

PE1637/I

Petitioner submission of 14 October 2019

The minister's response once again fails to address a number of key issues raised by this petition. We are acutely aware that the process for granting a STS licence is reserved to the UK government. The **Merchant Shipping (Ship-to-ship Transfers) Regulations 2010** offers the opportunity for the Scottish Agencies to input to that process – SNH are specifically named as a consultation body as are “any authority or other body the Secretary of State considers likely to have an interest in an application.” The response is an obfuscation by the Minister.

In relation to consultation on the PoCF STS licence, the Minister has replied *"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"*.

The Scottish government seems to be selective on replying to the environmental consultancy (Intertek). They certainly replied to Intertek when asked to approve the Oil Spill Response plan for the PoCF ship-to-ship licence. The STS regulations are very clear that an STS licence can only be awarded when an approved oil spill response plan is in place. An approved oil spill plan is a legal requirement, it is also the first step in obtaining an STS licence.

FOI correspondence shows that on 6th October 2015, Marine Scotland sent an email to Intertek, CC MCA staff. This email gives Scottish government approval of the PoCF oil spill plan, as sent to them by Intertek. This is at odds with the response from the Minister who advises PPC members that Intertek are not an appropriate entity for the Scottish government to respond to.

To say that the method of consultation was not satisfactory is disingenuous. The fact remains that during the PoCF application, the consultation was received by Marine Scotland, similar to many other consultations including the Oil Spill Response plan. Marine Scotland officials not only discussed with SNH, they consulted internally and produced a detailed response. That response was not issued to the MCA, despite the MCA providing an opportunity to do so after the deadline. Marine Scotland must have been instructed by someone within the Scottish government not to submit the response – we do not know who but the public deserve to know – we call for a detailed investigation into this dereliction of public duty.

The point regarding EPS licensing seems valid with regard to the published process but surely this must be a material consideration? This is at odds with the licensing process for terrestrial situations where the ability to grant a licence must be considered during the planning process. The potential issue of EPS licensing should have been raised by Marine Scotland, had they been allowed to respond. This issue is not limited to PoCF - the PPC should seek to clarify whether the need for EPS licences were considered either pre- or post licence award for ship-to-ship oil transfer licences in Scapa Flow, Sullom Voe,

Grangemouth, Finnart and indeed the Nigg Terminal. Evidence should be further provided that these Scottish trust ports consulted SNH, who are named as a statutory consultee, during these applications.

On the issue of Trust Ports there is nothing new – it reinforces our point on lack of accountability. How can a Trust Port board be independent of a Trust Port when Trust Ports appoint their own board members outwith the public appointments process? How can the chief executive of a Trust Port, serving on the board of that Trust Port, act independently?

The minister states:

“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.”

This reiterates our point – there is no independent scrutiny – there is no recourse for aggrieved communities or individuals other than court. This is at odds with the situation in England as highlighted in our previous submission.

With regard to other environmental matters, such as the release of the cement dust cloud in the Cromarty Firth – the PoCF response to community concerns regarding hazardous cement cloud releases was a brief email stating "no environmental impacts."

Cement dust contains fine and ultrafine particles between 0.05 – 5.0 µm which can penetrate into the lung parenchyma and cause toxic damage. Cement dust can cause lung function impairment, chronic obstructive lung disease, pneumoconiosis, and carcinoma of the lungs. Studies have also shown that cement dust may contain toxic heavy metals, such as hexavalent chromium, nickel, and cobalt. This is a clear potential hazard for protected cetaceans, sea birds and humans alike and cannot simply be dismissed as it has been.

We further raised this issue with SNH. From the verbal reply it would appear that the Port of Cromarty Firth have never taken account of any of their activities with regard to the potential impact on the Moray Firth SAC. As the minister, highlights, PoCF are the “competent authority” but would appear not to have the competence to implement the requirements of the “Habitats Regulations.” It would appear their duties as competent authority have been ignored since 1994, a period of 25 year – this is a national outrage. The minister again states the petitioners should raise their concerns regarding ongoing operations of the port with the port authority – this again reinforces our point –this particular port we use in our example would appear to pay lip service to complaints and there is no-one to appeal to. We remind the minister and the committee that Scottish Trust Ports are public assets, yet there is no public accountability.

