Main Petitioner: Greg Fullarton on behalf of [Cromarty Rising](#)

Subject: Ship-to-ship oil transfers and trust port accountability

Calls on the Parliament to urge the Scottish Government to ensure that environmental legislation in Scotland is sufficient to prevent ship-to-ship transfers of crude oil in environmentally sensitive locations, such as the Inner Moray Firth, and to enhance the accountability of trust port boards to their stakeholders.

Background

In December 2015, the Cromarty Firth Port Authority (CFPA) submitted an [application](#) to the Maritime and Coastguard Agency (MCA), to obtain a licence for ship-to-ship (STS) oil transfers at anchor in the inner Moray Firth for a maximum of 8.6 million tonnes per year. However, the MCA decided that the application needed more work, therefore the CFPA withdrew it. A new application is expected to be submitted in the coming weeks.

The original application describes how STS would be carried out:

STS transfers entail the transfer of oil from one ship (known as the mother vessel) to another ship (known as the daughter vessel). STS transfer operations are undertaken by anchoring one vessel and berthing the other vessel alongside on completion of the anchoring.

A transfer operation can involve more than one daughter vessel, but only one at a time. The proposed cargo transfer is always conducted with one vessel anchored at one of the designated STS locations.

Applications for STS oil transfer licences are reserved, and are the responsibility of the UK Secretary of State for Transport.

In Scotland, ship to ship transfer of oil currently takes place at Scapa Flow in Orkney, Nigg in the Cromarty Firth, and Sullom Voe in Shetland. STS transfers at Scapa Flow have taken place [since 1980 without major incident](#). There were [86 STS transfers at the Nigg oil terminal between 2009 and 2014](#) without incident.

In November 2009, there were [two minor](#) spills of a small quantity of oil condensate during STS transfer at Sullom Voe Terminal. An investigation was carried out by the terminal's anti-pollution team who confirmed no adverse effects or damage to the environment.

The CFPA currently has an OTL to undertake STS transfers alongside the jetty at the Nigg Oil Terminal (NOT) which services the Beatrice oil field. Oil production from the Beatrice oil field [ceased in early 2015](#), making the future operation of the NOT uncertain.

There has been a reduction in oil tanker visits to Nigg from 55 in 2010, to one in 2016. This is [estimated](#) to have led to a loss of £577,000 per year in revenue. The CFPA consider that these revenues protect employment, reinvestment and economic growth for the local area.

Environmental protection under current legislation

The [Merchant Shipping \(Ship-to-Ship Transfers\) Regulations 2010](#) ensure that the transfer of oil between tankers can only take place within harbour authority areas which have suitable oil spill contingency plans. The regulations prohibit STS transfer of oil within UK Territorial Sea. Harbours that wish to permit STS transfers within their waters must apply to the MCA for an OTL.

The 2010 Regulations state:

5.—(1) Before a harbour authority may obtain an oil transfer licence the harbour authority must— (a) determine, in accordance with the procedure in Schedule 1, whether the cargo transfers to be authorised pursuant to the licence would be likely to have a significant effect on any European site; [...].

Schedule 1 states:

The harbour authority must— (a) determine, and (b) provide to the Secretary of State a written statement with reasons stating, whether the cargo transfers to be carried out under the requested oil transfer licence are likely to have a significant effect on any European site, either individually or in combination with other plans or projects.

Schedule 2 states that the application must include an environmental statement (ES), which is the result of an Environmental Impact Assessment (EIA), paragraph 2 of this Schedule sets out the required contents of the ES in detail. Thereafter, according to the 2010 Regulations, a 42 day consultation period opens with statutory consultees.

OTL applications must therefore provide an ES in accordance with the provisions of the EC Habitats Directive ([Council Directive 92/43/EEC](#)) which complements and amends the Birds Directive ([Council Directive 2009/147/EC](#)). Together they ensure the conservation of a wide range of rare or threatened animal and plant species. These are transposed in the UK by the [Conservation of Habitats and Species Regulations 2010](#).

In Scotland, the Habitats Directive is transposed by [The Habitats \(Scotland\) Regulations 1994](#). However, this does not apply to reserved matters and is therefore not applicable to OTL licence applications.

