

PE1637/H

Minister for Energy, Connectivity and the Islands submission of 11 September 2019

Thank you for your letter dated 12 August 2019 to Mairi Gougeon MSP, Minister for Rural Affairs and the Natural Environment regarding petition PE1637. I am responding as the majority of the points you have raised sit within my portfolio.

The annex to this letter responds to the points raised. For ease it is divided into three sections:

- Environmental Issues relating to the ship to ship oil transfers
- Trust Ports
- Other environmental issues

I trust this satisfies the request from the Committee.

Annex

Environmental issues relating to the ship to ship oil transfers

I reiterate the points that I made in my letter of 30 January 2018 regarding this petition. The process for considering and determining applications for ship-to-ship oil transfer licences is reserved to the UK Government.

The Scottish Government has made clear to the UK Government that consultation on such matters should be taking place at Ministerial level and the Scottish Government has expressed dissatisfaction with previous efforts: it is simply not appropriate for a copy of documentation to be sent by an environmental consultancy (acting as agent for the applicant) to officials as a substitute for correspondence between Ministers. This has been made clear to the UK Government on several occasions along with requests for this important function to be devolved to Scottish Ministers. I can also confirm that there has been no discussions with the UK Government on this matter since the previous letter to the Committee on 30 January 2018.

The petitioner also mentions European Protected Species (EPS) Licensing. This would only become a material consideration if a ship-to-ship oil transfer licence had been issued. It is clear in the published Scottish Government guidance that an application for an EPS licence will only be determined after all other licences required for the activity are in place, although a potential applicant can begin discussions with Marine Scotland earlier should they wish to do so.

Trust ports

Regarding the petitioner's comments about the trust port model, I reiterate the points that I made in my letter of 30 January 2018. Scottish Ministers expect Trust Ports to operate with reference to the Modern Trust Ports for Scotland: Guidance for Good Governance and our experience is that Trust Ports across Scotland do this.

Trust ports operate in a commercial environment usually with no direct public funding and compete in the market with private and local authority ports as well as other trust ports. We would look to trust ports to use the relevant elements of the Guidance as a benchmark – all ports on which the Scottish Parliament has devolved statutory powers and duties in the

public interest should be accountable for their use. As independent statutory bodies, however, Trust Ports are governed by their own local legislation and run by independent boards.

The petitioner questions the security process of trust ports. Port security is a reserved matter and all ports, regardless of whether operating through the trust, local authority or private model, fall under the remit of the UK Border Force, which has responsibility to secure the border and promote national prosperity by facilitating the legitimate movement of individuals and goods.

Unlike privately owned ports, trust ports have no shareholders so all the surpluses from port operations are re-invested into the port. The primary requirement is for ports to comply with their own local legislation that sets out their powers and responsibilities. Any party who feels a trust port is operating outwith their powers as set out in their legislation should raise this with the Port in the first instance, but ultimately has the option to consider legal remedy. Anyone considering a legal action is advised to take independent legal advice.

Other environmental issues

A number of additional issues have been raised by the petitioners in their latest submission. These appear to be related to the ongoing operation of the Port of Cromarty Firth. Ongoing operations are a matter for the competent authority which in this case is the Cromarty Firth Port Authority. They have an obligation to ensure that their activities do not cause significant deterioration of the Moray Firth Special Area of Conservation. If the petitioners have concerns regarding the ongoing operations of the port then they should raise them with the Cromarty Firth Port Authority.

The Committee may wish to be aware that the most recent assessment of bottlenose dolphin concluded that the population was favourable. I think this gives some confidence that ongoing activities in the Moray Firth are being undertaken in an appropriate manner.