As a further example from Port of Cromarty Firth, **the International Convention for the control and Management of Ships Ballast Water and**

Sediments. (Adopted 13 February 2004: Entry into force 8 September 2017), would appear not to have been adopted.

In a response to a question by a local Councillor, who is also Local Authority "Species Champion" for bottlenose dolphin, PoCF indicated they do not perform ballast water sampling before discharge and that members of the public should contact MCA for further details. This is an astonishing response to responsibilities held within an international treaty for which compliance is mandatory.

Two heavy-lift ships have recently discharged ballast water into the Moray Firth SAC. One of which is the Liberian registered Zhen Hua 7, which loaded a drilling rig and ballast water in North Africa and then discharged this ballast water into the Moray Firth SAC while offloading the rig. Heavy-lift ships are not believed to be technically capable of meeting International Maritime Organisation ballast water exchange treatment to meet international human health standards. MCA were contacted, as advised by PoCF, and MCA have since escalated their handling of the enquiry resulting in an investigation has been ordered by MCA's Director of Safety and Standards. While enforcement of the treaty is a reserved matter, the potential release of Invasive Non-Native Species (INNS) from ballast water is not.

INNS can cause severe and irreversible damage to coastal eco-systems. A Scottish government commissioned study¹ identified the total annual cost of INNS to the Scottish economy to be £244,736,000. In a work-shop, jointly sponsored by The Crown Estate and Scottish Natural Heritage (SNH),² the Cromarty Firth was given an eco-system service value of £16, 619, 345, 217. Scotland's estuaries represent a significant portion of Scotland's national GDP. Why have Scottish Ministers lost control of this valuable part of GDP?

These examples illustrate the fundamental point of PPC petition PE1637. Why can't Scottish Ministers act to protect our coastal waters and their fauna from potentially harmful Scottish Trust Port activities?

Scottish Trust Port Policy is wholly devolved to the Scottish government, responsibility for which rests with the Cabinet Secretary for Transport, Infrastructure and Connectivity. Scotland's First Minister has said in the Scottish Parliament that "she is unconvinced the oil transfers can or should take place in the Cromarty Firth without resulting in an unacceptable risk to the marine environment-in particular a European designated area for bottlenose dolphins." (January 2017). Why then do Scottish Ministers not simply rule out such harm by issuing a Scottish Trust Port Policy Statement which protects marine wild life where required?

In another PoCF example, we understand that PoCF recently received Scottish government funding worth £7.5 million for a new cruise hub

¹ The Economic Cost of Invasive Non-Native Species on Great Britain. Sponsored by The Scottish Government. CAB/001/09. www.cabi.org

² Industrialised Estuaries and the Cost Benefit Implications ; Encouraging Sustainable Development and management

development. This follows a £4 million grant from HIE in August 2014. Can the PPC please seek to clarify the statement made by the Minister that trust ports receive “no direct public funding”?

With regard to the assessment of bottlenose dolphin population in the Moray Firth SAC being favourable, the suggestion that this means that activities being undertaken in an appropriate manner is an ill-judged statement. All it means is that the population is stable – they are not flourishing nor increasing in number, in fact this year’s monitoring finds up to 30% of the population using the southern North Sea and not the Moray Firth SAC – the reason for this is as yet unclear. Indeed within the latest site condition monitoring report³ it is stated:

“The east coast of Scotland bottlenose dolphin population remains small and potentially vulnerable. “ It is not within the spirit of the Habitat Regulations to ignore the potential impact of increasing industrialisation and the massive increase in marine traffic around the Moray Firth SAC without any scientific scrutiny of the potential impact of activities. Even to suggest carrying out Ship to Ship transfers of crude oil at sea in the highly protected area shows a flagrant disregard for the potential impact of a catastrophic spill which could potential wipe out this fragile population of bottlenose dolphins.

³ Cheney, B., Graham, I.M., Barton, T.R., Hammond, P.S. & Thompson, P.M. 2018. Site Condition Monitoring of bottlenose dolphins within the Moray Firth Special Area of Conservation: 2014-2016. Scottish Natural Heritage Research Report No. 1021.