Nature conservation in the Cromarty Firth

The Cromarty Firth is protected as a nature conservation area under a number of designations including the EU Natura 2000 network (SPA & SAC), SNH [provides](#) the following table:

Designation	Regulating body/legislation	What is protected?
Special Protection Area (SPA)	EC Birds Directive	15 bird species .
Special Area Conservation (SAC)	EC Habitats Directive	Subtidal sandbanks, Bottlenose dolphin
Special Site of Scientific Interest (SSSI)	Scottish Natural Heritage/Nature Conservation (Scotland) Act 2004	Mudflats, sandflats, saltmarsh and 5 bird species .
Ramsar (International treaty for the protection of wetlands)		Intertidal mudflats and sandflats and 3 bird species .

Trust Ports

Transport Scotland handles all devolved ports policy on behalf of Scottish Ministers, covering commercial, publicly owned and trust ports and [states](#):

Trust ports are independent statutory bodies, governed by their own local legislation and run by independent boards for the benefit of stakeholders. Unlike private company port they have no shareholders so all the surpluses from port operations are put back into the port.

Transport Scotland, therefore, makes no ministerial appointments to trust port boards in Scotland.

The CFPA was formed in 1973 by Act of Parliament. It is an independent Trust Port governed by its own local legislation, and run by an independent Board of Directors who manage assets of the Trust for the benefit of stakeholders, which include port users, employees, local communities and public authorities.

Scottish Government and Scottish Parliament Action

In [response to a question raised in the Parliament on the 12 January 2017](#), the First Minister stated:

On the basis of the current information, the Scottish Government is unconvinced that ship-to ship oil transfers can, or should, take place at anchor in the Cromarty Firth without unacceptable risk to the marine environment—in particular the European Union designated area for bottlenose dolphins.

We will ensure that local communities' concerns are heard by the UK authorities while [...]we continue to press for the relevant powers to be devolved Scotland. We will also continue to support the Cromarty Firth

Port Authority, which is a vital and valued part of the north of Scotland's economy.

Scottish Ministers have written to the Department of Transport (see PQ S5W-06774 below) requesting that the Scottish Government is consulted on the review of the Merchant Shipping (Ship-to-Ship Transfers) Regulations. These findings are due to be published in March 2017.

There was a [debate on the 9 March 2006](#) on ship-to-ship oil transfer in the Firth of Forth.

There have been numerous Parliamentary Questions in relation to STS in the Cromarty Firth; these are included in the Annex.

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Research Specialist
3 March 2017

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ANNEX: PARLIAMENTARY QUESTIONS

Question S5W-06998: Mark Ruskell, Mid Scotland and Fife, Scottish Green Party, Date Lodged: 08/02/2017

To ask the Scottish Government what recent discussions it has had with (a) Scottish Natural Heritage, (b) the Maritime and Coastguard Agency, (c) Cromarty Firth Port Authority and (d) the UK Government regarding the application of Regulation 48A of the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended), which was introduced by the Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2007, regarding ship-to-ship transfers in the Cromarty Firth,

Answered by Paul Wheelhouse (22/02/2017): I refer the member to the answer to question S5W-06053 on 26 January 2017. All answers to written parliamentary questions are available on the Parliament's website, the search facility for which can be found at <http://www.parliament.scot/parliamentarybusiness/28877.aspx>

Question S5W-06774: Mark Ruskell, Mid Scotland and Fife, Scottish Green Party, Date Lodged: 01/02/2017

To ask the Scottish Government what representations it has made to the Secretary of State for Transport regarding a review of the Merchant Shipping (Ship-to-Ship Oil Transfers) Regulations 2010, as required by Regulation 2 of the Merchant Shipping (Ship-to-Ship Transfers) (Amendment) Regulations 2012.

Answered by Paul Wheelhouse (23/02/2017): The Scottish Government has only recently been made aware of a review and quite astonishingly has not been invited to make any representations regarding a review of the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010, as amended. It is understood that the UK Department for Transport has undertaken a minor review to consider the cost, safety and impact on the environment of ship to ship oil transfers, and whether the regulations were meeting their proposed intention. The UK Department for Transport has now informed the Scottish Government they will publish their findings in March. In response Scottish Ministers have written to the Department of Transport requesting that the Scottish Government is consulted on the review before the findings are published. To do otherwise would be to deny the elected Government of Scotland, and Scotland's Parliament, which is responsible for our marine environment, a say on an issue of importance to our environment and Scotland's people.

