

PE1637/A

Scottish Natural Heritage submission of 22 May 2017

Thank you for your letter dated 20th March 2017 seeking our views on the actions called for in petition [PE1637](#).

The petition summary is:

Calling on the Scottish 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.

The petition raises two broad questions, namely: the adequacy of environmental legislation in relation to the ship-to-ship transfers; and the accountability of trust ports.

Our response is to the first of these questions. The second question is out with our remit, although we support trust port engagement with stakeholders, including SNH.

The [SPICe report](#) (page 2) provides a concise description of the environmental protection afforded to ship-to-ship transfers under [The Merchant Shipping \(Ship-to-Ship Transfers\) Regulation 2010](#). In essence, the Secretary of State must determine whether the proposed oil transfers subject to a licence application are likely to have a significant effect on any European protected sites. For this, the Secretary of State must make an appropriate assessment of the implications of these transfers for the European site in view of the site's conservation objectives. This provision is a requirement of the Habitats Directive (the Conservation of Habitats and Species Regulations 2010 as amended). We note there is an apparent error in Schedule 1 paragraph 3(2) of The Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010 where it refers to Article 5 of the Habitats Directive. We believe that this should refer to Article 6, which requires that "competent authorities shall only agree to a plan or project having ascertained that it will not adversely affect the integrity of the site concerned".

All applications for an oil transfer licence must be accompanied by an environmental statement (ES) which sets out all of the relevant information on which the consultees may then comment. SNH is named in [The Merchant Shipping \(Ship-to-Ship Transfers\) Regulation 2010](#) as one of the consultation bodies to whom the ES must be provided by the Secretary of State (or their agent the Marine and Coastguard Agency (MCA)). The Secretary of State must have regard to any representations that consultation bodies make before deciding whether to grant a licence.

When consulted, we will advise the MCA on the nature and scale of the likely impacts of the proposal on European interests. We will suggest any mitigating conditions necessary to avoid impacts or reduce them to a level which will not adversely affect site integrity. We will advise whether, in our view, it can be ascertained that the proposal will not have an adverse effect on the integrity of European sites. If the application does not contain sufficient information to determine the potential impacts, we may request further information (from the MCA) on the proposal and advise on the scope and content of the appropriate assessment, including further survey/analysis necessary on the habitats/species concerned or the factors affecting them. Whilst the appropriate assessment (and its conclusion) is the responsibility of the MCA, we must be consulted, and our advice considered.

In addition to advising on European designated sites, we may advise on other natural heritage interests including; [European Protected Species](#), [other protected species](#), species and habitats that are designated interests of [Sites of Special Scientific Interest](#) and [Priority Marine Features](#). We may also advise on any oil spill contingency planning in relation to a ship-to-ship proposal insofar as it affects natural heritage interests.

Thus, in our view, there is legislation in place to ensure that the environmental effects of oil transfers are considered on a site by site basis and there is a competent authority to implement them. These safeguards match the requirements for considering effects of plans or projects on other European sites as well as areas subject to national nature conservation designations and protected species.

To identify appropriate locations for ship to ship transfers, it may be appropriate for the MCA to carry out a strategic overview of the activity in UK waters. This would allow for an assessment of the environmental effects on potentially sensitive sites at that strategic level.

Please note that for recent ship-to-ship cases in the Scapa Flow and the Moray Firth, the Scottish Environment Protection Agency led on ballast water issues including the introduction of invasive non-native species and water quality. They may have additional comments to make on these specific aspects.