Question S5W-06775: Mark Ruskell, Mid Scotland and Fife, Scottish Green Party, Date Lodged: 01/02/2017

To ask the Scottish Government what representations it has made to the Secretary of State for Transport regarding licence applications and the impact on wildlife sites of ship-to-ship transfers of (a) oil and (b) other chemicals in (i) harbour authority areas, (ii) other inshore waters and (iii) offshore waters; what assessment it has made of (A) the impact of any proposed licences and (B) whether any proposed licences meet the requirements of the habitats directive, and what the reasons are for its position on this matter.

Answered by Paul Wheelhouse (22/02/2017): The Scottish Government is not a formal consultation body for Ship to Ship Oil Transfer Licence applications under the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010, as amended. Scottish Ministers have written on a number of occasions to the Secretary of State for Transport requesting devolution of this reserved function, including two letters in 2016. In 2007, Scottish Ministers wrote four times to the UK Government's Secretary of State for Transport with regards to concerns over ship to ship oil transfer proposals in the Firth of Forth.

Assessment of potential impact of proposed ship-to-ship oil transfer licence applications, including compliance with the EU Habitats Directive is a matter for the competent authority. For ship-to-ship oil transfer licences that is currently the Secretary of State for Transport, although Scottish Minister's argue such powers should be devolved to the Scottish Government. Ship to ship transfers in offshore waters are not currently regulated. Again, this is an area that is reserved to Westminster. The Scottish Government is not aware of historical ship to ship transfer applications for other chemicals in Scottish territorial waters.

Question S5W-06180: Mark Ruskell, Mid Scotland and Fife, Scottish Green Party, Date Lodged: 13/01/2017

To ask the Scottish Government whether it considers that ship-to-ship oil transfer operations, as proposed in the licence application by Cromarty Firth Port Authority in December 2015, are compliant with regulations established under directives 92/43/EEC and 79/409/EEC.

Answered by Roseanna Cunningham (24/01/2017): As stated in Parliament by the First Minister on 12 January 2017, on the basis of the current information, the Scottish Government is unconvinced that ship-to-ship oil transfers can, or should, take place at anchor in the Cromarty Firth without unacceptable risk to the marine environment.

Question S5W-06181: Mark Ruskell, Mid Scotland and Fife, Scottish Green Party, Date Lodged: 13/01/2017

To ask the Scottish Government for what reason Marine Scotland did not provide a response to the licence application by Cromarty Firth Ports Authority, in December 2015, to carry out ship-to-ship oil transfers.

Answered by Roseanna Cunningham (24/01/2017): Marine Scotland is a Directorate of Scottish Government. The Scottish Government is not a formal consultation body for Ship to Ship Licence applications under the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010. We expect an invitation from the UK Government to respond on a revised application.

Question S5W-06146: Mark Ruskell, Mid Scotland and Fife, Scottish Green Party, Date Lodged: 13/01/2017

To ask the Scottish Government what meetings (a) ministers and (b) officials have had with (i) Scottish Natural Heritage and (ii) Scottish Enterprise at which proposals by Cromarty Firth Port Authority to carry out ship-to-ship oil transfers were discussed, broken down by (A) date and (B) location.

Answered by Roseanna Cunningham (26/01/2017): There have been no meetings between Ministers or officials and these bodies to discuss the application for ship to ship oil transfers by Cromarty Firth Port Authority.

Question S5W-06148: Mark Ruskell, Mid Scotland and Fife, Scottish Green Party, Date Lodged: 13/01/2017

To ask the Scottish Government what meetings (a) ministers and (b) officials have had with Cromarty Firth Port Authority at which proposals to carry out ship-to-ship oil transfers were discussed, broken down by (i) date and (ii) location.

Answered by Humza Yousaf (24/01/2017): There have been no specific meetings between Ministers or officials and Cromarty Firth Port Authority at which their proposals for ship to ship oil transfers were discussed. However the matter was an agenda item at the Cromarty Firth Port Authority Annual and Board meetings on 24 and 25 November 2016 in Invergordon, attended by a Transport Scotland official as an observer. Officials occasionally attend various trust port board meetings as part of their role in developing guidance for the port sector.

The decision on any licence for ship to ship oil transfers is a reserved matter and the responsibility rests with the Secretary of State for Transport.

Question S5W-06053: Mark Ruskell, Mid Scotland and Fife, Scottish Green Party, Date Lodged: 12/01/2017

To ask the Scottish Government how it uses section 48 of the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) to assess the impact on wildlife sites of ship-to-ship transfers of (a) oil and (b) other chemicals in (i) harbour authority areas, (ii) other inshore waters and (iii) offshore waters, and what assessment it has made of (A) the impact of its approach and (B) whether its approach meets the requirements of the habitats directive.

Answered by Paul Wheelhouse (26/01/2017): All matters relating to ship-to-ship transfers are reserved to the UK Government. The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) do not apply to reserved matters.

Question S5W-06060: Mark Ruskell, Mid Scotland and Fife, Scottish Green Party, Date Lodged: 11/01/2017

To ask the Scottish Government whether the Cromarty Firth Port Authority has consulted Scottish Natural Heritage for the purpose of carrying out an appropriate assessment of a plan or project under the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) for ship-to-ship transfers of oil in the Moray Firth.

Answered by Paul Wheelhouse (26/01/2017): The Secretary of State for Transport is the Competent Authority, under the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010, and is responsible for undertaking appropriate assessments when required. Scottish Natural Heritage has provided advice to the environmental advisors of the Cromarty Firth Port Authority. The Scottish Government has repeatedly requested devolution of

this function to allow decisions to be taken by those with responsibility for protecting Scotland's environment.

Question S5W-06061: Mark Ruskell, Mid Scotland and Fife, Scottish Green Party, Date Lodged: 11/01/2017

To ask the Scottish Government whether a harbour authority can consent to a programme of ship-to-ship oil transfers without amending its by-laws to take account of such transfer operations.

Answered by Humza Yousaf (24/01/2017): The licensing of port authorities for the purposes of ship to ship transfers is a matter for the Maritime and Coastguard Agency (MCA), on behalf of the Secretary of State for Transport. Once a licence is issued by the MCA, it would be for individual port authorities to ensure that such activity was not inconsistent with its byelaws before any such activity commences.

On the basis of the current information, the Scottish Government is unconvinced that ship-to-ship oil transfers can, or should, take place at anchor in the Cromarty Firth without unacceptable risk to the marine environment. The Scottish Government expects to be fully consulted by the MCA on any revised application put forward by the Port of the Cromarty Firth.

Question S5W-05637: Maree Todd, Highlands and Islands, Scottish National Party, Date Lodged: 15/12/2016

To ask the Scottish Government, further to the answer to the fifth supplementary to question SF5-00643 by the First Minister on 15 December 2016 (Official Report, c. 15), whether it will provide an update on discussions that it has had with the UK Government regarding plans to conduct ship-to-ship oil transfers in the Cromarty Firth.

Answered by Keith Brown (22/12/2016): In October Scottish Ministers wrote to the Chief Executive of the Maritime and Coastguard Agency (MCA) to reiterate that the Scottish Government should be formally consulted on all applications for Oil Transfer Licences in Scottish Waters. In addition Scottish Ministers have written to the Secretary of State for Transport requesting devolution of the responsibility for ship to ship oil transfer licensing. As a result of this correspondence, an initial meeting between officials of Marine Scotland and MCA took place on 13 December 2016 to discuss how the Scottish Government should be consulted on a revised Cromarty Firth application.

Question S5W-00285: John Finnie, Highlands and Islands, Scottish Green Party, Date Lodged: 26/05/2016

To ask the Scottish Government what assessment of risk to the marine wildlife, including orcas, it has made of the proposed ship-to-ship transfer in the Moray Firth.

Answered by Roseanna Cunningham (03/06/2016): The Scottish Government has no functions in relation to ship to ship oil transfer licenses. This is a matter reserved to the UK Government, and we continue to press for devolution of these powers to Scotland.